

# THE ELECTORAL COLLEGE: RELEVANCY AND REFORM

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## Abstract

*Though it has received little attention since the Bush-Gore Presidential election of 2000, discussion of Electoral College reform inevitably returns during close Presidential elections. However, the lack of continuous popular discussion does not imply the absence of a serious need for reforming the electoral process. As such, some reforms may be necessary to return presidential elections to their intended design. This paper will provide an overview of the Electoral College as it was designed, its current relevance in elections, and a proposal for reform that will take into consideration modern democratic expectations while still preserving the republican ideals intended by the Founders.*

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## Introduction

Perhaps the most foundational principle of American government is equal representation. Some of the most formative disputes in the nation's history—the Jacksonian democratization, the Civil War, the Women's Suffrage Movement, and the Civil Rights Movement—have been inextricably connected to the right to vote. The details of how such a right should be exercised have long been debated. Options range from strong and weak models of representation, to direct democracy, to even tyranny by consent. However, the unquenchable and quintessentially American idea that all men have natural rights has inspired countless millions within our nation's borders, from poets, to painters, to plumbers, to philosophers.

That is not to say that the American form of democracy is incontrovertibly perfect. While America prides itself in being one of the most successful democratic experiments ever attempted, several aspects of the American system have engendered much debate. One of the primary examples is the Electoral College. Under the current paradigm, many Americans who do not live in swing states feel that their votes are essentially worthless—and, mathematically speaking, they have a point. A Democrat from Texas is, under normal circumstances, going to have no voice in the choosing of the next President. Similarly, a Republican Californian cannot generally determine the nation's next commander-in-chief. This gives rise to an important question: is there a way to maintain the Federalism originally intended while better representing the American people? This study will examine potential answers to that question that can reform the electoral system in a positive and representative fashion.

## Literature Review

This paper offers and then analyzes an original approach to reforming the electoral college. This contributes to a field about which little is currently known: the impacts of specific reforms. As Gary Bugh states “Despite the voluminous literature on the presidential electoral system, not many works focus on its modification or elimination—that is to say, on its reform” (Bugh, 2010). Three broad categories are possible for Electoral College Reform:

1. **Keeping the system as it is.** Proponents for this option argue that the Electoral College is working as intended and that it has the capability to adapt to modern changes in population and voting habits. Such arguments point to the success of the system, which has over 200 years of experience to prove it (Diamond, 1977; Best, 1975; Gregg II, 2001).

2. **Modifying the system while keeping the framework.** Proponents for this option argue that the basic premise of the Electoral College, while sound, was not

created with the idiosyncrasies of modern America in mind and has flaws that should be addressed. As such, the system should be modified to incorporate the different social context that has evolved since the creation of the Electoral College. These suggestions generally utilize an already existing model such as runoff elections, drawing from European parliamentary models, or overhauling the primary elections to make the general election more representative of the people (Wilmerding, Jr., 1958; Matthews, 1973; Lott, Daschle, 2016; Sayre, Parris, 1970; Bugh, 2010).

3. **Eliminating the Electoral College.** Proponents of this option believe that the Electoral College is outdated, primitive, and incapable of representing citizens in a modern, connected, democratic world. Almost universally, they advocate for some form of direct vote and “majority wins” procedures (Abbott, Levine, 1991; Edwards III, 2004; Peirce, 1968).

## Data and Methods

Most of the data utilized in this paper has been taken directly from election results (The U.S. National Archives and Records Administration, n.d.). This paper will study the 1992 and 2000 presidential elections. While other elections could be considered, these elections serve as both recent and quintessential examples of how reform might change the results of a presidential election.

The math and method applied is straightforward: using the election data gathered from election archives, I applied a proportional Electoral College vote distribution by percentage of the total votes from each state. When determining the number votes each candidate would receive from the activation of Article 2, Section 1 (as modified by the 12th Amendment), I tallied the number of incoming Representatives from each party with the majority party receiving the vote. It should also be noted that when calculating the number of votes for the 2000 election, the 2000 Census data was used. While election information as a result of the 2000 Census was not applied that year, I have used this number to better represent the actual population statistics. It should be noted that no significant vote reapportionment occurred: no changes were by a margin of more than two electoral votes.

When applying this method, henceforth referred to as the Population-Appportionment Method or PAM, some small rounding anomalies occur due to the presence of three or more parties. This creates one of two scenarios: either the sum of votes is insufficient (for example, a state with four electoral votes only distributes three), or there are too many (for example, a state with four electoral votes distributes five). If the former problem arises, I will assume that the candidate with the highest percentage will receive the undistributed vote. If the latter, the runner up will lose a vote. In this way, the winner will still receive the majority of electoral votes and the lowest vote-getter still has the opportunity to receive at least one electoral vote.

Additionally, any candidate who receives at least five percent of the popular vote (with all percentages rounding down) is guaranteed at least one electoral vote if they would not otherwise have received one. This electoral vote will be taken from the candidate with the second largest share of the vote. If a state has an insufficient amount of votes for a candidate to receive an electoral vote from the runner up (for example, a state with three electoral votes with a split of 2/1/0 cannot give the third candidate a vote without the runner up receiving none), the vote will be taken from the candidate with the largest vote share instead. In the unlikely event of multiple frontrunner candidates receiving more than 5% of the vote, only the three highest vote-getters would have the above method applied.

The reason why we have a two-party dominance is not because we have a two-party system, but what I believe is due in large part to the winner-take-all election process. As Lowi pointed out:

However, the golden age of the two-party system was the nineteenth century, and that age ended rather abruptly in 1896, when the southern states became exclusively one-party systems dominated by the Democrats and to a lesser degree the northern states become one-party systems dominated by the Republicans. Even in some important states where the two parties competed directly, the counties in one part of the state were one-party Democratic systems, and those in the other part were one-party Republican systems. Therefore, while nationally the two-party system seemed to dominate into the twentieth century, the truth was that we were governed mainly by two competing one-party systems, not a bona fide two-party system.

There is still another type of third party, and a vote for it would be the most effective of all – if a party of that sort were made available. This is an electorally based third party: a third party just like the two major parties, just as pragmatic, just as concerned with winning elections. Creating such a party on a national scale has not been tried seriously since the Progressives tried it in 1912. The very presence of such a third party would make a fundamental difference to the political system (Lowi, 1985).

## Research

The goal of PAM is to address two principal imbalances of the electoral college: to create a more representative election, and to create a friendlier environment for

additional party candidates. To demonstrate PAM as well as to highlight the results of reform, two case studies will be examined, the 1992 and 2000 presidential elections. As might be expected, PAM makes the biggest difference when elections are close: when PAM is applied to landslide elections, the outcomes are similar or identical.

On the surface, one could say that PAM is simply an attempt to institute a popular election: those with the most votes win. This is categorically incorrect. PAM retains the Electoral College, while more accurately representing the people. Furthermore, by retaining the Electoral College and the federalism therein, PAM would force candidates to actually campaign to win states as opposed to simply winning a majority.

### *The Role of the Electoral College*

A full history of the creation of the electoral college falls well outside this paper. As such, this paper will focus on two key aspects of the Founder's intent as it relates to PAM. The first centers on the idea that federalism allows the states to represent their diverse and unique geographical and political trends:

Delegates [of the Constitutional Convention] realized that direct election, even if physically possible, meant disregarding geographical and political boundaries which identified Americans as citizens of states with distinctive problems and interests. The United States, already stretching from the Atlantic to the Mississippi and from Massachusetts to Georgia, would comprise one district. Could any state or group feel that its interests would be adequately protected? (Kuroda, 1994)

This plays into the central tenants of federalism: while the states can be united in a single nation, each state continues to maintain its own unique aspects as well as a measure of sovereignty. It is clear from the design of the college that the delegates at the convention wanted each state to be represented when it came to Presidential elections.

The second aspect of the Founder's intent as it relates to elections is the concept of informed elections. In 1787, communication was slow. Even up until the advent of the radio and television the only way most people would hear about a presidential candidate would be to attend a rally or read a newspaper. Therefore, it was relatively rare when the electorate would be fully informed about a particular candidate or election:

Many [delegates] reasonably feared that, in these circumstances [poor internal communications], the people simply could not have the national information about available candidates to make any

real choice, let alone an intelligent one. And small-state partisans feared that, given this lack of information, ordinary voters would vote for favorite sons, with the result that large-state candidates would always win the presidential pluralities (Diamond, 1977).

Understanding the context and role of these two concepts will be critical to understanding how a system like PAM can supply needed reform while maintaining the sense of federalism the Founders desired.

### *Modern Issues Facing the Electoral College*

A number of factors have contributed to the need for electoral college reform. The geographic size of states is one such factor. While there were certainly large states prior to 1800, the westward expansion of the U.S. brought larger states into existence. Among the smallest ten states, only Hawaii and West Virginia were not in existence at the time of the Constitutional Convention. Among the largest states only Georgia (currently at number 21) was among the original 13 (U.S. States by Size, 2015). Granted, unified Virginia (that is, Virginia prior to splitting into Virginia and West Virginia) would have been in the top ten, but the point remains the same: the founders simply never envisioned large states where the populace could be so distributed that radically different beliefs could arise in significant numbers within a state. This leads to the third problem faced in modern times: the rise of metropolitan centers.

Metropolitan areas are perhaps the most significant threat to traditional federalism. They serve as both focal points for politics and as congregation centers for like-minded people. Cities often become known for certain traits. Portland, for instance, is often seen as a hipster city while Orlando is often thought of as a retirement home. This is also reflected in voting patterns. Typically, major cities trend Democrat while rural areas trend Republican. In the extremely Republican state of Texas, every one of the major cities—Austin, Dallas, Houston, and San Antonio—voted Democrat in the 2008 election (Kron, 2012), yet the state – and its EVs – voted Republican. This creates a problem: if a widely populated state with few cities (or at least a small urban population) follows a particular party it is nearly impossible for the opposing party to win elections. For instance, despite the major cities in Texas voting Democrat, Texas still remains a Republican state in almost every elected office. This becomes even more pronounced in the reverse: if a megacity votes a particular way and if the rural population is quite small, the votes of the rest of the state matter very little.

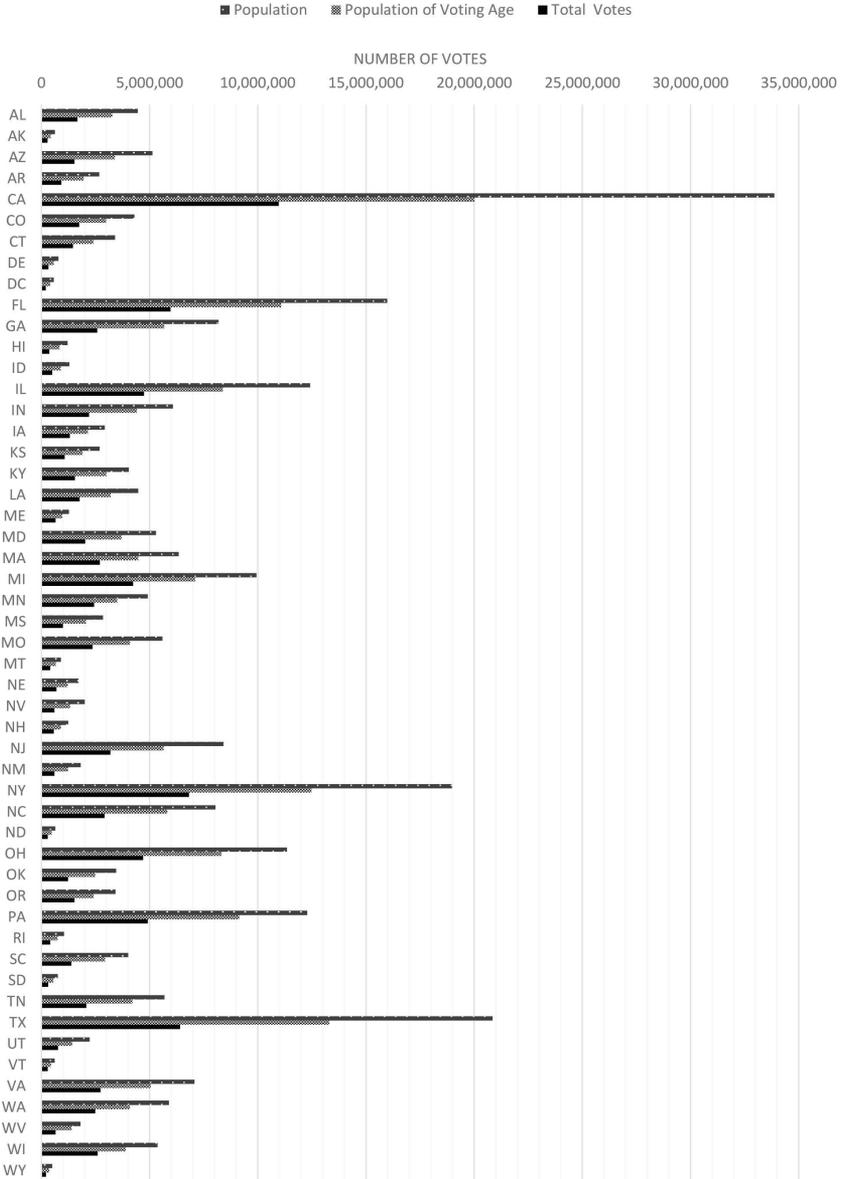
The results of this urban-rural divide are two-fold. First, it creates what essentially amounts to a type of urban federalism, whereby distinguishing political idioms are no longer represented by state borders but rather by city boundaries, and state boundaries become the unofficial boundary for city-driven influence. This is

further compounded by the allocation of state districts. As cities gain more people, they receive more districts. As they receive more districts, they receive more statewide power, and because all those districts almost invariably vote for one party or the other, the politics of the entire state become an extension of the state's major cities. This is why the increase in state sizes matters. If the states were small and a large urban center occupied the majority of the geographical area of a state, then the state as a whole would still be represented. But in states like Texas and California, where urban centers make up only a fraction of the total area, even if they make up a significant portion of the population, the idea of a statewide federalism fails entirely. It is little wonder why there have been efforts to partition California in recent years (Brown, 2014).

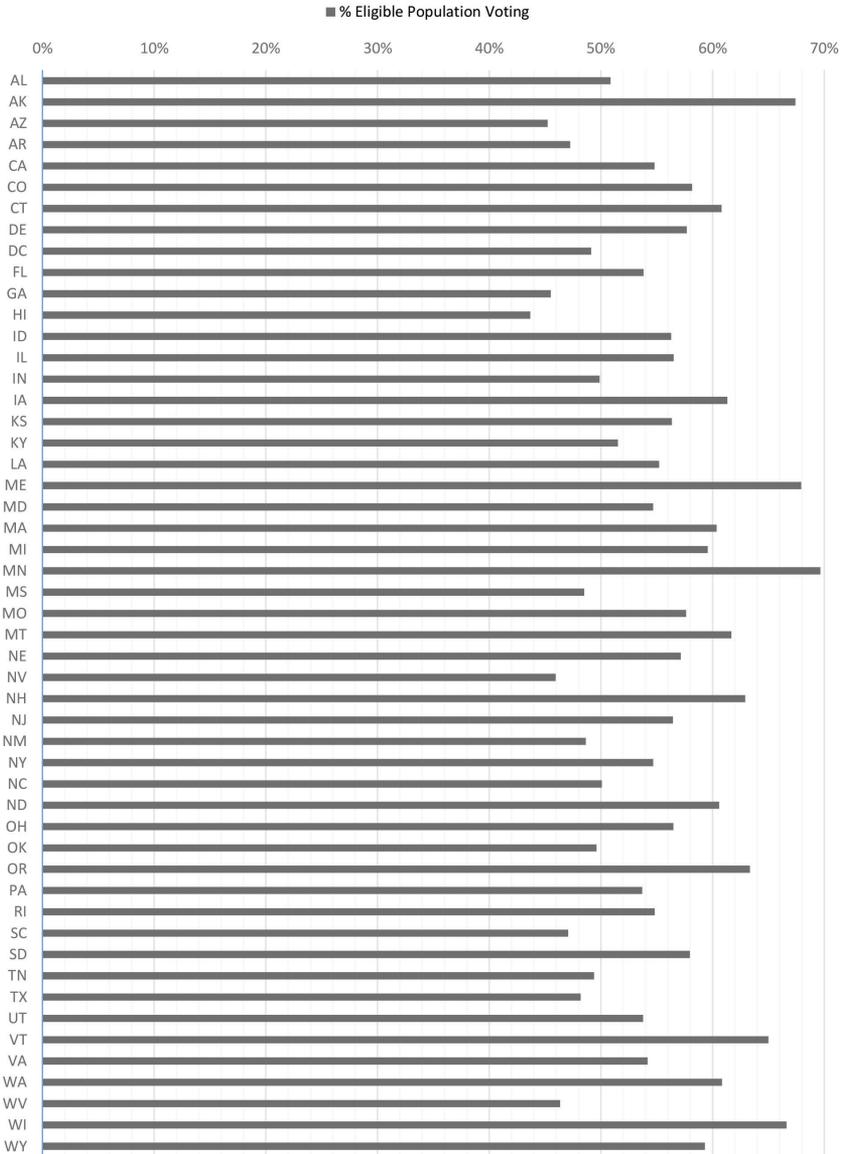
The second result of this difference is that literally millions of votes will be essentially worthless. A particular side will never have the number of votes necessary to have a legitimate shot at the winning in a normal election. Despite the millions of citizens voting Democrat in Texas, the state votes red. The reverse is also true in California. This, in part, has led to the rise of so called battleground states where there are a sufficient number of independent voters or soft party members – a party member that will occasionally vote against their chosen party depending on the candidate or issues in an election – to swing the state from Republican or Democrat to the other. Should a candidate gain enough of these battleground states, they most often win the election. Once again, the result is that presidential candidates are often chosen because of simple majority of numerically small states percentage of states (and thus votes and population) rather than a consensus of the whole. To clarify: I am not suggesting that the idea of a minority winning is objectionable in just the same way I am not suggesting that the majority should win every time. I am merely suggesting that it is unwise for a significantly small percentage of the population to be determining the course for the whole.

Something else must also be taken into account when considering the influence that a minority of states have on the overall election. It might not be so bad if a minority of the states were the critical turning points of an election if every eligible voter actually voted every cycle, but as any good campaign manager will tell you: they do not. This is why Get Out The Vote [GOTV] efforts are so critical to a successful election. The end result is that a minority within each state – those voters who go vote – end up determining an election. While I do not believe that anyone should be required to vote, I also do not think that those minorities that turn out to vote are totally representative of everyone in the state. Many may not turn out because of not having a preferred candidate to choose from, some may not turn out because of emergency events, while still others fail to turn out because they think their vote does not matter. In analyzing election data, the following graphs can be used to illustrate this point:

## Population-Voter Ratio 2000 Election



### Percent of Voting-Eligible Population Turnout 2000 Election



As can be seen, there are a great number of registered voters who end up not voting. In an election as close and contested as that in 2000, upwards of 56% of voters stayed home in some cases. This phenomenon is only compounded in elections that are boring or one-sided where voters are even less interested in turning out.

### *Assumptions*

In attempting to craft a revision to the EC in order to help correct some of these imbalances, a number of assumptions have to be made. Notably, this is where most of the disagreement about PAM would originate: few people are outright opposed to the idea of improving our method of elections, but the assumptions and decisions resulting from those assumptions can be vigorously discussed. The following are assumptions that this paper makes:

1. Federalism is something that is not only important to our heritage and the institutions that have been erected around it, but as a nation we can also profit from retaining federalism as a system of government.

2. While the U.S. was in reality a republic at birth, certain aspects of democracy have become so widespread that elements of it (such as “majority rule” and everyone getting a vote on important issues) cannot be parted from in today’s modern government. Therefore, while the retention of republic ideals should be encouraged we cannot expect to return to a pure republic and must embrace the influence of democracy.

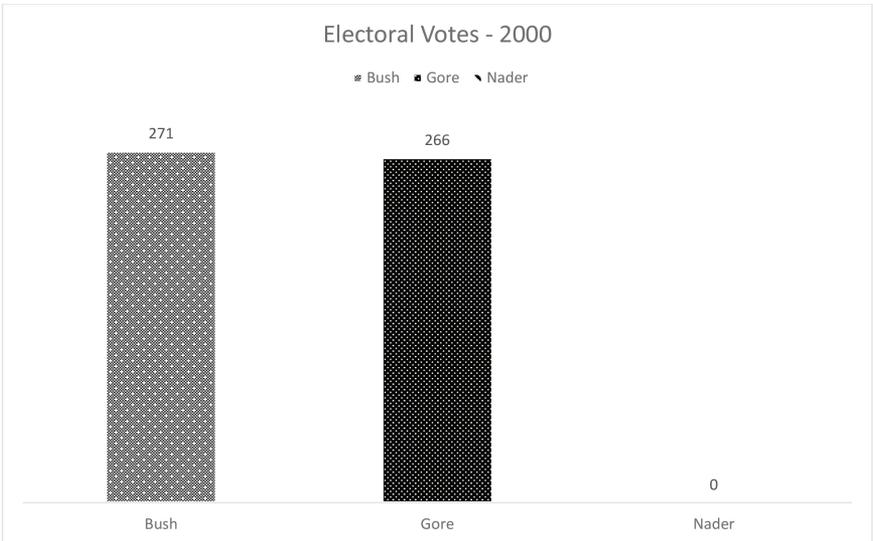
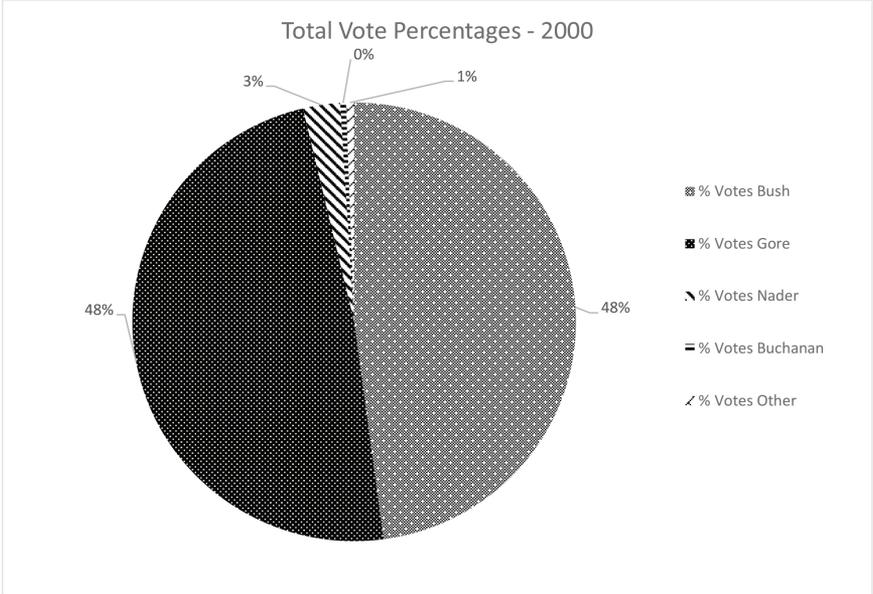
3. The idea of certain votes mattering more than others is objectionable to modern understandings of equality and minority groups and should thus be remedied whenever possible or practical.

4. Democratically elected officials – regardless of one’s subscription to delegate, trustee theory, or some form of hybrid – represent the people. Obviously, this assumption cannot factor in personal decisions the elected official might make that are contrary to the desires of the majority that elected them, however, even then that official is assumed to be representing his constituents. This paper also assumes that if an electorate is sufficiently angered by its official, he will be removed from office either by replacement in the next election or by a special recall vote.

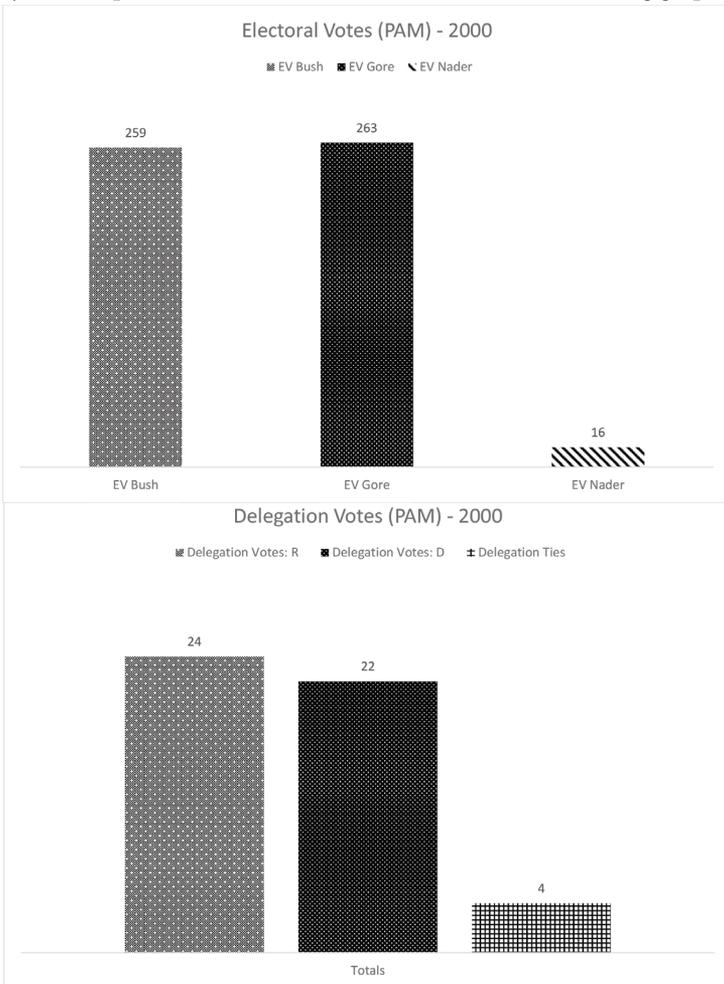
### *Case Studies*

The 1992 and 2000 elections serve as excellent examples of both the need for reform and how PAM could have helped alleviate the described issues.

In 2000, the problem was a close contest in which hanging chads determined the winner via a Supreme Court decision. This essentially left the election in the hands of unelected justices. There is also the issue of third party candidates which may have influenced the close outcome.

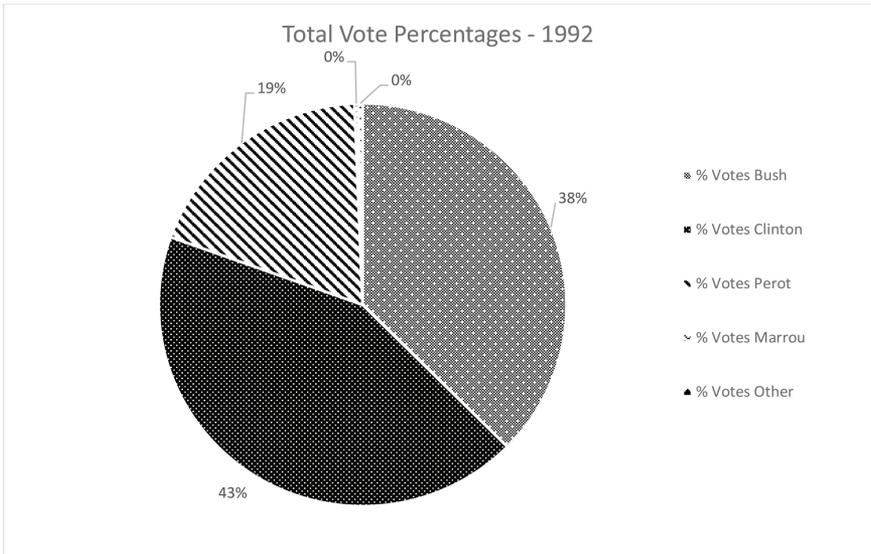


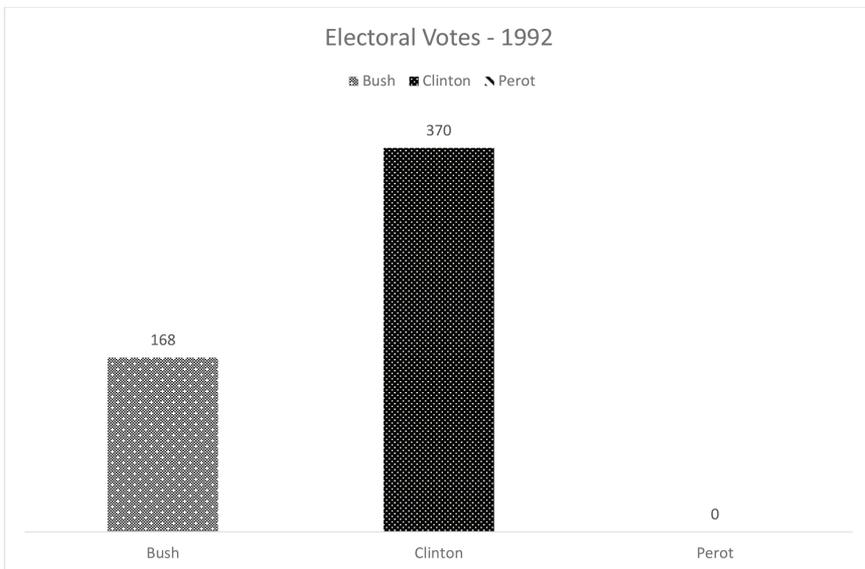
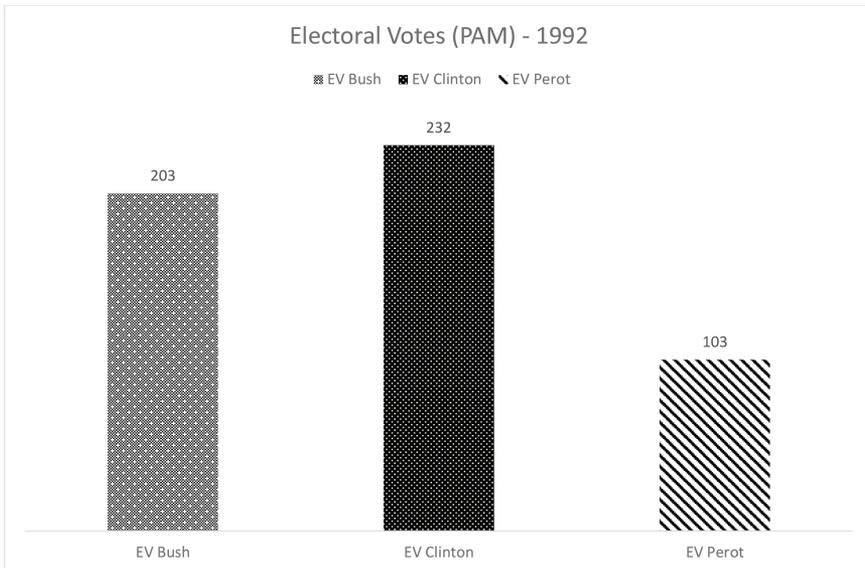
Noticeably, there is no quantifiable data to show that Nader had any actual impact from an electoral perspective. How would this look like if PAM were applied? It would differ in two ways. The first is that Nader now indeed makes an electoral impact. The second is that neither major candidate has received the required number of EVs. This, in essence, has the same result as the actual election: neither candidate received a majority of the electoral vote until SCOTUS decided. But what would it have looked like if Article 2 had kicked in instead? Obviously we can only speculate on what the delegations would have decided, but if we include incoming Representatives in Congress, assuming each state's delegation had voted with the majority of its Representatives it would have resulted in the following graphs.



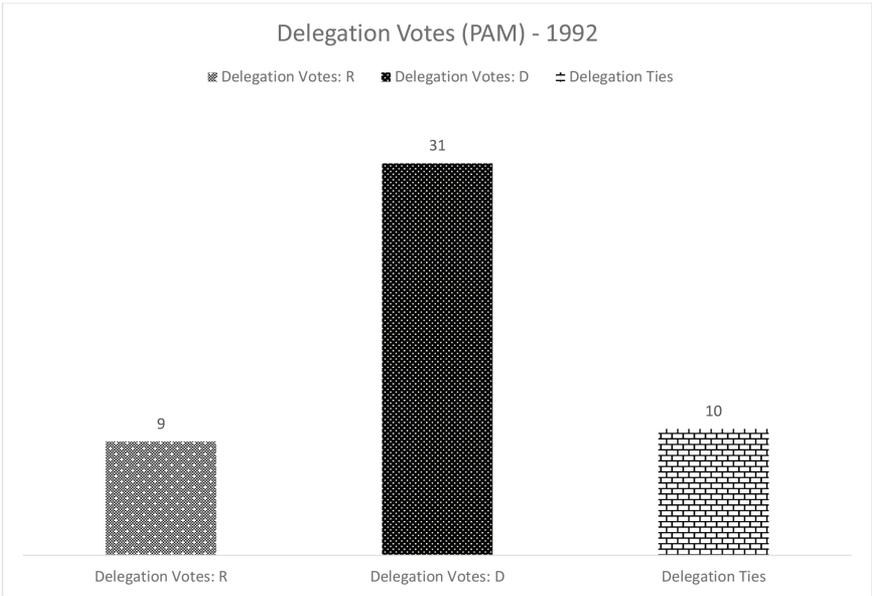
Clearly each candidate still has not received the majority required with tie votes unallocated, but that is not a bad thing. It means that any candidate still has a chance at winning and, in this case, the outcome is nearly identical to the actual results. Bear in mind that we assume each delegation would vote based on the majority. There are plenty of instances where a state might lean conservative or liberal and party members may switch sides based on the candidate. The goal however is achieved, the winner would be the result of a Constitutional process by elected officials (and by assumption representing the will of the people) instead of relying on a court case. Clearly then, PAM would seem to accomplish its goal while of preserving state federalism by way of Article 2 while also giving the people a more accurate representation of their votes.

The 1992 election differed from 2000 because of the strong third party candidate. Like Nader, Perot was accused of “stealing” the re-election of one of the major candidates because of their “normal” political affiliations. A further wrinkle was added however: Perot took a significant number of votes – in some states more than one of the other major candidates – yet received zero electoral representation. This returns to the objection of minorities determining the outcome of the whole while no representation is retained for the whole. As the following graphs demonstrate, despite taking nearly 20% of the vote, Perot went unrepresented in the EC. Furthermore, despite taking only 43% of the general vote, Clinton received 69% of the EV. This seems like a drastic and improper imbalance. Thus we apply PAM.





Once again no candidate would have had the majority of EVs needed to win the election and Article 2 would have been activated. The delegation vote results that might have resulted are shown in the following graph (including incoming Representatives). This result may seem a bit surprising at first glance, clearly the number of votes going to Clinton far outweighed the number of votes that he received in the election. However, those Representatives are the voice of the people from a local level. In any event, the result likely would have turned out to be the same: Clinton is still elected President but the people have received a more accurate representation in the national election and made additional parties electorally relevant and viable.



At this point I would like to note that in all other elections since 1992, the PAM model would have made no significant difference: Clinton, G. W. Bush, and Obama would all have won their reelections as they historically did. This would suggest that the PAM model can indeed help balance objections with the electoral process without significantly interfering with clearly determined elections results.

*Objections to PAM*

One of the objections to PAM is that using a direct method – even on a state level – constitutes a threat to state’s rights (Best, 1975). On the contrary, PAM resolves certain electoral deficiencies without overly intruding on the results of most elections. Furthermore, it bears mentioning that the apportionment of electoral

votes a state gets is determined by a national metric: as state populations increase or decrease votes are reapportioned by the Census. If the size of state delegations was by geographic or some other fixed metric, then the concern could be valid. At present, the power that a state receives is only because of its relation to every other state, not an inherent privilege.

Some might also say that third party candidates are not a part of how the electoral college was originally designed, and that such popular third party candidates are undemocratic and are bound to cause mischief (Abbott, Levine, 1991). Having explained why we do not have a two-party system and how an increasingly large portion of the electorate actually want a third party candidate, I believe such a claim is illegitimate. While I cannot speak for every registered voter, it would be highly suspicious to assume that the nearly 20% of the electorate who voted for Perot in 1992 were deliberately attempting to cause such mischief.

## **Conclusion**

While researching PAM, I attempted to find previous attempts to reform the electoral college that were similar. Only one of significance was found: The Lodge-Gossett proposal introduced in 1949 that called for the removal of the EC in favor of a direct-proportional election based on the national results, not by state outcomes. Understandably, there was a concern that it would seriously encroach on state's rights, yet it managed to pass the Senate with the required two-thirds majority only to fail in the House. Interestingly, one of the primary arguments against it (aside from state's rights) was that a minor party could come to win the White House (Zanca, 2010). While this might have been a concern in the 1950's with extremely powerful party bosses and a Congress that was far more bi-partisan, today – and especially in the 2016 election – the public has increasingly expressed a strong interest in a viable third-party option (Tau, 2016). PAM increases the ability of third-party candidates to compete for the Presidency while still preserving the ability of major parties to win decisively.

This study suggests that PAM's unique approach can provide a reasonable alternative to voter misrepresentation and provide a more sensible alternative in certain controversial elections. State rights by way of federalism would be preserved. Furthermore, PAM offers a refined approach to electing presidents in this modern age.

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