

THE LEGAL EAGLE

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A LEGAL NEWSPAPER FOR KIDS

Voter Fraud *Rare or Rampant?*

by Phyllis Raybin Emert

The 2016 presidential election is finally behind us and Donald J. Trump prevailed, winning the Electoral College (and the presidency) 304 to 227. When the final votes were tallied, however, Trump had lost the popular vote by nearly three million votes. The final total was 65,844,610 votes (48.2 percent) for Democratic candidate Hillary Clinton compared to 62,979,636 votes (46.1 percent) for Trump.

On November 27, 2016, then President-Elect Trump tweeted: "In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally."

President Trump continues to insist, without actual evidence to support the claim, that there was widespread voter fraud in the last presidential election and that millions of illegal voters gave the popular vote to Clinton.

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The Fourth Estate Cornerstone of Democracy

by Jodi L. Miller

Thomas Jefferson once said, "Our liberty depends on the freedom of the press, and that cannot be limited without being lost." Despite a rocky relationship with the press, Jefferson also wrote that given a choice between "a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter."

Freedom of the press is taking a beating these days with political leaders around the globe and here at home, including the president, launching attacks against the news media. While U.S. journalists possess First Amendment protections, other journalists around the globe do not.

Freedom House, an independent watchdog organization dedicated to expanding freedom and democracy around the world, publishes



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Does the Electoral College System Still Work?

by Robin Foster

The outcome of the 2016 presidential election was unusual but not unprecedented. For only the fifth time in U.S. history, the winner of the national popular vote did not become President of the United States. That's because voters in the United States do not elect the president and vice president by direct popular vote, but via the Electoral College.

What's that?

The Electoral College is a component of federalism, our system of government in which each state has its own constitution and sovereignty, but also shares power with a federal government. Every four years voters head to the polls to select the president and vice president of the United States. However, when they flick the voting switch, or check off a box on the ballot, voters are not actually voting for the presidential candidate of their choice. They are, in fact, voting for the slate of either Democratic or Republican electors in their state.

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Equal Justice for All Depends on Judicial Independence

by Cheryl Baisden

When the Founding Fathers drafted the United States Constitution in 1787, their objective was to establish three independent branches of government—the legislative branch (Congress), the executive branch (the president) and the judicial branch (the courts). This three-pronged system was designed to provide important checks and balances for all three branches, and prevent any one branch from assuming too much power.

In the case of the judicial branch, Article III of the Constitution establishes judicial independence, meaning the courts should function separately from the other branches of government and should not be subject to influence from the government or special interest groups, so the decisions made by the courts can be fair and impartial, based on an interpretation of the existing law and facts of the case.

“Article III of the Constitution seeks to ensure judicial independence by providing that judges serve for life and prohibiting Congress from reducing their compensation,” says Earl Maltz, a Rutgers Law School professor who focuses on constitutional law, the role of the courts and legal history. Under the Constitution, judges can only be removed from the bench if they commit a serious crime, protecting them from political retribution if a court decision goes against the interests of the president or Congress.

In general, “an independent judiciary will, hopefully, prevent Congress from exceeding its enumerated powers and prevent all branches of government from infringing on the rights guaranteed by the Constitution,” says Professor Maltz.

Throughout the nation’s history, there have been attempts to circumvent this three-pronged system and challenge judicial independence, notes Professor Maltz. “In the early 19th century, the Jeffersonians unsuccessfully attempted to remove a member of the Supreme Court because they strongly disapproved of his political perspective,” he says. “During the

1930s, President Franklin Delano Roosevelt unsuccessfully attempted to enlarge the Supreme Court in order to have the opportunity to appoint a number of justices who would be more sympathetic to his perspective.”

Founding Father Alexander Hamilton wrote in *The Federalist Papers*, “The courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts.”

A 21st century view

Statements made by President Donald Trump via Twitter have been viewed by critics of the administration as an effort to discredit the independence and authority of the judiciary.

In February, when U.S. District Judge James Robart blocked President Trump’s initial executive order banning immigrants from seven mostly Muslim countries, the president referred to him as a “so-called judge” and called the ruling “ridiculous,” claiming it left the U.S. open to terrorist attacks. He later

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tweeted: “Just cannot believe a judge would put our country in such peril. If something bad happens blame him and court system. People pouring in. Bad!” As the Ninth Circuit Court of Appeals prepared to rule on the matter in May, the president tweeted that “a bad high school student” would understand that the Constitution gave him the total authority to set immigration policy. The statements led Trump’s nominee to the U.S. Supreme Court, Neil Gorsuch, to condemn the tweets as “demoralizing” and “disheartening.”

Following the Ninth Circuit’s ruling against the president’s proposed immigration ban, Trump senior

advisor Stephen Miller clarified the administration’s view of the judicial branch’s authority. “We have a judiciary that has taken far too much power and become, in many cases, a supreme branch of government,” Miller told CBS’s *Face the Nation*. “Our opponents, the media and the whole world will soon see as we begin to take further actions, that the powers of the president to protect our country are very substantial and will not be questioned.”

Such a position, according to Professor Maltz, can prove detrimental to democracy. “The one case that comes to mind is the former Soviet Union,” he says. “The absence of an independent judiciary leaves the citizenry with fewer defenses against government abuses.”

States weigh in

Beyond the president’s efforts to discredit the federal courts, there also has been a political push targeting state courts this year. According to the Brennan Center for Justice, state courts

hear over 95 percent of the nation’s more than 100 million court cases. In the first four months of 2017, at least 41 bills in 15 states have focused on state courts, including legislation designed to control how judges are appointed, remove current judges, restrict power and let state legislatures override or refuse to enforce legal rulings.

In North Carolina, for example, after a Democrat assumed the governor’s post, the state’s Republican-controlled Legislature passed several laws that weaken the governor’s ability to make court appointments.

One new law reduced the court size, preventing the governor from being able to change the makeup of the court by filling vacancies expected when several Republican judges retire. The bill passed without any input from the courts, judges or courts’ administrators, and the governor vetoed it. Days before the legislature overrode the governor’s veto, Judge Doug McCullough, a Republican who was set to retire in the near future, resigned in protest, so the governor could fill his seat. In a press statement, Judge McCullough said, “I did not want my legacy to be the elimination of a seat and the impairment of a court that I have served on.”

What’s in store for New Jersey

In May, Republican State Senators Gerald Cardinale and Michael Doherty introduced an amendment to the New Jersey Constitution that would eliminate tenure for state Supreme Court justices and require they be elected by voters to four-year terms after their initial appointment by the governor. Presently, justices are appointed by

the governor and approved by the Senate for a seven-year term and then, upon reappointment, serve until the mandatory retirement age of 70.

“Our current tenure system for New Jersey Supreme Court justices has repeatedly failed the state and its residents,” said Cardinale in announcing the legislation. “With only a single opportunity to review a justice’s record upon reappointment, we have little ability to hold members of the New Jersey Supreme Court accountable for their activism. As a result, we’ve had a long history of horrendous Supreme Court decisions that have made New Jersey the most expensive state in the country for property taxpayers.”

“The New Jersey Supreme Court has imposed expensive affordable housing and school funding mandates that have cost property taxpayers tens of billions of dollars,” added Doherty. “It’s time that the people of New Jersey get a direct vote on the justices who have mandated the overdevelopment of our towns and locked the state into an outrageously expensive school funding ideology.”

While the proposed legislation has not been introduced for a formal vote, critics have commented that it would inject more politics into the judicial system.

“Generally, we believe tenure protects judicial independence,” said New Jersey State Bar Association President Robert Hille following the Senators’ announcement. Judicial independence “in turn, protects the public by allowing judges to decide cases on the law and facts and not political pressures.”

In its *Legislative Round-Up* report, the Brennan Center said, “The politicization of the judiciary threatens the integrity of our courts and the promise of equal justice for all.”



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an annual report on media freedom around the world. In *Freedom of the Press* 2017, the organization expresses concern that the U.S. may stop being a free press model for other countries. "Protection of press freedom in the United States remains vital to the defense and expansion of press freedom worldwide; indeed, it is a cornerstone of global democracy....When U.S. leaders step back from promoting democracy and press freedom, journalists beyond American shores feel the chill."

History of newspapers and the Fourth Estate

The Fourth Estate refers to an entity that can indirectly influence the three (legislative, executive and judicial) branches of government. It can mean the people or interest groups but has commonly become associated with all forms of the news media, which is seen as providing a check on elected leaders.

The concept of newspapers didn't come to America until the late 17th century and were quite different, ironically more **partisan**, than what we have today.

Carol Sue Humphrey, a history professor at Oklahoma Baptist University, told *Smithsonian*, "I tell my students, if you want to see partisan writing at its worst, take a look at the 1790s."

It wasn't until the 1830s that newspapers started to transform in an effort to appeal to a wider audience. Because newspaper publishers didn't know which party subscribers belonged to, they decided to employ fact-based reporting. "You have a clear distinction between news and opinion that starts to happen," Professor Humphrey noted.

The early 1900s saw the rise of investigative journalism and the exposure of corruption in government, which caused President Theodore Roosevelt to label journalists as "muckrakers" a reference to "digging up dirt" or muck. While meant as an insult, many journalists embraced the term, which is today synonymous with investigative reporting.

Ellen Goodman, a professor at Rutgers Law School—Camden says a free press is important to democracy "to hold leaders accountable and inform the public." Professor Goodman is co-founder of the Rutgers Institute for Information and specializes in free speech and media policy. She says it is "very dangerous" when political leaders attack the press, creating doubt about "the truth of anything."

Presidents & the press

The reality is every president, as far back as John Adams, has had issues with the press. In 1798,

President Adams, in fact, signed into law the Sedition Act, which targeted the press, making it illegal for anyone to express "any false, scandalous and malicious writing against Congress or the president." In addition, the law punished spoken and published speech that had "bad intent" or the intention to "defame" the government. Penalties for breaking this law ranged from jail time (six months to five years depending on the severity of the crime) to fines of up to \$5,000, which would amount to approximately \$100,000 today. More than a dozen people were brought up on charges for violating the Sedition Act, but with the election of Thomas Jefferson in 1800, the law expired.

It may just seem like President Trump's relationship with the news media is worse than past presidents due to his use of social media and constant barrage of tweets maligning them (something not available to all but one past president). However, when the President of the United States talks about jailing reporters, labels reputable news outlets as "fake news," and calls the press "enemy of the people," a term used by

authoritarian regimes like Russia, China and Nazi Germany, it gives activists, news organizations and the American public pause.

In response to President Trump labeling the *New York Times*, CBS, CNN, ABC and NBC News "the enemy of the American people," the National Coalition Against Censorship (NCAC), along with nearly 100 other free speech and press organizations, issued a statement saying, "Our Constitution enshrines the press as an independent watchdog and bulwark against tyranny and official misconduct. Its function is to monitor and report on the actions of public officials so that the public can hold them accountable. The effort to delegitimize the press undermines democracy, and officials who challenge the value of an independent press or questions its legitimacy betray the country's most cherished values and undercut one of its most significant strengths."

Confidence in the press

While the president's approval rating is quite low, so is the current approval rating of the press. According to a USA Today/Suffolk University poll, the press has a 36 percent approval rating, which is actually lower than the president's.

Joan Bertin, former executive director of NCAC, says it's reflective of the political polarization in the country. "We're in a very angry moment and people are looking for a place to point the finger," Bertin says. "We have a very divided press, just like a divided country."



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One criticism that President Trump has with the press is its use of anonymous sources. President Barack Obama, in fact, cracked down on whistleblowers during his administration. Bertin and Professor Goodman both agree that anonymous sources are vital to investigative reporting where some sources are reluctant to go on the record for fear of retaliation.

The 1971 case of *New York Times Co. v. United States* concerned such an issue. *The Times* and *The Washington Post* published classified information obtained through a whistleblower. The information, in what became known as the Pentagon Papers, dealt with U.S. involvement in the Vietnam War. The U.S. Supreme Court sided with the press. Without anonymous sources, the Pentagon Papers story would never have come to light.


In a concurring opinion, Supreme Court Justice Hugo Black wrote, "In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government."

Press protection and freedom around the globe

According to Freedom House's 2017 report, only 13 percent of the world has what would be termed a free press, an environment where political news coverage is tough and there are safety protections for journalists. Forty-five percent of the world's population lives in countries where there is no free press. Journalists can be jailed for their reporting and authorities impose restrictive laws on free speech whether online or in print.

"The global decline in press freedom will likely continue in the absence of strong leadership from the United States, EU members and other democracies," the report stated. "If President Donald Trump and his administration continue their harsh criticism of factual reporting and take other actions that pose a threat to the U.S. Constitution's First Amendment, Washington's ability to apply normative pressure to media freedom violators around the world will suffer."

In a statement released after the report was published, Michael J. Abramowitz, president of Freedom House, said, "When politicians lambaste the media, it encourages their counterparts abroad to do the same. **Vitriolic** attacks on individual journalists and news outlets in the United States undermine our democracy's status as a model of press freedom."

Famous newsman Walter Cronkite, one of the most respected men in journalism, once said, "Freedom of the press is not just important to democracy, it is democracy." 

Electoral College CONTINUED FROM PAGE 1

The number of electors in a state equals the total number of U.S. House and Senate members in that state. The least populous states like Delaware and Montana have only three electoral votes each, while the largest number of electoral votes comes from California, which has 55. The Electoral College consists of 538 electors in total and a candidate needs 270 electoral votes to become the president. In every state, except Maine and Nebraska, it's a winner-takes-all proposition where the candidate who wins the popular vote in that state receives all of the state's electoral votes.

Why?

During the Constitutional Convention of 1787, the newly-formed

U.S. Congress considered several methods of electing the president. The Founding Fathers were determined to avoid a true and direct democracy. They were concerned about **mob rule** and wanted to institute a safeguard against a potentially fickle and unruly public and the **demagogues** it might elect.

In *The Federalist Papers*, Alexander Hamilton wrote that the Constitution was designed to ensure "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." While Hamilton said the Electoral College would "preserve the sense of the people" it would also ensure the president is chosen "by men most capable of analyzing the qualities adapted to the station, and

acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice."

It was written into the Constitution that the president would be elected by a "college of electors, chosen by those of the people in each State, who shall have the Qualifications requisite." The Founding Fathers wanted the president chosen by the sovereign states, not by direct popular vote, to ensure the selection of a president who would properly check and balance the powers of Congress and support constitutional interests, not simply appeal to the public that elected him.

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Voter fraud commission

On May 10, 2017, President Trump signed an Executive Order that created the Presidential Commission on Election Integrity, which was charged with investigating voter fraud. Vice President Mike Pence and Kansas Secretary of State Kris Kobach are co-chairing the Commission. Kobach is a leading activist for tough voting restrictions and earned the title “King of Voter Suppression” from the American Civil Liberties Union (ACLU). He alleges there is widespread voter fraud in his state. But, according to a *New York Times* editorial, “Mr. Kobach has secured a total of nine convictions for double voting over the years—most of them older Republican men.”

The first act of the Commission was to request voter roll data from every state, including names, addresses, birthdates, political party affiliation, last four digits of social security numbers, voter history, felony convictions and other information. In response to this request, dozens of states—both Republican and Democratic—refused, other states submitted partial, already public information, and thousands of voters dropped their names from voter rolls, worried about voter privacy and identity theft. In Colorado, for example, 3,800 voters de-registered.

One of the more colorful responses from a state that refused to comply with the Commission’s request came from Mississippi whose Secretary of State, a Republican, stated: “They can go jump in the Gulf of Mexico. Mississippi residents should celebrate Independence Day and our State’s right to protect the privacy of our citizens by conducting our own electoral process.”

The Commission’s requests prompted at least seven lawsuits from organizations such as the ACLU, Public Citizen and the Electronic Privacy Information Center (EPIC). EPIC’s lawsuit claimed the Commission was required to conduct a privacy impact assessment before it asked for the personal information of 200 million voters. In July 2017, a federal judge ruled that since the Commission was not a federal agency, it was not bound by that requirement. The ruling allowed the gathering of personal data to continue.

Response to Commission

In response to the president’s commission, on May 25, 2017, the Democratic National Committee formed the Commission on Protecting American Democracy from the Trump Administration. The purpose of the commission is to disprove the idea of rampant voter fraud in America and resist efforts to suppress the vote.

“Putting an extremist like Mr. Kobach at the helm of this commission is akin to putting an arsonist in charge of the fire department,” Senate Minority Leader Chuck Schumer (D-NY) said at a press conference. “President Trump has decided to waste taxpayer

dollars chasing a unicorn and perpetuating the dangerous myth that widespread voter fraud exists.”

Even Republican leaders have expressed doubt about voter fraud, including Senate Majority Leader Mitch McConnell, who told CNN’s *State of the Union*, “Election fraud does occur,” but added, “there’s no evidence it occurred in such a significant number that it would have changed the presidential election.” He also stated he didn’t think federal money should be spent investigating voter fraud, saying it should be left to the states.

Voter integrity is the responsibility of each state’s Secretary of State. In a press release, the National Association of Secretaries of State said: “We are not aware of any evidence that supports the voter fraud claims made by President Trump... In the lead up to the November 2016 election, secretaries of state expressed their confidence in the systemic integrity of our election process as a **bipartisan** group, and they stand behind that statement today.”

Fraud or suppression?

Myrna Perez is the deputy director of the Brennan Center for Justice’s Democracy Program at New York University School of Law. “Everyone wants secure elections. That is not in dispute. The issue is how many barriers to the ballot box are we comfortable putting in front of eligible Americans and how much security do we get from those barriers,” says Perez. “The high profile voting battles we see today are over policies that make it very hard for some people to vote, but provide very, very little in terms of additional security.”

Ms. Perez is very concerned about the activities of the President’s Commission. “A number of its members have a history of vote suppression, and the vice chair [Kobach] has indicated in the past that he wants federal legislation making it harder for people to register to vote.”

Clerical errors are not fraud

Irregularities in voter registration rolls are common but do not amount to voter fraud. A 2012 Pew Center Study revealed that nearly 2.7 million people are registered to vote in more than one state and more than 70,000 are registered in three or more. In addition, the study found that 1.8 million people who are deceased still remain on the voter rolls. Casting a ballot for an individual who is deceased would be illegal, but experts say that scenario is extremely rare and merely having out of date information on voter rolls does not equate to voter fraud.

Clerical errors may also include inaccurate information on the registration rolls; even duplicate names or other mistakes. Since Americans move so frequently that can include being registered in two different states. But, that doesn’t mean

Voter Fraud **CONTINUED FROM PAGE 6**

anyone cast a vote in two states, only that the name wasn't removed when the person moved. In fact, President Trump's daughter Tiffany was registered in two different states (Pennsylvania and New York) as was White House Chief Strategist Steve Bannon (Florida and New York) and Trump's Secretary of the Treasury Steve Mnuchin (California and New York). It is not illegal to be registered to vote in more than one state as long as you only vote once.

Real voter fraud involves someone who purposely votes under another person's name (voter impersonation) or knows it is illegal for them to vote for some reason, such as they are a convicted felon or a non-citizen. Again, experts contend this type of fraud is very rare, but Republicans believe that tougher ID requirements will eliminate it. Unfortunately, it can also eliminate eligible voters who are unable to get a proper ID. For example, a 2014 federal court decision in Wisconsin estimated that approximately 300,000 already registered voters would not be able to produce the required identification to vote.

The Heritage Foundation is a conservative think tank that does believe in widespread voter fraud and has been tracking incidents since 1982. An article on its website reported the organization has compiled 1,071 cases of voter fraud in 47 states, covering all levels of elections in the U.S. including municipal races at the local level. That comes out to an average of 31 cases per year over the past 35 years. Compared to the number of voters registered and the number of votes cast, the total is quite small.

Not worth the risk

The Brennan Center report, *The Truth About Voter Fraud*, noted that one reason in person voter fraud is extremely rare is that it's not worth the risk. "Fraud by individual voters is a singularly foolish and ineffective way to attempt to win an election. Each act of voter fraud in connection with a federal election risks five years in prison and a \$10,000 fine, in addition to any state penalties. In return, it yields at most one incremental vote." For illegal immigrants, who President Trump alleges voted in droves to give Clinton the popular vote, that price is increased by the risk of deportation.

The Brennan Center also attributes a lot of what constitutes voter fraud to people mistakenly thinking they are eligible to vote. That was the case in Texas, when in February 2017 Rosa Maria Ortega was convicted of voter fraud, sentenced to eight years in prison, and fined \$5,000. She is a permanent resident but not a citizen and voted in 2012 and 2014, both times for Republicans. Ortega thought that as a resident she could vote. The mother of four children, who are all U.S. citizens, wanted to set a good example. If her sentence is upheld, she could be deported after serving prison time. Her case is currently being appealed.

The ability to cast a ballot is sacred and some believe that even one vote cast illegally is unacceptable. The question remains, however, whether it warrants a national investigation and a reason to pass tougher voting laws. A report with findings from the Presidential Commission on Election Integrity is expected sometime in 2018. 🗳️



Electoral College **CONTINUED FROM PAGE 5**

The Constitution does not require electors to vote according to the popular vote winner in their state, nor does it require a winner-take-all approach to electoral votes. Technically, electors are free to vote for whichever candidate they deem the most worthy, however, the electors are usually party loyalists who wouldn't deviate from their party's candidate.

It happened again

In the 2016 presidential election, Republican candidate Donald Trump lost the popular vote to Democratic candidate Hillary Clinton by nearly 2.9

million votes. Trump received more votes in the Electoral College—304 to Clinton's 227—and so he became the 45th U.S. president.

This phenomenon has happened five times in U.S. history, with the first three times—John Quincy Adams, Rutherford B. Hayes and Benjamin Harrison—occurring in the 19th century. The fourth time was in the 2000 election, when George W. Bush lost the popular vote to Al Gore but won the presidency in the Electoral College. An occurrence that has happened only five times in U.S. history may not seem like a big deal, but the fact that it has happened

twice in the past 16 years is concerning for some and may indicate a trend towards mismatched outcomes.

Is it really needed?

The Electoral College prevents the most populous states (California, New York, Texas, Illinois) from determining the outcome of a presidential election. If we elected the president based on popular vote alone, cities like Los Angeles, New York and Chicago would determine the next

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president, drowning out votes from rural and less populated areas.

Using the Electoral College process ensures that third, fourth, even fifth party candidates will not dilute the popular vote count. For example, imagine there were four candidates running for president: one candidate gets 32 percent of the popular vote, one gets 25 percent, one gets 22 percent, and one gets 21 percent. If our president was elected based on direct popular vote, the winning candidate might have the support of less than one-third of the nation's voters. This would not give the winning candidate a mandate to lead, potentially resulting in **anarchy**.

Without the Electoral College, no presidential candidate would have the need to campaign beyond the largest cities. There would be no reason to campaign in the Midwest, or in the South, or anywhere in rural America, because winning a few large states would bring enough votes for a victory.

What's the problem and what can be done?

Many people have the sense that the presence of electors between the people and their president isn't exactly fair and democratic. If the president were elected by popular vote, each person's vote would count as much as the next. Instead, votes in swing states (states that historically go back and forth between voting Democrat or Republican) like Nevada, Iowa and Ohio end up determining the outcome of these elections. In actuality, every vote across the country does not weigh equally. This reality goes against our nation's one-person, one-vote doctrine, a fundamental ideal of our democracy, which holds that all votes within a state should be equal and no single vote should have more power over another.

In late 2016, outgoing California Senator Barbara

Boxer introduced a bill "to abolish the Electoral College and to provide for the direct popular election of the President and Vice President of the United States."

In a statement, Senator Boxer said, "In my lifetime, I have seen two elections where the winner of the general election did not win the popular vote. The Electoral College is an outdated, undemocratic system that does not reflect our modern society, and it needs to change immediately. Every American should be guaranteed that their vote counts."


Passage of Senator Boxer's bill would require an amendment to the Constitution, which needs a two-thirds vote in Congress and three-fourths of the states to ratify it. That seems unlikely, as states with small populations that currently benefit from the process in place would need to back it.

Professor Thomas Healy of Seton Hall University School of Law doubts the measure to abolish the Electoral College will be successful. "Congress could not eliminate it through ordinary legislation. Given the difficulty of amending the Constitution and the rarity of amendments in modern times, I'd be surprised if such a constitutional amendment were ever ratified."

Boxer's bill was referred to the Committee on the Judiciary where it currently sits. There are, however, two other measures currently being proposed to "fix" the Electoral College.

One proposal is the bipartisan National Popular Vote initiative. This is a multistate compact sponsored by the group FairVote, in which states who sign on to the NPV initiative pledge to assign their electoral votes to the candidate who won the national popular vote. The compact only takes effect once enough states to reach 270 electoral votes sign on. To date, 10 states (California, Hawaii, Illinois, Massachusetts, Maryland, New Jersey,

New York, Rhode Island, Vermont and Washington) plus Washington D.C. have signed on, totaling 165 of the 270 electoral votes needed. If this initiative were to pass, there is some question whether it would be enforceable since the U.S. Constitution prevents interstate compacts or treaties.

Another solution would be to follow in the footsteps of Maine and Nebraska, where states would allocate their electoral votes based on the percentage of the popular vote won. The Constitution does not stipulate how the Electoral College system should be implemented, but leaves it up to the states to determine. It just happened that 48 states opted for the winner-take-all approach. Allocating a percentage would be a more democratic approach to the Electoral College system, giving proportional representation to the Democratic and Republican candidates in the final electoral vote, a process favored by Alexander Hamilton. 

GLOSSARY

anarchy—the absence of government, which creates lawless confusion and disorder.

bipartisan—supported by two political parties.

demagogue—a political leader who seeks support by appealing to popular desires and prejudices rather than by using rational argument.

mob rule—control of a political situation by those outside the law, usually involving violence and intimidation.

partisan—someone who supports a particular political party or cause with great devotion.

sovereignty—supremacy of authority over a defined area or population.

vitriolic—filled with bitter criticism or malice.