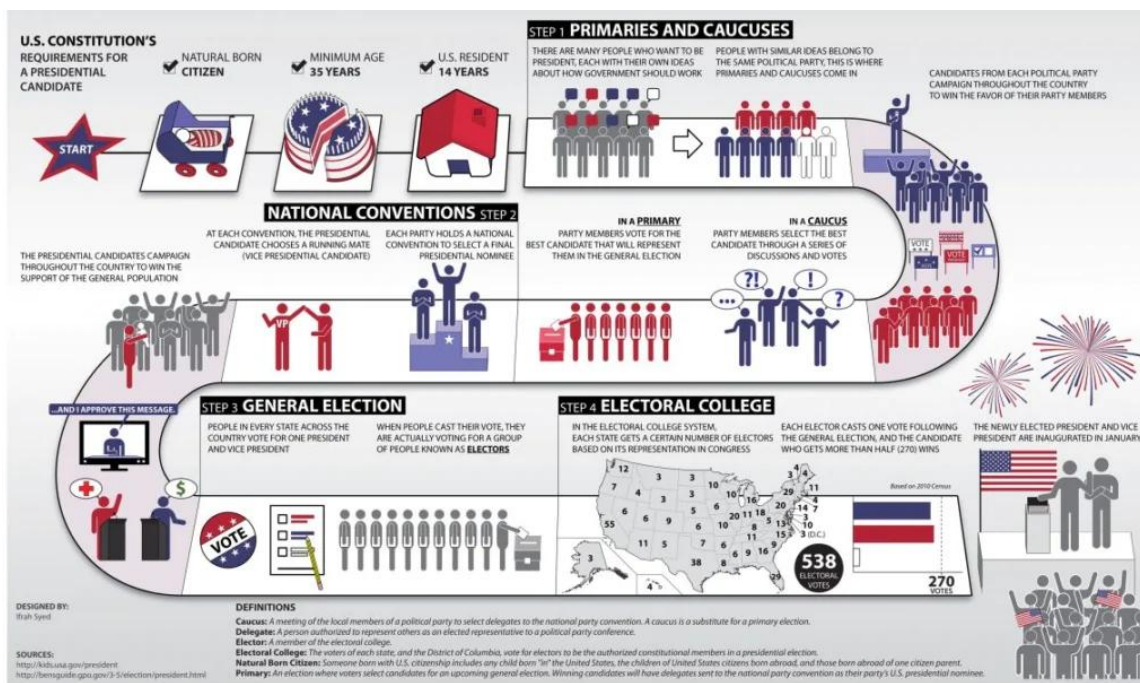


Presidential Elections



The basics for presidential elections are listed in Article II, Section I, of the United States Constitution. The three main requirements are that the person must be at least 35 years old, be a natural born citizen, and have resided in the country for fourteen years. The presidential election is every four years, regardless of what is going on in the world.

Presidents are elected through **the Electoral College – a constitutionally required process for selecting the president through states of electors chosen in each state.** Originally, the Constitution established that the second place finisher would become the vice president but this created many problems so the **12th Amendment** in 1804 was ratified having separate votes for the president and vice president. This means that the president and vice-president run for office together on the same party's ticket. When a candidate wins the presidency, their running mate becomes the vice president.



What is the Electoral College?

Voters do not cast ballots directly for the president. Instead, they are voting for a slate of electors pledged to vote for a nominee. Article II, Section I places limits on who may serve as an elector. The requirements can be found at this link:

<https://www.archives.gov/electoral-college/electors>

The magic number of Electoral College votes to win the presidency is **270**. Each state is allocated a number of electoral votes based on its representation in Congress, one for each of its two senators and one for each of its members in the House of Representatives, guaranteeing each state at least three electoral votes.

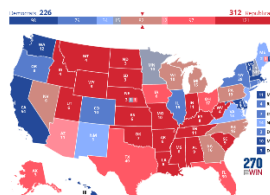
When the **32nd Amendment** was ratified in 1961, the District of Columbia was given three votes which now made the total votes at **538**. [435 for the House of Representatives, 100 for the Senate, 3 for District of Columbia).

An interactive map of the United States showing the states and their current party affiliation and electoral votes can be found at this link: <https://www.270towin.com/>

All states, except Maine and Nebraska, use a **winner-take-all system – a system of elections in which the candidate who wins the plurality of votes within a state receives all of that state’s votes in the Electoral College**. In Maine and Nebraska, whoever wins that state wins the two electoral votes allocated for the Senate, and the rest are awarded for winning a plurality of votes within each of the state’s congressional districts.

Electors are chosen from party leaders and loyal activists. Although they have already pledged to vote for their party’s candidate, there is a risk that they may change their minds in between the general election and the electors’ vote, which takes place in December after the presidential election. Electors who do not vote for the candidate supported by the plurality of the voters in their states are called **faithless electors**.

In 2020, the Supreme Court ruled that laws in 32 states requiring electors to vote for the candidate who received the most popular votes in the state are constitutional. Laws in 12 states that also include a penalty for violating the pledge to support the winning candidate are also constitutional. The Court did not directly address whether states that do not require a pledge can remove faithless electors. The issue of having faithless electors is rare and has never changed the outcome of a presidential election.



If no nominee wins a majority of the electoral votes, then the presidential election goes to Congress, with the House of Representatives choosing among the top three electoral vote winners. Each state gets one vote, and the candidate with the majority of votes wins. The Senate chooses the vice president. This process has been used twice in the nation's history but not since the election of 1824.

A presidential candidate can secure the presidency without winning more than half of the popular vote. This has happened several times. In 1992, Bill Clinton won the presidential election with only 43% of the popular vote. Ross Perot, a third-party candidate, won nearly 19% of the popular vote, making it difficult for either of the party candidates to win with a majority.

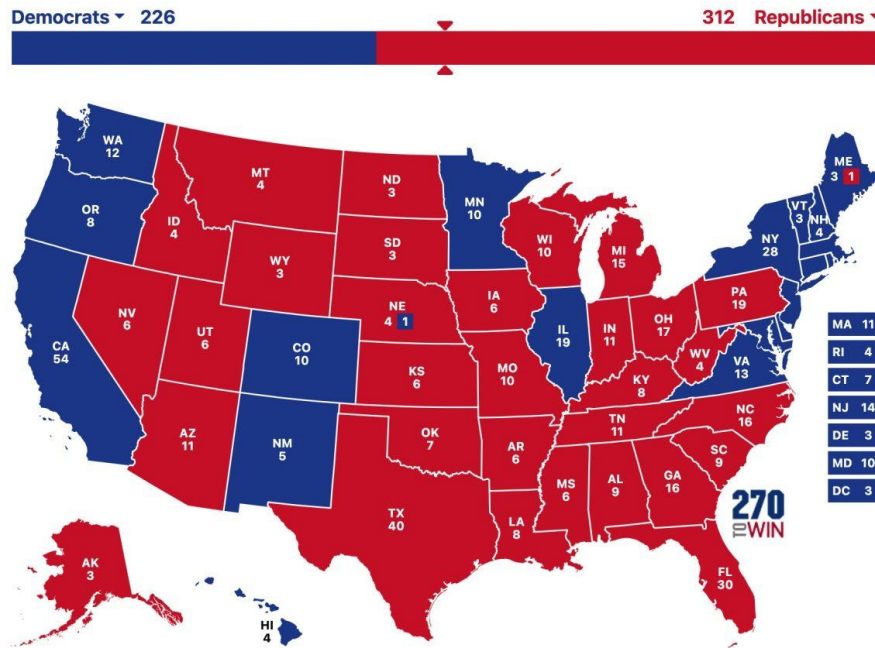
Sometimes the candidate who wins the popular vote loses the Electoral College vote and does not become president. This has happened five times, twice recently, in 2000 when George W. Bush defeated Al Gore, and again in 2016 when Donald Trump defeated Hillary Clinton.

Several proposals have been made to prevent the winner of the popular vote from losing the Electoral College. The **National Popular Vote Interstate Compact (NPV)** introduced in 2006 a proposal that required each state to sign their agreement to pledge their electoral votes to the winner of the popular vote. However, as of 2024, only 17 states representing 209 votes have signed. Even if enough states signed, it would probably be challenged constitutionally.

Candidates tend to focus their campaigns on states with a large number of electoral votes whose electoral votes seem to be in play, largely ignoring other states. For example, Republicans have been able to safely count a majority of Texans to support their party, and Democrats have been able to count on California, so there is little incentive for candidates to allocate scarce resources on these states, despite the sizes of their populations. Instead, candidates focus on **battleground** or **swing states, states where the polls show a close contest between the Republican candidate and the Democratic candidate in a presidential election.**

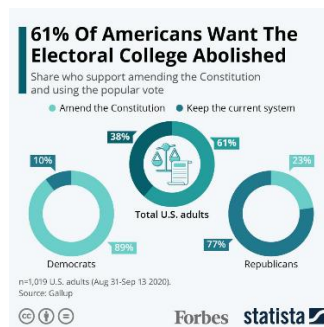
In the 2024 election, polls showed close races between Harris and Trump in seven swing states: Arizona, Georgia, Michigan, Nevada, North Carolina, Pennsylvania, and Wisconsin. Because winning the swing states is usually a key to victory, both candidates focused a great deal of time and advertising in these states. Trump and Harris visited Pennsylvania and Michigan 53 times from August 5 to election day! Trump won all 7 swing states, flipping Georgia, Michigan, Pennsylvania, and Wisconsin which Biden had won in 2020. In the end, Trump won just over 50% of the popular vote and 312 votes in the Electoral College.

The 2024 Presidential Election



Critics of the Electoral College system claim it is undemocratic because it does not reflect the will of the majority of the people, which may cause the government to lose its legitimacy. The Electoral College may also lower voter turnout. A Republican living in California may be discouraged due to the majority being Democratic and vice-versa in Texas. Their response is often “my vote doesn’t count.” When voters do not show up for presidential elections, they miss an opportunity to influence the outcome of state and local elections and ballot initiatives.

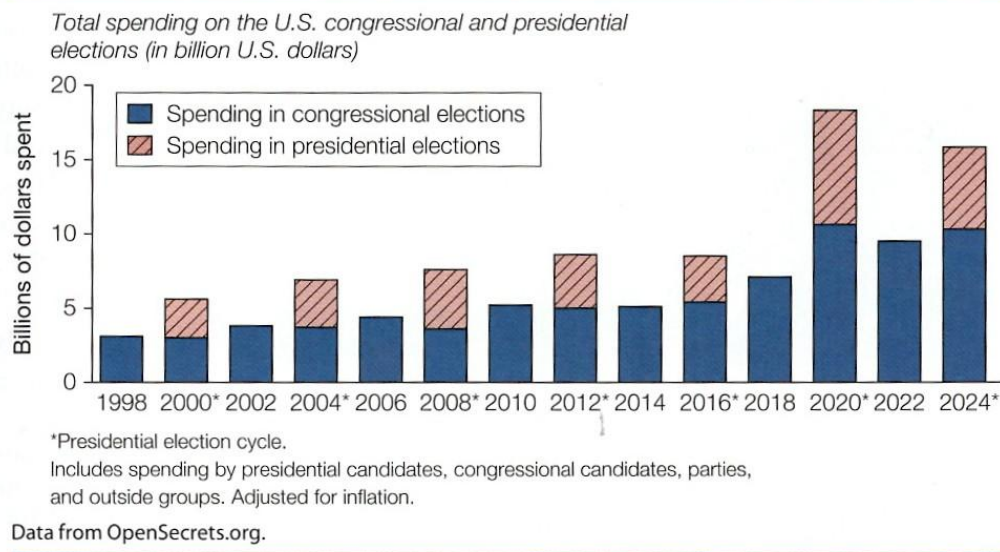
Proponents of the Electoral College argue that it was established to provide a check on the passions of the majority. It protects the influence of the states under the system of federalism. Additionally, if the president were selected through the popular vote, candidates would focus on large population centers, virtually ignoring rural voters.



Elections and Campaign Finance

In the 2024 presidential campaign, \$ 5.5 Billion was spent in support of the campaigns of Harris and Trump. Harris’s campaign committee raised an astonishing \$ 1 billion, Trump raising \$ 382 million. Most of Trump’s funding came from outside sources, which demonstrates the growing power of independent expenditures. Total spending, including both inside and outside groups, was estimated at nearly \$ 1.8 billion for Biden and Harris and \$ 1.4 Billion for Trump. While Kamala Harris raised more money in the 2024 election, and still lost, the fact remains that candidates need staggering amounts of money to run their campaigns.

Spending in the Presidential and Congressional Elections



Money buys media time, on television and radio, in print, and in social media outlets. Some campaign advertisements focus on the candidate’s qualities and creates a positive image. Others focus on policy differences between the candidates and their opponents. Finally, negative campaign advertisements attack an opponent in an effort to raise doubts about them. Negative campaigning has been part of presidential politics since the election of 1800!

Polls show that most voters dislike negative ads and most people believe campaigns would be better by reducing them. Political scientists disagree with this statement as they say that negative ads increase the quality of information available and this allows voters to make better decisions.

Candidates use money to hire professional consultants who draw up strategies and figure out where voter turnout will be crucial to the campaign. Campaign staff need to be paid so this funding has to be allocated from raised amounts, Money also pays for candidates to travel, to give speeches, rally supporters and meet members of local communities.

Also of note is that a person who has a sizeable amount of money leading into a campaign may discourage potential challengers from entering that race in the first place.

Campaign Finance Reform

In 1971, after Watergate, Congress passed the **Federal Election Campaign Act**, which created the **Federal Election Commission (FEC)**. This is an independent agency that oversees campaign finance laws. The act also sets rules requiring disclosure of the source of campaign funds, placing limits on campaign contributions, and creates a system for public financing of presidential elections.

In the Supreme Court case of ***Buckley v. Valeo*** in 1976, the Court upheld the constitutionality of restrictions on campaign contributions by individuals, although not on monies spent independently or money spent by candidates on their own campaigns.

Controlling money and elections has not been easy. In 2002, Congress passed the **Bipartisan Campaign Reform Act (BCRA)** which placed stricter limits on campaign contributions by individuals and political action committees. BCRA included a “**Stand by Your Ad**” provision, which requires candidates, interest groups, and political parties to inform viewers about who paid for the ad and to confirm that the candidate approves this message.

Under BCRA, independent groups were not allowed to run ads thirty days before a primary or sixty days before the general election. These limits were challenged as a violation of the First Amendment right to free speech in ***Citizens United v. Federal Election Commission*** (2010).

In a 5-4 decision, the Supreme Court struck down portions of the BCRA, ruling that corporations and labor unions are persons under the law protected by the First Amendment. The time periods before elections were also a restriction of speech that the First Amendment was meant to protect.

A link to the case can be found at: <https://www.oyez.org/cases/2008/08-205>

The next page has a chart as to the facts and outcome.

Citizens United V. Federal Election Commission (2020)

Facts	Citizens United wanted to show <i>Hillary: The Movie</i> , a highly critical portrayal of Hillary Clinton, on a video-on-demand cable television service in the thirty days prior to a primary election.
Issue	Does BCRA's prohibition on independent ads aired thirty days before a primary or sixty days before a general election violate the free speech clause of the First Amendment?
Decisions and Holding	Citizens United won. BCRA's prohibition on independent ads within certain time frames violates the free speech clause of the First Amendment.
Reasoning	Corporations and Labor Unions have free speech rights under the First Amendment, and BCRA's limits on independent campaign spending are unconstitutional

Political Action Committee (PACs) are an organization that raise money to elect and defeat candidates and may donate money directly to a candidate's campaign, subject to limits.

Super PACs are an organization that may spend an unlimited amount of money on a political campaign, as long as the spending is not coordinated with a campaign.

One of the results in the decision on the case of Citizens United has been the explosion in spending by super PACs.

Spending by super PACs raises a tricky issue. Even if there is no contact between a super PAC and members of a campaign, if the super PAC runs advertisements that are successful in getting its point across, candidates will take notice. Information will change hands, even if this transfer is uncoordinated and legal.

Additionally, the decision opened the floodgates to unlimited corporate campaign contributions and was opposed by 8 out of 10 Americans across the political spectrum. The case is central to understanding how money is deployed in today's campaigns.

Although all citizens have the right to run for office, it takes a lot of money to run a campaign. The high cost of campaigning raises questions about whether money plays too big a role in politics.