Who Will Be the Next President? A Guide to the U.S. Presidential Election System

Alexander S. Belenky

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Second Edition

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To the memory of my parents,

Sofia M. Belenkaya and Solomon Y. Belenki

Preface to the Second Edition

The idea underlying the publication of the second edition of this book is to make an introductory guide to the U.S. presidential election system available to anyone via the Internet ***free of charge***.

From the author's viewpoint, this system deserves to be understood by both its supporters and opponents in the U.S. though its underlying ideas, basic principles, and features may interest a curious individual in any country. This unique system, however, is not easy to understand in depth. Yet the understanding by American voters of how this system works, and what strategic opportunities it provides to competing presidential candidates affects the outcome of every election. To outline and to explain these opportunities, the author undertook an attempt to offer an introductory guide to this system, which was published by Springer in 2013.

The first edition of this guide contains a description and an explanation of the above-mentioned underlying ideas, basic principles, and features of the existing presidential election system. In addition, it presents a brief description of how these opportunities can be used by teams of competing presidential candidates in both strategizing and conducting the election campaigns. Finally, it offers a brief description of four proposals to change this system, which have drawn some attention.

In the first edition of the book, the author proposed a modified presidential election system based on the new idea of how to change the existing one. This modified election system would keep the existing Electoral College-based system only as a back-up while giving a chance to elect a President who is preferred by both the nation as a whole and the states as equal members of the Union. The proposed system treats the will of the nation and the will of the states equally, which reflects the underlying ideas of the Founding Fathers in developing the structure of Congress and the way it is to pass every bill.

The second edition of the book corrects the misprints noticed, clarifies several sentences from the first edition, recomposes the text of Sect. 3.2, and presents a few new examples and comments. Also, it adds to the Conclusion a brief description of (a) fundamental merits, (b) particular deficiencies embedded in the system via the Constitution, and (c) some urgent problems of this system as the author views them.

Finally, it offers a new topic on the election system to discuss. This topic deals with national televised presidential debates. It covers current requirements for presidential candidates to participate in the debates, and what the candidates from both established non-major political parties and independent ones need to demonstrate to meet these requirements. In addition, it includes a new proposal on how to organize and hold televised presidential debates that would allow all these candidates to participate.

The rest of the second edition of the book reproduces the first edition.

The author expresses his deep appreciation to Springer for supporting the idea to make the text of the book available via the Springer web site free of charge. Also, the author would like to express his deep appreciation to the sponsors of this edition of the book, who share the author's position that knowledge about the U.S. presidential election system should be made accessible for free to all interested individuals, especially to all Americans.

Boston, Massachusetts Alexander S. Belenky
July 2016

Preface to the First Edition

If the title of this book has caught your eye, spend a couple of minutes to look at the following list of statements relevant to American presidential elections:

1. The system for electing a President was not designed to reflect the popular will.
2. The current election system does not follow some major ideas of the Founding Fathers.
3. The application of some election rules can make the intervention of the Supreme Court in the election process almost inevitable.
4. Amendment 12 of the Constitution contains at least seven puzzles relating to presidential elections, and the answers to these puzzles have remained unknown for more than 200 years.
5. The text of Article 2 of the Constitution contains a statement that is mathematically incorrect.
6. Skillful use of the election system may elect a President with less than 20 % of the popular support.
7. Applying some election rules may cause a constitutional crisis in the country.
8. Votes cast by voters in a presidential election in November of the election year are not votes for President or for Vice President.
9. The "winner-take-all" method for awarding state electoral votes can be used to encourage presidential candidates to fight for each and every vote in a state and in D.C.
10. Many statements about the Electoral College mechanism are no more than myths of their authors, no matter how plausible these myths may seem.
11. A tie in the Electoral College may not necessarily be resolved in the House of Representatives in favor of a person who has support from majorities of at least 26 delegations there.
12. There is no need to get rid of the Electoral College to make every vote cast valuable in deciding the election outcome.

If these statements bother or intrigue you, and you want the explanations, this book is written for you. This book is the author's second book to discuss in a simple manner the logical fundamentals of the system for electing a President. (The first

one [1] is a monograph discussing these fundamentals, along with the mathematics of U.S. presidential elections.)

Studying the election system is mandatory in American schools, and immigrants applying for U.S. citizenship must pass an exam that includes questions on the basics of this system. Yet many of those who teach the subject and who have studied it do not seem to be clear on how the election system was designed, and how it currently works. From the author's viewpoint, this partly explains why more than 40 % of all eligible voters usually do not vote in presidential elections.

Each election presents an opportunity to learn about the uniqueness of the presidential election system. Moreover, explaining the fundamentals of this system to eligible voters and to residents of the country will contribute to developing their analytical skills and logical thinking. If the commercial media were interested in educating people, it could do a lot to help develop both by explaining these fundamentals. Indeed, many people obtain information in general, and on presidential elections in particular, from this media. While public radio and TV also spotlight presidential elections, the commercial media seem to have a solid lead in spotlighting elections. Whatever the role of both branches of the media in spotlighting elections, currently, the above educational opportunities remain unavailable to millions of those who could benefit from their use.

Undoubtedly, the commercial media must compete to earn money, and this imposes limits on what the anchors and hosts of talk shows can afford to broadcast. Any risky topic may either bring new customers or lose the current audience to the competitors. The same is true regarding the style in which the topic is presented to the audience. Everyone who watches or listens to any media channel expects to see or to hear something new, catchy, puzzling, etc., but not in the form of a lecture. Thus, any serious matters should be discussed in an entertaining form to hold the audience's attention, not an easy task. One must "have the guts" and a certain level of authority in the media to discuss on the air, for instance, some statements from the above list.

Certainly, the anchors and show hosts themselves should understand the fundamentals of the election system to discuss such statements. Even if they (or their producers) decided to discuss the system as deeply as it deserves, they would have to find experts in the field and present the topic as a controversy. They usually choose experts from a close circle of those who they know and who are (presumably) knowledgeable on the subject. Authors of the books promoted by numerous publicists and PR agencies connected to the media are another source of the experts. The shows are unlikely to invite knowledgeable experts who do not fall into these two categories, since they consider it risky. Thus, if the shows do not find trustworthy experts from their inner circle, the election system fundamentals are doomed not to be discussed on the air in the course of the election campaign.

This is how an artificial taboo becomes imposed on the right of Americans to be educated regarding what the election system was designed for, how it really works, what outcomes, including weird ones, it may produce, and why. As a result, election rules that every voter should know may surprise the American electorate. In one of his columns, David Broder of *the Washington Post* warned of the possible

public reaction to the "discovery" that in an election thrown into Congress, each state has one vote regardless of its size [2]. It seems that society would be much better off if the presidential election rules, especially those applicable in close elections, were explained to the electorate before weird election outcomes are looming, rather than being "discovered" when such outcomes occur.

In any case, picking the subject of the election system fundamentals could be problematic even if a particular show invites knowledgeable experts. It could be problematic even if there was a good chance that this show would become the first to report new information on the election system.

It is much safer to provide traditional election coverage, which includes the following:

1. Nationwide polls. These polls are conducted by numerous organizations, and their results vary. Even if the results of these polls are trustworthy, they may contribute to creating the wrong impression in the voters about possible election results. That is, they may make the voter believe that a recipient of the nationwide popular majority or plurality of the votes will necessarily win or is likely to win the election.
2. Nationwide polls among certain groups of the American electorate. Unless one knows the demography of the electorate in each state, especially in the "battleground" ones, results of these polls are not informative. Moreover, they may create the wrong impression that certain voting patterns exist within each such group throughout the country.
3. Polls in the "battleground" states. Although the commercial media sometimes present the results of these polls, usually, no analysis of the factors that affect the dynamics of these polls is provided.
4. Promises of the candidates. Presidential candidates make many promises in the course of their election campaigns, and most of these promises relate to improving the everyday life of the American people. Promises are usually made by the candidates themselves and by members of their teams who appear on the air on their behalf, and these promises seem to be one of the most important parts of the campaigns. However, debating opinions about the promises made, rather than the analysis of the promises themselves, is what is really offered by the media. Under this approach, real issues of concern to the voters remain no more than headlines of the candidates' speeches and two-minute statements made in the course of presidential debates.
5. Scrutiny of the candidates. This is the major part of the media coverage, and the more scandalous the discussions, the more attention is usually paid by the audience.
6. Meetings with groups of selected voters in "battleground" states. It is hard to understand how these groups are selected, and to what extent their views can represent those of the states. However, broadcasting such meetings conveys what some people think about the candidates.

7. Voting equipment to be used in the election. This coverage is certainly informative though it is not clear how this information contributes to the voter's decision on Election Day.
8. Opinions of political observers, commentators, and journalists regarding the election. These opinions mostly deal with what the American people think about the candidates, states of affairs in the economy, international relations, military activities (especially if they are underway), etc. Undecided voters and non-voters give a great deal of attention to discussions of these topics, as well as to those of the mood of the American electorate. Indeed, since the behavior of these categories of voters is assumed to be unpredictable, these discussions help keep the audience intrigued.
9. Presidential and vice-presidential debates. These debates are critical to many voters who make their decisions on Election Day based on the likeability of the candidates and the trust that the voters have in them. For many voters, it has always been a chance to learn about candidates' promises and to decide whose promises sound more trustworthy and realistic.

Certainly, the traditional coverage does not require tackling the list of statements presented at the beginning of this Preface. Moreover, as long as likeability and trust in the candidates remain prevailing decisive factors in forming the voter's opinion, any coverage of the system fundamentals would seem unnecessary.

But can the country do better than this?

It seems that the following four elements of media coverage would be more beneficial for the American electorate in the 21st century:

1. Strategic abilities of the candidates. Although past activities of the candidates certainly matter, they may not necessarily constitute a pattern of making decisions (at least by the challenger). Even if they do, it is not clear to what extent such a pattern can be extended to the Presidency for the next four years. At the same time, any comparison is reasonable and fair when both candidates make strategic decisions in the same environment. Election campaigns undoubtedly present such an environment.

   If the analysis of strategic moves of the candidates in the course of their election campaigns was done by the media, the voter could evaluate whose decisions were more effective. Such an analysis would be especially important in the last one or two weeks before Election Day. Indeed, the resources of the candidates will have been almost exhausted by that time, and misleading moves of a major party candidate may force the opponent to make wrong decisions on where to focus the remaining part of the campaign. It is the analysis of the campaign strategies in the context of the electoral map that could constantly remind the voters that under the current election system, the states—rather than the nationwide popular vote—decide the election outcome. It would be illustrative of how each candidate can use the election system to win the election by the rules in force, especially in a close election.

Such a coverage would require conducting and analyzing completely different polls. For instance, polls reflecting how particular moves affected opinions of likely voters in each social or ethnic group of the voters in each state (rather than nationwide) would be more informative. Finally, such a coverage would emphasize that a Chief Executive to govern the Union of the states and D.C.—rather than a President of the American people—is elected in the U.S. every four years. His strategic abilities are what should matter and what should make him a good manager and a good Commander-in-Chief. If evaluated and analyzed properly, decisions on campaign strategies could help the voters understand who can better govern the country in the next four years.

2. Leadership. How the candidates form their teams speaks volumes about their abilities to lead. Analyzing the appearances of representatives of the candidate's team on the air, as well as their preparedness for answering questions and for "delivering the message" on behalf of the candidate, may help in evaluating the leadership provided by the candidates in shaping their election campaigns. Discussing the names of possible members of the next Cabinet may also contribute to the image of the leader that each candidate should try to create in the voter's mind.
3. Programs of the candidates. Each and every element of the candidate's program should be scrutinized by the media. It is important to separate promises, which may sound very good, from the deals that can really be accomplished in the next four years. It is important to explain to the voters that an elected President cannot transform any promises into the laws without Congress. Chances of the promises to be fulfilled should be evaluated depending on the composition of Congress that the newly elected President will work with. All elements of the programs should be made understandable to every voter in terms of the voter's everyday life, rather than in terms of percentages of the potential beneficiaries. Thus, all the details of the candidates' programs should be understandable to all the voters rather than only to those who wrote these programs. Moreover, the candidates must be able to explain to the voters all these elements and answer corresponding questions on the air.
4. Tactical abilities of the candidates. Debates among the candidates present an excellent opportunity to the voters to see whose tactical abilities seem to be stronger. The analysis of approaches employed by the candidates in answering questions or in making comments, which should be provided by political observers, is critical to this end. It should give the voters an impression of how the candidate could handle her/his opponents in numerous discussions as President in the next four years.

The readers who share the author's viewpoint that the second type of election coverage is preferable—or at least should be present in the election year—may ask: can the media provide such a coverage? From the author's viewpoint, the answer is yes, once there is a demand for this from society. However, this demand may not emerge unless the voter education and the election culture in the country start changing.

Currently, it does not seem that the commercial media can (or want to) initiate this process because of the above-mentioned financial reasons. Nevertheless, it can certainly contribute to the process once the American people decide that they really want to know how the election system works, and how it can shape the election campaign.

The long-deserved explanation of the fundamentals of this system is the key to initiating the change. However, conducting any substantive public discussion in the media of either the election system or election rules, including controversial ones, requires three prerequisites.

First, a sizable part of society should be concerned with the topic.

Second, those who wish to participate in the debates either as contributors or spectators should be at least familiar with the structure and the principles of the election system.

Third, at least one national TV channel should be willing to start the dialogue in a form that would encourage the rest of the media to follow suit.

Where is American society today with these inseparable ingredients of any substantive public discussion of the election system?

1. Society has been concerned about the fairness of the current election rules that may elect President someone who lost the popular vote, as happened, for instance, in the 2000 election. This concern has initiated two activities: (a) a few new approaches to changing the election system have surfaced, and (b) voting technologies to count votes cast have been studied. Several proposals for improving the current election system have been published. However, only one particular proposal, the National Popular Vote (NPV) plan, has been promoted by a part of the media and presented to society as the best and even as an "ingenious" one.
2. Several books analyzing how the current election system works have been published since the 2000 election. However, a majority of American society seem to have advanced in understanding of only two basic features of the system. That is, more people have understood that under the rules of the current system, 1) the electoral vote rather than the popular vote matters in determining the election outcome, and 2) the "winner-take-all" method for awarding state and D.C. electoral votes is to blame for the division of the country into "safe" and "battleground" states in presidential elections. (Here, a "safe" state is a state in which the electors of one of the presidential candidates are practically guaranteed to win all the state electoral votes in an election, and a "battleground" state is a state in which the electors of no presidential candidate can be sure to win all the state electoral votes.)
3. Though some newspapers have tried to initiate a dialogue on how to elect a President, a few influential media outlets have supported the National Popular Vote plan and have managed to present it as the only alternative to the current election system. Moreover, all the controversies of this plan and its constitutionality have never been seriously discussed, and the newspapers that support the plan are reluctant to publish articles critically analyzing this plan. Only the

NPV plan has been mentioned by national TV channels, and only its originators and supporters have been able to air their views on how the current election system could be improved.

This state of affairs with public awareness of the basics of the current presidential election system has moved the author to write a book in which the fundamentals of this system are addressed [1]. The book offers (a) a logical analysis of the constitutionality and controversies of the NPV plan, (b) a brief description of other plans to improve the election system, proposed by other authors, and (c) the author's plan to improve the system under which the will of the nation and the will of the states as equal members of the Union decide the election outcome, whereas the Electoral College remains only a back-up election mechanism [1]. The book [1] is, however, a monograph oriented mostly to professionals studying presidential elections, including political scientists, constitutional lawyers, managers who plan and analyze election campaigns, systems scientists, and mathematicians, interested in familiarizing themselves with the election system and with the mathematics of this system.

In contrast, though the present book implements the author's attempt in the same direction, this book is oriented to a general readership, and its understanding does not require preliminary knowledge of the subject. Like all the author's previous publications on U.S. presidential elections and unlike almost all publications of other authors on the subject, the present book does not consider historical materials. In particular, it does not consider the Federalist papers in which some of the Founding Fathers expressed their viewpoints on what Constitutional Convention participants meant regarding issues relating to the election system. The author believes that the Constitution, Supreme Court decisions, and federal statutes are the only publications that can be used in any analysis of the election system. Any other historical materials may only encourage one to focus on particular published historic documents.

The Constitution was written for the American people rather than only for experts in constitutional law. Therefore, one should not be surprised that different people have different perceptions and different understanding of election rules, embedded in provisions of the Constitution and Supreme Court decisions. Moreover, the logical analysis of these rules suggests that more than one understanding of particular rules is possible.

If this is the case for any of the rules, these rules should be analyzed by constitutional experts, and the results of the analysis should be made available to all interested individuals. Though the interpretation of controversial election rules can be provided only by the Supreme Court, public discussion of these rules is a mechanism for initiating either such an interpretation or constitutional amendments addressing the controversies.

The author views the present book as an introductory guide for those who are curious about the peculiarities of the election system that are not studied in civics lessons in schools and are not considered in publications of other authors on U.S.

presidential elections. He hopes that this book, along with the book [1], will contribute to making knowledge about the election system available to everyone.

Boston, Massachusetts Alexander S. Belenky
June 2012

Contents

Chapter 1
The Initial Design of the Electoral College: Basic Ideas, Logical Mistakes, and Overlooked Problems

Abstract Almost every American has either studied something about the Electoral College in school or at least heard of it. Yet to many people used to electing municipal, state, and federal officials by the democratic principle "the one who gets the most votes always wins," the Electoral College looks quite mysterious and antiquated. The mystery concerns how such a system could have existed for so long, and why it has not been replaced by a system that is based on the above democratic principle. In contrast, people who are curious about the election system often try to grasp (a) how the Electoral College could have emerged in the first place, and (b) what could have been the Founding Fathers' logic of designing the system for electing a President and a Vice President. This Chapter considers the Electoral College origins and analyzes a logical mistake made by the originators of the Constitution, which still remains in its text, as well as the election problems that were overlooked by the Founding Fathers in the original design of the Constitution.

Keywords 1787 Great Compromise · Article 2 of the Constitution · Committee of Eleven, Electoral College · Electors · Electoral votes · Executive power · Founding Fathers · Founding Fathers' logical mistake · "One state, one vote" principle · Slavery

Almost every American has either studied something about the Electoral College in school or at least heard of it. Yet to many people used to electing municipal, state, and federal officials by the democratic principle "the one who gets the most votes always wins," the Electoral College looks quite mysterious and antiquated. The mystery concerns how such a system could have existed for so long, and why it has not been replaced by a system that is based on the above democratic principle.

In contrast, people who are curious about the election system often try to grasp (a) how the Electoral College could have emerged in the first place, and (b) what could have been the Founding Fathers' logic of designing the system for electing a President and a Vice President.

This chapter considers the Electoral College origins and analyzes a logical mistake made by the originators of the Constitution, which still remains in its text,

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as well as the election problems that were overlooked by the Founding Fathers in the original design of the Constitution.

The titles and the context of the sections of this chapter contain questions and answers addressing the above concerns raised by both people's curiosity and the alleged mystery and antiquity of the Electoral College. The questions are those the author has often heard Americans ask.

1.1 The Founding Fathers' Electoral College: A Monster or a Masterpiece?

For many of those who do not understand how the Electoral College works, it may look like a monster [3]. Even those who believe it has served the country quite well for more than two centuries may not understand how it works. The opinions about the Electoral College differ, as do the people who hold them. This is business as usual.

Traditionally, Americans attribute two meanings to the phrase "the Electoral College."

1. Constitutionally, there is a group of people—called (presidential) electors—who elect a President and a Vice President every four years. This group is often called the Electoral College though there are no such words in the text of the Constitution. This meaning is equivalent to the phrase "all the presidential electors appointed by (currently) 50 states and by D.C. (since the 1964 election) as Article 2 and Amendment 23 of the Constitution direct."

Each state is entitled to appoint as many electors as it has members of Congress. The total number of members of the House of Representatives is determined by Congress, and it is apportioned among the states. The number of Representatives that the state is entitled to in the House of Representatives depends on the number of people leaving in the state. This number is determined based upon the results of the census that is conducted in the country every ten years. According to Article 1 of the Constitution, each state is entitled to two U.S. Senators in Congress, despite the state's size.

In 1912, Congress set the size of the House of Representatives equal to 435, and this has been the number of Representatives ever since. The only exception was made in 1960 for the 1960 presidential election, when the number of Representatives was temporarily made equal to 437.

From 1948 to 1959, the Union consisted of 48 states, and Congress consisted of 435 Representatives in the House of Representatives and 96 Senators. Thus, 531 presidential electors could be appointed during those years. Alaska and Hawaii joined the Union in 1959, and for the 1960 election, the number of Representatives

in the House of Representatives was made equal to 437 to let each of the two states appoint the minimum number of presidential electors that each state could have in the election. Thus, the number of all the electors that could be appointed in that election was equal to 537 (since the number of Representatives in the House of Representatives was 437, and 50 states had 100 Senators in the Senate). In 1961, Amendment 23 of the Constitution gave the District of Columbia the right to have as many presidential electors as the least populous state in the Union. Currently, this number equals three, so since the 1964 presidential election, the (maximum) number of electors that could be appointed has been 538 [1, 4].

In each particular election, each state can appoint the maximum number of presidential electors that the state is entitled to appoint. However, any state may choose to appoint fewer electors or may simply fail to appoint all (or some) electors, for instance, by the time specified by a federal statute. Though such situations are certainly rare exceptions, they have taken place in the past [4].

2. Colloquially, the whole U.S. presidential election system is often called the Electoral College though the Electoral College as such is only a part of the whole system yet the decisive one since the 1828 election. The 1824 presidential election was the second (and the last) one in which Congress rather than the Electoral College elected both a President and a Vice President [4].

Certainly, the second meaning attributed to the phrase "Electoral College" is no more than a jargon. However, it has widely been used in publications on American presidential elections, as well as in the media reports.

Thus, the Electoral College can be construed as a collection of all the appointed presidential electors, or as a manner in which America elects its presidents, or both. It is a matter of personal perception. From this viewpoint, there is nothing in the Electoral College either monstrous or possessing a masterpiece quality. But the devil is in details, which are to be discussed further in this book.

The author hopes that the book will help the reader decide whether the Electoral College is a monster, or a masterpiece, or neither, or both, or something else.

It seems important to distinguish people's personal impressions about the Electoral College from the interpretation of facts and constitutional provisions by those who offer their opinions on this election mechanism, especially regarding the explanations of why the 1787 Constitutional Convention participants adopted decisions reflected in the text of the Constitution.

The Supreme Court is the only body that can ultimately interpret the text of the Constitution. Therefore, any "interpretations" or "explanations" by any other organizations or individuals are no more than the opinions of their authors, no matter how plausible and convincing they may seem.

1.2 Neither the People, nor Congress: Why Electors?

There are numerous publications "explaining" what the Founding Fathers "were up to" by creating the Electoral College [5–11]. However, the Constitution does not provide either such explanations or any hints about why the Electoral College as a manner of electing a President was adopted at the1787 Constitutional Convention.

Here are the most widespread beliefs about the reasons underlying the Electoral College creation in a nutshell.

1. The Founding Fathers did not want an elected President to be dependent on those in power who elected him, especially on those who constituted a legislative branch of the government. This seems to be in line with the "checks and balances" system of government, which the 1787 Constitutional Convention participants embedded in the Constitution. According to this system, all three branches of government—legislative, executive, and judicial—should be independent of each other and should complement and "balance" each other.
2. The Founding Fathers did not want the people to elect a President directly. They believed that ordinary people could hardly make the right choice of a President due to their lack of knowledge about individuals who would make good Presidents. Also, many researchers believe that the Founding Fathers wanted to avoid the "tyranny of majority," which would depreciate the role of small states in electing a President [12–14].

This particular reason has been intensively discussed both in scientific publications and in the media, and certain extreme viewpoints have been and still are expressed in the discussions. For instance, some researchers assert or believe that at least a majority of the Founding Fathers simply did not trust the people, did not appreciate democracy, etc. These views are often offered despite the fact that the Founding Fathers did not prohibit the election of state presidential electors by popular elections. (Nevertheless, they left the right to choose a manner of appointing electors to state legislatures.) One should notice that the authors of all these viewpoints always manage to find appropriate citations in the Federalist papers [15], which they interpret as those supporting their cause.

3. Committee of Eleven, appointed by the 1787 Constitutional Convention, suggested to adopt a principle of dual representation of the states in electing a President that was similar to the one that had already been adopted for Congress [1]. The Committee proposed that each state would be entitled to the number of presidential electors equaling the total number of members of Congress that the state was entitled to (i.e., to the total number of Representatives in the House of Representatives plus two Senators for each state) [6, 16].
4. The Founding Fathers could not find the best solution to the problem of choosing a manner of electing a President after they had refused the election of a President by the people, by Congress, and by Governors several times. They were too tired to continue to discuss this particular matter and came up with a compromise [6, 17].

5. The Founding Fathers wanted to have an independent body, an intermediate "Congress" that would convene once in four years only for the purpose of electing a President and a Vice President. This "Congress" would consist of knowledgeable, wise people from all the states, who would choose real statesmen to the highest offices in the country. The number of such people from each state would depend on the number of people living there. The Founding Fathers did not prohibit these knowledgeable people from deliberating their choices within each state. However, they did not allow presidential electors—members of this "Congress"—to gather in one place to deliberate their choices and to work out a collective decision on behalf of the whole country.

Whatever reason seems either true or plausible, the Founding Fathers decided to vest on the electors the privilege of exercising the first attempt to elect a President and a Vice President. They reserved to Congress the right to exercise the second attempt to elect a President and a Vice President there if the first attempt were to fail. In electing both executives in Congress, all the states would vote as equal members of the Union, with an equal number of votes despite the state's size [18].

1.3 The 1787 Great Compromise and the Electoral College

The 1787 Great Compromise was an agreement between the small states and the large states of free settlers, reached by the Founding Fathers at the 1787 Constitutional Convention. The major part of the Compromise was the establishing of a dual representation of the states in Congress.

The people needed equal representation as individuals, and the states wanted to keep their equality as they had under the Articles of Confederation [6]. The Founding Fathers agreed that people of every state would be represented in Congress via the House of Representatives by congressional districts in their states of residence. At the Convention, they agreed that the number of districts in each state would depend on the number of people living in the state to be counted as follows: free people would be counted by the number of individuals, and each slave would be counted as three-fifths of a free person (the so-called "three-fifths clause" [19]).

This representation definitely favored large states and gave them more influence in Congress. To balance this disparity, the Founding Fathers agreed that each state as a whole would also be represented in Congress via the Senate. They agreed that all the states would be represented there as equal members of the Union, despite their sizes. The Founding Fathers decided that each state would be entitled to two Senators to be appointed by the state legislators. Thus, the advantage that the large states had over the small states in the House of Representatives was balanced by the proposed structure of Congress.

Moreover, the Founding Fathers went even further in their intent to balance the above advantage of the large states. They agreed that all the states would be equal

members of the Union in electing a President and a Vice President in Congress, as well as in ratifying amendments to the Constitution.

The Founding Fathers decided that in electing a President in the House of Representatives, each state delegation—i.e., all the Representatives from the state—would have a single vote, no matter how many Representatives the state was entitled to have there. In electing a Vice President in the Senate, each Senator was given one vote so that each state was given two votes. Thus, all the states were equal in electing a President and a Vice President in Congress—one vote in electing a President in the House of Representatives and two votes in electing a Vice President in the Senate. This equality was given to the states independently of their sizes.

Two forms of state representation in Congress—of the residents of each state in the House of Representatives and of each state as a whole in the Senate—constitute the core of the 1787 Great Compromise. With respect to presidential elections, the equality of the states as members of the Union (a) in electing a President and a Vice President, and (b) in amending the Constitution was a key element of the 1787 Great Compromise.

In the Constitution, the Founding Fathers set the basic principles of the structure of the executive power in the U.S. These principles reflected the underlying concepts of the Presidency, and they have remained unchanged ever since [18].

The Founding Fathers vested all the executive power in one person, the President of the United States. Thus, one may construe this decision as the intent to see the elected President as Chief Executive to run the Union. The Founding Fathers seem to have believed that by electing a President, the states forming the Union would give the elected person a mandate to govern the country. This mandate should come from the states, no matter whether or not it coincided with the will of the set of individuals entitled to vote.

Of course, a President could eventually receive such a mandate from all the voting voters as well. This could be the case, since a manner of choosing state electors was to be determined by the state legislatures of all the states, who could decide to hold statewide elections to choose state presidential electors. If this were the case, one could talk about the will of all eligible voters in the country, and this will could coincide with the will of the states, expressed by presidential electors. However, such a coincidence does not seem to have been a priority for the Founding Fathers. For instance, at the Convention, they did not discuss whether a majority or only any plurality of voting voters favoring a particular person could reflect the will of voting voters.

Thus, choosing the best Chief Executive to run the Union according to the will of the states was and constitutionally remains the goal of presidential elections in the U.S. Detecting a person who was favored by all the voting voters did not become either necessary or even relevant for this goal. The Founding Fathers allowed the states to exercise two attempts to elect a President: first in the Electoral College, and second in Congress, should the Electoral College fail to elect the Chief Executive.

As mentioned earlier, a disproportionate representation of the state population in the Electoral College was part of the 1787 Great Compromise. This unequal

representation has been a source of sharp criticism of the system for electing a President. In contrast, the equal representation of the states in the Senate, which is unequal from the viewpoint of representation of the state population, has never been a subject of serious discussion though it was another part of the 1787 Great Compromise.

There exists the widely widespread belief that the Founding Fathers did not expect the Electoral College to elect a President. Rather they might have believed that most of the time, presidential electors would only form a list of the best choices for the office of President. If this were the case, then electing a President by the states as equal members of the Union might have been the Founding Fathers' major goal in presidential elections. So they might have believed that the "one state, one vote" principle would be the ultimate principle for electing a President.

Thus, both the two-chamber Congress and the Electoral College as an election mechanism for electing a President and a Vice President were part of the 1787 Great Compromise, which all the states have honored for more than 220 years.

In today's America, there are political scientists, reporters, and ordinary citizens and residents who believe that this compromise is outdated and should no longer be honored by the states. They favor an equal representation of all the states in both the Senate and the Electoral College, and they believe that the Electoral College should be eliminated. (Some of them even believe that the Senate should be abolished as well [20].) Proponents of this viewpoint believe that the fairness of state representation in any matters of national importance should require representation proportional to the size of the state population in the country.

Though proponents of abolishing the Electoral College call for eliminating the Senate, they focus on the Electoral College as the major "evil." They insist on the introduction of a direct popular election of a President and a Vice President. Many of them suggest that the "one man, one vote" (or the "one person, one vote") principle should underlie the presidential election system, since it is the fundamental principle of democracy [5].

Further in the book, the reader will find an analysis of whether abolishing the Electoral College has a chance of succeeding, along with an analysis of whether such an idea really has support in the country.

1.4 An Unpleasant Heritage: Is the Electoral College a Vestige of Slavery?

There are prominent constitutional lawyers who believe that this is the case, and that the Electoral College "… was designed in part to cater to slavery…" [21]. Their logic is based on the fact that at the time of the Constitutional Convention, the Southern states had many slaves, each of whom was to be counted as three-fifths of a free person, but could not vote in elections.

The rules for calculating the number of electors that every state was entitled to were based on the number of all the inhabitants in the state. So the Southern states with large numbers of slaves could have more presidential electors than the states that did not have that many slaves. Some proponents of this idea assert that this was the major reason the Southern states supported the idea that presidential electors would choose a President.

While this assertion looks quite logical, there is, however, no reason to believe that the Electoral College is a vestige of slavery more than is the House of Representatives.

Indeed, the Committee of Eleven simply proposed that the states would be represented in the Electoral College in just the same manner as they would be represented in Congress. Moreover, by the time of this proposal, the Founding Fathers had already agreed on the manner in which the states would be represented in Congress. Thus, the major portion of the total number of the state electors was to be equal to the number of Representatives in the state's share in the House of Representatives. The more slaves a state had, the larger share of Representatives in the House of Representatives it would have. Consequently, the more slaves the state had, the more electors in the Electoral College this state would be entitled to.

Thus, by agreeing to the Electoral College the Southern states did "benefit" twice from the large numbers of slaves that they had. However, this does not mean that the Electoral College initiated the slavery argument that played a role in reaching the 1787 Great Compromise.

Certainly, one may assume that the Founding Fathers could have found a different manner of choosing a President, not based on the number of all the inhabitants in a state. However, the same assumption would then be applicable to the House of Representatives.

Did slavery play a role in choosing the structure of Congress? It certainly did. Was slavery the underlying cause for creating the Electoral College? Nothing suggests that it was, since the apportionment of electoral votes among the states could have been different from the one used in designing the structure of the House of Representatives. However, though slavery did not initiate the Electoral College design, it did affect the Electoral College structure in just the same manner as it did the structure of the House of Representatives, which was chosen first. Thus, those who consider the Electoral College as a vestige of slavery should be consistent in their perception and consider the House of Representatives to be the same.

However, for unknown reasons, critics of the current election system attribute the slavery label to the origins of the Electoral College only.

1.5 The Electoral College: A Decisive Body or a Selecting Committee?

As mentioned in Sect. 1.3, it is widely believed that the Founding Fathers did not expect the Electoral College to elect a President and a Vice President. They might have expected that most of the time, presidential electors would be the best to select a set of potential candidates for these two offices. The selected candidates would further be considered by Congress (see Sect. 1.3).

This expectation of the Founding Fathers might have contributed to convincing the small states to join the Union, since in electing a President and a Vice President in Congress, states would vote as equal members of the Union.

Article 2 of the Constitution introduced a three-level presidential election system. At the first level, states were to appoint state presidential electors. According to the restrictions that Sect. 1 of the article imposed on candidates to the office of elector [19], not everyone could become a presidential elector. The Founding Fathers authorized the state legislature of each state to choose a manner in which the state electors would be appointed. The state legislature of every state could decide to hold a popular statewide election to choose state presidential electors [18, 19].

At the second level, all the state presidential electors appointed in a particular election year were charged to vote for President. All the electors together constituted the Electoral College for that election year, and they were to vote for President on one and the same day. That day was to be established by Congress.

Each appointed elector was to vote in his respective state for any two persons as President.

The only restriction imposed on the electors was as follows: At least one of the persons each elector could favor could not be an inhabitant of the elector's state. Article 2 of the Constitution did not specify for whom each state elector could vote, and for whom this elector could not vote. Nor did the article operate with the notion of "presidential candidate." By favoring particular persons, appointed electors, in fact, would attribute the status of presidential candidates to those persons.

Thus, the article does not specify which particular persons electors were to favor. The only requirement to the electors was to vote by ballot. The voting procedure in each state was to result in compiling a list of all the persons voted for as President, and the total number of (electoral) votes received by each such person ought to be present on the list [22].

The Founding Fathers considered Congress as the ultimate authority in deciding the election outcome (see Sect. 1.3). They authorized Congress (a) to count electoral votes cast in favor of all the persons as President, (b) to prepare a list of all the persons who received electoral votes, and (c) to indicate there the number of electoral votes received by each of the persons. The list was supposed to be ordered, and the preparation of the list constituted the first stage of the election procedure at the third level of the election system [22].

If none of the persons on the list was a recipient of electoral votes from a majority of all the appointed electors, the election was to be transferred to (thrown into)

Congress. If this were the case, the House of Representatives was to elect a President from the "… five highest on the List …" of those voted for as President in the Electoral College [19]. Thus, at the second stage of the election procedure at the third level, Congress was to either declare President one of the persons from the list or to transfer the election of a President to the House of Representatives.

As mentioned earlier, according to Article 2 of the Constitution, each appointed presidential elector could cast two electoral votes. However, he could not cast both votes in favor of one and the same person. To win the Presidency in the Electoral College, a person voted for as President was to receive votes from a majority of all the appointed electors [19].

It is widely believed that the Founding Fathers gave two undifferentiated votes to each elector purposely, since they expected that most of the time, each elector would favor a son of his own state, by casting one of his votes in favor of that person. Also, it is widely believed that the Founding Fathers have expected that each elector would always cast the other electoral vote for a true statesman [6, 18].

While one can argue whether or not these beliefs have any grounds, the collection of the "second" votes cast by presidential electors was apparently supposed to determine the most appropriate Chief Executive to govern the Union [18]. Indeed, if each elector cast both votes in line with the constitutional requirements, a majority of the "second" votes could turn out to be sufficient to win the Presidency in the Electoral College, since the number of votes in this majority would coincide with the number of electors who cast these votes.

Thus, the Founding Fathers might not have considered the Electoral College as a decisive body in electing a President.

1.6 The Same Qualities Required: The Choice of a President and a Vice President

Outcomes that could occur under the rules of presidential elections set by Article 2 of the Constitution differ from those that the current election system may produce. Moreover, some of the outcomes possible under the old rules may seem weird under the current rules.

Outcome 1. Only one person voted for as President in the Electoral College received electoral votes from a majority of all the appointed electors. Then this person would be declared President.

Outcome 2. One person received the greatest number of electoral votes from among two or three persons who received electoral votes from majorities of all the appointed electors. This person would be declared President.

It is clear that in no case could each of more than three persons voted for as President receive a majority of all the electoral votes. However, each of three persons voted for as President could receive such a majority [1, 18]. The following example from [18] is illustrative of this statement:

Example 1.1 Let us consider the 1800 presidential election, and let us assume that all the 138 appointed electors cast their votes in favor of four persons. Further, let us assume that no two of the four persons were from the same state. (In the 1800 election, five persons received electoral votes from all the appointed electors [6, 8].) Finally, let us assume that all the electors cast their votes as follows:

The first group consisting of 69 electors voted in favor of person A (69 votes), in favor of person B (35 votes), and in favor of person C (34 votes).

The second group consisting of 34 electors voted in favor of person B (34 votes) and in favor of person C (34 votes).

The third group consisting of 7 electors voted in favor of person A (7 votes), in favor of person C (1 vote), and in favor of person D (6 votes).

The fourth group consisting of 7 electors voted in favor of person B (7 votes) and if favor of person C (7 votes).

The fifth group consisting of 7 electors voted in favor of person C (7 votes) and in favor of person D (7 votes).

The sixth group consisting of 7 electors voted in favor of person A (7 votes) and in favor of person D (7 votes).

The seventh group consisting of 7 electors voted in favor of person B (7 votes) and in favor of person D (7 votes).

Had this hypothetical distribution of electoral votes among the four persons taken place, then persons A, B, and C would have received electoral votes from a majority of 83 electors each, and person D would have received 27 electoral votes, as the following table illustrates:

	Person A	Person B	Person C	Person D
Group 1	69	35	34	0
Group 2	0	34	34	0
Group 3	7	0	1	6
Group 4	0	7	7	0
Group 5	0	0	7	7
Group 6	7	0	0	7
Group 7	0	7	0	7
Total	**83**	**83**	**83**	**27**

In all the other possible cases, the House of Representatives was to elect a President, and the following two situations [21] could emerge:

(a) Two or three persons voted for as President in the Electoral College received one and the same greatest number of electoral votes from majorities of all the appointed electors, and
(b) no person voted for as President received electoral votes from a majority of all the appointed electors.

In situation (a) the House of Representatives was to choose a President between those two or from among those three persons. In situation (b) the House of Representatives was to choose a President from "… the five highest on the List …"" (of persons voted for as President).

Under the rules determined by Article 2 of the Constitution, a Vice President was to be elected from the same list of persons voted for as President in the Electoral College. However, both in the Electoral College and in Congress, a Vice President could be elected only after a President had been elected.

Depending on how a President was to be elected, the mechanism for electing a Vice President in Congress worked differently.

Outcome 3. Only two persons among those voted for as President received electoral votes from majorities of all the appointed electors, and one of those persons received more votes that the other. Then the person with the greatest number of the electoral votes received was to be declared an elected President, and the other person was to be declared an elected Vice President.

Outcome 4. Only two persons among those voted for as President received electoral votes from majorities of all the appointed electors, and both received the same number of electoral votes. Then the House of Representatives was to chose a President between those two persons, and the person who were to lose the election in the House of Representatives would be declared an elected Vice President.

Example 1.2 Let us consider the above hypothetical 1800 presidential election in which all the 138 electors were appointed and cast their ballots in favor of persons A, B, C, and D. Let person A and person B receive 80 electoral votes each, whereas persons C and D receive 58 electoral votes each. Further, let person A be elected President in the House of Representatives. Then person B would be declared an elected Vice President.

Outcome 5. Three persons received electoral votes from majorities of all the appointed electors, and one of the three received the greatest number of the electoral votes cast. This person was to be declared an elected President. If the other two received the same number of votes, the Senate was to choose a Vice President between them.

Outcome 6. Three persons received electoral votes from majorities of all the appointed electors, and all the three received one and the same number of electoral votes. Then the House of Representatives was to elect a President from among them, and after electing a President, the Senate was to choose a Vice President between the remaining two persons.

Outcome 7. Three persons received electoral votes from majorities of all the appointed electors, and two of the three were recipients of the same greatest number of electoral votes. Then, the House of Representatives was to chose a President between the two top electoral vote-getters, and the person who were to lose the election there would be declared an elected Vice President.

Example 1.3 Once again, let us consider the above hypothetical 1800 presidential election. Let us assume that person A received 85 electoral votes, persons B and C

received 83 electoral votes each, and person D received 25 electoral votes. Then person A would become President, whereas the Senate would have to choose a Vice President between persons B and C.

Now, let us assume that persons A, B, and C received 83 electoral votes each, and person D received 27 electoral votes in the same 1800 hypothetical election. Further, let us assume that the House of Representatives elected person A to the office of President. Then the Senate would have to choose a Vice President between persons B and C.

Outcome 8. No person received electoral votes from a majority of all the appointed electors. Then the House of Representatives would have to elect a President from among the "… five highest on the List…" of those voted for as President. After electing a President, if there were a person with the highest number of electoral votes received, this person would be declared an elected Vice President. Otherwise, the Senate would have to elect a Vice President from among persons with the same highest number of electoral votes received who would remain after the election of a President. If this were the case, a person with more electoral votes than the elected President received could become an elected Vice President [18, 22].

Example 1.4 Let us assume that all the 138 appointed electors cast their votes in favor of five persons in the 1800 hypothetical election. Further, let us assume that each elector voted for two persons as Article 2 of the Constitution directs. Finally, let us assume that persons A and B received 60 electoral votes each, whereas persons C, D and E received 59, 51, and 46 electoral votes, respectively. Then all the five persons would participate in electing a President in the House of Representatives.

Let us assume that person D had been elected President. It this had been the case, according to Article 2 of the Constitution, the Senate would have to choose a Vice President between persons A and B. If, say, person A had been elected the next Vice President, this person would have been the one who received more electoral votes in the Electoral College (60 electoral votes) than the next President (51 electoral votes).

Outcome 9. No person received electoral votes from a majority of all the appointed electors in the above 1800 hypothetical election. Moreover, let us assume that after electing a President in the House of Representatives, more than four persons voted for as President in the Electoral College with the same number of electoral votes received would remain. According to Article 2 of the Constitution, all those persons would be eligible to participate in electing a Vice President in the Senate. Indeed, the article did not put any limit on the number of persons with the same number of electoral votes received who would be eligible to participate in electing a Vice President in the Senate. In particular, the article did not specify that only those from the "… five highest on the List …" who would remain after electing a President in the House of Representatives would be eligible to participate in electing a Vice President in the Senate.

Example 1.5 Let us assume that in the 1800 hypothetical election, one person received 66 electoral votes, and six more persons received 35 electoral votes each. Further, let us assume that four persons from among six persons with 35 electoral votes each were selected to be included in "… the five highest on the List …," together with the person who received 66 electoral votes. (However, Article 2 of the Constitution did not propose a mechanism for selecting those four persons from among the six persons with 35 electoral votes.) Finally, let us assume that the House of Representatives elected President the person with 66 electoral votes. Then all the above six persons with 35 electoral votes each would be eligible to participate in electing a Vice President in the Senate.

The same situation could have emerged if in the above 1800 hypothetical election, one person received 72 electoral votes (i.e., a majority of votes from all the appointed electors), whereas six more persons received 34 electoral votes each. According to Article 2 of the Constitution, after declaring the person with 72 electoral votes an elected President, the Senate would have to chose a Vice President from among all the six persons with 34 electoral votes each.

The voting procedure in electing a Vice President in Congress was to be held by ballot, and each Senator was to vote as an individual, not necessarily in line with the preferences of his state. In the case of a tie in electing a Vice President in the Senate, the sitting Vice President could break this tie, as Sect. 1.3 of Article 1 of the Constitution allowed, since he could break any tie that could occur in voting in the Senate on any matters.

1.7 The Founding Fathers' Mistake: Should Anybody Care?

It could happen that none of the persons voted for as President in the Electoral College were to receive electoral votes from a majority of all the appointed electors (see Sect. 1.6). Article 2 of the Constitution determined which persons voted for as President in the Electoral College could then participate in electing a President in the House of Representatives.

The article states that if this were the case, a list of those voted for as President in the Electoral College was to be complied by Congress in the course of counting the electoral votes. Only the "… five highest on the List …" would be eligible to be considered by the House of Representatives in electing a President there.

This phrase means that if the Electoral College were to fail to elect a President, five persons, each with the number of electoral votes fewer than a majority of all the electoral votes in play in the election, would always be available.

However, this assertion is incorrect, since if the number of all the appointed electors were even in a presidential election, it could have happened that only four rather than five persons would have received all the electoral votes cast. Thus, only

four rather than five persons would have been available to be included on the above "List" [1, 22, 23].

Indeed, in the 1792, 1796, and 1800 election the number of all the appointed electors was even. For instance in the 1800 election, 138 presidential electors were appointed, and 276 electoral votes were in play. Let us show by a counterexample that it could have happened that the electors could favor only four persons by giving each of them one-fourth of all the 276 electoral votes, i.e., 69 electoral votes. Such a counterexample to the above assertion from Article 2 of the Constitution, which is subject of consideration, was first developed in [22] for the 1800 election.

Let us consider the 1800 election in which five persons were voted for as President in the Electoral College (2 Democratic-Republicans and 3 Federalists). Those persons received 276 electoral votes from 138 electors from 16 states then forming the Union [1, 22]. Further, let us assume that presidential electors from the states of Georgia or Kentucky had decided to vote in favor of (Federalists) John Adams and Charles Pinckney and to give each of them four electoral votes. Also, let us assume that one elector from Rhode Island had decided to give one of his two electoral votes to John Adams and the other to Charles Pinckney instead of giving one of these two electoral votes to John Jay from New York (as it took place in the 1800 election).

Had this been the case, only four persons voted for as President in the Electoral College would have received 69 electoral votes each. One can easily be certain that the requirement from Article 2 of the Constitution for each elector to cast his two ballots in favor of two persons at least one of whom was not an inhabitant of the same state with the elector would have been met.

However, only four persons would have received all the 276 electoral votes (69 electoral votes each), and none of the persons would have been a recipient of electoral votes from a majority of all the appointed electors.

To be certain how close the real distribution of the electoral votes was to the suggested one, both distributions are presented below [1, 22].

The actual electoral vote distribution among five persons voted for as President in the Electoral College in the 1800 election—two Democratic-Republicans (Thomas Jefferson and Aaron Burr) and three Federalists (John Adams, Charles Pinckney, and John Jay)—looks as follows [1, 22]:

Thomas Jefferson (from Virginia), 73 electoral votes: Georgia (4), Kentucky (4), Maryland (5), New York (12), North Carolina (8), Pennsylvania (8), South Carolina (8), Tennessee (3), Virginia (21).

Aaron Burr (from New York), 73 electoral votes: Georgia (4), Kentucky (4), Maryland (5), New York (12), North Carolina (8), Pennsylvania (8), South Carolina (8), Tennessee (3), Virginia (21).

John Adams (from Massachusetts), 65 electoral votes: Connecticut (9), Delaware (3), Maryland (5), Massachusetts (16), New Hampshire (6), New Jersey (7), North Carolina (4), Pennsylvania (7), Rhode Island (4), Vermont (4).

Charles Pinckney (from South Carolina), 64 electoral votes: Connecticut (9), Delaware (3), Maryland (5), Massachusetts (16), New Hampshire (6), New Jersey (7), North Carolina (4), Pennsylvania (7), Rhode Island (3), Vermont (4).

John Jay (from New York), 1 electoral vote, Rhode Island (1).

The distribution of the electoral votes among four out of the same five persons voted for as President in the Electoral College in the 1800 election—two Democratic-Republicans (Thomas Jefferson and Aaron Burr) and three Federalists (John Adams, Charles Pinckney, and John Jay)— that was suggested in the mentioned counterexample from [1, 22] looks as follows:

Thomas Jefferson (from Virginia), 69 electoral votes: Kentucky (4), Maryland (5), New York (12), North Carolina (8), Pennsylvania (8), South Carolina (8), Tennessee (3), Virginia (21).

Aaron Burr (from New York), 69 electoral votes: Kentucky (4), Maryland (5), New York (12), North Carolina (8), Pennsylvania (8), South Carolina (8), Tennessee (3), Virginia (21).

John Adams (from Massachusetts), 69 electoral votes: Massachusetts (16), Connecticut (9), New Jersey (7), Pennsylvania (7), New Hampshire (6), Maryland (5), Georgia (4), North Carolina (4), Rhode Island (4), Vermont (4), Delaware (3).

Charles Pinckney (from South Carolina), 69 electoral votes: Massachusetts (16), Connecticut (9), New Jersey (7), Pennsylvania (7), New Hampshire (6), Maryland (5), Georgia (4), North Carolina (4), Rhode Island (4), Vermont (4), Delaware (3).

The presented counterexample shows that the case in which only four rather than necessarily five persons (as the Constitution states) could have received all the electoral votes as President in the Electoral College when the number of electors was 138 was possible.

However, this leaves open the question on whether the same case could have existed for any even number of electors. The answer to this question was given in [1, 22, 23], where it was mathematically proven that only four rather than necessarily five persons could have been available in any election held under the rules determined by Article 2 of the Constitution when the number of the electoral votes in play was even. In particular, this could have been the case in the 1792, 1796, and 1800 presidential elections.

The Twelfth Amendment has changed both the manner of electing a President and a Vice President in Congress and the number of persons eligible to be considered in electing a President in the House or Representatives. Thus, the presented counterexample currently has only historical interest. But the question is: should anybody care that the text of the Supreme Law of the Land

(a) contains a detected logical mistake, which is equivalent to the assertion "4=5" [18], and
(b) no remarks on this matter is present in the footnotes to this text?

Should the U.S. Government Printing Office make a corresponding remark on this matter in new editions of the Constitution to be published in the years to come?

From the author's viewpoint, it is inappropriate to have such a logical mistake in the text of the Constitution without any notes, but the readers may disagree.

1.8 What Did the Founding Fathers Miss?

Conventional wisdom suggests that the Founding Fathers have created a remarkable document—the Constitution of the United States—in which they offered their vision on how the country should be governed. With respect to presidential elections, they seem to have intended to create a system that would avoid election stalemates—i.e., situations in which the election held according to the rules would not allow one to determine who would be the next President.

Section 1.7 describes a situation in which, formally, the election rules could not have been applied, and the language of Article 2 of the Constitution would have to be changed to let the country complete the election.

The Founding Fathers seem to have believed that every presidential election would inevitably result in electing a President. At least, in the initial design of the election system, there were no rules determining how to continue the election if both the Electoral College and the House of Representatives were to fail to elect a President, at least by a certain day.

The Founding Fathers did not provide for any run-offs in the Electoral College, and they did not let presidential electors change their vote if no person received a majority of votes from all the appointed electors. This seems to be in line with the belief that the Founding Fathers considered the Electoral College more as a selection committee than a decisive body (see Sect. 1.3). In contrast, the Founding Fathers allowed state delegations in the House of Representatives to change their vote as many times as they may need to reach consensus about the best person to fill the office of President. The same freedom to change the vote they reserved for the Senators in electing a Vice President in the Senate. (One should, however, bear in mind that, as mentioned earlier, the Senate could start electing a Vice President only after a President had been elected by the House of Representatives.)

Despite the above-mentioned freedom to change the vote given to both state delegations in the House of Representatives and the Senators, it is clear that the voting procedure in the House of Representatives might not have even started due to the absence of a quorum or could have not resulted in electing a President there. Both outcomes could be results of particular maneuvers that the lower chamber of Congress could eventually undertake, even in the absence of political parties. However, Article 2 of the Constitution did not specify either who should be considered President in both cases, or how long the House of Representatives could continue to elect a President. Moreover, the Constitution did not give any authority to Congress to intervene in the election process in any of such situations.

Only in 1933, the issue of not electing a President and a Vice President by Inauguration Day was addressed in the Twentieth Amendment, which specified how the election should be completed though only in some of such situations (see Chaps. 2 and 3 for details.)

1.9 Who Can Be President or Vice President?

Article 2 of the Constitution specifies that only "… a natural born Citizen or a Citizen of the United States at the time of the Adoption of this Constitution, shall be eligible to the Office of President…" So only persons meeting the above requirements were eligible to the office of President, provided that these persons had attained the age of 35 years, and any such person had been " … fourteen Years a Resident within the United States."

This norm has remained in force since the ratification of the Constitution.

In the course of the 2016 U.S. presidential election, U.S. Senator Ted Cruz participated in the race for the right to be nominated a U.S. presidential candidate from the Republican Party. However, his the eligibility to the office of President was questioned. Though he was born abroad, his mother was a U.S. citizen, and Pennsylvania Senior Judge Dan Pellegrini ruled that Ted Cruz is to be recognized as a natural born citizen. In his ruling, the Judge referred to the opinion of constitutional scholars Paul Clement and Neal Katyal, published in Harvard Law Review on March 11, 2015. This opinion suggests that persons who are "…U.S. citizens at birth with no need to go through a naturalization proceeding at some later time …" should be recognized as natural born citizens. In the 2008 U.S. presidential election campaign, a similar question was raised with respect to Senator John McCain, who was born on a U.S. military base in the Panama Canal Zone, outside the United States.

Chapter 2
The Electoral College Today

Abstract Today's Electoral College and the one created by the Founding Fathers are two different election mechanisms. The Founding Fathers might have expected that the Electoral College would only select the candidates for both the Presidency and the Vice Presidency, and Congress would choose both executives from among the selected candidates. In any case, the equality of the states in electing both executives in Congress was expected to compensate for the inequality of the states in the Electoral College. This chapter discusses the current election system and attempts to help the reader comprehend whether this system is a historical anachronism or a unique element of the system of "checks and balances" embedded in the Constitution. This chapter presents a list of constitutional articles and amendments relating to the election system, along with a brief description of how each of these parts of the Constitution affects the functioning of the system. It discusses the basic principles of the current election system, along with seven puzzles of the Twelfth Amendment that have remained unsolved since its ratification in 1804.

Keywords Abstaining electors · Concepts and basic principles of the election system · Double-balloting principle of voting in the Electoral College · Electoral tie · Faithless electors · Supreme Court decisions · Twelfth Amendment · Twentieth Amendment · "Winner-take-all" method for awarding state electoral votes

The Electoral College created by the Founding Fathers and today's are two different election mechanisms. The Founding Fathers might have expected that the Electoral College would only select the candidates for both the Presidency and the Vice Presidency, and Congress would choose both executives from among the selected candidates. In any case, the equality of the states in electing both executives in Congress was expected to compensate for the inequality of the states in the Electoral College.

The Twelfth Amendment has substantially changed the initial design of this election mechanism and turned the Electoral College into the body that has determined the outcomes of almost all the presidential elections held after 1804, when the amendment was ratified. Moreover, the adoption of the "winner-take-all"

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method for awarding state electoral votes by 48 states, and the use of a slight modification of this method in the states of Maine and Nebraska have eliminated the deliberative nature of the Electoral College. This method has transformed it into an outlandish scheme for determining the election winner by the states with different numbers of electors, and these numbers depend on the states' sizes.

This chapter discusses the current election system and attempts to help the reader comprehend whether this system is a historical anachronism or a unique element of the system of "checks and balances" embedded in the Constitution. This chapter presents a list of constitutional articles and amendments relating to the election system, along with a brief description of how each of these parts of the Constitution affects the functioning of the system. It discusses basic principles of the current election system, along with seven puzzles of the Twelfth Amendment, which have remained unsolved since its ratification.

The aim of this chapter is (a) to acquaint the reader with the changes that the initial design of the Electoral College has undergone, and (b) to outline the concepts and the basic principles underlying today's Electoral College to help the reader understand what place the Electoral College occupies in the current presidential election system.

2.1 Which Constitutional Amendments Defined the Electoral College

There are two groups of constitutional amendments that affected the structure of both the Electoral College and the other parts of the initial design of the election system. Amendments 12, 20, 22, 23, and 25 contain explicit changes to the initial design of the election system, whereas Amendments 13, 14, 15, 17, 19, 24, and 26 concern important issues relating to the changes. The reader can learn more about these amendments further in this chapter.

The Twelfth Amendment still determines the basic scheme for electing a President and a Vice President. It left unchanged some parts of the initial system design while substantially changing the other parts of the system.

The Twelfth Amendment left unchanged the three-level structure of the election system. Also, it left unchanged the basic principle of forming the Electoral College as a set of state presidential electors to be appointed in the manner that the state "… Legislature thereof may direct …." [19]. However, the Twelfth Amendment substantially changed the manner in which the second and third levels of the initial system operate.

With respect to the second level of the system, the Twelfth Amendment directs that each presidential elector is to cast two votes, one for President and the other for Vice President.

With respect to the third level of the system, the Twelfth Amendment directs that

(a) in an election in which electing both executives is to be thrown into Congress, the House of Representatives begins voting for President and the Senate begins voting for Vice President independently, at the same time;
(b) in electing a President, the House of Representatives is to choose a President from among no more than the three top electoral vote-getters (of votes in favor of President);
(c) in electing a Vice President, the Senate is to choose a Vice President between the two top electoral vote-getters (of votes in favor of Vice President);
(d) a quorum of at least two-thirds of all the Senators is needed to start electing a Vice President in the Senate, and the voting should not necessarily be by ballot;
(e) only a majority of the whole number of Senators can elect a Vice President in the Senate by favoring the same person once the voting procedure has started.

The introduction of the principle for separately voting for President and for Vice President in the Electoral College made a difference in presidential elections. Under the principle, a President can be elected after a Vice President has been elected.

Let us assume that a person voted for as Vice President in the Electoral College receives a majority of all the electoral votes that are in play in the election. Further, let us assume that electing a President is thrown into the House of Representatives and that this body elects a President by Inauguration Day. Then, unlike the Vice President-elect, the President-elect is not a recipient of electoral votes from a majority of all the appointed electors. In contrast, under the election rules determined by Article 2 of the Constitution, such an election outcome was impossible (see Sects. 1.5 and 1.6).

Also, the Twelfth Amendment for the first time provided for the case in which a new President shall not have been elected to the office by Inauguration Day. Also, it set an eligibility requirement for the office of Vice President though it did not specify whether this requirement relates only to getting elected to the office.

2.2 The Twelfth Amendment Puzzles that Remain Unsolved

There are at least seven puzzles in the text of the Twelfth Amendment, which have remained unaddressed since 1804, when the amendment was ratified, and the absence of clear answers to them may affect the outcomes of presidential elections.

Puzzle 1. The status of electors has not been addressed either in Article 2 of the Constitution or in the other articles and constitutional amendments, including the Twelfth Amendment.

Currently, there exist two viewpoints on the matter. Some scholars argue that the Founding Fathers reserved to electors the absolute freedom to vote their choice.

According to the opposite viewpoint, electors were to express the will of those who appointed them. Several times the Supreme Court has rendered opinions relating to this issue. However, the Court has never addressed the issue itself directly [1, 4, 22]. In addition, statements made by the Court in its decisions may support both viewpoints.

For instance, in *Ray v. Blair* [24], the text of the Supreme Court decision contains the phrase "… even if … promises of candidates for the electoral college are legally unenforceable because violative of an assumed constitutional freedom of the elector under the Constitution, Art. II, 1., to vote as he may choose in the electoral college … ." This phrase seems to suggest that the Court supports the viewpoint that the Founding Fathers might have intended the absolute freedom of an elector to vote his choice in the Electoral College.

In contrast, in *McPherson v. Blacker* [25], the Supreme Court stated that "… Doubtless it was supposed that the electors would exercise a reasonable independence and fair judgment in the selection of the chief executive, but experience soon demonstrated that, whether chosen by the legislatures or by popular suffrage on general ticket or in districts, they were so chosen simply to register the will of the appointing power in respect of a particular candidate. In relation, then, to the independence of the electors, the original expectation may be said to have been frustrated … ." This phrase seems to suggest that the Court supports the viewpoint that the Founding Fathers might not have intended absolute freedom of electors to vote their choice in the Electoral College. (One should, however, bear in mind that this phrase refers to the implementation of basic ideas of the Constitutional Convention participants rather than to the ideas themselves.) Moreover, in the same *McPherson v. Blacker* [25], the Supreme Court stated that " … But we can perceive no reason for holding that the power confided to the states by the Constitution has ceased to exist because the operation of the system has not fully realized the hopes of those by whom it was created… . " This phrase seems to suggest that, at least, constitutionally, the absolute freedom of electors to vote their choice should be respected.

Over the years, the discussion about the elector's status has been focused on these two viewpoints. However, in [22] the author has suggested another viewpoint, which cannot, apparently, be ruled out. That is, the Founding Fathers might not have so much been concerned about the elector's status and might purposely have left this issue unaddressed. They might have expected that new generations of Americans would reconsider the compromise that resulted in the creation of the Electoral College. Also, they might have believed that the new generations would propose a better presidential election system or at least a better compromise [18]. The Founding Fathers might even have believed that the absence of a definitive status of electors would motivate a search for a new compromise or a new election system as the country developed [1, 18].

No matter which of these three viewpoints may prevail under particular circumstances, the formal status of electors remains that of free agents [4]. Moreover, the intent of the Founding Fathers on the status of electors remains unknown.

Finally, the Supreme Court position on whether presidential electors may vote their own choice, despite their pledges, remains unclear.

However, if some electors vote faithlessly, i.e., not in line with their pledges, the Electoral College may produce weird or even extreme election outcomes.

Example 2.1 [1, 18, 22]. Let us consider a presidential election in which presidential candidate A who either represents a non-major political party or is an independent candidate wins at least one electoral vote. None of the other participating candidates win at least 270 electoral votes in the election. Candidate A decides (or agrees) to transfer the electoral votes she/he won to a presidential candidate from a major political party for whatever reasons. The transferred votes (vote) may let the candidate from a major party be elected President if (a) all the electors who are to favor this major party candidate cast their ballots faithfully, (b) the electors of the non-major party candidate vote faithlessly, favoring the major party candidate, (c) no electoral votes are rejected by Congress in the course of their counting in the January that follows the election year, and (d) the total number of electoral votes favoring this major party candidate is sufficient to win the election.

Example 2.2 [1, 18, 22]. Let us consider a presidential election in which three presidential candidates, A, B, and C, win fewer than 270 electoral votes each. For instance, let they win 268, 150, and 120 electoral votes, respectively. Let candidate A (with 268 electoral votes) also receive a majority of the popular vote nationwide and have support from a majority of all the 50 delegations in the House of Representatives.

While the election is supposed to be thrown into Congress, candidates B and C block this course of the election. They do so by agreeing that a particular pair of the candidates will be elected President and Vice President. Such a pair of the candidates can be formed out of these two candidates and their running-mates. As part of this agreement, all the electors of candidates B and C vote according to the instructions of their candidates. Thus, the agreed upon pair receives 270 electoral votes in December of the election year. If Congress does not object to this move in the course of counting electoral votes, this pair of the candidates becomes elected President and Vice President.

Theoretically, in the absence of clarity regarding the status of electors, the following two weird outcomes may emerge: 1) Presidential electors elect Vice President a presidential candidate and elect President a vice-presidential candidate within one pair of the running mates, and 2) presidential electors elect President and Vice President either persons who have had no presidential electors in a particular presidential election or persons whose presidential electors have not won electoral votes.

Example 2.3 [1, 18, 22]. In the 1988 election, an elector of the Democratic Party candidates voted for Michael Dukakis' running mate as President and for Michael Dukakis as Vice President.

Example 2.4 [1, 18, 22]. In the 1976 election, one of the Republican Party electors voted for Ronald Reagan as President though Ronald Reagan was not either a presidential or a vice-presidential candidate in the election.

If enough electors decide to vote faithlessly in the Electoral College like indicated in these two examples, the above two extreme outcomes may become possible. Moreover, Congress may not be able or willing to reject enough faithlessly cast electoral votes to block such extreme election outcomes. Also, one should bear in mind that "massive" faithlessness of electors has never been put to a test [4].

At first glance, these moves of presidential electors may seem too theoretical and too exotic. However, one should bear in mind that such moves may be strategic ones undertaken by a political party. These moves can be made for whatever reasons, for instance, due to a split within the party with respect to supporting its own presidential nominee. Should this be the case in voting for President in the Electoral College, (a) some of the electors of a major political party decide to favor someone who is supported by a sizable part of the party (whose name, however, may even not be on the ballot), (b) the number of faithlessly cast votes is sufficient to throw the election of President into Congress, and (c) the House of Representatives is expected to be controlled by this party in the January that follows the election year, this someone may become elected President in Congress. (See Chap. 3 for more details.)

Some states do not even formally bind their electors to favor particular presidential and vice-presidential nominees in presidential elections [4]. According to the federal Register, the number of these states (which currently control 208 electoral votes combined) equals 21. Electors from these states may eventually decide not to vote in favor of the presidential candidates who head the winning slates of electors in their states. In addition, the Supreme Court may not find a reason to interfere in the election to block the above extreme election outcomes [1]. Finally, the vote of a faithless elector cast in the 1968 election was upheld by Congress, which rejected the objection of several U.S. Senators and Representatives, who challenged this vote [4, 7]. Thus, the ability of Congress to reject faithlessly cast votes seems limited.

Puzzle 2. The requirement for presidential electors to vote for President and for Vice President does not make it clear whether the electors should necessarily favor any particular persons to be voted for as President and as Vice President. Therefore, if a presidential elector abstains by casting blank ballots, should this be considered a violation of the Constitution?

When the Electoral College voted in December 2000, one Democratic Party elector abstained by casting blank ballots for President and Vice President [1, 4, 18, 22]. However, this was not considered a violation of the Constitution. Moreover, this manner of voting may even meet the requirements of the Twelfth Amendment. This may be the case if a presidential elector casts a ballot though this ballot cannot be recognized as a vote advantaging any person. The ballot cast blank may still be considered as a vote against all those whom an elector could have advantaged had this elector decided to do so. Such a viewpoint reflects a logically possible interpretation of the phrase "to vote for" [22].

Here, the abstention of an elector is understood as a vote that is physically cast. However, this vote does not advantage any person whom this elector could have advantaged. In particular, it does not advantage the presidential and vice-presidential candidates whose slates of electors form the Electoral College.

Abstention by casting a ballot not recognizable as a vote advantaging any person seems to be a legitimate manner of voting in the Electoral College at least until the Supreme Court provides an interpretation of the phrase "to vote for" and any rules regarding the above-mentioned (assumed) absolute freedom of the electors to vote their own choice. This interpretation may require that every presidential elector casting a ballot should favor, for instance, the presidential and vice-presidential candidates who head the slate of electors to which the elector belongs. On the contrary, this interpretation may confirm that the (assumed) absolute freedom of electors to vote at their own discretion includes their freedom to abstain by casting a blank ballot or a ballot that cannot be recognized as a vote advantaging any person. In the absence of such an interpretation of the phrase "to vote for," the Electoral College can produce other extreme election outcomes [1, 18, 22].

Example 2.5 [1, 18, 22]. Let presidential candidates A and B win 270 and 268 electoral votes, respectively. Further, let one of the electors of candidate A abstain by casting a ballot that cannot be recognized as a vote advantaging any person. Then neither candidate receives electoral votes from a majority of all the appointed electors as a result of counting electoral votes in Congress.

The election is thrown into Congress, and the House of Representatives elects President candidate B, who received 268 electoral votes. This may happen even if candidate A received a majority of the popular vote nationwide, and even if her/his electors received majorities of the popular vote from each place from a majority of the 51 places (states and D.C.).

Formally, abstaining electors are faithless in a traditionally accepted sense, since they broke their pledges. However, one should distinguish abstaining electors from any other faithless electors. The distinction is associated with the inability of Congress to counteract this phenomenon.

Indeed, Congress can at least try to reject certain electoral votes faithlessly cast but still favoring somebody. Unlike this situation, no actions aimed, for instance, at reassigning electoral votes that did not advantage any person seem reasonable and fair. The example of the 2000 election illustrates how abstaining electors could change the election outcome [1, 18, 22]. Had only two electors of G.W. Bush abstained in the 2000 election, he would have received 269 electoral votes. Then the election would have been thrown into Congress, and the fate of the Presidency would have been decided there rather than in the Electoral College.

Abstaining electors may eventually change the outcome of a presidential election to be thrown into Congress.

Example 2.6 [1, 18, 22]. Let us consider a presidential election in which four candidates, A, B, C, and D, win 270, 265, 2, and 1 electoral votes, respectively. Further, let 5 electors from among the electors of candidate A (with 270 electoral

votes) vote faithlessly by advantaging candidate B and making this candidate the winner in the Electoral College. Also, let one of the faithlessly cast votes be rejected by Congress in the course of counting electoral votes. Then the election is to be thrown into Congress.

Finally, let candidate C (with 2 electoral votes) have support from majorities of at least 26 state delegations in the House of Representatives. While this candidate has a chance to be elected President, both of candidate C's electors abstain. As a result of these abstentions, the House of Representatives will have to vote for the candidates who do not have support from majorities of 26 delegations there.

Here, the phrase "the highest numbers" from the amendment phrase "… from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. …" (from the Twelfth Amendment [19]) is construed as follows: If (a) there are at least three persons each of whom receives electoral votes as President from less than a majority of all the appointed electors, and (b) no person receives electoral votes from such a majority, three persons always make it onto the list of those to be considered by the House of Representatives in electing a President there.

Thus, Example 2.6 suggests that abstaining electors can make a difference in the number of persons voted for as President in the Electoral College who are to be considered in electing a President in the House of Representatives.

Puzzle 3. Let only three persons be voted for as President in the Electoral College and receive different numbers of electoral votes, each less than a majority of all the electoral votes that are in play in the election. The phrase "… not exceeding three…" from the Twelfth Amendment can be attributed (a) to the word "persons," or (b) to the word "numbers," which may affect the number of the candidates who are to be considered in electing a President in the House of Representatives.

Example 2.7 Let three persons voted for as President receive 269, 267, and 2 electoral votes. Then, in cases (a) and (b), constitutionally, the House of Representatives may consider either only two persons—with 269 and 267 electoral votes—in electing President there or all the three. Let now three persons voted for as President receive 268, 135, and 135 electoral votes, respectively. Then, in case b), all the three candidates are to be considered.

Abstaining electors can also make a difference in electing a President under either interpretation of the above phrase from the Twelfth Amendment. For instance, in case (a), in the situation from Example 2.6, the number of the candidates eligible to participate in electing a President in the House of Representatives may change (from three to two) if both electors of candidate C abstain. This may be the case, if the House of Representatives decides that as long as candidate C, who has support from majorities in at least 26 state delegations, cannot participate in electing a President there, only candidates A and B should be considered in electing a President in the House of Representatives, since they received substantially more electoral votes than did candidate D. (One should mention, that, under interpretation (a), the House

of Representatives may always decide to consider two rather than three persons, even if more than two persons received electoral votes.)

Puzzle 4. Many constitutional scholars believe that the electoral tie in the 1800 election caused the introduction of the principle for separately voting for President and for Vice President in the Electoral College [4, 6, 8, 10]. However, the way the language of the Twelfth Amendment is traditionally construed may formally leave the case of an electoral tie in the Electoral College uncovered by the amendment [1].

Indeed, let there be a tie in the Electoral College between two recipients of the same number of electoral votes as President in an election, and let no other person receive electoral votes. Further, let the phrase "the highest numbers" be attributed to electoral votes received by these two persons (as constitutional scholars usually believe [22]). Then, formally, there are two persons having "the highest number" (one and the same) rather than two persons having "the highest numbers" of electoral votes. The use of the plural noun "numbers" means that, formally, this part of the amendment does not cover the case of an electoral tie in the Electoral College when only the tied persons are the electoral vote recipients. Indeed, one should attribute the sense of singularity to the plural noun "numbers" to cover this case. The situation seems to be different when at least two electoral vote recipients are tied, and there are other electoral vote recipients. Under both interpretations (a) and (b) of the phrase "… not exceeding three …," the amendment lets the House of Representatives choose a President from among the electoral vote recipients.

However, let the phrase "the highest numbers" from the amendment refer to positions "… on the list of those voted for as President …" [22]. Then if certain requirements to compiling the list of persons voted for as President are met [22], the tie under consideration will be covered by the Twelfth Amendment [1].

The reader interested in a more detailed analysis of the language employed in the Twelfth Amendment should turn to the author's book [22] and to the author's article [26]. However, one should bear in mind that the aim of the provided analysis is to draw the reader's attention to the existence of a particular uncertainty in the text of the Twelfth Amendment. It neither intends to offer the author's opinion on how the phrase "the highest numbers" from the amendment should be understood nor does to discuss how exotic the presented logic with respect to the electoral tie may (or should) seem.

Puzzle 5. Let us assume that at least four persons voted for as President in the Electoral College received one and the same greatest number of electoral votes from among the recipients of electoral votes as President in a particular election year. (Such a situation covers the cases in which not all the appointed electors cast their ballots that could be recognized as votes favoring a particular person.) As in Puzzle 3, under both cases (a) and (b), it is unclear how many electoral vote recipients will be eligible to be considered by the House of Representatives in electing a President there, and how they can be selected from at least the four. The Twelfth Amendment does not provide such a mechanism, and Congress does not have any constitutional authority to establish it.

The same is true for selecting two persons voted for as Vice President in the Electoral College from among at least three recipients of one and the same greatest

number of electoral votes among the recipients of electoral votes as Vice President in a particular election year. (Depending on the number of all the electors appointed in a particular election, there may also be recipients of fewer electoral vote numbers.)

A problem similar to the first of these two problems existed under the initial double-balloting principle for voting for President, determined by Article 2 of the Constitution [22]. (This kind of a problem could emerge under this principle, if, for instance, at least six persons voted for as President in the Electoral College received the same greatest number of electoral votes.)

Puzzle 6. The Twelfth Amendment did address the problem of not electing a President by Inauguration Day (see Sect. 2.1). However, it left unclear whether "the Vice President," mentioned in the text of the amendment, is the sitting one or a newly elected one.

Many scholars in the field believe that the phrase "the Vice President" should be construed as the newly elected Vice President. Based on this belief, they assert that Sect. 3 of Amendment 20 of the Constitution superseded the sentence from the Twelfth Amendment containing this provision. The footnote to the text of the Twelfth Amendment, which is published by the U.S. Government Printing Office, asserts the same [19]. However, this assertion may be incorrect [1, 18], and this may make a difference in the event of not electing both a President and a Vice President by Inauguration Day (see Chap. 3).

No matter how strange and egregious the above assumption (that this may be the sitting Vice President rather than a newly elected one) may look, this possibility should be analyzed, since both a President and a Vice President might not have been elected by Inauguration Day in any presidential election held from 1789 to 1932. Indeed, only the Twentieth Amendment, ratified in 1933, addressed for the first time the case of not electing both a President and a Vice President by Inauguration Day. Only in the Twentieth Amendment, for the first time, a President-elect and a Vice President-elect were mentioned in the Constitution.

The authority given by Article 2 of the Constitution to Congress to provide by law for the "… Case of the Removal of the President from Office or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office …" and for the "… Case of Removal, Death, Resignation or Inability, both of the President and Vice President …" was given only with respect to both the acting President and the acting Vice President. (Congress used this authority for the first time in 1792 by adopting the President Succession Act of 1792.) However, the above circumstances, listed in Article 2, do not include the situation in which (a) neither a new President nor a new Vice President have been chosen (elected) by either the Electoral College or Congress by Inauguration Day, or (b) both a President and a Vice President have been chosen (elected) by either the Electoral College or Congress but have failed to meet the constitutionally eligibility requirements of the office of President by Inauguration Day. The phrase "the Vice President" cannot be attributed to any person who has not been sworn in as Vice President and has not taken the office.

Moreover, in this situation, the Twelfth Amendment did not give to Congress any constitutional authority to act, for instance, by assigning anyone to act as

President if neither a President nor a Vice President were chosen by Inauguration Day. Thus, from the 1804 election to the 1932 election, an election stalemate would have been the only alternative to the interpretation of the phrase "the Vice President" from the Twelfth Amendment as the sitting Vice President. Whether the possibility of this situation to emerge was a result of a logical flaw in the text of the Twelfth Amendment, or the amendment sponsors meant the extension of the authority of the sitting Vice President under this circumstance remains a puzzle.

This puzzle can be eliminated by a clarification and interpretation of the corresponding part of the text of the Twelfth Amendment, and this can be done either by the Supreme Court or by means of adopting a new constitutional amendment. Any opinions of any constitutional scholars on the matter are no more than their opinions, no matter how convincing they may seem.

Finally, theoretically, it is possible that for whatever reasons, all the appointed presidential electors act faithlessly, i.e., all the Electoral College members in a particular election year cast ballots that cannot be recognized as votes favoring any persons or cast blank ballots. Had this happened, the only provision to complete the election (held from 1804 to 1932) would have been the Twelfth Amendment if the Supreme Court confirmed that "the Vice President," mentioned in the amendment, is the sitting Vice President rather than a newly elected one.

Generally, as long as the text of the Constitution creates some room for logically possible variants of understanding its particular parts, these parts may, eventually, require corresponding interpretations. However, this is likely to happen only when uncertainties embedded in such parts of the text cause events requiring the immediate attention of the Supreme Court in the course of a particular election campaign. At the same time, the chances of not having elected a President, or a Vice President, or both by Inauguration Day look slim. So any interpretations of the above phrases by the Supreme Court (see Chap. 3) in the future seem unlikely.

Once again, the aim of the provided analysis is to draw attention to a particular uncertainty that is present in the text of the Twelfth Amendment rather than to offer the author's opinion on how the phrase "the Vice President" from the amendment should be understood.

Puzzle 7. The Twelfth Amendment has determined that in electing a Vice President in the Senate,

(a) "… a quorum for the purpose shall consist of two-thirds of the whole number of Senators …", and
(b) "… a majority of the whole number shall be necessary to a choice."

Unlike in requirement (a) from the text of the Twelfth Amendment, it is not clear a majority of what "the whole number," mentioned in requirement (b), was meant by the amendment sponsors. It seems natural to understand the phrase "the whole number" in both requirements (a) and (b) as the whole number of the appointed Senators rather than the number of the voting Senators that are present in the Senate at the time of electing a Vice President there and form a quorum needed to start the voting there. This understanding seems to be in line with the text of the amendment

though, logically, this phrase may imply a majority of the Senators who would vote in electing a Vice President in the Senate (provided there is a quorum required in (a) to start the voting procedure there). Yet both interpretations of the above phrase raise the same question: How should one understand the right of the sitting Vice President to cast a vote according to the phrase "The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided," from Article 1 of the Constitution [19], in electing a Vice President there?

It seems that the authorization to break a tie once the votes of the Senators are equally divided works only if no special requirements to be met to consider a vote in the Senate decisive are stipulated. Attaining a majority of votes of "…the whole number … ," which is "… necessary to a choice … ," seems to be such a requirement in both (logically) possible variants of understanding the phrase "…the whole number … " from the amendment. Thus, if "… a majority of the whole number …" of votes of all the Senators (or of only voting ones) is not attained while the votes are equally divided, the sitting Vice President, apparently, cannot break a tie in the Senate in voting for a new Vice President there. In any case, it should be clarified whether "… a majority of the whole number …" should necessarily be understood as that of the votes from all the appointed Senators or as that of those who would vote in electing a Vice President in the Senate (provided a quorum required in (a) to start the voting procedure there exists).

Once again, the aim of the provided analysis is to draw attention to a particular uncertainty that is present in the text of the Twelfth Amendment rather than to offer the author's opinion on how the phrase "… a majority of the whole number …" from the amendment should be understood.

2.3 The Electoral College: Concepts and Basic Principles

Article 2 of the Constitution reflects the following three basic ideas underlying the Electoral College [1, 18]:

(1) All the states should be fairly represented in presidential elections. The 1787 Constitutional Convention participants believed that the states should be represented in these elections in the same manner in which the states are represented in Congress.
(2) A President and a Vice President are to be elected by state presidential electors. Each elector is to be chosen in the state of his residence "… in such Manner as the Legislature thereof may direct …" [19].
(3) The first choice of electors from among persons voted for as President by the Electoral College was to be President, provided only one such person had received the greatest number of electoral votes from a majority of all the

appointed electors. The first choice of electors from among the residual persons (after electing a President) voted for as President by the Electoral College was to be Vice President, provided only one person from among the residual persons had received the greatest number of electoral votes.

If the Electoral College were to fail to elect either executive or both of them, the election was to be thrown into Congress.

Article 2 of the Constitution stipulated the rules for electing either executive or both in Congress.

Two principles—unequally dividing the election power among the states and allocating blocs of electors to the states—incorporate the first and the second basic ideas of a fair representation of all the states in electing a President.

The double-balloting principle of voting in the Electoral College, the "one state, one vote" principle in electing a President in the House of Representatives, and the "one state, two votes" principle of electing a Vice President in the Senate incorporated the third basic idea into the election system.

Article 2 of the Constitution requested each elector to cast two undifferentiated votes for two persons as President. However, no uniform manner in which electors should vote was proposed in the Constitution (see Sect. 2.2).

The Twelfth Amendment has substantially modified the third basic idea of the Founding Fathers. First, the amendment introduced the principles for separately voting for President and for Vice President both in the Electoral College and in Congress. Second, due to these principles, the election can produce an acting rather than an elected President (at least for a certain period of time). Third, unlike under Article 2 of the Constitution, the House of Representatives could no longer affect the election of a Vice President (see Sect. 1.6.)

Today, the above three original ideas of the Founding Fathers are present in the election system in the following forms:

(a) The election power is unequally divided among the states by allocating blocs of electors to the states.
(b) The distribution of the population among the states determines the sizes of the blocs of electoral votes allocated to the states. The number of electors for the District of Columbia is determined by Amendment 23 of the Constitution (since the 1964 election).
(c) Three groups of people rather than the American electorate have the power to elect a President and a Vice President. State presidential electors constitute the first group, and they are appointed in a manner determined by the state legislatures and by the D. C. authorities. Members of the House of Representatives constitute the second group, and members of the Senate constitute the third group. Though both the second and third group together tally the votes cast by presidential electors, they are to elect either or both executives only if the Electoral College fails to elect them. The House of Representatives then elects a President, and the Senate elects a Vice President.

These ideas of the Founding Fathers work together with the following two new election principles introduced as the election system has evolved:

(d) The "winner-take-all" principle for awarding state electoral votes, a particular manner of choosing state electors, introduced into the system under "… the influence of political parties …" [27] (see about this principle later in Sect. 2.4).
(e) The principles for separately voting for President and for Vice President both in the Electoral College and in Congress. These principles replaced the double-balloting principle for voting in the Electoral College and the schemes for electing a President and a Vice President in Congress, determined by Article 2 of the Constitution.

The Twelfth Amendment employs the following definition of a person elected President:

A person voted for as President in the Electoral College is considered elected President in two cases:

1. This person received electoral votes from a majority of all the appointed electors. This fact is established by Congress as a result of counting electoral votes there in the January that follows the election year.
2. This person received votes from a majority of (currently 50) state delegations if the election of a President is thrown into Congress. This is established by tallying the votes cast by the state delegations in the House of Representatives.

Throughout the book, this definition is referred to as the first concept of the current election system [1, 18].

Article 2 and Amendment 23 of the Constitution determine the formal procedures by which electoral vote quotas are assigned to the states and to D.C., respectively. Throughout the book, these procedures are referred to as the second concept of the current election system [1].

Besides the above two concepts of the current election system, the following principles of the system are referred to as the basic ones [1, 18]:

– the "winner-take-all" principle of (method for) awarding state electoral votes (currently employed in 48 states and in the District of Columbia),
– the method for awarding state electoral votes in the state congressional districts and at large (currently employed in the states of Maine and Nebraska),
– the principle for separately voting for President and for Vice President both in the Electoral College and in Congress, and
– the rules of 1825, determining the voting procedure in electing a President in the House of Representatives.

2.4 The "Winner-Take-All" Principle and the 1787 Great Compromise

According to Article 2 of the Constitution, the legislature of a state directs the manner in which state electors are appointed in each presidential election. Nowadays, 48 states and the District of Columbia choose their electors by popular vote [4, 6]. Constitutionally, Congress determines the manner of appointing D.C. electors [19, 27]. However, in 1973, Congress delegated the privilege to choose this manner to the D.C. Council [5].

Each person recognized as a presidential candidate in any of these 49 places (48 states and D.C.) is entitled to submit a slate of electors there. The number of electors in this slate equals the number of electors that the place is entitled to in a particular presidential election (see Sect. 1.1.) Voting voters can favor any slate of electors from among all the slates submitted by the participating presidential candidates in a state or in D.C. Under this manner of choosing electors in these 49 places, no voter can favor electors from different slates.

Formally, voting voters vote for presidential electors, whose names are supposed to be on the ballot. However, currently, D.C. and a majority of the states use the so-called "short ballots." Only the names of presidential and vice-presidential candidates heading the slates of their electors appear on these ballots. In each of the 48 states, the slate of electors that receives at least a plurality of the votes cast statewide (in November of the election year) wins the right to represent the state in the Electoral College. The slate of electors that receives at least a plurality of all the votes cast in D.C. wins the right to represent D.C. in the Electoral College.

This manner of choosing presidential electors in each of the 48 states and in D.C. is called the "winner-take-all" method. This name comes from the fact that only one pair of presidential and vice-presidential candidates whose slate of electors wins the popular vote statewide "takes all" the state electoral votes. The other participating candidates, as well as all the voters who supported their electors, are left with nothing.

The state of Maine and the state of Nebraska elect their electors in a slightly different manner. The state of Maine elects two electors statewide (at large) and one elector in each of its two congressional districts. The state of Nebraska elects two electors statewide (at large) and one elector in each of its three congressional districts. An elector who receives at least a plurality of votes cast in a congressional district of either state wins the right to represent this district of the state in the Electoral College.

In each of these two states, two electors who receive at least a plurality of votes statewide win at large. These two electors are to represent the state in the Electoral College, along with the electors who are to represent congressional districts of the states in the Electoral College as well [28, 29]. Both states use the "short ballots" so that voters in either state may believe that they vote directly for the corresponding pairs of the candidates (as may the voters in the other states and in D.C.).

Nevertheless, they vote for one elector in each congressional district and for two electors at large.

Only these two states may have electors who are to favor different pairs of presidential and vice-presidential candidates. Up to four pairs of presidential and vice-presidential candidates may win electoral votes in Nebraska, and up to three pairs of the candidates may win electoral votes in Maine.

Though both the state of Maine and the state of Nebraska do not use the "winner-take-all" method in the form in which the other 48 states and D.C. do, their manner of appointing state presidential electors remains the "winner-take-all." [30].

Example 2.8. [18, 22]. Consider a hypothetical presidential election in the state of Maine in which three presidential candidates submit slates of electors. Let these candidates receive 16000 votes total, and let the slates of electors, submitted by the candidates, receive the following numbers of the votes cast:

Slates of electors	District 1	District 2	Total (at large)
Candidate 1	**2000**	3000	5000
Candidate 2	1900	3900	**5800**
Candidate 3	1100	**4100**	5200

Here, the slate of electors of candidate 1 wins one electoral vote (in Congressional District 1), the slate of electors of candidate 3 wins one electoral vote (in Congressional District 2), and the slate of electors of candidate 2 wins two electoral votes (at large) though no slate of electors of candidate 2 wins in the districts.

Example 2.9 [18, 22]. Consider a hypothetical presidential election in the state of Nebraska in which four presidential candidates submit their slates of electors. Let these candidates receive 20000 votes total, and let the slates of the candidates receive the following numbers of the votes cast [18]:

Slates of electors	District 1	District 2	District 3	Total (at large)
Candidate 1	1250	2000	3500	**6750**
Candidate 2	**2000**	1500	1500	5000
Candidate 3	500	**2250**	1000	3750
Candidate 4	250	250	**4000**	4500

Here, the slate of electors of candidate 2 wins one electoral vote (in Congressional District 1), the slate of electors of candidate 3 wins one electoral vote (in Congressional District 2), the slate of electors of candidate 4 wins one electoral vote (in Congressional District 3), and the slate of electors of candidate 1 wins two electoral votes (at large) though no slate of electors of candidate 1 wins in the districts.

Thus, Maine since 1969 and Nebraska since 1991 have become the only states in the Union in which the electors of a pair of presidential candidates can win electoral votes without winning in the whole state [31]. The reader can find a complete analysis of all possible election outcomes in the states of Maine and Nebraska in [22].

It seems natural that voting voters expect electors who win the right to represent the states and D.C. in the Electoral College under the "winner-take-all" principle to favor those pairs of presidential and vice-presidential candidates whose slates of electors these electors represent. However, if the electors were obliged to vote in such a manner in the Electoral College, this might raise questions about whether the election system is in line with the 1787 Compromise. All depends on how the elector's status is construed.

Under the 1787 Compromise, only presidential electors can exercise the first attempt to elect a President. Neither the people nor the states can do this directly. The Founding Fathers might have believed that only electors—who apparently were supposed to be distinguished individuals in the nation—would possess the necessary knowledge, judgment, etc. about the best persons to fill both highest offices in the country. Moreover, the Founding Fathers might have believed that the double-balloting system for voting for President would help identify either the best two such persons or a list of the persons the most suitable to be Chief Executive of the Union and his Vice President [22].

The 1787 Constitutional Convention participants wanted electors to vote in their respective states on one and the same day. One may believe that this was done to avoid any pressure that some electors could impose on others [18]. If the electors were to fail, the states would determine the election outcome in the second attempt to elect a President and a Vice President. The House of Representatives would elect a President according to the principle "one state, one vote," and the Senate would elect a Vice President according to the principle "one state, two votes," despite the states' sizes.

What happens if one assumes that presidential electors must vote according to the will of their respective states and D.C.? This would mean that the states and D.C. themselves, rather than state and D.C. presidential electors exercise the first attempt to elect a President. However, the states and D.C. would not do this according to the "one state, one vote" and "one state, two votes" principles of electing a President and a Vice President by the states, respectively, and each state would not have the same number of votes independently of its size. This would contradict the 1787 compromise.

Some people who believe that in voting in the Electoral College, the electors chosen under the "winner-take-all" principle for appointing state and D.C. presidential electors exercise their free judgment may, however, refer to the opinion of the Supreme Court in *Ray v. Blair* [24]. This opinion, in particular, states that "… the Amendment does not prohibit an elector's announcing his choice beforehand… ." They may also refer to *McPherson v. Blacker* and may believe that by following "… the will of the appointing power in respect of a particular candidate …" [25], electors exercise their free judgment [1, 18]. Also, by upholding the vote cast by a faithless elector in the 1968 election [6], Congress, in fact, confirmed that free judgment may not be prohibited to electors, since choices other than those announced beforehand can be made.

In any case, the "winner-take-all" method for appointing state and D.C. presidential electors is no more than one such method. Though this method is currently used both in all the states and in D.C., the legislature of any state can replace it with

any other method at any time, as long as it is done in line with the federal statute requirements [1]. No matter in which particular form this method is applied, its use by all the states and D.C. may raise constitutional questions on whether the current election system works in line with the 1787 Great Compromise.

2.5 Electing a President in the House of Representatives

The Constitution provides very basic principles for electing a President in the House of Representatives in an election thrown into Congress. The House of Representatives is entitled to set its own rules for the voting procedure there [6], and such rules are not part of the Constitution. Thus, the Constitution allows each newly elected House of Representatives either to change the already accepted rules or to follow these rules.

The House of Representatives set the rules for electing a President in 1825, and these rules have remained unchanged ever since [6, 18].

Article 2 of the Constitution provided for certain situations in which an elected President could not "… discharge the Powers and Duties of the said Office, …" [19]. However, the article did not provide for situations in which a President was not elected in the House of Representatives in an election thrown into Congress (see Sect. 1.8). Moreover, this article requires a new Vice President to be elected only after a President has been elected.

In contrast, the Twelfth Amendment considers the case in which a President shall not have been elected by a particular time and separates the election of a Vice President from the election of a President.

According to the Twelfth Amendment, not electing a President by Inauguration Day in the House of Representatives is a legitimate election outcome there. The Twentieth Amendment, ratified in 1933, provides additional rules for the case in which a President shall not have been elected by a particular time. Both amendments reconfirm that not electing a President by the House of Representatives by Inauguration Day can be a legitimate election outcome.

The rules of 1825, however, seem to eliminate such an option, which looks contradictory to the constitutional provisions stipulated by both amendments. Indeed, according to the 1825 rules, "… in case neither of those persons shall receive the votes of a majority of all the States on the first ballot, the House shall continue to ballot for a President, without interruption by other business, until a President be chosen." [4, 18].

Thus, formally, the rules of 1825 do not require that electing a President in the House of Representatives must necessarily result in electing President a person voted for as President in the Electoral College, particularly, before Inauguration Day. However, it is hard to imagine that the House of Representatives will vote for President "… without interruption by other business …" through the next presidential election if there is a quorum to start the voting procedure there, since the option to adjourn [4] can eventually be used.

2.6 The Electoral College and Amendments 20, 22, 23, and 25

Besides the basic concepts of the election system, set by Article 2 and Amendment 12 of the Constitution, there are several constitutional provisions that determine a set of particular rules of presidential elections. These election rules reflect developments of the system that have taken place over the years, and they embody certain principles of the system.

Some of these rules have further diverted the election system from its initial design.

Amendment 20 of the Constitution reconfirmed that a President may be chosen after electing a Vice President, which was first established by the Twelfth Amendment (see Sect. 2.2). Also, the Twentieth Amendment provides for certain situations in which a President shall not have been elected at least by the beginning of the new presidential term.

Amendment 22 of the Constitution has substantially changed the initial design of the election system. This amendment limited the right of an eligible citizen to be elected President.

Certain limitations on the length of the term of a President in the office were proposed in the course of the 1787 Constitutional Convention [18]. However, no limitations on the eligibility of citizens to be elected President were imposed by the 1787 Constitutional Convention. From this viewpoint, the limitations imposed by Amendment 22 of the Constitution may be viewed as a punishment for success in governing the country by a person who has either been elected President twice, or has been elected President once, or has served as President for more than two years of somebody else's term. Nevertheless, the motives underlying the amendment are understandable.

Also, the Twenty Second Amendment has created a constitutional puzzle.

The amendment, particularly, limited the right of a citizen who has been elected President twice to be elected President again. Yet it did not say anything about the eligibility of such a citizen to be elected Vice President or to fill the vacancy of the office of President according to the Presidential Succession Act of 1947.

Article 2 of the Constitution uses the phrase "eligible to the office." Black's Law Dictionary treats this phrase as "capable of being chosen," whereas the Merriam-Webster Dictionary treats the word "eligible" as "qualified to participate or be chosen." So the use of the phrase "No person shall be elected to the office of the President…" instead of the phrase "No person shall be eligible to the office of the President…" in the Twenty Second Amendment may suggest that the amendment affects only the right of particular persons to be elected to the office of President rather than their eligibility to the office, which includes that to serve in the office.

The Constitution addresses the cases in which someone other than a person who has been elected President can serve in the office of President. This may happen as a result of (a) tragic or unfavorable events, a decision to resign, or the inability of an elected President to discharge the powers and duties of the office of President

(as Article 2 and Amendment 25 of the Constitution read), and (b) the application of the Presidential Succession Act of 1947 due to the inability of a person—who has been chosen by either the Electoral College or the House of Representatives but has not met the constitutional eligibility requirements of the office of President—to swear in as President (in the case addressed by the Twentieth Amendment). Thus, the phrase "constitutionally ineligible to the office of President" from the Twelfth Amendment requires clarification, since this phrase was the only one on the matter of the eligibility of a person to be elected to the office of Vice President from 1804 until the ratification of the Twenty Second Amendment in 1951.

Sect.1 of Article 2 of the Constitution set the same constitutional eligibility to the offices of President and Vice President in 1788. That is, a person is eligible to either office if this person is (a) "a natural born Citizen," (b) "has been fourteen Years a Resident within the United States," and (c) has "attained to the Age of thirty five Years," and the Twelfth Amendment left the eligibility to both offices unchanged. The Twenty Second Amendment has prohibited particular persons otherwise eligible to the office of President from being elected to this office [19]. However, the amendment left unclear whether (a) the notion of the eligibility of a person to the office of President that existed from 1788 to 1951 changed, and (b) the phrases "to be eligible to the office of President" and "to be elected to the office of President" are to be treated as synonyms.

After the ratification of the Twenty Second Amendment, though the difference between the above two options to construe the eligibility with respect to the office of President seems clear, only the Supreme Court may decide how this eligibility should be construed. That is, only the Court may decide whether the meaning of the eligibility to the office of President that existed in the country from 1788 to 1951 has changed, or it remains the same, and the amendment imposed limitations only on the right of particular persons to be elected to this office.

A description of the consequences of both possible Supreme Court decisions may encourage the clarification of the phrase "eligible to the office of President."

First, let us assume that the Court decides that beginning from 1951, the eligibility of a person to the office of President has meant that the person (a) is "a natural born Citizen," (b) "has been fourteen Years a Resident within the United States," (c) has "attained to the Age of thirty five Years," and (d) has not been elected to the office twice or has not served "… two years of a term to which some other person was elected President …" and then has been elected President once. Then a person who was elected to the office of President twice cannot (a) be elected Vice President, and (b) fill the office of President by the application of the Presidential Succession Act. This understanding of the eligibility does not make a person banned from being elected President if she/he has held the office of President once and then "… acted as President, for more than two years of a term to which some other person was elected President …." Yet had such a person been elected President again, this person would have turned out to be the one elected President twice having served "… two years of a term to which some other person was elected President …," which would seem to contradict the amendment provision. However, it is unclear whether the amendment covers this case, since, formally,

such a person is not mentioned in the text of the amendment, whereas a person who acted as President for more than two years first and then was elected President cannot be elected President again. Only the Supreme Court can decide whether the Twenty Second Amendment, nevertheless, covers the above case.

Now consider the second option. Let the Court decide that the eligibility of a person to the office of President is still determined only by Sect.1 of Article 2 of the Constitution, whereas, particularly, a person who has been elected to the office twice cannot be elected President. If this is the case, this person cannot be elected to the office of President while remaining eligible to the office of Vice President. Thus, such a person can (a) be elected Vice President, and (b) fill the office of President as a result of the application of the Presidential Succession Act, and (c) become an Acting President in line with the Twenty Fifth Amendment provisions. (This person could also act as President if the Supreme Court decided that "the Vice President," mentioned in the text of the Twelfth Amendment, is the sitting one.)

Amendment 23 of the Constitution has given the District of Columbia the right to appoint as many presidential electors as the least populous state in the country has, which currently equals three.

Amendment 25 of the Constitution determines the rules of (a) filling the office of President in "… case of removal of the President from the office …," (b) filling the vacancy in the office of Vice President, and the procedures for filling the offices of President and Vice President in the case of disability of the President.

Besides the considered situations, Amendment 25 determines the rules to be applied if either a President-elect or a Vice-President-elect makes an unexpected decision to resign before Inauguration Day. Also, Amendments 20 and 25 authorize Congress to provide for situations that may occur in the elections under certain tragic circumstances.

The reader interested in studying such situations is referred to the book [4].

2.7 Electoral Requirements and Amendments 13, 14, 15, 19, 24, and 26

The Thirteenth Amendment prohibited slavery in the United States of America, changed the composition of the American electorate and, consequently, the apportionment of the seats in the House of Representatives among the states.

The Fourteenth Amendment guaranteed equal "privileges or immunities" and "equal protection of the laws" to all citizens of the United States of America. Also, it determined who cannot be a member of the Electoral College in any election year.

The Fifteenth Amendment gave the right to vote to all U.S. citizens, independently of their "race, color, or previous condition of servitude."

The Nineteenth Amendment prohibited both the denial and the abridgment of the right to vote based on sex, giving American women the right to vote.

The Twenty Fourth Amendment prohibited both the denial and the abridgment of the right to vote due to the failure to pay any taxes.

The Twenty Sixth Amendment gave the right to vote to all American citizens who have attained the age of 18.

2.8 American Beliefs About the Election System

The Constitution does not address certain issues relating to the voting behavior of electors in the Electoral College. Nor does it address issues relating to nominating presidential and vice-presidential candidates. Nevertheless, many Americans believe that the following assumptions always hold in presidential elections though this may not be the case:

(a) Many eligible voters always vote in every state and in D.C. "… on the Tuesday next after the first Monday in the month of November…" (Election Day) [1] of the election year. The voter turnouts in each state and in D.C. are sufficient to allow one to consider legitimate the appointing of electors according to the popular vote there. (The electors of) one pair of presidential and vice-presidential candidates at least from each of (currently) two major political parties participate in the election on Election Day.

Voting voters vote for participating pairs of presidential and vice-presidential candidates (though they really vote only for slates of electors submitted by the candidates rather than for the candidates themselves).

Replacing the candidates from both major political parties before Election Day is possible, and the rules for replacing candidates from both major political parties under certain circumstances are legitimate. (Both major political parties have declared rules governing such replacements [4]). However, the Constitution does not address this issue, which was indicated, in particular, by President Lyndon Johnson in his message to Congress laid before the Senate on January 20, 1966.

(b) On the first Monday after the second Wednesday in December of the election year, each state elector casts two ballots. One ballot is recognizable as a vote favoring a person as President, and the other is recognizable as a vote favoring a person as Vice President. At least one of these two persons is not "… an inhabitant of the same state…" [19] with the elector.

However, each elector can decide to favor two persons from the elector's state, making one of her/his votes not possible for tallying by Congress in the January that follows the election year.

(c) Persons voted for as President or as Vice President by the Electoral College are those who had received at least one electoral vote from all the appointed electors.

However, a person can be voted for as President or as Vice President but receive zero electoral votes. Indeed, as free agents, presidential electors can abstain by

casting ballots that cannot be recognized as votes, for instance, by casting blank ballots (see Sect. 2.2).

(d) The voting procedure in the Electoral College usually results in electing a President and a Vice President. If unsuccessful, quorums to hold elections in the House of Representatives and in the Senate are always available. These voting procedures there result in electing a President in the House of Representatives and in electing a Vice President in the Senate by Inauguration Day. If the voting in either Chamber of Congress or in both of them is still unsuccessful, Amendments 20 and 25 of the Constitution, along with statutory provisions for presidential selection, always determine who are to fill the offices of President and Vice President [18]. These provisions are either currently in force or can be introduced by Congress [4].

However, there are situations of not electing a President and a Vice President by Inauguration Day that may not be covered by the Twentieth and Twenty Fifth Amendments. These situations may cause election stalemates (see Chap. 3 for details).

Under the assumptions made, the current election system guarantees that two eligible citizens will always fill the offices of President and Vice President on Inauguration Day as a result of a presidential election without run-off elections [1].

However, even under these assumptions, there is no constitutional guarantee that presidential and vice-presidential nominees whose electors form the Electoral College will be among persons favored by the electors. This means that voting voters play only quite a limited role in presidential elections.

Indeed, constitutionally, with respect to presidential elections, eligible citizens may choose only electors in the places of their residence (states and D.C.). Moreover, the Constitution allows the citizens to play even this limited role only as long as "… the Legislature thereof…" directs choosing state electors by popular vote in the states of their residence (and in D.C.) [1]. Only electors chosen by any manner can then choose a President and a Vice President. All presidential electors are free to nominate whomever they want to be voted for as President and as Vice President. They can put any names on the elector ballots, and, constitutionally, they can elect their own nominees President and Vice President. A majority of the votes cast by all the appointed electors and received by any person, can make this person the election winner in the Electoral College.

Thus, electors can elect President and Vice President whomever they want rather than necessarily presidential and vice-presidential candidates whose slates of electors won in the states and in D.C. Even if presidential and vice-presidential candidates are those or are among those whom electors decide to favor, these candidates cannot be guaranteed to be elected to the offices according to the status they have on the ballots in November of the Election Year. Electors are free to favor vice-presidential candidates as President and to favor presidential candidates as Vice President. They can even favor the same person as President and as Vice President, which might have been the case in the 2004 election.

If the Constitution does attribute the status of free agents to presidential electors, then the electors are free to exercise their judgment in any manner they want. It remains questionable whether the binding that (currently) 29 states and D.C. impose on electors is enforceable [4, 10].

While (currently) more than 200 million voters are eligible to participate in one election process—vote for slates of presidential electors—the decision on the election outcome in each presidential election is currently made by no more than 1073 citizens in the framework of another election process (provided no court interferes in the election process). Indeed, currently, only all the appointed presidential electors, whose number does not exceed 538, and 535 members of Congress determine the election outcome as a result of this another election process. Here, the number of electors equals 538 only if all the states and D.C. appoint all the electors that they are entitled to appoint [18].

There is nothing in the Constitution that suggests that the outcomes of both election processes should necessarily be connected. Of course, if the electors chosen under the "winner-take-all" principle do not follow the will of their states and D.C., it may cause extreme election outcomes in the Electoral College (see Sect. 2.2). However, the Constitution does not prevent the country from the emergence of such outcomes.

No matter how illogical this may seem at first glance, according to the Constitution, voters may participate in presidential elections in the states only to choose state electors. The Founding Fathers did not agree that the will of the nation should matter in presidential elections, and this disagreement among the Constitutional Convention participants is part of the 1787 Great Compromise. Even the will of the states matters only if the electors do not reach consensus on who should be the next President. This explains why the "winner-take-all" principle, applied by all the states (in both variants) and by D.C. as a manner of choosing state presidential electors, seems to distort the role that the Founding Fathers attributed to presidential electors (see Sect. 2.4).

Weird outcomes in presidential elections, some of which were considered earlier (see Sect. 2.2), may emerge due to the absence of a formal connection between the above two election processes. Even if assumptions (a)–(d), cited in this section, along with the assumption that electors are to vote for only presidential and vice-presidential candidates hold, extreme election outcomes still may occur. Moreover, the omission of combinations of these assumptions, or certain parts of them may cause additional extreme election outcomes. These weird and extreme outcomes are among the subjects of consideration in the author's books [1, 18, 22].

2.9 Is the Electoral College Impervious to Change?

Almost a thousand attempts to reform the Electoral College have been undertaken. All these attempts, including those to replace the Electoral College with a direct popular election *de jure*, by amending the Constitution, have failed.

This idea to introduce a direct popular election has long existed in the United States, and it recurs each time a new presidential election nears. If the results of the polls are trustworthy, this idea is supported by an overwhelming majority of the respondents. However, it is doubtful whether the poll results bear evidence that the country would benefit from such a replacement. The seeming simplicity of a direct popular presidential election in the U.S. is quite deceptive. The clear separation of powers between the states and the federal government has existed for more than two centuries. So any change of the balance between the two would have hidden drawbacks that the media and the pollsters usually fail to communicate.

The existing Electoral College-based system of electing a President is complicated, and the simplistic media coverage of American social and political phenomena fails to educate voters about nuances of that system. In fact, pollsters ask people whether they favor replacing the Electoral College, a system that many respondents do not sufficiently understand, with direct popular election, a system that many respondents also do not necessarily understand [32].

There seem to be objective reasons for the failure to change the Electoral College-based election system.

1. Despite all its deficiencies, the Electoral College seems to have served the underlying idea of the Constitution well. Many Americans believe that the Electoral College is one of the key elements of the "checks and balances" system, which the Founding Fathers put in place as a result of the debates at the 1787 Constitutional Convention. Since the country was founded as a Union of the states, it seems that only the states, rather than any number of respondents to any polls should decide whether to replace this system with any other system.
2. Only the states can decide whether to surrender the privileges they are entitled to, even if some of the states have not used them for a particular historical period of time. Moreover, the states can surrender these privileges only via a constitutional amendment, which is not easy to initiate and pass.
3. The manner of the state representation in the Union, invented by the Founding Fathers as a result of the 1787 Great Compromise, seems to have been favored by all the states. The states have dual representation in Congress—in the House of Representatives by congressional districts and in the Senate as equal units. The representation in the House of Representatives reflects the size of the state population, whereas the representation in the Senate reflects the equality of all the states as members of the Union.

The same type of dual representation is embedded in the Electoral College (though, possibly, not in the best way). Any attempt to replace this dual representation of the states in electing a President by any form of a singular representation of the people only is unlikely to succeed unless all the states agree to such a replacement.

4. The current structure of the Constitution and the Supreme Court decisions regarding issues relating to presidential elections do not seem to let one do away with the Electoral College in its existing form other than by means of a

constitutional amendment. A recent attempt to replace the current Electoral College-based presidential election system with the National Popular Vote plan (see Chap. 6) does not seem to be an exception.

Its originators and backers claim that the plan leaves the Electoral College unchanged while introducing a direct popular election without amending the Constitution. Numerous lobbyists have succeeded in convincing state legislatures of (currently) 10 states and D.C. to make this plan a state law. They have managed to do this by exploiting the lack of knowledge in the country about both the Electoral College and constitutional provisions designed to block attempts to usurp any form of power, including the power of a group of states to decide the presidential election outcome. The plan does not seem to be able to withstand scrutiny in any federal court or in the Supreme Court due to the brittle logical cornerstones of the plan [33]. Chapter 6 contains a detailed analysis of this plan, first presented in the author's book [18].

5. Despite well-known deficiencies, "the winner-take-all" principle of (method for) awarding state electoral votes is viewed by state legislatures as the best one to determine the will of a state in electing a President. Poorly contested, not "battleground" states have tried to get rid of this method in an attempt to change their "safe" status. These states usually propose principles of awarding electoral votes that would encourage major party presidential candidates to campaign in the state. There are two principles of (methods for) determining the state's will that help understand why any attempts to get rid of "the winner-take-all" principle that are not based on new ideas are doomed to fail.

The Maine-like district method for determining presidential election results in a state is one of the two.

Today, voters in most of all the 435 congressional districts in the country favor one or the other major party in all elections, including presidential ones. Gerrymandering in drawing the district borders within a state is what causes this phenomenon. For instance, currently, voting voters in at least 19 out of 53 California congressional districts favor the Republicans though the state at large favored the Democrats in the last five presidential elections. In 2008, a proposal to switch California to the Maine-like district method for awarding state electoral votes failed to make it on the ballot. But even if it did, and California adopted this method, this would not motivate the major party presidential candidates to campaign in the state.

Indeed, the adoption of this method would almost guarantee that the Republicans would receive 19 electoral votes out of 55 electoral votes and the Democrats would receive 36 electoral votes (34 electoral votes in congressional districts and two electoral votes at large). These guarantees make it unreasonable for the Democratic candidate to campaign in predominantly Republican districts and for the Republican candidate to campaign both in predominantly Democratic districts and in the state at large [30].

Thus, under the Maine-like district method for awarding state electoral votes in California, both major party presidential candidates would have no reason to intensify their election campaigns in the state. The election outcome would be quite predictable for both candidates, leaving the state with the same status, which is not a "battleground" one.

What would happen if every state in the country adopted the Maine-like district method for awarding state electoral votes? Most likely, the "battleground" districts together with all the "battleground" states—in which the candidates could compete for two at-large electoral votes— would become the places on which both major party candidates would focus their campaigns.

The 2008 election illustrates how this may happen. In the state of Nebraska, Barack Obama campaigned in only one closely contested congressional district. He did not campaign either in the other two congressional districts or in the state at large, since they were not closely contested in the predominately "Republican" state of Nebraska. Indeed, John McCain easily won in the other two congressional districts, as well as at large.

If the Maine-like district method was adopted by all the states, a major party candidate may eventually find it more reasonable to campaign in two congressional districts in different states than to compete in a "battleground" state for two electoral votes at large.

The proportional method for awarding state electoral votes is not much better for a "safe" state from the viewpoint of getting rid of this status. In a closely contested state, each major party candidate is almost guaranteed to receive half of all the state electoral votes. What then would be a reason for a major party candidate to campaign in such a state? Any strong election campaign in the state by either major party candidate would likely give this candidate no more than two extra electoral votes.

For instance, let a closely contested state be entitled to eight electoral votes in a particular election. Further, let half of the state's electorate favor one of the two major party candidates, and let the other half of the electorate favor the other major party candidate. Then the outcomes for the major party candidates are quite predictable. Most likely they will be as follows: (a) four electoral votes each if neither candidate campaigns, (b) five electoral votes and three electoral votes if one of the two candidates campaigns there, (c) four electoral votes each if both candidates campaign in the state equally intensively.

In a state that is not closely contested, the outcomes are also quite predictable. Let 60 % of all likely voters who are likely to favor major party candidates favor candidate A. Then for major party candidate B, all depends on how many voters are likely to favor non-major party candidates and independent ones, and how many likely voters remain undecided. However, the margin of electoral votes that candidate A would win if he decided to campaign in the state would hardly be significantly higher than the one "guaranteed" by the above 60 % voter support [30].

What would happen if all the large and medium-size states adopted the proportional method for awarding state electoral votes? Most likely, the number of "battleground" states in which major party candidates could decide to campaign

would increase. Indeed, the states in which both candidates could increase the number of electoral votes by two could interest the candidates.

In small states that are not closely contested, the situation is likely to be different. Neither major party candidate may find a reason to campaign there, since the candidate who is not a state favorite is unlikely to increase the numbers of electoral votes that he can win by more than one.

Neither these two plans, nor many others, considered, for instance, in [1, 6, 10, 18] address the major complaint of poorly contested states. That is, how can one make these states as valuable for presidential candidates as are the "battleground" ones and encourage major party candidates to campaign there?

The answer to this question is discussed in Chaps. 6 and 7.

Chapter 3
Curbing Contingent Elections

Abstract Contingent U.S. presidential elections are those in which the Electoral College fails to elect a President and (or) a Vice President, and Congress is to elect either executive or both. Contingent elections of a Vice President may emerge independently of whether a President is elected in the Electoral College. This is possible due to the principle of voting separately for President and for Vice President in the Electoral College. This chapter considers all types of contingent elections, including those in which even Congress fails to elect either executive or both by Inauguration Day. This chapter offers an analysis of whether the Presidential Succession Act can govern contingent elections in which neither executive is elected by Inauguration Day. It also discusses whether the existing constitutional provisions and federal statutes allow one to avoid election stalemates and shows that this depends on how some phrases from the Twelfth and the Twentieth Amendments are construed.

Keywords Contingent elections · Electoral ties · Failure to qualify · President-elect · President pro tempore · Presidential Succession Act · Twelfth Amendment · Twentieth Amendment · Twenty Fifth Amendment · Vice President-Elect

Contingent U.S. presidential elections are those in which the Electoral College fails to elect a President and/or a Vice President. This happens when either none of the participating presidential candidates and/or none of the participating vice-presidential candidates receives a majority of all the electoral votes that are in play in the election.

Contingent elections in electing a President may emerge in three situations depending on (a) how the Electoral College votes in December of the election year, (b) whether Congress rejects any electoral votes cast, and (c) how many recipients of the electoral votes as President can (if elected) take the oath on Inauguration Day.

Situation 1. Only two recipients of the electoral votes as President with the same number of electoral votes received meet the requirement formulated in (c).

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Situation 2. At least three recipients of the electoral votes as President meet the requirement formulated in (c), and none of the recipients received a majority of all the electoral votes that are in play in the election.

Situation 3. Only one recipient of the electoral votes as President meets the requirement formulated in (c), and this recipient received less than a majority of all the electoral votes that are in play in the election.

Contingent elections of a Vice President may emerge independently of whether a President becomes elected in the Electoral College. This is possible due to the principle of separately voting for President and for Vice President in the Electoral College. Indeed, none of the participating vice-presidential candidates may receive a majority of all the electoral votes that are in play in the election while one of the participating presidential candidates does receive such a majority.

There are four possible election outcomes in the Electoral College: (a) both a President and a Vice President are elected, (b) only a President is elected, (c) only a Vice President is elected, and (d) neither a President nor a Vice President is elected. The last three out of the four possible election outcomes are those of contingent elections.

In all these three cases, the election is thrown into Congress. If the election of only one of the two executives is thrown into Congress, they say that the election is thrown into Congress partly. Otherwise, when the election of both a President and a Vice President is thrown into Congress, they say that the election is thrown into Congress completely.

Chapter 3 concerns all the types of contingent elections, including those in which even Congress fails to elect either executive or both by Inauguration Day. This chapter offers an analysis of whether the Presidential Succession Act can govern contingent elections in which neither a President nor a Vice President is elected by Inauguration Day. It also discusses whether the existing constitutional provisions and federal statutes allow one to avoid election stalemates and shows that this depends on how some phrases from the Twelfth and the Twentieth Amendments are construed.

3.1 Determining the Election Winner in Contingent Elections

The Twelfth Amendment determines the rules for completing contingent elections thrown into Congress, both partly and completely. If Congress is to elect a President, this duty is vested in the House of Representatives. If Congress is to elect a Vice President, the Senate is to do this.

Electing a President in the House of Representatives. The Twelfth Amendment directs that the House of Representatives is to chose a President from among no more than the top three electoral vote recipients voted for as President in the Electoral College. This requirement leaves unclear how to select no more than three

from among more than three electoral vote recipients eligible to be considered in electing a President in the House of Representatives.

Example 3.1 Let five persons voted for as President in the Electoral College receive 134, 134, 134, 134, and 2 electoral votes, respectively, as a result of counting electoral votes in Congress. There is no mechanism for selecting no more than three persons from among these four with 132 electoral votes each [1, 18].

Electing a Vice President in the Senate. The Twelfth Amendment directs that the Senate is to choose a Vice President from among the top two electoral vote recipients voted for as Vice President in the Electoral College. As in the case of electing a President in the House of Representatives, this requirement leaves unclear how to select two from among more than two electoral vote recipients eligible to be considered in electing a Vice President in the Senate.

Example 3.2 Let five running-mates of persons considered in Example 3.1 receive the same number of electoral votes as Vice President in the Electoral College as did the above persons, i.e. 134, 134, 134, 134, and 2 electoral votes, respectively. There is no mechanism for selecting two persons from among these four with 132 electoral votes each [1, 18].

The voting for President in the House of Representatives is arranged according to the principle "one state, one vote." Only the states elect a President in the House of Representatives, and D.C. does not participate in this election. Each state delegation is given one vote, regardless of the state's size. Thus, the states of California and Wyoming are equal in electing a President in the House of Representatives, which is part of the 1787 Great Compromise.

For a state delegation consisting of one member, the vote of the state coincides with that of this member. However, for more-than-one-member delegations, each delegation must ascertain its vote before each ballot, and the number of ballots in electing a President in the House of Representatives is, generally, not limited.

The ascertainment procedure implies that a state delegation should decide how it will vote in the next ballot, and each state delegation may change its vote as many times as the number of times the balloting procedure is held. According to the 1825 rules for electing a President in the House of Representatives (see Sect. 2.5), the ascertainment of the vote of each state is to be held via a balloting procedure within the state delegation.

It may happen that none of those eligible to be considered by the House of Representatives in electing a President there receives a majority of votes within a state delegation as a result of the ascertaining procedure. Then the state is considered divided, and the vote of this state cannot be counted in the next ballot. However, the divided state participates in electing a President, and its "divided" status does not affect the quorum needed to hold the next ballot.

As mentioned in the description of Puzzle 3 (see Sect. 2.2), it seems unclear how many persons are to be considered by the House of Representatives in electing a President there. (It depends on whether the phrase "… not exceeding three…" from the amendment should be attributed to the word "persons," or to the word "numbers.") In any case, a quorum of at least two-thirds of all the states is needed to start

the procedure of balloting for President in the House of Representatives. A person is elected President in the House of Representatives if this person is a recipient of votes from a majority of the whole number of state delegations there (currently, from at least 26 state delegations).

Electing a Vice President in the Senate is held according to the principle "one state, two votes," and unlike in the House of Representatives, all the Senators vote as individuals. A quorum of at least two-thirds of the whole number of Senators is necessary to hold the voting procedure, and the voting should not necessarily be by ballot. A "… majority of the whole number …" (apparently the votes of all the appointed Senators; see Sect. 2.2 for more details) should favor the same person to elect this person Vice President in the Senate. Unlike in electing a President in the House of Representatives, there are no special rules for electing a Vice President in the Senate.

What happens if the House of Representatives fails to elect a President by Inauguration Day, whereas the Senate elects a Vice President?

According to the Twentieth Amendment, in this case, the Vice President-elect becomes the acting President until the next President is elected. According to the Twenty Fifth Amendment, this acting President "…shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress …" [19].

The following two situations may emerge in this case:

1. The House of Representatives finally elects a President from among persons for whom the balloting procedure was held though it happens after Inauguration Day but before the next elected or selected President is sworn in.
2. The next President is elected only as a result of the next presidential election.

In case 1, once the President has been elected before the next presidential election results in electing a new President, the acting President (who is the elected Vice President) becomes the next Vice President. Though there are no provisions either in the Constitution or in the federal statutes regarding the fate of the acting Vice President, one may assume that once the elected Vice President takes the office, the authority of the acting Vice President is terminated.

What happens if the House of Representatives elects a President, whereas the Senate fails to elect a Vice President by Inauguration Day?

The Twenty Fifth Amendment requires that the elected President "…shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress …" As before, there are no constitutional provisions or federal statutes that address what happens to the acting Vice President once the next Vice President has been elected. However, one may assume that once the elected Vice President takes the office, the authority of the acting Vice President is terminated.

3.2 When Both the Electoral College and Congress Fail

If by Inauguration Day (a) the Electoral College fails to elect both a President and a Vice President, (b) the House of Representatives fails to elect a President, and (c) the Senate fails to elect a Vice President, an election stalemate may occur. That is, depending on how the language of the Twentieth and the Twelfth Amendments is construed, the contingent election may or may not be completed.

In the course of the 2008 election campaign, several constitutional scholars and journalists entertained the hypothetical scenario that the election would be so close that a 269–269 tie in the Electoral College would be a possibility. They went further and offered their vision of what would happen if the contingent election of both a President and a Vice President resulted in the failure to elect a President and a Vice President in the House of Representatives and in the Senate, respectively, by Inauguration Day in 2009. From their point of view, the Presidential Succession Act of 1947 [34] would then govern the completion of the election [35].

But this might not have been the case had such a hypothetical scenario occurred.

The 1947 Presidential Succession Act was adopted by Congress under the authority given to it by the Twentieth Amendment. However, the language employed in the text of the amendment can be construed in a manner that puts the above viewpoint of the constitutional scholars and journalists into question.

Before describing specifically how this language could be understood, it is helpful to imagine what would have happened if the use of any particular understanding of the amendment language had led to an election stalemate in the 2008 election. This would mean that at least under this particular understanding, the above hypothetical scenario, offered by the constitutional scholars and journalists, might have been impossible. Moreover, assume that the Supreme Court considers this particular understanding of the amendment language to be correct. An election stalemate might then occur in any contingent election in which both the Electoral College and Congress fail to elect both a President and a Vice President by Inauguration Day.

The Presidential Succession Act covers five situations in which there is no one to "discharge the Powers and Duties" of the office of President [1, 4, 19]. The "failure to qualify" is one such situation for which the Twentieth Amendment gives Congress the authority to act. That is, Congress has the constitutional power to provide by law "… for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected … ."

It is the widespread belief that the Presidential Succession Act covers this case. However, as mentioned earlier, whether or not it does depends on how the language employed in the cited part of the Twentieth Amendment is construed. That is, it depends on whether one should perceive that the above phrase in the amendment means (a) persons who have been voted for as President and as Vice President in the Electoral College, but have not reached the statuses of President-elect and Vice President-elect (as the above-mentioned scholars and journalists suggested in 2008), or (b) persons who have been chosen (elected) a President and a Vice

President by either the Electoral College or by Congress but have failed to qualify, or c) persons of both kinds who have been voted for as President and as Vice President in the Electoral College.

To analyze what case (cases) of these three is (are) addressed by the Twentieth Amendment, one should turn to the dictionaries that define the verb "to qualify."

The dictionary [36] offers the following two definitions: (a) "To be successful in one stage of the competition and as a result to proceed to the next stage," and (b) "to have the abilities required to do or to have something." In other dictionaries, one can find the same or similar definitions such as (a) to reach the later stages of a selection process or contest by competing successfully in earlier rounds, and (b) to be or to become qualified.

First, assume that the verb "to qualify" in the above phrase should be construed only in the sense of definition (a). Consider a person who was voted for, for instance, as President in the Electoral College, but neither the Electoral College nor the House of Representatives elected her/him President. According to definition (a), this person is not qualified as President-elect since she/he did not reach the status of President-elect.

Consider now a person who has been elected either by the Electoral College or by the House of Representatives but has failed to meet the constitutional eligibility requirements of the office of President. This person has successfully reached the status of President-elect, and as a result of this success, can proceed in this status to the "later stages of the selection process." Specifically, this person can proceed to the next stage of the selection process, associated with the verification of whether she/he meets the constitutional eligibility requirements of the office of President. If, however, this person does not meet these requirements, she/he does not "have the abilities" to be President. So while this person is qualified as President-elect in the sense of definition (a), she/he does not have the abilities required to become President, i.e., cannot qualify as President-elect in the sense of definition (b).

The assumption that reaching the status of President-elect and meeting the constitutional eligibility requirements by a person who has reached this status are two different stages of the selection process (or the competition) associated with electing a President seems to follow from the phrase from the Twentieth Amendment

> … If **a** President shall not have been chosen before the time fixed for the beginning of his term, or if **the** President elect shall have failed to qualify … .

Indeed, this phrase seems to make it clear that not meeting the constitutional eligibility requirements of the office of President does not preclude a person from being voted for as President in the Electoral College and in the House of Representatives. Nor does it preclude this person from reaching the status of President-elect by being chosen (elected) President either in the Electoral College or in the House of Representatives. Certainly, the same assumption on the two different stages of the selection process (competition) associated with electing a Vice President follows from this very phrase.

Also, it seems clear that taking the oath on Inauguration Day can formally be considered as the final stage of the process of electing a President, and it seems clear that this final stage can be reached by a President-elect only. Thus, in conformity to a person who has reached the status of President-elect, the verb "to qualify" can only be construed in the sense of definition (b). Indeed, except for tragic circumstances or unexpected decisions, a person who has the status of President-elect cannot reach this final stage only if this person fails to meet the constitutional eligibility requirements of the office of President. This means that this person can fail to qualify only in the sense of definition (b) of the verb "to qualify."

Thus, two different interpretations of the verb "to qualify," employed in the Twentieth Amendment, seem possible. Each interpretation may lead to a particular understanding of the phrase "… wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected … ." So different situations may emerge as a result of voting for both President and Vice President in the Electoral College and in Congress.

It is clear that only the Supreme Court can make the final determination on how to interpret the verb "to qualify" in the phrase "… wherein neither a President elect nor a Vice President elect shall have qualified … . " So in the absence of this determination, it seems interesting to analyze logically possible versions of the interpretation of this verb in this phrase that the Court may make, along with the consequences of the Court decision. However, the author would like to emphasize that the reasoning to follow aims to draw the reader's attention to the lack of clarity in a particular part of the Twentieth Amendment rather than to offer any judgment on how to interpret the language employed in the amendment.

Version 1. The Supreme Court finds that only definition (a) is to be attributed to the verb "to qualify" in the phrase "…wherein neither a President elect nor a Vice President elect shall have qualified …" Thus, the Supreme Court finds the Presidential Succession Act applicable only when neither the Electoral College nor Congress has chosen a President and a Vice President by Inauguration Day. This, particularly, suggests that the Twentieth Amendment covers only the situation in which no person voted for as President and as Vice President in the Electoral College is elected either there or in Congress, i.e., no person reaches the status of President-elect or Vice President-elect. Indeed, only a person voted for as President in the Electoral College but not elected President (either in the Electoral College or in Congress) can fail to qualify as a President-elect in the sense of definition (a) of the verb "to qualify." This is the case, since to fail to qualify in the sense of definition (b), the person should have reached the status of President-elect first.

If this is the case in a particular presidential election, the Presidential Succession Act governs the situation. One of the officers on the list of potential successors will then become President and will nominate a Vice President, whose nomination is to be approved by Congress, as the Twenty Fifth Amendment directs.

What happens, however, if the President-elect and the Vice President-elect have been chosen but have failed to meet the constitutional eligibility requirements?

In this case, the Twelfth Amendment is the only part of the Constitution that may govern the completion of the election. The amendment determines that in this case, "the Vice President" will be the new President. The Supreme Court then should decide whether "the Vice President" that is mentioned in the Twelfth Amendment is the newly elected Vice President or the sitting one (see Sect. 2.2 for more details).

If the Supreme Court decides that this is the newly elected Vice President, an election stalemate seems inevitable, since there are no constitutional provisions or federal statutes to determine who should act as the next President in this case. The election cannot be completed, which means a potential constitutional crisis [1, 18].

If, however, the Supreme Court decides that "the Vice President" mentioned in the Twelfth Amendment means the sitting Vice President, this sitting Vice President will be sworn in on January 20 of the year following the election year, and an election stalemate will be avoided.

Thus, under interpretation (a) of the verb "to qualify," the situation in which both a President and a Vice President have been chosen by either the Electoral College or by Congress but both have failed to meet the constitutional eligibility requirements does not seem to be covered by the Twentieth Amendment.

Version 2. The Supreme Court finds that only definition (b) is to be attributed to the verb "to qualify" in the phrase "…wherein neither a President elect nor a Vice President elect shall have qualified …" Thus, the Supreme Court finds the Presidential Succession Act inapplicable under definition (a) of the verb "to qualify, " i.e., the act is inapplicable when neither the Electoral College nor Congress has chosen a President and a Vice President by Inauguration Day.

If in a particular presidential election, both a President and a Vice President have been chosen by either the Electoral College or by Congress but both have failed to meet the constitutional eligibility requirements, the Presidential Succession Act governs the situation. One of the officers on the list of potential successors will then become President and will nominate a Vice President, whose nomination is to be approved by Congress, as the Twenty Fifth Amendment directs.

What happens, however, when neither the Electoral College nor Congress has elected a President and a Vice President by Inauguration Day?

Similar to how this was described in Version 1, only the Twelfth Amendment may then govern the completion of the election, which means that only the sitting Vice President may then act as President in the next presidential term [37]. However, as mentioned earlier, even this outcome may take place only if the Supreme Court clarifies that the phrase "the Vice President" from the Twelfth Amendment means the sitting Vice President. If the Supreme Court decides that this is a newly elected Vice President, an election stalemate is inevitable.

Thus, under interpretation (b) of the verb "to qualify," the situation in which both a President and a Vice President have not been chosen by either the Electoral College or by Congress does not seem to be covered by the Twentieth Amendment.

Attributing definition (b) to the verb "to qualify" used in the Presidential Succession Act looks like "the lesser of two evils" in a presidential election in which "neither a President elect nor a Vice President elect shall have qualified."

Indeed, let neither the Electoral College nor Congress have chosen a President and a Vice President by Inauguration Day. Further, let definition (b) of the verb "to qualify" from the Twentieth Amendment be used according to the Supreme Court determination. Then Congress still may eventually produce either the President-elect or the Vice President-elect or both before the next election (though after Inauguration Day).

In contrast, let the Supreme Court determine that the verb "to qualify" (in the phrase under consideration) should be attributed definition (a). Then if both the President-elect and the Vice President-elect have been chosen, but have been disqualified, only the sitting Vice President (if she/he is the one mentioned in the Twelfth Amendment) can act as President to avoid an election stalemate.

Version 3. The Supreme Court determines that the phrase "…wherein neither a President elect nor a Vice President elect shall have qualified …" is intended to cover and covers both definitions (a) and (b) of the verb "to qualify."

Then, it seems reasonable to analyze what could be the basis for this determination. Particularly, one should analyze whether it is possible to substantiate that the Twentieth Amendment does give Congress the authority to provide by law for both options to understand the verb "to qualify" in one and the same phrase from the text of the amendment.

Consider the phrase from the Twentieth Amendment "… If **a** President shall not have been chosen before the time fixed for the beginning of his term, or if **the** President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified … ." This phrase appears to be present in the amendment to cover both situations with respect to the status of President-elect. So this phrase may constitute the above-mentioned basis for the Court determination. Under this assumption, it seems natural to assume that the intent to use the phrase "… for the case wherein neither a President elect nor a Vice President elect shall have qualified …" in the amendment may have been to cover the same two **situations with respect to both the status of President-elect and the status of Vice President-elect concurrently**.

Thus, the question is: can the phrase "… for the case wherein neither a President elect nor a Vice President elect shall have qualified …" be understood as addressing both situations? That is, can this phrase in the question be considered as covering the following two events:

(1) "… If **a** President shall not have been chosen before the time fixed for the beginning of his term, or if **the** President elect shall have failed to qualify …,"

and

(2) if **a** Vice President shall not have been chosen before the time fixed for the beginning of his term, or if **the** Vice President-elect shall have failed to qualify,

then Congress may by law provide for this case "… declaring who shall then act as President, or a manner in which one who is to act should be selected …?"

The sense of the phrase "… If **a** President shall not have been chosen before the time fixed for the beginning of his term, or if **the** President elect shall have failed to qualify … " seems to be equivalent to the phrase "… if a President shall not have qualified … ." So had the phrase "wherein neither **a President** nor **a Vice President** shall have qualified" been used in the text of the Twentieth Amendment instead of the phrase "… for the case wherein neither a **President elect** nor **a Vice President-elect** shall have qualified …," both events (described by the pair of phrases (1) and (2)) would have been covered.

Indeed, consider the phrase of the same type "… until **a** President shall have qualified; …," which is directly employed in the text of the Twentieth Amendment. If a President shall not have been qualified, this means that either a President has not been chosen before Inauguration Day, or the President-elect has failed to qualify. The presence of this phrase in the text of the Twentieth Amendment seems to suggest that the Supreme Court may decide that the phrase "…wherein neither a President elect nor a Vice President elect shall have qualified …" can be considered to be equivalent to the above two phrases (1) and (2).

Moreover, it seems that the phrase "… until a President shall have qualified …" from the Twentieth Amendment implies "until a person to be sworn in as President shall have qualified." So the pair of phrases (1) and (2) may mean "for the case wherein neither a person to be sworn in as President nor a person to be sworn in as Vice President shall have qualified." Thus, under options (a) and (b) to interpret the verb "to qualify," six possible election outcomes would be covered. That is, if

1) both a President and a Vice President have been chosen (elected) by either the Electoral College or by Congress, but only the President-elect has failed to qualify, the Vice President elect will be sworn in on Inauguration Day as the next President—as the Twentieth Amendment directs—and this new President will nominate a Vice President, as the Twenty Fifth Amendment directs,
2) both a President and a Vice President have been chosen (elected) by either the Electoral College or by Congress, but only the Vice President-elect has failed to qualify, the President-elect will be sworn in on Inauguration Day as the next President—as the Twelfth Amendment directs—and this new President will nominate a Vice President, as the Twenty Fifth Amendment directs,
3) both a President and a Vice President have been chosen (elected) by either the Electoral College or by Congress, but both have failed to qualify, the Presidential Succession Act will govern the completion of the election, and the Speaker of the House of Representatives, or the President pro tempore of the Senate, who is next after the Speaker on the list of potential successors, or one of the other officers next on this list will be sworn in as the next President, and this new President will nominate a Vice President, as the Twenty Fifth Amendment directs,
4) neither a President nor a Vice President have been chosen (elected) by either the Electoral College or by Congress, the Presidential Succession Act will govern the completion of the election, and the Speaker of the House of Representatives, or the President pro tempore of the Senate, who is next after the Speaker on the list of

potential successors, or one of the other officers next on this list will be sworn in as the next President, and this new President will nominate a Vice President, as the Twenty Fifth Amendment directs,

5) a President has been chosen (elected) by either the Electoral College or by the House of Representatives but has failed to qualify, whereas a Vice President has not been elected. Then the Presidential Succession Act will govern the completion of the election, and the Speaker of the House of Representatives, or the President pro tempore of the Senate, who is next after the Speaker on the list of potential successors, or one of the other officers next on this list will be sworn in as the next President, and this new President will nominate a Vice President, as the Twenty Fifth Amendment directs, and
6) a Vice President has been chosen (elected) by either the Electoral College or by the Senate but has failed to qualify, whereas a President has not been elected. Then the Presidential Succession Act will govern the completion of the election, and the Speaker of the House of Representatives, or the President pro tempore of the Senate, who is next after the Speaker on the list of potential successors, or one of the other officers next on this list will be sworn in as the next President, and this new President will nominate a Vice President, as the Twenty Fifth Amendment directs.

Since, generally, the Supreme Court can make any specific determination about the interpretation of the verb "to qualify" in the phrase "…wherein neither a President elect nor a Vice President elect shall have qualified … ," including the above three, it seems interesting to guess how the Court may approach this issue, for instance, in the case of a tie in the Electoral College, when the election of both a President and a Vice President is thrown into Congress, which fails to elect either executive or both by Inauguration Day.

The language employed in the text of the Twentieth Amendment seems to limit the number of definitions of the verb "to qualify" covered by the amendment to either definition (a) or definition (b), and it seems unclear to which one. So one needs to analyze which of the above two definitions this phrase is likely to cover. Also, it seems helpful to develop examples of hypothetical scenarios of what may happen in the election process in either case.

One may assume that the presence of the phrase "… until a President shall have qualified …" in the text of the Twentieth Amendment, along with the phrase "… wherein neither a President elect nor a Vice President elect shall have qualified …," seems to suggest that the wording "shall have qualified" **should have the same meaning in both phrases**. That is, it should be understood with respect to the persons reaching the corresponding constitutional statuses.

In the first of these two phrases, this status is that of President, i.e., that of a person (i) who has been chosen a President either by the Electoral College or by the House of Representatives, (ii) whose constitutional qualifications to be President have been verified and confirmed, and (iii) who has been sworn in as President, by taking the oath on Inauguration Day.

In the second phrase, these statuses are those of President-elect and Vice President-elect, and they are reached by two persons only if they have been chosen (elected) a President and a Vice President either by the Electoral College or by Congress.

Under this logic, definition (a) of the verb "to qualify" seems to be meant in the phrase "… neither a President elect nor a Vice President elect shall have qualified … ." As shown earlier, if this is the case, the amendment covers the situation in which no person reaches the status of President-elect or Vice President-elect.

However, one may argue that the wording "shall have qualified" should not necessarily have the same meaning with respect to the statuses of President-elect and Vice President-elect as it has with respect to the status of President. That is, with respect to the status of President this wording in the phrase "… until a President shall have qualified …" should have the meaning of reaching the status of President by a person voted for as President in the Electoral College. In contrast, in the phrase "… neither a President elect nor a Vice President elect shall have qualified …," it should have the meaning of meeting the constitutional eligibility requirements by persons who have already reached the statuses of President-elect and Vice President-elect having been chosen (elected) either by the Electoral College or by Congress..

Thus, one may argue that the phrase

A) "… and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified"

from the Twentieth Amendment should be viewed as complementary to the phrase

B) "… If **a** President shall not have been chosen before the time fixed for the beginning of his term, or if **the** President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified …"

from the same amendment. If this is the case, phrase A covers the situation in which both **the** President-elect and **the** Vice President-elect were chosen either in the Electoral College or in Congress but both failed to qualify.

One may also refer to the fact that in both phrases, the proposed measures are those to cover the period of time up to the same moment at which "a President shall have qualified" (in phrase B) and "a President or Vice President shall have qualified" (in phrase A). This moment is the one at which there is a person who can be sworn in as President on Inauguration Day. Such a similarity may also suggest that the definition (b) of the verb "to qualify" (to have the abilities required to do or to have something) is what was meant by the amendment sponsors.

The authors of [38], a textbook for law schools, say that "… Congress now made the same provision for succession in the event of disability or disqualification of **the**

President-elect and Vice President-elect as in the case of President and Vice President. …" The author of [39] states that "… Section 3 of the Twentieth Amendment empowers Congress to provide for the situation when neither **the** President-elect nor Vice President-elect qualifies. …" The use of the article "**the"** in "**the** President-elect and Vice President-elect" makes it appear that both books support case (b) of possible definitions of the verb "to qualify," i.e., the definition in the sense of meeting the constitutional eligibility requirements.

Also, as mentioned earlier, the phrase "… **the** President elect shall have failed to qualify…" from the amendment suggests that, constitutionally, the failure of the President-elect to qualify is a possible election outcome. Thus, the phrase "…neither **a** President elect nor **a** Vice President elect shall have qualified …" may address the situation in which both a President and a Vice President have been chosen by either body but have failed to qualify, which corresponds to definition (b) of the verb "to qualify." Indeed, the use of the article "**a"** in the phrase "neither **a** President elect nor **a** Vice President elect shall have qualified" may suggest that a President-elect and a Vice President-elect can be chosen by either of the two bodies—the Electoral College and Congress—and in both cases, after having been chosen, they may fail to have qualified.

This logic seems to rebuff the one suggesting that the article "**the**" rather than the article "**a**" would have been used in the wording "neither **a** President elect nor **a** Vice President elect shall have qualified" if definition (b) were attributed to the verb "to qualify." The latter option to understand the wording "shall have qualified" in the phrase "… If **a** President shall not have been chosen before the time fixed for the beginning of his term, or if **the** President elect shall have failed to qualify…" seems to be how this phrase should be understood.

What would happen if the Supreme Court determined that only one definition of the verb "to qualify" can be applied in the phrase "… and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President…" [19]?

Besides the situation corresponding to the other definition that would then not be covered by this particular definition, there would still be other situations uncovered by the Presidential Succession Act.

Indeed, let, for instance, a President have been chosen either by the Electoral College or by the House of Representatives, and let this President-elect have failed to qualify. Further, let a Vice President have not been chosen by Inauguration Day by the Electoral College or by the Senate. The Twentieth Amendment does not then authorize Congress to address such a situation by law, and the Presidential Succession Act cannot govern this situation. As mentioned earlier, only the Twelfth Amendment may then govern the situation unless either (i) the Senate finally elects a Vice President by Inauguration Day, and the elected Vice President meets all the constitutional eligibility requirements of the office of President, i.e., qualifies for the office, or (ii) a President or a Vice President qualify in the next election. A similar problem arises when a Vice President has been chosen either by the Electoral College or by the Senate, but has failed to qualify, whereas a President has not been

chosen by Inauguration Day, i.e., both the Electoral College and the House of Representatives have failed to elect a President.

Thus, the fuzzy language employed in both the Twelfth and the Twentieth Amendments may cause uncertainty in an election by making unclear how this election can be completed. This uncertainty may force the Supreme Court to intervene in the course of the election process, which American society will not appreciate [1].

Once again, the author would like to emphasize that all the reasoning presented in this section aims only at drawing attention to this fuzzy language rather than at offering the author's judgment on particular possible interpretations of the text of both amendments.

3.3 The Presidential Succession Act and Contingent Elections

The Presidential Succession Act is a federal statute, which was adopted under the authority given to Congress by the Twentieth Amendment (see Sect. 2.6). The act covers five situations in a presidential election—removal from office, death, resignation, inability, and failure to qualify—in which there is no one to "… discharge the Powers and Duties of the Office of President…" [1, 4, 19]. Any of the last four from among the above five situations may occur in the course of an election in which either a President-elect or a Vice President-elect or both have been chosen. If, for instance, it was found that both elected persons do not meet the constitutional eligibility requirements to hold the office of President, the act may govern the completion of the election. However, in the firth situation, this is the case only if the Supreme Court establishes that either the verb "to qualify" is to be construed in sense (b) (see Sect. 3.2), i.e., "to have abilities required to do or to have something," or if the Court decides that both definitions, cited in Sect. 3.2, are to be covered by the act.

The act determines the list of officers who are eligible to fill the office of President and the order in which they can fill the office. The officer who finally fills the office, after taking the oath as an acting President should nominate the acting Vice President who is to be confirmed by Congress [40].

This list includes the Speaker of the House of Representatives, the President pro tempore of the Senate, the Secretary of State, the Secretary of the Treasure, the Secretary of Defense, the Attorney General, the Secretary of Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Education, the Secretary of Veteran Affairs, and the Secretary of Homeland Security [4, 34]. (The President pro tempore of the Senate is a Senator who acts as President of the Senate when the President of the Senate—i.e., the sitting Vice President—is absent

and cannot preside over a particular session of the Senate. Traditionally, the President pro tempore of the Senate is the Senator from a majority party in the Senate who has been a Senator for the longest period of time. Generally, the President pro tempore of the Senate is elected by the Senate.)

The act requires that in order to become the acting President, the Speaker of the House of Representatives shall resign both as the Speaker and as a Representative, and the President pro tempore of the Senate shall resign both as the President pro tempore and as the Senator. The same is true for all the other officers on the above list—they are considered resigned from their positions in the presidential administration as a result of taking the oath of the office of President [4].

What happens to an individual who fills the office of President as a result of the application of the Presidential Succession Act if either a President or a Vice President has become available, i.e., elected in Congress before the expiration of the term for which the individual was appointed the acting President though after Inauguration Day?

As egregious as it may seem, this person must resign as the acting President, and there is nothing in the act that determines her/his further status in the government. Since the person had to resign from the office that allowed him to become eligible to fill the office of President according to the act, this person has no formal privilege to serve in the government.

Moreover, the duration of acting as President by any individual from the above list who has taken the oath of the office of President is uncertain. Indeed, any so called prior-entitled officer who becomes "able to act" and is qualified to fill the office of President can unseat the Acting President. (A prior-entitled officer is the one whose position in the above list of eligible officers is higher than that of the officer who became the Acting President.)

Filling the office of President is a must for the Speaker of the House of Representatives (provided this position is not vacant, and the act is applied) unless she/he fails to qualify for the office of President. The same is true for the President pro tempore of the Senate if the Speaker does not fill the office of President.

Can election stalemates emerge as a result of executing the Presidential Succession Act?

Yes, they can. Besides election stalemates associated with the ambiguity of the language employed in the Twentieth Amendment, there could be stalemates associated with executing the Presidential Succession Act.

Let us consider a contingent election, and let us assume that the Presidential Succession Act is applicable to govern this election. The act states that it can be applied only to "… such officers as are eligible to the office of President under the Constitution…." [4]. However, the requirements that must be met by American citizens to be eligible to any of the offices listed in the act and the requirements to be met to be eligible to the office of President are different. For instance, any officer from the list mentioned earlier in this section, including Secretary of State, may not be a natural born citizen. Hypothetically, at the time at which the act is to be applied, some officers from the list who could qualify as an Acting President may turn out to be either under impeachment or disabled. The other officers from the list

may, however, turn out to be ineligible to the office of President. If this were to happen, a stalemate would occur.

Thus, until Congress and the Supreme Court clarify fuzzy election rules determining the voting behavior of electors and the voting procedures in Congress, election stalemates may have a chance to occur in presidential elections, no matter how remote or even implausible they may currently seem.

The author understands that the reasoning presented in Chapter 3 may not be in line with the opinions of constitutional scholars on matters associated with the text of the Twelfth Amendment, considered there, and may even irritate the scholars. However, one should bear in mind that this reasoning is presented in the framework of the analysis of logically possible interpretations of the amendment's text, no matter how strange or even egregious these interpretations may seem. It is important to stress that only Supreme Court decisions on these interpretations or new constitutional amendments addressing the corresponding matters, rather than the opinions of even respected and prominent constitutional scholars can clarify fuzzy election rules embedded in the amendment. The fact that these rules have never before been exposed and analyzed from the angle proposed by the author does not mean that they are not fuzzy. Rather, it reflects the customary practice of considering presidential election problems only when some weird or extreme election outcomes are looming or happening (as in the 2000 presidential election of recent memory). In any case, the availability of this reasoning to all interested voters makes one hope that they, the voters, may request to clarify these fuzzy rules before the application of these rules becomes inevitable in the course of a particular presidential election.

Chapter 4
Inconvenient Facts About the Electoral College

Abstract The Electoral College has its internal logic and mathematics that are not easy to understand in depth. Constitutionally, a person voted for as President in the Electoral College and received any majority of votes from all the appointed electors (as a result of counting these electoral votes in Congress in the January that follows the election year) becomes President. (This is, however, the case provided this person meets all the constitutional eligibility requirements of the office of President.) However, since the 1824 election, votes cast in all the states that appoint their electors by holding popular elections have been tallied. This tally of votes cast (nowadays) in 50 states and in D.C. for electors of presidential candidates does not have any constitutional status. Yet it is customarily considered as the popular vote that presidential candidates receive nationwide. This chapter analyzes the conceptions of (a) the popular vote, (b) the voting power of a voter (c) the voting power of a state, and (d) the will of the nation in a presidential election, along with their customary understanding by a sizable part of the American people. The chapter presents percentages of the popular vote that could have elected President one of the candidates in the elections held from 1948 to 2004.

Keywords *A priori* voting power of a voter · *A priori* voting power of a state · Apportionment of seats in the House of Representatives · Minimum fraction of the popular vote to elect a President · Popular vote · Will of the nation

The Electoral College has its internal logic and mathematics that are not easy to understand in depth. Constitutionally, a person voted for as President in the Electoral College and received any majority of votes from all the appointed electors becomes President. (This is, however, the case provided no electoral votes are rejected by Congress as a result of counting all the electoral votes cast, and the person meets all the constitutional eligibility requirements of the office of President.) However, since the 1824 election, votes cast in all the states that appoint their electors by holding popular elections have been tallied. This tally of votes cast (nowadays) in 50 states and in D.C. for electors of presidential candidates does not

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have any constitutional status. Yet it is customarily considered as the popular vote that presidential candidates receive nationwide.

This chapter analyzes the conceptions of (a) the popular vote, (b) the voting power of a voter (c) the voting power of a state, and (d) the will of the nation in a presidential election, along with their customary understanding by a sizable part of the American people. Percentages of the popular vote that could have elected President one of the candidates who participated in the elections held from 1948 to 2004 are presented, and some egregious election outcomes that the Electoral College-based election system may eventually produce are described.

4.1 The Popular Vote as Americans Understand It

In all American elections, except for presidential ones, a person with the most votes wins the election. The tally of votes cast by all the participating voters in an election is customarily called the popular vote. Americans are used to determining the election winner by popular vote.

In presidential elections, voters do not cast their votes for President and for Vice President. Only if the state legislature of a state decides that state presidential electors should be chosen by holding a statewide popular election, will state voters cast their ballots even for state electors. Currently, all the states choose their electors in this manner, by holding statewide elections in which state voters cast their ballots for slates of state electors. Voters in the states of Maine and Nebraska also cast their ballots for slates of electors in congressional districts—in two districts in the state of Maine and in three districts in the state of Nebraska. The slate in each congressional district in either state consists of one elector. The District of Columbia holds a district-wide election in which D.C. voters vote for slates of electors, each consisting of three electors (see Chap. 2 for more details).

The whole notion of the nationwide popular vote does not, generally, make sense, since the tally of all the votes cast for electors from different states and D.C. is not the national tally of votes cast for President and for Vice President. Yet since the 1824 election, this national tally has unofficially been conducted in every presidential election, and its results have been attributed to presidential candidates.

When state voters in a state could favor electors from the slates of state electors submitted by different candidates, attributing the votes cast to a particular candidate could present substantial difficulties. This was the case in several elections, and the 1960 election was one of the most controversial, since the application of two different schemes of attributing the votes cast led to different outcomes [6].

When a state voter in each state can favor only the whole slate of electors and cannot favor electors from different slates, technically, all the votes cast can be considered as those favoring the candidates submitting the slates. Nowadays, the "winner-take-all" method for choosing state electors is applied by all the states and D.C., as well as by all the congressional districts of Maine and Nebraska, so all the votes cast in a presidential election are those cast for slates of electors only.

Therefore, technically, one can call the tally of votes cast for all the slates of state and D.C. electors the national popular vote for President.

The nationwide popular vote in presidential elections does not have any constitutional status. Yet its count creates the wrong impression in many voters that they vote for President and for Vice President. It is this wrong impression that causes many people to believe that the election winner is the candidate who won the popular vote. The current election system determines the winner by determining whose slate of electors won in every state and D.C. separately. It uses the popular vote results in every state only to determine the winning slate of electors there. The slates of electors that won in all the states and in D.C. form the Electoral College that is to elect a President and a Vice President.

To explain why the popular vote winner may not win in the Electoral College, consider the 11 largest states in the country—California, Texas, New York, Florida, Pennsylvania, Illinois, Ohio, Georgia, Michigan, North Carolina, and New Jersey—which currently control 270 electoral votes combined. This number of electoral votes coincides with the number of members of Congress that these states have in the election year in which these states can appoint 270 electors combined. (The census conducted every ten years determines the apportionment of the number of state Representatives in Congress for the next decade, and each state has two Senators [19].) If the electors of a candidate win in each of these states, the candidate wins the election in the Electoral College, provided her/his state electors in each state vote faithfully, i.e., in line with statewide election results there, determining the winning slate, and no electoral votes are rejected by Congress in the January that follows the election year.

Currently, a majority of all eligible voters reside in these 11 states [22]. Therefore, in any direct popular election in which all eligible voters in the country vote, and all the voters from the 11 states favor candidate A, candidate A wins. However, the number of voting voters in the 11 states does not affect this election outcome as long as the electors of candidate A receive a plurality of votes in each of these states. This is the case since the 11 states control (currently) 270 electoral votes combined independently of how many eligible voters from these states decide to vote in an election. (As mentioned earlier, a) this number of electoral votes coincides with the number of members of Congress that these states have in the election year in which these states can appoint 270 electors combined, and b) the census conducted every ten years determines the apportionment of the number of state Representatives in Congress for the next decade [19].)

Thus, once the apportionment determines that the 11 states will have 248 state Representatives combined plus 22 U.S. Senators (two in each state), these states will be in control of the Electoral College. Therefore, if a candidate manages to win in each of these states, no matter how many voters may decide to vote, this candidate wins in the Electoral College. The number of voting voters in each of the 11 states can be small or even negligibly small. If this is the case, the percentage of votes needed to win the election in the Electoral College can also be small or even negligibly small (independently of the voter turnout in the other states and in D.C.), provided the popular vote results always determine the election winner in each of the states and in D.C..

The minimum percent of the popular vote that can secure the victory in the Electoral College, however, equals zero. Indeed, constitutionally, the state legislatures in each of the 11 largest states may decide to appoint electors themselves in a particular election, without holding a popular election. Let us assume that (a) the rest of the country chooses electors by holding statewide popular elections, and (b) all the electors appointed in the 11 states favor one and the same person. Then this person may win in the Electoral College with no votes received by her/his electors (if her/his electors do not receive votes in any other state and in D.C.).

4.2 Which Election System Requires More Popular Votes to Win

Though the percentage of the popular vote that can elect a President in the Electoral College can be negligibly small (and theoretically, can even be equal to zero), one may wonder how small or large this percentage can be in real elections. The comparison of this percentage with the one needed to win a direct popular election can help judge which election system better reflects the popular will.

As far as the author is aware, Professor George Polya, a prominent American mathematician, was the first to consider this issue. In 1961, he published an article in which he described how this percentage can be calculated approximately, under (a) a set of assumptions on relations between the votes cast and the electoral votes received by particular candidates, and (b) the structure of the Electoral College that existed in the 1960 election [41]. He proposed an elegant arithmetic approach to solving the problem and showed that 22.08 % of voting voters could have elected a President in the 1960 election. His approach is so simple that any high school student familiar with arithmetic can understand how to calculate this percentage (under the assumptions made).

In 1990, Professor Arnold Barnett of MIT proposed a different approach to approximately calculating this percentage. Barnett's approach does not use some of the assumptions under which Polya developed his approach [42]. Also, the application of Barnett's approach allows one to receive more exact values of the percentages than the approach proposed by Polya, and Barnett calculated these percentages for the elections held from 1972 to 1988.

In 2007, the author published an article in which he proposed an exact method for calculating the minimum percentage of the popular vote that can elect a President in the Electoral College [43] and calculated the percentages for elections held from 1948 to 2004. The above percentages were calculated based upon the available actual data on votes cast in all the states since the 1948 election and in D.C. since the 1964 election [31] under the following assumptions:

(a) all the votes were cast for (the electors of) two major party candidates only,
(b) the electors of only one major party candidate won in the state of Maine, and the electors of only one major party candidate won in the state of Nebraska, and
(c) the winning slate of electors in each state and in D.C. would represent the state in the Electoral College, and all the state electors voted faithfully.

The results of the calculations are presented in the following table: [1, 43]:

Election year	Contenders	The number of the electoral votes in play in the election	The minimum majority of the electoral votes in play in the election	The fraction of the popular vote that could have elected a President (%)
1948	Truman–Dewey	531	266	16.072
1952	Eisenhower–Stevenson	531	266	17.547
1956	Eisenhower–Stevenson	531	266	17.455
1960	Kennedy–Nixon	537	269	17.544
1964	Johnson–Goldwater	538	270	18.875
1968	Nixon–Humphrey	538	270	19.970
1972	Nixon–McGovern	538	270	20.101
1976	Carter–Ford	538	270	21.202
1980	Reagan–Carter	538	270	21.348
1984	Reagan–Mondale	538	270	21.530
1988	Bush–Dukakis	538	270	21.506
1992	Clinton–Bush	538	270	21.944
1996	Clinton–Dole	538	270	22.103
2000	Bush–Gore	538	270	21.107
2004	Bush–Kerry	538	270	21.666

Assumption (b) held for all the elections from 1948 to 2004. The 2008 election turned out to be the first in which one of the states split its electoral votes between two major party candidates. (The electors of Barack Obama won one electoral vote in one of the three congressional districts in Nebraska.)

Though assumption (a) did not hold in the above elections, the percentage of votes cast for (the electors of) presidential candidates other than those from the major parties was negligibly small, except for the 1992 and 1996 elections. In each of the two elections, (the electors of) R. Perot received substantial numbers of votes. Partcularly, they received almost 19 % of all the votes cast in the 1992 election [31]. In a three-candidate race in the 1992 and in the 1996 elections, only a plurality rather than a majority of all the votes cast in a state or in D.C. was needed to win all the electoral votes there. Therefore, the actual minimum percentage of the popular vote that could have elected a President in the Electoral College could only decrease.

The difference in the assumptions about the election rules in the calculations of the above percentage according to the approximate method by Polya and according to the exact method by the author caused a significant difference between the results for the 1960 election. In addition to assumptions (a)-(c), in his calculations Polya assumed that [41]

(d) the number of the votes cast in a state is proportional to the number of Representatives the state has in the House of Representatives, and

(e) the number of Representatives in the House of Representatives was 437 rather than 435.

Also, in the 1960 election, the District of Columbia did not have presidential electors. All these assumptions are significant.

The difference between the calculation results presented by Barnett for the 1972–1988 elections [42] and those by the author for the same election years [43] is negligibly small though Barnett and the author used different sources for the data [1, 43]. This insignificant difference between the results is understandable and is quite common for approximate and exact methods. The analysis of Barnett's method and an example when the application of his method and the author's method lead to different results are presented in the author's book [1].

As mentioned earlier, one of the above assumptions ((a)) did not hold in the1992 and 1996 elections, whereas the percentages presented in the above table for these two years reflect the case in which all the voting voters cast their votes for the electors of only two rather than three presidential candidates (that they certainly could do). If voting voters divided their votes equally among three rather than between two candidates in the race, the percentage under consideration could have only been smaller. Yet the comparison of the numbers reflected in the above table implies that all the three above assumptions ((a)-(c)) held in all the elections from 1948 to 2004. (In direct popular elections, 50 % of the votes cast plus one vote can elect a President.)

Based on the calculation results presented in the table, one can conclude that under the current election system, the nation as a whole does not have a say in electing a President, since the will of less than one-fourth of voting voters can prevail over the will of more than three-fourths of them. However, this is not the fault of the Electoral College, which has never been designed to reflect the popular will in the elections.

Many political scientists, reporters, and observers consider the distribution of the national popular support of the candidates in the course of the election campaign as an indicator of their potential victory in the election. However, one can easily be certain that, for instance, a "dead heat" at any stage of the election campaign does not mean that the election in the Electoral College will be close.

Indeed, for the sake of simplicity, let us consider an election in which voting voters favor only two major party candidates, and let the candidates run statistically even in the popular vote. Then under the current election rules, one of them may win any number of electoral votes from zero to 538.

To be certain about a possibility of this outcome to occur, let all the states, D.C., two congressional districts in the sates of Maine, and three congressional districts in the state of Nebraska use the "winner-take-all" method for appointing electors. Further, let (the electors of) candidate A win in each congressional district of the states of Maine and Nebraska and in each of the other 48 states with a one vote margin. Then the total margin of votes for (the electors of) candidate A in all the places except for D.C. will be 53 votes. Also, let (the electors of) candidate B win in D.C. with a 53 vote margin. Then candidate A will win 535 electoral votes, and

candidate B will win 3 electoral votes, while (the electors of) both candidates receive exactly the same number of votes.

Should (the electors of) candidate B lose to (the electors of) candidate A in D.C. with a one vote margin, the total margin of (the electors of) candidate A will be 54 votes, and candidate A will win all the 538 electoral votes. Since, nowadays, more than 100,000,000 voters vote in presidential elections, this 54-vote margin is negligibly small. Thus, the percentage of votes received by (all the electors of) candidates A and B in the election can be viewed as being the same.

4.3 The Voting Power of a Voter and the Voting Power of a State

When the Founding Fathers designed the system for electing a President, they were concerned with the equality that the states would have in electing a President. This equality was not provided in the Electoral College, but was provided in the mechanisms for electing a President and a Vice President in Congress (see Chap. 2). Under the Electoral College rules adopted by the 1787 Constitutional Convention participants, the equality of voting voters throughout the country could not matter, since voting voters could participate only in electing state presidential electors. Therefore, only the equality of votes within a state could matter, and this would be within the state jurisdiction only.

Nowadays, since the popular vote results concern many Americans, the equality of votes cast in a presidential election has become a widespread topic actively discussed in society at election time. Participants in these discussions argue that the current election system does not provide such an equality and, therefore, is unfair. Some of the discussants assert that voters from small states have more power, since they have a smaller number of voting voters per electoral vote than do the large states. Two "senatorial" electoral votes, which each state has, do contribute to this phenomenon as does the structure of the House of Representatives, which gives at least one Representative and, consequently, one electoral vote to each state, independently of the size of its population. However, the number of voting voters per electoral vote can hardly be considered as a measure of the equality of the votes cast that the current system provides.

Indeed, the current presidential election system provides the equality of votes in statewide elections of presidential electors, as the Constitution requires. But one cannot require this system to provide the equality of all the votes cast in the country for presidential electors, since (a) these votes are cast for different groups of people (slates of electors) in different states and in D.C., and (b) the tally of the votes cast for presidential electors in different states and in D.C. does not have any constitutional status (see Sect. 4.1). However, one can measure the degree of equality of all the votes cast that the current system would provide under certain hypothetical assumptions and wonder what would be the best index to measure the above equality.

It turns out that the Banzhaf and Shapley-Shubik power indices can say something about the so-*called a priori* voting power of a state and D.C. in the Electoral College and the *a priori* voting power of a voter in a state or in D.C. [44–46]. These indices allow one to evaluate the ability of a state and of a voter, respectively, to affect the election outcome (under certain simplifying, hypothetical assumptions on how the Electoral College works). For a state and D.C., this is the ability to change the election outcome in the Electoral College. For a voter in a state or in D.C., this is her/his ability to change the state (or D.C.) election outcome by casting a decisive vote there. The *a priori* Banzhaf power indices have received more attention in studying two-party elections, a particular case of U.S. presidential elections [44], and it is these indices that will briefly be discussed in this section.

With respect to a two-party U.S. presidential election, the *a priori* Banzhaf power index of a state or D.C. is construed as the probability with which the state or D.C. can change the election outcome in the Electoral College if (a) all the electors representing the state or D.C. in the Electoral College vote collectively, as a group, (b) the group decision of a state (or D.C.) to favor a particular pair of presidential and vice-presidential candidates does not depend on the choice of its voters expressed in a statewide (D.C.-wide) election held to choose state (D.C.) electors, and (c) groups of the states and D.C. favoring either ticket form with one and the same probability.

Calculating the *a priori* Banzhaf power index of any voter H from a state in a two-party presidential election requires calculating the value of the state power of voter H to change the election outcome in the state. If the number of voting voters is odd, voter H is decisive if half of the state voting voters, except for voter H, support either candidate, and the other half support the other candidate. If the number of voting voters is even, voter H is decisive if her/his vote balances a one vote margin that either candidate receives from all voting voters except for voter H. Thus, in a state, the vote of voter H is decisive if it either breaks a tie formed by the other voting voters or if it creates a tie. The *a priori* Banzhaf power index of a voter from a state or D.C. under the Electoral College election rules, is the product of two probabilities—her/his state power value and the state's Banzaf power index [44]. Calculations of this index presented in [44] show the dependence of the value of this index on the number of residents in a state and the number of the electoral votes that this state has in the Electoral College. Under all the (unrealistic) assumptions underlying the calculations of this index, the larger the number of residents in a state, the larger the power of a voter in the state to affect the outcome in a two-party U.S. presidential election.

The value of the Banzaf power index depends on the method for awarding state electoral votes, and interesting results of calculating this value under different methods, including the National Bonus Plan (see Chap. 7), are presented in [44].

Yet the results of all the calculations of the voting power of a voter even in a two-party election may be interesting only from the curiosity viewpoint. Due to the assumptions under which these calculations are conduced, their results are not applicable for analyzing real elections [44, 46]. Moreover, the unequal voting powers of the states in the Electoral College are determined by the Constitution and represent part of the 1787 Great Compromise. The same is true for the voting

powers of voters in different states due to the different numbers of eligible voters there. So blaming the Electoral College for not providing the equality of the voting power for all the voters is illogical. One cannot blame an election mechanism that was not created to provide an equal power for all voting voters for not providing this equality. This would be like blaming a train for not flying [1].

Some of the above restrictions under which the power indices of the states and of the voters in different states are calculated can be lifted. Moreover, statistical regularities such as voting patterns in different groups of voters in different states and correlations among the voting behavior of particular groups of voters can be taken into consideration [47]. However, the remaining assumptions are still quite unrealistic though they are less restrictive than those underlying the calculation of the *a priori* voting power. Also, in all statistical evaluations of the voting power of a state and that of a voter under different methods for awarding state electoral votes, the available data reflect the voting behavior of voters under the rules of the current election system. There is no reason to believe that voting patterns and correlations under these different methods for awarding state electoral votes will be the same or close to those statistically detected under the "winner-take-all" method. Both the idealistic (coin-flip) model of the voting behavior of a voter in a hypothetical (two-party) election in calculating the *a priori* voting power and the models reflecting the above statistical regularities present mostly cognitive interest. These models have so far been used mainly by the Electoral College opponents in their attempts to topple the current election system on the basis that this system does not serve the purpose for which it has not been designed.

4.4 How Many States Secure the Victory?

Since 1964, to win a presidential election, a presidential candidate needs to receive at least 270 electoral votes in the Electoral College (assuming that all the electors are appointed) as a result of counting the electoral votes in Congress in the January that follows the election year. Currently, the 11 largest states control this number of electoral votes, these states constitute only 21.57 % of all the states and D. C. in the Union, and these 11 states favored one and the same candidate only in a few U.S. presidential elections [31].

For each presidential election, one can easily find the minimum number of states in which the election winner could have focused her/his election campaign to win. For instance, W. Clinton could have focused his election campaign in 16 large- and medium-size states in both the 1992 and the 1996 elections to win in the Electoral College. Indeed, California, New York, Pennsylvania, Illinois, Ohio, Michigan, New Jersey, Massachusetts, Missouri, Washington, Minnesota, Maryland, West Virginia, Tennessee, Connecticut, and Arkansas controlled 270 electoral votes combined, and he carried all of them in both elections. These states represent only 31.37 % of all the states and D.C. in the Union. Thus, the current election system

could have ignored the will of 34 states and D.C. in both elections, making their participation in both elections irrelevant [1, 22].

The number of states that can control at least 270 electoral votes combined depends on the distribution of the population throughout the country, which is updated every ten years based on the results of the mandatory census. The population distribution at the time of the census determines the number of Representatives that each state will have in the next decade and, consequently, the number of presidential electors. This rule may lead to egregious situations in which a few large states or even one large state may control 270 electoral votes.

According to the 2000 census, the entire population of the country was 281,500,000 people, and the concentration of 173,500,000 people in one state at a certain period of time surrounding the census time could have put this state in control of 270 electoral votes [1, 18] in both the 2004 and the 2008 elections. The state of California occupies a territory of 158,693 square miles, and, for instance, Japan occupies a territory of 143,629 square miles. In 2010, the population of Japan was about 128,000,000 people, so the concentration of 173,500,000 people in California at the time of the 2000 census looks possible (at least for a period of time surrounding the census time). Certainly, migration of the population to California and to the three large states, Texas, New York, and Florida, may eventually put these four states in control of 270 electoral votes combined and may make the participation of the other states and D.C. irrelevant in deciding the outcome in several presidential elections.

4.5 What Should Be Considered the Will of the Nation?

If one assumes that the election results should reflect the will of the nation, there is only one constitutional option to define it. That is, the will of the states expressed either via the Electoral College or via Congress in the House of Representatives and in the Senate. Another "candidate" for this definition is the tally of votes cast for all presidential electors (though this tally does not have any constitutional status).

Which of the two can better reflect the will of the nation?

If the votes cast for presidential electors were cast for President and Vice President, and the person with the most votes was elected President, the second definition would be appropriate. However, this would mean that (a) a President and a Vice President are elected under the rules of a direct popular election, and (b) a candidate who receives only a plurality of votes can be elected President.

In multi-candidate elections, which are quite possible in the country under any form of direct popular elections [32], a plurality of votes that wins the Presidency may be small.

Would the country accept a President who received the support of, say, only 30 % of all the voting voters, especially if this support came from densely populated metropolitan areas? Currently, this does not look to be the case.

Under the current election system, the winning candidate may not be the choice of a majority of the states. Currently, winning pluralities of votes in the 11 largest states, or in 15–20 large and medium-size states by the electors of a candidate can be sufficient to elect this candidate President (in the Electoral College) (see Sect. 4.3).

The only situation in which a President is always elected by a majority of the states is in an election in which the House of Representatives elects a President. However, electing a President in the House of Representatives takes place only as a result of a failure of the states to elect a President based upon the preferences of state voting voters. If this is the case, states are to elect a President as equal members of the Union. While the result of this type of election does reflect the will of the states, it may not represent and may even distort the preferences of voting voters.

Thus, in the framework of the current system, it may be hard to determine what should be considered the will of the nation if one wants to harmonize the preferences of the voting voters and those of the states. Chapter 7 considers a new election system that may allow one to reach a harmony between the two.

Chapter 5
The Electoral College and Campaign Strategies

Abstract Under the current presidential election system, a set of 51 concurrent elections—in each of the 50 states and in D.C—constitute a presidential election. Campaigning throughout the country requires every presidential candidate to spend financial resources as effectively as possible. Each candidate has limited time to demonstrate to the voters that she/he is the best fit to be President, and the amount of time remaining before Election Day decreases with every passing day. This chapter focuses on how the Electoral College affects campaign strategies of presidential candidates, and how this election mechanism helps evaluate strategic and tactical abilities of the candidates. The chapter provides verbal formulations of problems to be solved by the teams of presidential candidates in planning election campaigns. It demonstrates the analogy of these problems to pattern problems solved in transportation systems. This analogy allows one to use well-developed software for solving both mathematical programming and discrete optimization problems in planning and analyzing election campaigns. The chapter discusses two extreme election strategies aimed at throwing the election into Congress in an attempt of a presidential candidate to win the Presidency there, by bypassing the Electoral College.

Keywords Allocating financial and time resources · Bin-packing · Campaign strategies · Combinatorial problems · Extreme election strategies · Feasibility test · Knapsack problem · Misleading campaigns · Probabilistic estimates · Routing · Schedules of visits to the states · Strategic and tactical abilities of a presidential candidate

Under the current presidential election system, a set of 51 concurrent elections—in each of the 50 states and in D.C—constitute a presidential election. Campaigning throughout the country requires every candidate to spend financial resources as effectively as possible. Each candidate has limited time to demonstrate to the voters that she/he is the best fit to be President, and the amount of time remaining before Election Day decreases with every passing day.

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The country usually judges how effective the campaign of a particular presidential candidate is based upon the nationwide polls that are conducted by reputable polling organizations. Even if correctly conducted and processed, generally, these polls cannot project the victory of a particular presidential candidate in the Electoral College [1].

Nevertheless, they allow one to conclude whether the candidate is gaining or losing voter support, which says something about how successfully or unsuccessfully her/his campaign is being run. This, in turn, allows one to draw certain conclusions on the ability of the candidate to select people for the team and to lead, which reflects the candidate's strategic abilities.

Certainly, each presidential candidate who has a chance to win in the Electoral College has a campaign strategy that is not revealed and should not be revealed to the public. Yet every interested voter has a chance to decide which states are key for a particular presidential candidate and to follow campaign developments there on a day-by-day basis proceeding from all the available information communicated by the media and by the Internet. The analysis of this information, as well as that of the messages delivered by both the candidate and her/his competitors in the race, can give the voter additional information on the strategic abilities of the candidate.

This chapter focuses on how the Electoral College affects the campaign strategies of presidential candidates, and how this election mechanism helps evaluate the strategic and tactical abilities of the candidates. Also, it provides verbal formulations of problems to be solved by the teams of presidential candidates in planning election campaigns and demonstrates the analogy of these problems to pattern ones solved in transportation systems. This analogy allows one to use well-developed software for solving mathematical programming and discrete optimization problems [1] in planning and analyzing election campaigns. The chapter briefly discusses two extreme election strategies aimed at throwing the election into Congress in an attempt by a presidential candidate to win the Presidency there, by bypassing the Electoral College.

5.1 The Electoral College and the Logic of Winning the Presidency

Since the states appoint their presidential electors based upon election results there, rather than on any national tally, a presidential election is a set of statewide elections in 50 states and a district-wide election in D.C., which are run concurrently. Constitutionally, in summing up the results of these concurrent elections, the Electoral College can act as an independent body. However, since the adoption of the "winner-take-all" method for appointing state electors by a majority of the states, most of the time, it has acted as a "rubber-stamp" body. It mirrors the state

popular vote results, i.e., the numbers of electoral votes won by the candidates in the statewide elections and in a district-wide election in D.C.

Under the current election rules, all the competing presidential candidates with a chance of winning the election in the Electoral College try to allocate their financial and time resources to win as many electoral votes as they can. Thus, each candidate should be concerned with two problems: (a) how to estimate her/his chances to win the election in the Electoral College, and (b) how to allocate available financial and time resources to win the election there (if these chances are real).

Solving the first problem involves certain probabilistic and combinatorial calculations, since estimating the chances of any event to occur means calculating the probability of this event to occur. Solving the second problem implies finding available variants of winning a majority of all the electoral votes that are in play in the election (currently, 270 if all the states and D.C. appoint all the electors that they are entitled to appoint), and choosing some variants from among the available ones is a combinatorial problem.

Contemporary mathematics offers powerful tools for solving both problems, and a brief description of the ideas underlying these tools and their potential for solving both problems are the subject of the discussion to follow.

One can divide all the 50 states and D.C. into three sets of places awarding electoral votes, and the team of a presidential candidate should make a division of the places both for the candidate and for all of her/his competitors in the race who have real chances to win the Presidency in the Electoral College. The first set, A1, is formed by the places in each of which the candidate can be sure to win all the electoral votes. The second set, A2, is formed by the places in each of which the candidate has no chance of winning the electoral votes, and her/his competitors consider the places from this set to belong to their sets A1. The third set, A3, is formed by the places in each of which the candidate can eventually win by competing with the opponents; these places are often called "toss-up" ones [1, 48].

Certainly, such a division of 50 states and D.C. into the above three sets of places should be considered by the team of each particular candidate. This division depends on both the candidate's team and the current status of the race. In the course of the election campaign, places from one of the three sets at one stage of the campaign can be reassigned to one of the other two sets at the next stage. However, whatever the current division, the candidate's team needs to find the best allocation of money and time available to the candidate at any stage of the campaign through the end of the race.

Let us assume that 538 electoral votes are in play in a presidential election. It is natural to assume that if the set A1 for a particular presidential candidate consists of the places that govern N1 electoral votes combined, this number does not exceed 269. If the set A2 consists of the places that govern N2 electoral votes combined, this number also does not exceed 269. Let the set A3 consist of the places that control N3 electoral votes combined. Then N3 should be such that at least one of the participating candidates would be able to win as many electoral votes in the places from the set A3 as she/he needs to win at least 270 electoral votes combined.

How should the candidate's team allocate the available resources of both kinds (i.e., money and time)? Allocating the resources in places from the set A3 should concern the team the most, while sufficient attention should be paid to places from the set A1 to preserve their loyalty on Election Day. Also, the team may decide that campaigning in some places from the set A2 may make sense for the candidate if this may affect the campaign of her/his major opponent in the race who may consider these places to belong to her/his set A1. Such a move of the candidate may force the opponent to spend more resources in these places than the opponent would have spent otherwise and weaken her/his chances to win in places from the set A3 in which the candidate needs to win electoral votes.

Example 5.1 [1, 48]. Let the set A1 for a presidential candidate in the 2016 election consist of the following 18 places:

1) California (55)	7) New Jersey (14)	13) D.C. (3)
2) New York (29)	8) Massachusetts (11)	14) Alabama (9)
3) Florida (29)	9) Tennessee (11)	15) Connecticut (7)
4) Vermont (3)	10) Hawaii (4)	16) Delaware (3)
5) Rhode Island (4)	11) New Hampshire (4)	17) West Virginia (5)
6) Alaska (3)	12) Maryland (10)	18) Arkansas (6)

Let the candidate's team believe that the candidate cannot win electoral votes in the following places forming the set A2:

19) Texas (38)	25) Michigan (16)	31) Indiana (11)
20) Pennsylvania (20)	26) North Carolina (15)	32) Wisconsin (10)
21) Illinois (20)	27) Georgia (16)	33) Missouri (10)
22) Ohio (18)	28) Virginia (13)	34) Washington (12)
23)Maine (4)	29) Nebraska (5)	35) Kansas (6)
24) Oregon (7)	30) Utah (6)	36) New Mexico (5)

Then the set A3 for the candidate consists of the following places:

37) Arizona (11)	42) South Carolina (9)	47) Idaho (4)
38) Minnesota (10)	43) Oklahoma (7)	48) Montana (3)
39) Colorado (9)	44) Iowa (6)	49) Wyoming (3)
40) Louisiana (8)	45) Mississippi (6)	50) North Dakota (3)
41) Kentucky (8)	46) Nevada (6)	51) South Dakota (3)

For the sake of certainty, the places from the sets A1, A2, and A3 are listed along with the numbers of the electoral votes that these places control in the 2016 election. To win the election, the candidate needs to win at least 60 electoral votes from the set A3.

The Electoral College rules and the tradition of presidential election campaigns dictate some general principles of allocating both financial and time resources that the teams of the candidates should bear in mind. While most of the candidate's attention should go to the places from the set A3, each candidate's team should spend a certain amount of money to continuously air advertising messages both in the set A1 and nationwide. These messages should target particular categories of eligible voters such as women, youth, retirees, middle class voters, etc. Most of the remaining money should be spent in places from the set A3, which are "toss-up" ("battleground") ones. For each place from the set A3 the candidate's team should estimate how much money and time is sufficient to spend to win the electoral votes there.

When the candidate campaigns in some places from the set A2 in an attempt to force her/his major opponent in the race to divert parts of the opponent's resources from spending in places from the set A3, she/he runs a tactically misleading campaign. However, tactically misleading campaigns may or may not be effective. Moreover, the opponent may apply the same tactic against the candidate, by intensively campaigning in places from the candidate's set A1. Therefore, the candidate's team should decide how much money and time to spend in places from the set A2 while holding on to her/his chances in the places forming the set A1.

No matter whether the candidate's team uses expert estimates or calculates the amount of each of the two resources to be spent campaigning in each place, the campaign develops in a competitive environment. This means that all the estimates can be considered true only with certain probabilities, which depend on such factors as, for instance, the economic situation in the country, the international political climate, and the campaign strategies of the candidate's major opponents. These probabilities are estimated using probability theory. Elementary concepts and facts of this theory, along with examples illustrative of using these concepts and facts in the context of U.S. presidential elections, are presented in the author's books [1, 48].

How can the candidate's team calculate the estimates of how much money is needed to win at least a plurality of votes for the candidate's electors in a state or in D.C.?

There are similarities between advertising goods and services that a company tries to sell to targeted customers and advertising programs, promises, and personal qualities of the candidate that her/his team tries to "sell" to the voters in the course of an election campaign [1, 49]. In fact, the candidate's team should plan an advertising campaign aimed at "selling the features" that the candidate possesses in an attempt to convince eligible voters to support the candidate by favoring her/his electors in their respective places. These similarities allow the candidate's team to use well-developed approaches to planning advertising campaigns of goods and services. Mathematical methods implementing these approaches, particularly, those presented in [50, 51], allow the candidate's team to estimate the amounts of money needed to win in each particular place from the sets A1 and A3.

To plan the campaign, the team needs these estimates (calculated or obtained from the experts) and those of the available amount of money that the candidate's

team can afford to spend for campaigning in places from the set A3. Proceeding from this data, the team can find a combination of the places (or a set of combinations of the places) where the candidate should focus her/his campaign. Here, at every particular time in the course of the election campaign, the available amount of money to spend in places from the set A3 is the difference between the amount that the candidate has raised and the amounts that will be spent (a) for nationwide advertisements, (b) for campaigning in places from the set A1, and, (c), possibly, for campaigning in some places from the set A2 (if conducting a tactically misleading campaign is part of the candidate's campaign strategy).

The candidate's team is interested in finding so-called "victorious" combinations of places from the set A3 [1, 48]. These places are those where the candidate should campaign in hope to win the Presidency in the Electoral College. (To this end, currently, at least 270 electoral votes are to be won in the chosen places from the set A3 and in the places from the set A1 in which the candidate is "guaranteed" to win.) Any "victorious" combination of the places from the set A3 in which the candidate can win is associated with an amount of money to be spent there. Certainly, the candidate's team should be interested in finding "victorious" combinations of the places requiring the minimum financial expenditures for successfully campaigning there while securing an acceptable reliability level of the results expected from campaignning in thus chosen places. Once such a particular "victorious" combination of the places (i.e., a combination of the places requiring the minimum financial expenditures) has been selected, the candidate's team should find the best routes of visiting the places from the sets A1, A3, and, possibly A2. Well-developed methods for solving routing problems can be used to this end [52]. It is clear that to remain competitive at all the stages of the campaign, the candidate's team may need to do all these calculations many times as the election campaign develops.

5.2 Allocating Financial and Time Resources

Let the minimum amount of money to win at least 270 electoral votes combined be calculated at a particular stage of the election campaign. Then the candidate's team should compare the amount of money that is available to the team at this stage and this calculated minimum amount. If the available amount is smaller than the minimum one, additional money should be raised. This may require the candidate to make additional visits to some "donors," in particular, to those from the states comprising the set A1. Also, in calculating the routes of visits to places from the sets A1 and A3, one should take into account certain obligations that the candidate may have by the time of the calculations. All this, along with the reliability reasons, requires raising more money than the minimum amount needed for campaigning in the chosen "victorious" combination of places from the set A3. Usually, the money that is needed for campaigning is considered a more precious resource than the time remaining before Election Day.

To illustrate how the problem of finding a "victorious" combination of places may look in the simplest case, let us consider an example from [1] (though with the data corresponding to the 2016 election).

Example 5.2 [1]. Let A1, A2, and A3 be the same sets of states as those from Example 5.1 for a presidential candidate in a campaign.

Let the candidate have $100 million left for campaigning, and let 90 days remain before Election Day. Further, let the candidate need to spend $49 million and 60 days in places from the set A1 (a) to preserve the loyalty of the candidate's supporters there on Election Day, and (b) for conducting nationwide campaign activities and airing nationwide advertisements. This means that the candidate can afford to spend $51 million for campaigning in states from the set A3, and that only 30 days are left before Election Day for campaigning there.

Finally, let the candidate need to spend the following amounts of money and time for campaigning in each of the states from the set A3 to win the electoral votes there:

37) Arizona	11 electoral votes	8 million	5 days
38) Minnesota	10 electoral votes	7 million	5 days
39) Colorado	9 electoral votes	8 million	5 days
40) Louisiana	8 electoral votes	6 million	5 days
41) Kentucky	8 electoral votes	8 million	5 days
42) South Carolina	9 electoral votes	7 million	4 days
43) Oklahoma	7 electoral votes	8 million	5 days
44) Iowa	6 electoral votes	7 million	4 days
45) Mississippi	6 electoral votes	7 million	3 days
46) Nevada	6 electoral votes	4 million	2 days
47) Idaho	4 electoral votes	5 million	3 days
48) Montana	3 electoral votes	3 million	2 days
49) Wyoming	3 electoral votes	4 million	3 days
50) North Dakota	3 electoral votes	4 million	2 days
51) South Dakota	3 electoral votes	3 million	3 days

First, the candidate's team should find whether the available money and time resources are sufficient to let the (electors of the) candidate win at least 60 electoral votes in states from the set A3. If they are sufficient, at least one "victorious" combination of states from the set A3 can be found. The candidate can win the election by winning all the electoral votes (at least 60) in this "victorious" combination of the states, along with 210 electoral votes in the states from the set A1. Second, if there are more than one "victorious" combination, the candidate's team can choose the one that best meets some other requirements that the candidate may need to meet. If the available amounts of both money and time resources do not let the candidate win at least 60 electoral votes combined, the candidate's team should find whether there is enough money available to win at least 60 electoral votes in

states from the set A3 (no matter whether the time limitations hold). If there is, the candidate's team may try to "compress" the schedule of the candidate's visits to the states in the remaining part of the campaign.

Finally, if the available amount of money is not sufficient for winning at least 60 electoral votes in places from the set A3, the candidate's team should determine potential "donors." These "donors" can be from the set of states A1, where the funds needed for campaigning in states from the set A3 can be raised. The team should recalculate the schedule of visits of the candidate for the remaining part of the campaign. Once the amount of money needed to campaign in states from the "victorious" combination of states from the sets A1 and A3 has been raised, the team should recalculate the allocation of all the available resources.

Proceeding from the data for the 15 states forming the set A3, one can be certain that, for instance, a combination of the following 7 states is "victorious" for the candidate, since these states govern 60 electoral votes combined. Moreover, the available amount of money ($51 million) allows the candidate to campaign and succeed in winning at least 60 electoral votes in states from the set A3. However, the number of days required for successfully campaigning in these particular 7 states equals 31, exceeding the available number of days (30 days) by one day.

37) Arizona	11 electoral votes	8 million	5 days
38) Minnesota	10 electoral votes	7 million	5 days
39) Colorado	9 electoral votes	8 million	5 days
40) Louisiana	8 electoral votes	6 million	5 days
42) South Carolina	9 electoral votes	7 million	4 days
43) Oklahoma	7 electoral votes	8 million	5 days
46) Nevada	6 electoral votes	4 million	2 days

The time required for campaigning in each place includes that for (a) transportation to and from the place, (b) accommodation in the place, and (c) rest. The required amount of time much depends on the candidate's physical ability to withstand a "compressed" schedule at a particular stage of the campaign. In the illustrative example, the candidate's team can suggest several options to "compress" the candidate's schedule of visits to the states from the "victorious" combination of the states from the set A3.

In general, time is usually considered a more flexible parameter of the campaign than the money needed for successfully campaigning (see Sect. 5.1). Such an approach leads to solving mathematical problems that are simpler than those in which both money and time are treated as equally important parameters.

The author's publications [1, 48, 49] consider mathematical formulations of problems associated with planning campaigns of presidential candidates. These problems include (a) those of verifying whether the available amount of money is sufficient for successfully campaigning in places from the sets A1 and A3, and

(b) those of finding an additional minimal amount of money to be raised if need be. These problems cover the case of treating money and time as equally important resources, as well as the case with the money being a less flexible and the time being a more flexible resource. References to software available for solving these problems in both cases can be found in [1, 49].

Mathematical models proposed in [1, 48, 49] enable the candidate's team to find an optimal allocation of both resources for campaigning in places from the set A3 only if the available amount of money is sufficient for successfully campaigning there (i.e. for winning at least 60 electoral votes in the case considered in Example 5.2). This money is to be spent for campaigning in each of the places from any "victorious" combination of places from the set A3. If the available amount is not sufficient, the models help determine the minimal additional amount of money to raise. Also, these models can help the team determine the allocation of the increased amount of money among "victorious" combinations of places from the set A3.

The teams of all the candidates with a chance of winning in the Electoral College are likely to calculate an optimal allocation of both resources at different stages of the campaign. Indeed, the set A3 may change several times in the course of the campaign, and this set of places should control enough electoral votes combined to let the candidate win in the Electoral College by winning in places from the sets A1 and A3. Therefore, tools for effectively allocating both resources are needed.

It turns out that the problem of allocating financial resources is completely analogous to a well-known discrete optimization problem [52]. Consider a person who is going to spend at least 270 days on an island and wants to eat homemade food. This food is available in 51 packs, and different packs contain different food. The food in each pack is sufficient to feed the person for a particular number of days. This number is different for different packs and falls within the range of 3–55 days.

Each pack has the weight and the volume known to the traveler who plans to put the packs in a knapsack. The knapsack can accommodate a set of packs provided the total volume of them does not exceed the volume capacity of the knapsack. The traveler can carry a weight that does not exceed her/his physical ability.

The analogy between the candidate's problem and that of the traveler becomes obvious if one notices that [1, 48]

(a) the knapsack volume can be viewed as an analog to the amount of time available for campaigning until Election Day, which must not be exceeded;
(b) the traveler's physical ability to carry a weight can be viewed as an analog to the amount of money that is available to the candidate until Election Day, which also must not be exceeded;
(c) each pack with a particular food from among 51 packs can be viewed as an analog to a place awarding electoral votes (state or D.C.);
(d) the weight of each pack can be viewed as an analog to the amount of money that the candidate should spend for campaigning in the corresponding place to help her/his electors win;

(e) the volume of each pack can be viewed as an analog to the amount of time that the candidate should spend for campaigning in the corresponding place,
(f) the number of days that the food from a pack allows the traveler to eat normally can be viewed as an analog to the number of the electoral votes that the corresponding place governs, and
(g) the at least 270-day duration of the journey can be viewed as an analog to the number of the electoral votes that the candidate expects to win in the election.

In deciding whether to undertake the trip, the traveler tries to estimate (a) which packs to put in the knapsack to eat normally for at least 270 days, and (b) how much the loaded knapsack will weigh. In deciding how to run the election campaign, the candidate's team tries to find which states should support the candidate to secure her/his victory. This means that her/his team should decide which states form the sets A1 and A3, and in which states from the sets A1, A3, and, possibly, A2 to run the campaign. (The traveler can certainly consider that some mandatory packs are to be put in the knapsack—and these packs are analogous to places forming the set A1—and to choose places from the sets A3 and A2 only.) Thus, both the traveler and the presidential candidate's team face the same mathematical problem: how to find the best composition of items of known volumes and weights (for the traveler) and that of known money expenditures and time (for the candidate) to put in a knapsack of a known volume and a known weight (expenditures and time for the candidate) for the maximum effect.

Mathematically, this problem is a particular case of a bin-packing problem—a two-dimensional Boolean knapsack problem with an additional constraint [1]. Bin-packing problems are well studied in applied mathematics, and various mathematical methods are known for their solution [53].

5.3 Optimizing the Candidate's Schedule

Let a subset of places from the set A3 and a subset of places from the set A1 be chosen by the candidate's team for campaigning and fundraising at a particular stage of the election campaign. Then the team should choose a sequence of visits to these places that the candidate should follow. That is, a set of routes connecting the chosen places, each to be visited a certain number of times, should be developed. Each visit may include different activities, and usually includes a set of meetings at town halls, at universities, schools, etc. to attend and a set of appearances on TV and radio stations to make in several cities within a place (state or D.C.). All kinds of transportation means— airplanes, trains, buses, river boats, etc.— can be used by the candidates to travel each route, and schedules of the candidate's competitors who may decide to visit the same place at the same time should be taken into consideration.

As before, an analogy between the problem that the candidate's team faces in developing an optimal set of routes and the problem that, say, a truck driver faces in

choosing an optimal scheme for delivering beer to a set of recipients located in a set of places is obvious. It is this analogy that allows the candidate's team to use a theory of routing [52] to build an optimal schedule of visiting those places from the set A3 that, together with places from the set A1, form the chosen "victorious" combination of the places to campaign, as well as to do fundraising.

There are several routing problems that have been studied by mathematicians, called pattern routing problems, for which solution algorithms and software have been developed [52]. In one of these problems, called the traveling salesman problem, a transportation means (a truck) starts its route at a particular place (called the base), makes visits to several customers to deliver them commodities (bear), and returns to the base. Proceeding from the cargo-carrying capacity that the truck has and from the geography of the customer locations, one should find an optimal sequence of visits. That is, one needs to find an optimal route of the truck, taking into account the distances or the time needed to travel between each pair of the customer locations and between each customer location and the base. The optimality is understood in the sense of the total time that the truck needs to travel to visit every customer [52].

One can view the cargo-carrying capacity of the above transportation means (truck) as the amount of time that the candidate has left before Election Day to visit the places from the sets A1 and A3 to campaign and to raise money there. The places can be viewed as the customers to visit, the base can be viewed as the headquarters of the candidate's campaign, and the time to travel between the base and each place, as well as the time to travel between each pair of the places to visit, and, possibly, to spend in particular places, is known. This makes the routing problem for the candidate's team to solve completely identical to that to be solved by the truck driver (travelling salesman) for the truck (transportation means).

As a matter of practice, during one visit, the candidate will never visit all the places that she/he needs to visit from any "victorious" combination of places from the sets A1 and A3 (calculated at any stage of the election campaign). The candidate is likely to visit several places and then to return to the headquarters, to spend some time there, and only then to continue visiting the remaining places. Also, the candidate must not necessarily return to the headquarters after every tour, and the candidate may have more than one headquarters or may have several places in which the tours may both start and end.

The travelling salesman problem can serve as an example of a routing problem that the candidate's team may need to solve at some stages of the election campaign. There are other problems that the team may consider that have the same kind of analogy with the problems that are solved for a transportation means. For instance, if the team would like to partition a set of all the places to visit into several closed tours, i.e., to partition all the places from the sets A1 and A3 to be visited into a few subsets, another well-known routing problem can be used to find the optimal partitioning.

The "p-travelling salesmen problem" allows one to find this optimal partitioning into p subsets of the set of the places from A1 and A3 in such a manner that (a) each subset of the places is to be visited by the candidate on a separate tour, (b) each

place from the sets A1 and A3 is visited only once and only within one of the tours, and (c) the candidate visits all the places and returns to the headquarters after each tour [52].

If the candidate's team decides that the candidate should have several headquarters or several places from which he can start several tours, the so-called "p travelling salesmen problem with p bases" can be used for developing the candidate's set of the tours. Here, the routes should not necessarily be closed, and the candidate may start the next route at the place where the previous route ended. The interested reader may find many other examples of the pattern routing problems in the author's book [52].

Though the verbal formulations of the pattern routing problems may look quite simple, these problems form a class of mathematical problems that are the most difficult to solve from the computational viewpoint [52, 53]. Also, the pattern routing problems may not fit all the needs of the candidate's team in calculating the set of her/his routes at any or at a particular stage of the election campaign. Thus, the candidate's team may need to formulate more complicated problems, tailored to meet more requirements of the tours of the candidate than the pattern routing problems can meet in principle.

Whatever the formulations of the routing problems to be solved, there is standard software, as well as some experimental one, that can be used. This software can be used either directly or become a part of a decision-support system that the candidate's team may need to calculate and recalculate the routes many times in the course of the election campaign. The ability to be adaptive and flexible in adding particular requirements of the candidate's team via a friendly interface is one of the important features of such a decision-support system. Having this system at the candidate team's disposal can make a difference in choosing the best strategies to win. Digitalized geographical data relating to the location of the places from the sets A1 and A3 to be visited by the candidate is now widely available on the Internet, as well as from commercial sources.

5.4 Applying Mathematics to Win

How should the planning of the election campaign of a candidate be organized? If the candidate plans to win the election via the Electoral College, the campaign should include the following:

1. *Strategic planning*. Members of the candidate's team responsible for strategic planning of the campaign, along with the experts, should determine which of the 50 states and D.C. should be assigned to the sets A1, A2, and A3. Then they should determine the set of topics to be addressed by the candidate in the course of visiting these places, a set of advertising messages to be spread both there and nationwide, and the schedule of the appearance of all these messages. Further, they should provide the estimates of time and money needed to campaign in the

places from the sets A1 and A3, including the expenses associated with the advertising, to have a chance of winning the electoral votes there. After that, the amount of money and time for campaigning nationwide should be estimated.

To this end, mathematical problems similar to those in planning advertising campaigns of goods and services, formulated in [50, 51], should be solved.

2. *The feasibility test*. The candidate's team should determine whether the available amount of money is sufficient to successfully campaign in the places from the sets A1 and A3 that control at least 270 electoral votes combined. That is, the team should determine whether there is a chance of winning all the electoral votes there. To this end, problems of the bin-packing kind, mentioned in Sect. 5.2, should be formulated and solved. (In reality, the problems to be solved for running the feasibility test are more complicated than the problems verbally formulated in Sect. 5.2.)

If the money is sufficient, a "victorious" combination of the places from the set A3 should be chosen from solutions to these problems. If it is not, the candidate's team should (a) calculate the minimum amount of money that needs to be raised to have a chance to win the Presidency in the Electoral College, and (b) indentify "places-donors" to visit to raise money, along with the estimates of the time needed to visit them. Then the team should solve the same problems of the bin-packing kind proceeding from the amount of money enlarged by the amount expected to be raised (which is to be not smaller than the calculated minimum amount).

The interested reader can find the mathematical formulations of all the problems that are to be solved to run the feasibility test in [1, 48, 49].

3. *Developing the sequence of visits to the places*. Once the time and money have been allocated among the places from the sets A1 and A3, a sequence of visits to these places, as well as to the "places-donors" should be developed.

To this end, routing problems, reflecting the peculiarities of the visit to each place to be visited, should be formulated and solved. The reader interested in seeing mathematical formulations of the routing problems that may cover the needs of a particular presidential candidate, as well as the description of ideas underlying methods for solving these problems, can find both in [52].

4. *Structuring campaigns in the places from the set A3*. A number of visits to a particular place from the set A3 depends on how effectively the candidate competes there. The structure of allocating the money available for campaigning in a state or in D.C. determines the strategy of the election campaign there. The allocation of the money should be done among all the activities that the candidate plans to conduct in the place.

Examples of mathematical problems to be solved to find, for instance, the best allocation of available financial resources among media markets, printed advertising messages, and any other possible forms of advertisements and campaign activities can be found in [1, 48, 49].

5. *Updating campaign strategies.* All the candidates run their campaigns in a competitive environment. This means that whatever move a particular candidate makes, this move produces countermoves from her/his opponents. These countermoves may necessitate substantial updates or even major changes in the campaign strategy of the candidate. For instance, if one of the candidate's major opponents increases campaigning activities in a state from the set A3, this may force the candidate to spend more money and time for campaigning in this state. If this is the case, this change may trigger the recalculation of the remaining part of the candidate's campaign, including that of the amounts of both the time and money resources needed and the current sequence of visits to the places.

To decide whether to make changes in the candidate's campaign to neutralize any impact that the countermoves of the candidate's opponents may have, the candidate needs a decision-support system. Any decision on making changes should be adopted based upon certain criteria that the candidate's team should have. The system should allow the team to verify whether the changes are needed as many times as the situation may require. The core of the system should consist of mathematical tools to solve the above-mentioned problems. Some of these tools in the form of mathematical models formalizing the problems are described in the author's books [1] and [48]. Methods for solving problems formulated with the use of these models are widely available and are implemented within commercial and open-source software packages [48, 49].

Developing a special decision-support system or appropriately customizing any already developed systems will help the candidate's team calculate competitive campaign strategies. This will give the candidate an advantage over any of her/his competitors who do not use such systems.

As usual, the mathematical analysis of the management strategies and moves of the competitors are likely to secure a competitive edge for those who use this tool. However, as in advertising any goods or services, in advertising the qualities of the candidate, the subject of the advertisement matters. In elections, the ability to deliver the message to the voters and to convince them that the candidate's program is better and her/his character is stronger than those of her/his opponents matters a great deal. If this important ingredient of the candidate's campaign is present, the use of mathematics can turn even a small advantage into a landslide victory. Otherwise, though the use of applied mathematics may help improve the election result a lot, it may not be sufficient to win.

Another problem that the candidate may face is her/his team's opposition to using any sophisticated tools, especially if the advice the tools give contradicts the intuition of her/his team members with respect to their understanding of the voters' mood. If this is the case, there is the chance that the campaign may be in danger. If in the end, the candidate relies on the advice of her/his close friends only, she/he may lose strategically to an opponent who uses mathematics in making decisions. Any unexpected advice that mathematics may give should alert both the candidate and her/his team rather than being ignored or rejected. Indeed, it may signal something invisible to or unexpected by the campaign strategists.

Applied mathematicians should learn from campaign managers about strategic principles that the candidate adheres to. In turn, campaign managers should ask applied mathematicians to help detect covert strategic moves of the candidate's opponents using mathematical tools. Only such a cooperation may help the team avoid irreversible losing situations in the campaign.

5.5 Gaming the Electoral College

When the Founding Fathers created the Electoral College, they (apparently) did not expect this election mechanism to always determine the next President (see Sect. 1.3). Therefore, they authorized the House of Representatives to make the ultimate decision on the election outcome should the Electoral College fail to elect a President. But this design of the election system created a legitimate way to bypass the Electoral College and to attempt to win the Presidency directly in the House of Representatives.

In fact, the Founding Fathers created two election mechanisms for winning the Presidency—the basic one (in the Electoral College) and the reserve one (in the House of Representatives). However, there is nothing in the Constitution that would prohibit a particular presidential candidate to use the reserve mechanism without using the basic one first.

This situation is similar to the one in which a parachutist who jumps from a plane and has two parachutes—a basic one and a reserve one—may decide to use the reserve one without trying the basic one if (for whatever reasons) she/he doubts that the basic parachute is reliable.

Thus, the natural course of a presidential election that society expects is that all the candidates compete to win the Presidency via the Electoral College. However, one should not rule out that an extreme strategy of throwing the election into Congress may become a strategy for a particular candidate. Moreover, this extreme strategy may be competitive and even the only winning one for this candidate if (a) she/he does not have a chance to win the Presidency in the Electoral College, (b) the party that the candidate represents is expected to control at least 26 delegations in the House of Representatives, and (c) the candidate and her/his party can secure the quorum (of at least two-thirds of 50 state delegations) to start electing a President in the House of Representatives.

To throw the election of a President into the House of Representatives, the interested candidate should (at least) manage to be among the electoral vote-getters with the top three highest numbers of electoral votes received to eventually have a chance to be considered by the House of Representatives in electing President there. Here, she/he may not win electoral votes at all, since a presidential elector may favor her/him for any reason, including a political agreement between the candidate and her/his competitor (whom this elector is expected to favor in the Electoral College). Yet this may be possible only if two fuzzy presidential election rules are interpreted as follows [1, 48]:

Rule 1 A presidential elector as a free agent can favor whomever she/he wants, despite any obligation to favor a pair of particular presidential and vice-presidential candidates and despite any restrictions that some (currently 29) states and D.C. impose on presidential electors. Thus, an electoral vote that has been won by a pair of presidential and vice-presidential candidates, say from party A, may be received by another pair of presidential and vice-presidential candidates or by either person from this pair. These pairs of the candidates (or persons) may be different from those who head the slate of electors to which the above elector belongs.

Rule 2 Congress can always decide how many persons who are recipients of the electoral votes as President should be considered by the House of Representatives in electing a President there. Indeed, the phrase from the Twelfth Amendment "… not exceeding three on the list of those voted for as President …" [19] does not make it clear how many persons from among at least three electoral vote recipients are to be considered in electing a President there, and how to select them.

Thus, besides the option to merge the electoral votes won by several candidates to receive a majority of all the electoral votes in the Electoral College (currently, at least 270), Rule 1 may put a candidate among the top three electoral vote-getters. Therefore, there are three constitutionally allowable election strategies that a candidate may exercise to win the Presidency:

(a) to win a majority of all the electoral votes that are in play in the election,
(b) to merge the electoral votes won by different candidates to accumulate a majority of the electoral votes and to receive this majority in the Electoral College, and
(c) to throw an election of a President into Congress, to manage to become one of the top three electoral vote-getters, and to secure both support from a majority of the state delegations in the House of Representatives and a quorum to start the election procedure there.

While election strategies (b) and (c) are certainly extreme, neither is constitutionally prohibited. Moreover, either may be competitive and even winning in a particular election. Which of these three strategies to exercise depends on which strategy gives the candidate a better chance to win the Presidency. The reader interested in learning how the chances of winning the Presidency in the House of Representatives can be evaluated, is referred to the author's publications [48, 49].

In exercising extreme election strategy (c), the interested candidate should manage not to let any candidate win the election in the Electoral College. It turns out that the "winner-take-all" method for awarding state electoral votes can be exploited to this end. Indeed, the "winner-take-all" method can help "balance" the number of electoral votes that potential Electoral College winners may win in every closely contested state.

If the electors of candidate A are likely to win in a state, the interested candidate may "sponsor" the campaign of the candidate A's major opponent or opponents by arranging debates on some election issues in this state either with the participation of candidate A or even without her/him. The debates should convince a part of

candidate A's supporters and independents to support the electors of a candidate A's opponent and not to let candidate A win electoral votes in the state.

The "winner-take-all" method can be exploited the same way by an interested candidate who tries to win the election in the Electoral College by arranging debates in a state from her/his set A2 with the opponents of the race favorite there or with the state's favorite herself/himself. This move may lower the threshold of a plurality of votes needed to win the electoral votes in the state and may let the interested candidate eliminate the chances of the electors of the state's favorite to win electoral votes there. Certainly, such an activity requires the interested candidate to spend money and time in the states in which it will be conducted and to make promises that may interest supporters of the opponents of the state's favorite.

Also, in exercising strategy (c), interested candidate B may need to convince other candidates who have won electoral votes to trade them for her/his promises and to instruct their electors to favor candidate B in the Electoral College [1, 4]. Precedents of elections in which the electors of one presidential candidate favored another presidential candidate are well known, and it was widely expected that such a trade of electoral votes would take place in the 1968 election [4].

5.6 Misleading the Opponents

Conducting a misleading campaign is a powerful tactical weapon that a presidential candidate may deploy, especially in close elections. Under the current election system, a misleading campaign is a set of activities aimed at convincing the major opponent (opponents) (a) to allocate more resources to some of the states from her/his (their) set (sets) A1, and (b) to reallocate her/his (their) resources to the states in which the electors of the opponent (opponents) cannot win by creating in her/him (them) the impression that they can [54]. With respect to part (b) of these activities, the most "reliable" way to create this impression is to affect the polls in the "battleground" states that reflect the state's support for each competing candidate, including that from particular voter groups there [48].

Let us assume that one can artificially affect the poll results in favor of the candidate's closest opponent in a particular state that this opponent considers to be from the set A3 (for this opponent), whereas (at least from the candidate's viewpoint) this opponent does not have a real chance to win there. Then the opponent may decide to switch her/his attention and resources to this state and thus may weaken her/his positions in at least one of the other "battleground" states, helping the candidate win there. Technically, such an effect can be "achieved" by using pollsters who (for a certain period of time) may conduct polls on the samples of state voters that disproportionally include people favoring the candidate's opponent. Conducting these misleading polls and announcing their results may be coupled with announcing the intent of the candidate to switch her/his campaign to other "battleground" states and explaining such a move by (allegedly) decreasing her/his chances to win electoral votes in the state.

If the candidate's opponent does not recognize the misleading nature of the candidate's move, she/he may make a fatal mistake by switching more of the remaining resources to the state to which she/he would have never switched them, otherwise. By doing so, the opponent is likely to take these resources from other "battleground" states, and if this is done close to Election Day, the consequences of such a decision may be irreversible [48, 54].

While this strategy is certainly extreme and (if exercised intentionally) can be considered a form of manipulation of public opinion, the candidate may exercise a different though a similar one corresponding to the above set of activities (b). That is, the candidate may announce the intent to win in a state from the set that the candidate's opponent considers to be from her/his set A1, i.e., in a state loyal to the opponent. This strategy may enforce similar changes in the opponent's plans for the remainder of the election campaign.

The power of creating a wrong impression in the opponent's mind was demonstrated in the course of the 2000 and the 2004 election campaigns in which strategic mistakes made by the teams of the candidates who ran poll-driven campaigns caused these candidates defeat in both elections.

Conducting misleading campaigns in a state or in a set of states may backfire. Reporters, political observers, and TV and radio talk show hosts may eventually be deceived by the candidate's move, which may negatively affect the candidate's real chances in this state or in these states. Also, making misleading moves requires extremely thorough calculations and the use of sophisticated mathematical methods for all the probabilistic estimations.

Chapter 6
The National Popular Vote Plan: A Brilliant Idea or a Dead-on-Arrival Delusion?

Abstract Should the country replace the Electoral College-based presidential election system with a direct popular election of a President? In the United States, many people believe it should though numerous attempts to do it *de jure*, by amending the Constitution, have failed. This chapter attempts to describe the National Popular Vote plan aimed at introducing a direct popular election of a President *de facto*, without amending the Constitution. This chapter presents the arguments that suggest that the plan may violate the Supreme Court decisions relating to the manner in which the plan proposes to award electoral votes in state-signatories to the plan. That is, this manner may violate the Equal Protection Clause from the Fourteenth Amendment. This chapter provides numerical examples suggesting that the claims of the NPV plan originators that the plan would encourage the candidates to chase every vote throughout the country are no more than wishful thinking. The reasoning presented in the chapter may help the reader decide whether the plan is an "ingenious" idea, or a dead-on-arrival, unconstitutional proposal.

Keywords Appointing non-voted electors · Equal Protection Clause · Impairment Clause · National Popular Vote plan · National contest · "One person, one vote" principle · Recount · Weighted voting games

Should the country replace the Electoral College-based presidential election system with a direct popular election of a President?

In the United States, many people believe it should. Numerous attempts to do away with the current Electoral College-based election system by replacing it with a direct popular presidential election *de jure*, by amending the Constitution, have been undertaken over the years. However, all these attempts, including those from 1968 to 1970 and, especially, those of 1969, the closest to success, have failed.

In the aftermath of the 2000 election, Professor Robert Bennett proposed a new approach to changing the existing election system. He proposed that interested states could use one of the key provisions of the Constitution that gives the state legislatures the plenary power to appoint state presidential electors in any manner

A.S. Belenky, *Who Will Be the Next President?*,
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they want [55]. A similar approach was proposed by Professors Akhil Amar and Vikram Amar [56] at around the same time. Later, Dr. John Koza proposed yet another approach to introducing a direct popular presidential election *de facto*, without amending the Constitution. His approach is, in fact, a slight modification of the two above-mentioned approaches, and it has been formulated as a plan called the National Popular Vote (NPV) plan [5]. This new plan gave birth to the movement called the National Popular Vote, in progress since 2006.

The National Popular Vote plan is a phenomenon deserving special attention. No other plan for changing the current election system has ever drawn so much attention from the media and received ardent support from a part of it. The idea of the plan, its constitutionality, and its deficiencies, along with the reasons this plan has become a national movement, are the subject of this chapter.

This chapter attempts to describe the National Popular Vote plan and presents the arguments that suggest that the plan may violate the Supreme Court decisions relating to the manner in which the plan proposes to award electoral votes of state-signatories to the plan. That is, this manner may violate the Equal Protection Clause from the Fourteenth Amendment. This chapter provides numerical examples suggesting that the claims of the NPV plan originators that the plan would force the candidates to chase every vote throughout the country are no more than wishful thinking. The reasoning presented in the chapter may help the reader decide whether the plan is an "ingenious" idea, or a dead-on-arrival, unconstitutional proposal.

6.1 The National Popular Vote Plan: What It Is, and Who Supports It

The idea of the NPV plan is to build a coalition (or a compact) of the states and D.C. controlling at least 270 electoral votes combined that would agree to award their electoral votes collectively. According to the plan, a pair of presidential and vice-presidential candidates whose slates of state and D.C. electors receive the most votes nationwide would be awarded all the electoral votes controlled by the coalition, i.e., at least 270 electoral votes. Under the plan, a majority of all the electoral votes that are in play in the election is to be awarded to the pair of the candidates preferred by the coalition

(a) despite the will of voters in the state-subscribers to the plan, and
(b) with no attention to the states that do not subscribe to the plan and favor a pair of the candidates different from the pair preferred by the coalition.

Thus, the NPV plan would determine the winning pair of presidential and vice-presidential candidates based on the tally of votes received by all the electors nationwide rather than on the state-by-state tally of state and D.C. electoral votes. Under the NPV plan, currently, any 11–20 states and D.C. that control at least 270 electoral votes combined may make the choice of all the other states irrelevant in

choosing a President, no matter whether these other states subscribe to the NPV plan or not.

Moreover, the coalition may eventually make irrelevant the choice of all the 50 states and D.C. Indeed, let D.C. and a group of states that together with D.C. form a compact controlling at least 270 electoral votes combined subscribe to the NPV plan. (As is known, D.C. has already become a signatory to the NPV plan.) Also, let presidential candidate A lose to one of the other, say, two participating candidates in each and every state and in D.C., but let the slates of candidate A's electors receive a plurality of all the votes cast. Then, according to the NPV election rules, candidate A is elected President (in the Electoral College).

When one argues that as part of the NPV compact, the 11 largest states may make irrelevant the will of the voters in the rest of the country, proponents of the NPV plan often object that this may happen under the current rules. While the objection is formally correct, there is a substantial difference between the NPV election rules and those of the current system. Under the current rules, the 11 largest states may decide the outcome only if a candidate wins in all of them. In contrast, the 11 states as a part of the compact may let a candidate lose in all the states and in D.C. and still be elected President.

Though many states would lose their voice under the NPV plan, state legislatures of several states support this plan anyway. According to the NPV movement website, the plan is either pending or at least has been introduced in all the 50 states, and ten states—Maryland, Illinois, Hawaii, Rhode Island, New York, Massachusetts, Vermont, California, Washington, and New Jersey—and D.C. have already signed it into law.

One may only wonder why this plan has become so popular among the state legislators who would not support a constitutional amendment to replace the current election system with direct popular presidential elections.

Several reasons seem to explain this phenomenon.

1. The chances of the introduction of any direct popular presidential election in the country *de jure* seem to be slim. All the 27 of the adopted amendments were initiated by two-thirds of both chambers of Congress. (The initiation of an amendment by a national convention called by Congress at the request of two-thirds of the legislators of all the states, has never been used.) Except for Amendment 21, ratified by conventions in three-fourths of all the states, all the amendments were ratified by the legislatures of three-fourths of all the states [19]. Thus, the implementation of both parts of the process of amending the Constitution is difficult and unpredictable.

   In contrast, the promises of the NPV originators and backers look like a simple solution to a long existing problem. Moreover, legislators in many states look at the NPV "together" with numerous NPV lobbyists, who actively promote this impression. Today, the National Popular Vote movement, which promotes the NPV plan, is well organized and has lobbyists "working" with every state legislature in the country.

2. The NPV plan enjoys a strong support from many influential media members, who can easily publish essays in support of the NPV plan in the most popular national newspapers. The NPV movement has managed to convince prominent Americans to serve as national spokesmen for the plan. Due to their popularity and connections in society, these people are welcome on almost any national TV programs, where they promote the NPV plan without any serious opposition.
   In contrast, the same newspapers that welcome essays supporting the NPV plan are quite reluctant to publish articles containing any serious analysis of the plan. Certainly, there is no chance to address the weak points of the plan and its constitutionality on the same national TV programs that easily give air time to the NPV promoters.

3. The NPV originators and promoters have managed to keep many Americans very much taken with the claim that the NPV plan can make every vote equal without eliminating the Electoral College and without amending the Constitution. Though the plan first surfaced in 2006, there has never been a national debate about the NPV, so many of those who take the above claim as a true statement remain unaware of the NPV origins, deficiencies, and real features. The same people who blindly support the NPV plan are unaware of the peculiarities and features of the current election system either, as well as of any other alternatives to it. Thus, the seeds of "wishful thinking" planted by the NPV originators and backers fall on fertile soil. This promotional strategy, enhanced by the support of a part of the media, seems to have succeeded, which helps the NPV originators claim an overwhelming enthusiasm for their plan in every state in the country.
   The NPV movement conducts its own polls, and both the questions asked in the polls and the manner in which the polls are conducted and processed are under control of the movement. One of the questions asked, which can be found on the NPV web site, is: "How do you think we should elect the President: Should it be the candidate who gets the most votes in all 50 states, or the current electoral college system?"
   The NPV movement claims that an overwhelming majority of respondents to the polls choose the first option, which well may be true. However, this does not mean that the same respondents would answer the question the same way if the first answer were, for instance, "The candidate who gets the most votes in 50 states, even if the candidate receives only a 15–20 % plurality and loses to her/his opponents in each of the 50 states and in the District of Columbia."
   Such an outcome is possible under the NPV election rules, since under these rules multi-candidate races are likely to emerge [32]. Even if only three candidates participate in the race, as mentioned earlier in this chapter, the NPV election rules may make the election winner a candidate who has the support of as little as 34 % of voting voters and who loses to the opponents in each of the 50 states and in D.C.
   Ross Perot managed to garner support of almost 19 % of voting voters in the 1992 election, even despite the fact that he suspended his campaign for several

weeks in the course of the race. His result bears evidence that the NPV election rules may produce such an outcome in an election with three or more strong candidates in the race.

4. Many Americans are very much concerned with any inequality that may transpire in society in any form, and they welcome positive changes in the country. The NPV originators and proponents quite skillfully exploit both phenomena, by depicting their plan as a simple and doable solution to a long existing problem and by claiming that this solution will benefit every voter in the country.

They have even managed to "equate" the problems of the current election system with those of the "winner-take-all" method for awarding state electoral votes though the whole idea of the NPV plan cannot survive without this method or any similar one, prohibiting a state voter from favoring electors from slates of electors of different presidential candidates competing for state electoral votes. However, the "winner-take-all" method is no more than a particular though widespread method for awarding state electoral votes. It has never been mandatory for any state, and it is not part of the Constitution. The state legislature of any state can switch to any other method for awarding state electoral votes, for instance, to the Maine-like district method (see Sect. 2.4) or to any other method allowing state voters to favor electors from different slates of electors at any time. Such a move does not require any approval of Congress or passing a constitutional amendment to this end.

The listed reasons look like the major ones to explain why the NPV originators and proponents seem to have convinced many Americans that if adopted, the NPV plan would address and solve basic problems of the existing election system.

6.2 The Equality of Votes Under the NPV Plan: What Is Real, and What Is Plausible

The NPV promoters have successfully manipulated the concept of voter equality and even try to exploit the Supreme Court decisions in which the Court discusses the equality of votes of voting voters.

In the Court decisions that involve the equality of votes, the Supreme Court stated several times that (a) constitutionally, the equality of weights of votes is mandatory only within a state, and (b) this equality is not applicable to electing presidential electors. The inequality of weights of votes cast in different states in electing a President is part of the 1787 Great Compromise. The Founding Fathers agreed to this inequality to balance an unequal representation of the states in the House of Representatives in electing a President there.

The state legislators who believe that it is either time or an opportunity to change this balance do not seem to understand what their states really gain, and what they lose by subscribing to the NPV plan in the name of equality of votes (which are cast not for President or Vice President, but only for their electors).

Since the NPV plan keeps the Electoral College, one can speak only about the equality of votes cast in different states and in D.C. for different slates of electors to represent the state and D.C. in the Electoral College. Only as long as each state and D.C. prohibit their voters from favoring electors from slates of electors of different presidential candidates competing there, can one consider votes cast for the slates of electors as those cast for presidential and vice-presidential candidates. Though every state may abandon this restriction, only assuming that no state does, can one speak about a direct popular election under the NPV election rules.

Assuming that this is the case, one should admit that under any direct popular election rules, including the NPV ones, every voting voter controls an equal "chunk" in the election result. For instance, if 200,000,000 voters voted in a presidential election, each voter would control the choice of 1/200,000,000 part of the next Presidency [1]. Would this mean that voting voters in any particular state are likely to benefit from such an "equality?" It depends on how strong the national contest is.

Indeed, let 60 % of likely voters in the country *a priori* favor ticket A. If this is the case, the other 40 % of likely voters will have no chance to affect the election outcome. As a result, the candidates do not need to care about this 40 % minority votes and may decide not to address any issues that concern these voters. Despite the equal weight that every voting voter has throughout the country, the will of these 40 % of the voters will not matter in the election. This may be the case even if these voters represent the will of overwhelming majorities in each of as many as, say, three-fourths of all the states and could have decided the election outcome under the current election rules. Moreover, if these preferences of the voters remain unchanged during a set of sequential presidential elections, an overwhelming majority of the states may not be able to change the election outcome for many years.

In contrast, under the existing presidential election system, these 40 % of voters may even decide the election outcome.

Indeed, let 130 million votes be cast for tickets A, B, and C in an election. Let ticket A win in the states of California, New York, Texas, Florida, Pennsylvania, Ohio, Georgia, Missouri, Washington, Alabama, Connecticut, Arkansas, Delaware, and Wyoming. Further, let ticket A receive 60 million votes combined in these fourteen states, which currently control 249 electoral votes combined. Finally, let ticket A receive 18 million votes in D.C. and in the other 36 states combined.

Let ticket B win in D.C. and in each of the above 36 states by having received 30 million votes total, and let this ticket receive 9 million votes in the above 14 states total. Finally, let ticket C receive 5 million votes in the above 14 states and 8 million votes in D.C. and in the above 36 states total.

Since D.C. and the above 36 states control 289 electoral votes combined, ticket B wins the election having won in all these 37 jurisdictions and having won 30 % of all the votes cast in the election. Ticket A loses the election with 60 % of all the votes cast and having won only in 14 states, including all the four largest states.

Thus, this 40 % of all the votes cast may decide the election outcome by winning in an overwhelming majority of the states and in D.C., even with these votes split between tickets B and C. (One can easily assign particular numbers of votes from

the above-indicated totals to favor each of the three tickets in each of the 50 states and in D.C. that would secure the victory to ticket B in D.C. and in each of the above 36 states.)

In the absence of a strong national contest, any direct popular election represents the "winner-take-all" principle on the national scale, no matter whether a majority or a plurality rule is to determine the election winner. The whole country becomes "safe" for ticket A in just the same way some states become "safe" under the current election rules. If this is the case, the "equality" of votes throughout the country can be understood only in the sense of the inability of both an individual voter from a 60 % majority and an individual voter from the 40 % minority to affect the election outcome.

Certainly, neither the NPV originators and proponents nor their lobbyists communicate this simple reasoning to state legislatures and to the American people. Nor do they communicate to them how different the value of votes would be under the NPV election rules. In particular, they do not communicate how different this value would be for the small states in the Electoral College in a direct popular election, regardless of the equality of weights of all the votes.

Consider the 2008 election in which only 6,112,148 votes were cast in Alaska, Delaware, Hawaii, Maine, Montana, New Hampshire, Nevada, North Dakota, Rhode Island, South Dakota, Vermont, Wyoming and D.C. combined. The votes cast in these thirteen members of the Union with three and four electoral votes each constituted about 4.6 % of the total of 131,463,122 votes cast. A majority of voting voters in these thirteen members of the Union combined favored Barack Obama, who won the election with a margin of 9,549,105 votes [31].

How would the election outcome have changed under the NPV election rules if all the voters in the above twelve states and D.C. had favored John McCain or anyone else? It would not have changed. Thus, had the distribution of the votes cast in the other 38 states been the same as it was in the 2008 election, the votes cast in D.C. and in the twelve states would not have affected the election outcome, i.e., would have been irrelevant in the 2008 election. This would have been true both under the NPV election rules and under any direct popular elections, despite the fact that all the votes would have had the same weight, i.e., would have been equal [1].

This illustrative example casts doubts that the desired equality of votes, which the NPV plan originators aspire to bring to presidential elections, can substantially change the treatment of the small states. Unless the national contest is very close, small states cannot count on the attention of the major party candidates in the course of election campaigns, even if these states are closely contested. It is clear that the "winner-take-all" method, the major "scapegoat" the NPV originators and promoters blame, has nothing to do with this phenomenon.

The status of the above twelve states and D.C. is remarkably different under the rules of the current election system. Indeed, these thirteen members of the Union governed 45 electoral votes in the 2008 election. Had they been closely contested in that election, they all would have been "battlegrounds" for both major party candidates, no matter how close the national contest would have been.

However, the author would like to make it clear that all this does not prove one of the underlying claims of the NPV plan wrong. Indeed, it does not prove that under the NPV rules, presidential candidates may not care about the votes in the small states as much as they will about the votes in densely populated parts of the country. The presented reasoning only provides evidence that the claim looks counterintuitive. It is incumbent on the NPV originators and proponents either to back up their claim or to agree that this claim has no grounds and represents no more than a plausible belief of its authors.

6.3 The "Achilles' Heel" of the NPV Plan

The NPV plan proponents and lobbyists may succeed in subscribing to the plan several states that control at least 270 electoral votes combined. If they do, would this mean that the objections of the other states to the plan and their refusal to join it are irrelevant?

Not necessarily, though at first glance, this looks like the case. Indeed, there is a chance that the NPV plan will be considered by the Supreme Court, and the Court may find the NPV plan unconstitutional in the first place.

Even if the plan were not found unconstitutional, some states may opt not to subscribe to this plan, and a lot depends on whether (and how) the states disagreeing with the NPV plan decide to react. There may be states that will opt not to join the NPV plan while deciding to continue to "supply" the NPV signatory states with votes cast for slates of state presidential electors. If all the other states join the plan, then the NPV election rules will govern presidential elections, and this can last as long as state-signatories to the plan continue to control at least 270 electoral votes combined. But even if this were the case, any state-signatory to the NPV plan, where this plan is a state law, may repeal this law before any election to come.

The picture would be completely different if at least one state opted to actively oppose the NPV plan by not providing its votes for the so-called "national tally," which the NPV plan would use to determine the election winner. The NPV election rules read that should this happen, only the remaining states and D.C.—that continue to vote for slates of electors according to the "winner-take-all" principle—would be eligible to participate in determining the election outcome [5].

Excluding a state that held a legitimate statewide election to award state electoral votes from the national election would create both moral and legal problems for the NPV plan.

Indeed, if this were the case, the NPV would not be able to claim that it awards a majority of all the electoral votes that are in play in the election on behalf of the nation or according to the popular vote results. The tally of votes (cast for presidential electors!) would not include votes from the states (legitimately) cast for electors from the slates of electors of different presidential candidates competing there. Excluding these votes would be un-American and would obliterate the underlying intent of the NPV plan to make every vote count.

The result of such a decision of the disagreeing state (or states) may encourage a law suit, which may be filed by the state (or states) excluded. Such a law suit would once again put the constitutionality of the NPV rules into question with a quite predictable outcome.

Certainly, if more than one state became excluded from deciding the outcome of the election, the above law suit would look even stronger. However, the most unfavorable development for the NPV plan would take place if only state-signatories to the plan supported it and voted for electors from only one slate of electors of presidential candidates competing in the state, and these states formed a minority of all the states. Indeed, if this were the case, a majority of all the votes cast could turn out to be cast outside the state-signatories, i.e., in the states that oppose the NPV plan and do not follow the above voting restriction. Then according to the NPV election rules, this majority of the votes cast would be excluded from the tally determining the fate of a majority of the electoral votes. Moreover, one cannot rule out that in this case, a person who is to be declared President under the NPV election rules and a person who would have been declared President under the Electoral College rules would be different persons.

Under this scenario, the Supreme Court would face a tough choice to determine which composition of the Electoral College is legitimate, the one formed according to the NPV election rules or the one formed according to the rules that have been in force for more than 220 years [57, 58].

The protesting states, opposing the NPV plan, do not need to sign any "anti-compact" agreement to counteract the NPV plan. However, they may collectively appeal to the Supreme Court on their exclusion from making a decision on the election outcome. All they need to do to make the case is to switch from the "winner-take-all" method for awarding state electoral votes to any other method, which does not let the state-signatories to the NPV plan count the votes cast in the opposing states in the tally determining the election outcome under the NPV plan.

Certainly, this self-defense strategy may come into play only if the Supreme Court finds the NPV plan to be constitutional.

The NPV originators apparently believe that once a "compact" of states has been formed, the states opposing this plan will have no choice other than to follow the NPV election rules. They also seem to believe that the states, especially the "safe" states, will easily surrender their current Electoral College benefits.

However, the opposing states can turn the plenary right of every state to choose a manner of appointing its presidential electors—which ironically underlies the NPV—into the "Achilles' heel" of this plan [57, 33].

The state legislatures of the opposing states may allow voters to favor individual electors of their choice from any slate of state electors. The top vote-getters would then represent the state in the Electoral College, and all the votes cast would remain legitimate, since they were cast for presidential electors, in line with the Constitution. By doing so, the legislature of each opposing state can make impossible to use the tally of votes legitimately cast in their state as a part of the NPV tally. The NPV tally, which is to determine the election winner according to the NPV election rules, will

then consist of only the votes cast in the states, where voters cast their ballots for electors from only one of the slates of presidential electors submitted by the candidates competing in the state (as the "winner-take-all" method requires).

Consider an example of such a situation, first published in [57, 33]. Let a state opposing the NPV with, say, seven electoral votes have five presidential candidates on the ballot—Democratic, Republican, Green Party, Libertarian, and Independent. Further, let each state voter be entitled to favor any seven electors of the voter's choice out of the thirty-five state electors. Finally, let the top vote-getters represent the state in the Electoral College. If a state voter chooses two electors from the Republican slate, two electors from the Green Party slate, and one elector from each of the remaining slates, the vote of this voter cannot be fairly tallied in the NPV tally of the votes cast as a vote favoring any presidential candidate.

This vote—favoring several state electors—may or may not affect the composition of the state delegation in the Electoral College. But in either case, (a) any attribution of each such vote to a particular presidential candidate would likely be contested in court, especially in close elections, and (b) the tally of votes favoring presidential electors throughout the country would no longer determine the distribution of support of voting voters for presidential candidates. This would undermine one of the underlying claims of the NPV originators that the NPV compact awards electoral votes controlled by its state-signatories in line with the national popular vote.

Thus, even if only one state opted to oppose the NPV election rules, their introduction may be challenged in court and may require a constitutional amendment. This would obliterate another underlying claim that the plan could be introduced without amending the Constitution [57, 58].

Conducting elections in the described manner in the states protesting against the NPV plan would be a legitimate form of self-defense that the states could exercise to counteract attempts to ignore their opposition to circumventing the Constitution [33, 57, 58]. So, under the Constitution, the states that oppose the NPV plan would not be defenseless against it being forced upon them. The plenary right of state legislatures to choose a manner of appointing state electors—which underlies the NPV plan—is a double-edged sword. In considering such federal issues as changing the rules of presidential elections, this sword can defend the constitutionally guaranteed eligibility of every state to have a say in national elections against divisive attempts to ignore their will [33].

It seems that the NPV originators construe too broadly the constitutionally guaranteed plenary right of a state legislature to choose a manner of appointing state presidential electors. They insist that any such manner can be chosen by the state legislature without any restrictions. If their logic were true, then appointing state presidential electors based upon election results, say, in D.C., or in any state, or even by means of tossing a coin would be legitimate as well.

Only the Supreme Court may decide whether appointing state electors by a collective decision of several state-signatories to the NPV plan is in line with the above-mentioned plenary right. It seems, however, that there is a situation in which

the NPV idea—to award the electoral votes controlled by the state-signatories based on the tally of all the votes cast for presidential electors throughout the country—might have a chance to be introduced. It might be the situation in which none of the 50 states and D.C. object, though not necessarily subscribe, to the NPV plan.

If the Supreme Court found such a change of election rules constitutional provided all the states do not object, the NPV proponents could claim success for their plan. That is, they could then claim that they had managed to introduce direct popular presidential elections in the country without amending the Constitution. But even if this were the case, it would still remain unclear (at least to the author) what good the NPV rules can bring to the country.

There is one controversial NPV statement that deserves to be considered, since it seems to be a cornerstone of the NPV plan.

The statement asserts that the states may allow their voters to vote directly for President [5]. This contradicts the Constitution, and the Supreme Court reaffirmed this in *Bush v. Gore* [59]. The use of the so-called short ballots—in which only the names of the presidential and vice-presidential candidates heading the slates of their electors, rather than the names of the electors themselves, appear—does not attribute any constitutionality to the NPV statement.

Even *de facto* this could have been true only if state presidential electors from the winning slate had constitutionally been obliged to favor the presidential and vice-presidential candidates heading the slate. However, constitutionally, presidential electors are free agents (see Sect. 2.2), and as such they can favor whomever they want, despite all the restrictions imposed upon them in (currently 29) states and in D.C.

This bears evidence that the statement is questionable to say the least.

6.4 Is the NPV Plan Constitutional?

Only the Supreme Court can eventually answer this question. This may happen if (a) the Court decides to consider a case relating to the NPV, and (b) the Court either does or does not find any grounds to conclude that the NPV plan violates the Constitution or any Supreme Court decisions.

Until this happens, one can only speculate regarding the constitutionality of the NPV plan while weighing arguments for and against one of the two potential Supreme Court rulings.

This section presents arguments favoring the viewpoint that the NPV plan may violate some particular provisions of the Constitution and Supreme Court decisions that directly or indirectly relate to presidential elections. These arguments reflect the viewpoint of the author, and unless these arguments are supported or rejected by the Supreme Court, they are no more than logical discrepancies that seem to be present in the NPV plan.

The author's approach to the analysis of the constitutionality of the NPV plan substantially differs from that of the NPV originators, who assert that the plan is constitutional.

Moreover, the NPV originators and backers assert that even Congress has no reason to consider whether forming a compact of states to collectively decide the election outcome—as the NPV plan does—requires approval of Congress. Though constitutional lawyers are among those who publicly assert this, their assertions are no more than the opinions of their authors that may or may not be supported by Congress and by the Supreme Court.

From the author's viewpoint, the NPV plan faces three major constitutional challenges.

1. The originators of the NPV plan believe that they construe a key provision from Article 2 of the Constitution correctly. That is, the NPV originators believe that the legislatures of a group of states can sign an agreement to collectively award the electoral votes that these states control. Moreover, the originators of the plan believe that the group can award electoral votes in any manner it wants.
2. Formally, the NPV plan does not imply the abolition of the Electoral College. Moreover, the plan involves holding statewide popular elections in which state voters will vote for slates of presidential electors submitted by eligible pairs of presidential and vice-presidential candidates. Legally, these statewide elections are held to identify the winning slate of electors to represent every state in the Electoral College. However, the winning slate may or may not be the one to cast ballots in the Electoral College for state-signatories to the NPV plan. According to the NPV plan, the tally of all the votes cast for electors throughout the country determines which slate of electors will represent each state-signatory to the NPV plan in the Electoral College. If the tally result does not coincide with the will of the voters from any state-signatory, the choice of this state will be ignored.

   Thus, the NPV plan puts forth a two-stage procedure to determine which electors will cast ballots on behalf of the states in the Electoral College. At the first stage, the will of state voting voters is detected in the course of a statewide election. At the second stage, this will is either honored or ignored depending on the tally of all the votes cast for presidential electors throughout the country.

   Though the NPV originators declare legitimate this quite strange manner of awarding state electoral votes, there is a principle problem with its application. To understand this, consider the case in which slate A is the winning slate in a state, whereas slate B, the losing slate, is to represent the state in the Electoral College in line with the NPV election rules. Let slate A win the statewide election held to determine the will of the state, and let it win by a majority of the votes cast. If the electors from slate B are to represent the state in the Electoral College, the weight of the vote of every voter who favored slate A in the statewide election becomes smaller than the weight of the vote of every voter who favored slate B. This change of the weights of the votes may violate the Equal Protection Clause from the Fourteenth Amendment, as the Supreme Court has determined several times in cases relating to statewide elections.

In a state-signatory to the NPV plan, it may even happen that according to the NPV election rules, state electoral votes are to be awarded to a pair of presidential and vice-presidential candidates whose names were not on the ballot in this state at all. If this were the case, under the NPV rules, a slate of electors who were not even voted for in the statewide election may, nevertheless, represent the state in the Electoral College. In this case, the weight of every vote cast in the statewide election would be nullified.

3. State-signatories to the NPV plan may turn out to be the only group of the states prohibiting their voters to favor electors from slates of electors of different presidential candidates competing there. If this is the case, then according to the NPV election rules, votes cast in the other states cannot be counted in the tally that is to determine the fate of a majority of all the electoral votes in play in the election. This may be the case even if the votes cast in all these other states form a majority of all the votes cast in the country.
   For instance, let some, say, 20 states and D.C. be signatories to the NPV plan. Further, let ticket A win in each of the 20 states, and let ticket B win in D.C. Also, let the tally of all the votes cast in these 20 states and in D.C. (in favor of (the electors of) all the presidential candidates, including candidates A and B), determine that the margin of votes favoring ticket B in D.C. is such that ticket B receives at least a plurality of votes cast in the 20 states and in D.C. Then ticket B will be declared the election winner according to the NPV election rules.
   Finally, imagine a presidential election in which not only does this scenario take place, but also ticket A wins in all the other 30 states. Then had the Electoral College been formed in line with the election rules that have existed in the country for more than two centuries, ticket A would have won the election by a landslide. However, ticket B, which won only in D.C., will be declared the election winner according to the NPV election rules.

One can only imagine how the country will react to such an election outcome, and how many lawsuits contesting the election results and the NPV election rules will be filed.

One may object, which the NPV originators and proponents always do, that some extreme and weird outcomes are possible under any election rules [59]. Also, they may refer to the current system that may engender weird election outcomes as well [1, 18, 21]. However, while such a reference would be correct, the deficiencies of the current system do not justify the introduction of doubtful election rules that have the potential to engender even more extreme election outcomes than the current system may produce. This is especially true when the introduction of the new system is done without the approval of three-fourths of all the states and even without a vote of the country on this new system.

6.5 Twisting One Constitutional Right of the State Legislatures

Article 2 of the Constitution reads "… Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors…." The originators of the NPV plan assert that these words are "the only guidance" that the Constitution gives to the states on how the states should award their electoral votes. The originators are certainly correct about these words, which guide the states in appointing their electors as the Constitution requires. However, there are other words in the Supreme Law of the Land that impose limits on possible manners that state legislatures may choose in electing state presidential electors. No state alone or a group of states collectively may go beyond these limits other than by means of a constitutional amendment.

Specifically, Section 2 of the Fourteenth Amendment reads "… But when the right to vote at any election for the choice of electors for President and Vice President of the United States… is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced…" [19]. Besides these words, the Nineteenth and the Twenty Sixth Amendments also contribute to forming such limits.

Section 1 of the Fourteenth Amendment reads "… No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States… nor deny to any person within its jurisdiction the equal protection of the laws…." Thus, the privileges of the citizens residing in the other states should not be abridged by decisions that a state or a group of states can make unless, of course, these decisions become part of a constitutional amendment. In particular, a manner of appointing state presidential electors by any state should not abridge the privilege of any other state to affect the election outcome via its electors.

However, the NPV election rules seem to be an example of such an abridgement. Under the NPV election rules, a state that opts to choose its presidential electors other than by determining the winning slate of electors on the "winner-take-all" basis is effectively excluded from electing a President.

The NPV originators and supporters admit that the chosen manner of appointing state presidential electors should not "violate any specific restriction contained elsewhere in the Constitution" [5]. At the same time, they believe that the legislature of any state may choose a manner of appointing state electors in any way the state legislature "sees fit." Thus, the NPV originators seem to believe that a group of states collectively appointing electors, as the NPV rules propose, does not violate any part of the Constitution.

This doubtful belief is one of the cornerstones of the NPV plan. Moreover, its originators apparently consider themselves pioneers paving the way to a better system and that the states that currently are not among state-signatories to the plan

will join this plan in the near future. To justify this expectation, the NPV proponents refer to the "winner-take-all" method that the country has come to use via state-by-state piecemeal changes in state laws rather than by means of a constitutional amendment.

Though this remark itself is correct, there is no analogy with the NPV plan. All the states have chosen the "winner-take-all" method for awarding state electoral votes acting on their own, and they did not sign any interstate compact agreements to this end. Moreover, each state decided that the use of such a "state property" as the votes of voting voters cast for slates of its state presidential electors would best reflect the will of the state in electing a President.

In contrast, the NPV plan allows a group of the states to decide the election outcome based on the tally of all the votes cast throughout the country for all the presidential electors in the places where voters vote for slates of electors. This tally is used by the state-signatories to the NPV plan regardless of whether the other states agree or at least do not mind that "their" votes are used in such a manner.

The other reference of the same kind that the NPV proponents make in [5] to justify the above expectation is "… Women's suffrage is another example of state legislatures collectively using the authority granted to them by the U.S. Constitution…," and this analogy is also quite misleading.

By 1919, women did have the vote in 30 of the then 48 states. But, once again, this did not happen as a result of any "compact agreement" between the states. Though a majority of the states then forming the Union already allowed women to vote, only the Nineteenth Amendment gave women the right to vote. The amendment imposed the "women's suffrage" on the minority of (18) states [19] once it was ratified by 36 (out of then 48) states. In any case, the decisions made by an individual state to allow women to vote in the state did not affect the other states in their decisions on this particular matter [1].

Similar observations hold for other examples of "allegedly collective" actions of the states, such as the introduction of direct popular elections of U.S. Senators, which the NPV originators refer to in an attempt to justify their "pioneering mission." This type of election had been used by several states *de facto*, before the Seventeenth Amendment was adopted and ratified [19]. But as in the previous two references, each state did it on its own, without any compact agreements, and its decision did not affect the other states.

To summarize, the reasoning presented in this paragraph suggests that such a broad interpretation of the plenary right of the state legislatures to choose a manner of appointing state electors as they want, proposed by the NPV originators and proponents, does not seem to have any grounds. Nor does this interpretation have any analogies with other radical changes in the country that have happened in the history of the U.S. The Constitution sets, though not explicitly, certain boundaries within which any state officials can make decisions to let these decisions be acceptable to all the other members of the Union.

6.6 Do the NPV Rules Violate the Supreme Court Decisions?

To answer the question in the section title, one should review (a) the NPV election rules relating to awarding electoral votes in state-signatories to the NPV plan, and (b) the Supreme Court decisions relating to the issue.

The NPV election rules may potentially change the weights of votes of voting voters that are cast in statewide elections to determine the winning slate of electors only in the state-signatories to the NPV plan. Indeed, if a state does not subscribe to the NPV plan and uses the "winner-take-all" method to determine the winning slate of state electors in a statewide election, the NPV rules cannot affect the statewide election result there.

Let us review how electoral votes are to be awarded in the state-signatories to the plan under the NPV election rules by considering a particular state-signatory to the NPV plan in a particular presidential election. For the sake of definiteness, let us consider the 2004 election in Massachusetts [60].

In that election, 36.78 % of Massachusetts voters favored George W. Bush, whereas 61.94 % of the state voters favored John Kerry, a U.S. Senator from Massachusetts [31]. The statewide election in Massachusetts was held to determine the winning slate of presidential electors, and 98.72 % of all the votes cast in the state favored the Democratic and the Republican slates of electors.

The number of votes cast was 2,912,388 [31], and at the time of holding the statewide election, each vote had one and the same weight 1/2,912,388. Under the "winner-take-all" method for awarding Massachusetts' electoral votes, all the 12 electoral votes were awarded to John Kerry.

Had the NPV election rules been in force in the 2004 election, the result in the state of Massachusetts would have been different. Indeed, since all the electors of George W. Bush received more than 3 million votes more than all the electors of John Kerry nationwide, in the hypothetical 2004 election—i.e., in the 2004 election under the NPV election rules—all the Massachusetts electoral votes would have been awarded to George W. Bush. This means that the result of the statewide election in Massachusetts would have been overturned. This would mean that the NPV election rules would give 36.78 % of "Bush" voters more weight than 61.94 % of "Kerry" voters. As a result of applying these rules, the weight of the vote of a "Bush-voter" in Massachusetts would have been made more than 1.68 times greater than that of a "Kerry-voter" in the hypothetical election.

The Supreme Court in *Gray v. Sanders* stated that "… Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote… This is required by the Equal Protection Clause of the Fourteenth Amendment … The idea that every voter is equal to every other voter in his state, when he casts his ballot in favor of one of several competing candidates underlies many of our decisions…" [61]. In a statewide election held to determine the winning slate of electors, the "representative" is that very slate "to be chosen." So unless the Supreme Court finds that its decision in *Gray v. Sanders* is

not applicable to a statewide election in a state-signatory to the NPV plan held under the NPV election rules, these election rules violate this decision. Also, in *Bush v. Gore*, the Supreme Court stated that "… Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over another. See e.g., *Harper v. Virginia Board Of Electors*, 383 U.S. 663, 665 (1966)… once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment…" [62]. This means that the state legislature cannot hold a statewide popular election under one rule of determining the election winner and then change the election result by applying any different rule that would "value one person's vote over another."

Thus, the NPV election rules may violate both Supreme Court decisions in state-signatories to the NPV plan in which the results of statewide elections held to determine the winning slates of electors do not coincide with the results of tallying the votes cast for all the slates of electors throughout the country. If this is the case, any eligible voter from a state-signatory to the NPV or from D.C. may challenge in court the constitutionality of the NPV election rules that may change the weight of her/his vote in a statewide election of state electors. The Supreme Court decision on *Gray v. Sanders*, as well as on *Bush v. Gore* (which refers to *Gray v. Sanders*) may constitute grounds for such a challenge.

In considering any potential case on the matter of changing the weight of votes in statewide elections held to determine the winning slate of electors, the Supreme Court will need to find whether the election rules proposed in the NPV plan are such that they constitute "… an instrument for circumventing a federally protected right…" [61]. This right is the right of every voter within a state of her/his residence to have an equal vote with all other state voters in ***any*** statewide election, reaffirmed by the Supreme Court in *Gray v. Sanders*.

The same logic that was presented for the state of Massachusetts is applicable to any state-signatory to the NPV plan. Indeed, according to the NPV election rules, a state-signatory to the NPV plan is to hold a statewide election. In this election every voting voter casts a ballot for one of the slates of presidential electors competing in the state, and the same holds for D.C. All the votes cast for all slates of presidential electors throughout the country are tallied to determine the pair of presidential and vice-presidential candidates whose electors received at least a plurality of all the tallied votes. Finally, the state-signatories to the NPV plan award their electoral votes to the winning pair of the candidates, i.e., to the pair of the candidates whose electors received at least a plurality of all the tallied votes (if no tie between two or among more than two pairs of the candidates occurs). If the winning pair of the candidates does not coincide with the pair that heads the winning slate of electors in a state-signatory to the NPV plan, the application of the above NPV election rules leads to changing the weights of votes cast in the state.

Finally, under the current election rules, all the votes cast within any of the 50 states, including the states of Maine and Nebraska, and within D.C. have equal weights. In Maine and in Nebraska, all votes cast within any congressional district of either state have an equal weight, and all the votes cast in either state as a whole

also have an equal weight within the state (which, however, may differ from that in each congressional district of either state). Thus, under the current election rules, the equality of votes within a state and within D.C. holds in every presidential election.

In contrast, under the NPV election rules, the equality of vote weights holds for D.C. and for the state-signatories to the NPV plan only if the will of the voters there and the results of tallying the votes cast for all presidential electors coincide.

6.7 An Egregious NPV Rule for Appointing Non-elected Electors

It may happen that the election winner determined according to the NPV election rules had not been on the ballot in a state-signatory to the NPV plan. The NPV originators call this scenario "hypothesized" and "politically implausible" [5]. However, this may happen under multi-candidate presidential elections if they are held under the NPV election rules in a particular election year. Indeed, a presidential candidate who needs to win, say, only a 20 % plurality of votes to be cast for all the slates of presidential candidates may not be very concerned if she/he is not qualified to be on the ballot in a state-signatory to the NPV or in D.C. [63]. If this were the case for a state-signatory to the NPV, any electors that could be appointed there would be those who had not been voted for by voting voters in the statewide election held to determine the winning slate of state electors there.

It is clear that any reasonable election rules should eliminate such scenarios as those capable of being constitutionally challenged in courts. However, as in many other situations, the NPV election rules do not eliminate them simply because the NPV originators consider such scenarios implausible.

The NPV originators seem to understand how damaging for their cause this scenario would be. Nevertheless, they have not considered the constitutionality of the NPV procedure to be applied should this scenario happen.

At first glance, one may believe that if this scenario were to happen in a state, the legislature of this state would use its plenary right to determine the manner of appointing state presidential electors. In particular, the state legislature could either appoint state electors themselves or would delegate this privilege to the candidate who won the election under the NPV election rules.

Indeed, in *Bush v. Gore*, the Supreme Court reaffirmed that the power to appoint state electors in any manner can be taken back by the state legislature at any time [62]. However, it is not clear whether the state legislature can do this after holding a statewide election to determine the winning slate of electors. In *Reynolds v. Sims* the Supreme Court stated that if the state legislature decided to choose "… a manner of appointing state presidential electors, by taking the granted franchise away from the state electorate after the franchise has been freely granted, it would effectively have denied the right of suffrage…" [64] to voting voters. Also, by refusing to appoint electors in line with the results of the above statewide election, the state

legislature would nullify the weight of every vote cast in this election. This may contradict the Supreme Court decision stated in *Reynolds v. Sims* in which the Court pointed out that "… the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise…" [64]. At the very least, no "… equal dignity owed to each voter…" [64] will be provided by the state legislature should it choose to ignore the results of the statewide election, contradictory to the requirement of the Supreme Court expressed in its opinion on *Bush v. Gore* [62].

Though one cannot predict how the Supreme Court might address the issue (if it takes such a case under any circumstances), it is interesting to understand the viewpoint of the NPV originators on the matter.

In addressing the scenario under consideration in this section [5], they submit that "…even in this politically implausible scenario, the National Popular Vote compact would deliver precisely its promised result, the election of the presidential candidate who received the most popular votes in all 50 states and in D.C.…."

From this statement, one can see that the NPV originators either do not see the potential legal challenge that this particular NPV election rule may face, or believe that all the above arguments do not have any value in conformity with the NPV rules. They seem to be sure that the NPV election rules will withstand the Supreme Court scrutiny should they be challenged in Court. Also, they seem to believe that the so-called "back-up procedure," which the authors of [5] offer if the scenario were to occur, would resolve the problem in any state-signatory to the NPV in which the winning candidate was not on the ballot. (This procedure consists of allowing the presidential candidate whose (appointed) presidential electors received a plurality of all the votes cast for all the slates of presidential electors nationwide "… to nominate the presidential electors from that state" and allowing "… a state's presidential elector certifying official to certify the appointment of such nominees….")

The considered scenario that may occur under the NPV election rules may be "strengthened" even further. One may wonder: what could happen under the NPV election rules if the winning pair of presidential and vice-presidential candidates were on the ballot in none of the state-signatories to the NPV? The answer is simple: according to the above "back-up procedure" offered by the NPV originators, the winning presidential candidate would nominate presidential electors in all these states, and the so-called presidential elector certifying officials in these states would certify the appointment of such nominees. Thus, according to the NPV rules, the will of all the voters from the state-signatories to the NPV would be ignored, despite the statewide election results in these states.

It seems that the NPV originators believe that they can propose any egregious rules in the set of the NPV election rules and expect them to be adopted, despite any legal challenges that these rules may present.

6.8 Does the NPV Plan Really Retain the Electoral College?

Formally, the NPV plan does not abolish the Electoral College. However, it transforms it into a body in which the state-signatories to the NPV dictate their will to the other states.

The NPV originators make two deceptive statements about their plan.

1. They assert that the NPV compact "would preserve the Electoral College" and that "… It would not affect the structure of the Electoral College contained in the U.S. Constitution…."
2. They also claim that "… Under the National Popular Vote plan, the states would retain their exclusive and plenary right to choose the method for awarding their electoral votes…."

It is hard to believe that the NPV originators do not understand what kind of changes to the Electoral College the NPV plan implies. More likely, these two statements are no more than an attempt to disguise the essence of the NPV plan.

Under the NPV election rules, the Electoral College would remain only as a name for a set of presidential electors who formally elect a President. It would cease to exist as a mechanism for electing a President. Under the NPV rules, 51 members of the Union will no longer form their independent decisions on who are the best candidates to fill the two highest offices in the country.

Instead, the Electoral College will consist of one collective unit, which will always decide the election outcome, and state electors from non-signatory states.

The collective unit will be formed by D.C. and state-signatories to the NPV plan. The states outside this collective unit may become divided into two groups—the states that under the NPV election rules will continue to vote for slates of presidential electors in statewide elections and the states that will not. The will of the states from the second group will simply be ignored, and votes of their voters will not count in the election.

The states from the first group of non-signatory states will play the role of "donors," supplying the NPV tally with votes from their states cast for slates of their state electors. The will of these states may or may not coincide with the decision of the collective unit, but in any case, the electoral votes to be cast by their representatives in the Electoral College will not change the election outcome, no matter which persons they decide to favor. The roles of both groups of the outside states (i.e., the states that are not signatories to the NPV) will be slightly different in the Electoral College under the NPV election rules. However, they will be common in one issue—together they will control only a minority of all the electoral votes in play in the election and will not be able to affect the election outcome.

This will be completely different from how the Electoral College currently operates and will contradict the idea underlying the design of this election mechanism.

To better understand how the Electoral College will operate under the NPV election rules, one should turn to the theory of voting. From the viewpoint of this theory, under certain assumptions [46, 65], the Electoral College is a so-called weighted voting game, which has been extensively studied [66]. In the framework of this game, participating players (voting units) do not necessarily have the same weight in determining the outcome. Each weighted voting game is set by describing the players, player weights, and the so-called quota of the game. This quota equals the minimum "collective" weight, and any group of the players that manage to control this weight wins in the game.

In the current Electoral College weighted voting game, all the 50 states and D.C. are the players, the player's weight is the number of electors that each state, as well as D.C., appoints in a presidential election. Certainly, the weight of each player does not exceed the number of electors that the state is entitled to appoint in the election according to the Constitution [1, 19]. In this game, the quota equals the number of electoral votes in a minimum majority of all the appointed electors. If each of the 50 states and D.C. appoint as many electors as each of them is entitled to appoint in the election, currently the quota equals 270 electoral votes.

In this game, participating pairs of presidential and vice-presidential candidates compete in each of the 50 states and in D.C. in an attempt to build a coalition of members of the Union that together control at least the quota of the game. To win in the game, a pair of presidential and vice-presidential candidates must win in a coalition of states and D.C. that control at least 270 electoral votes combined.

The pair of presidential and vice-presidential candidates whose electors receive the most votes in a statewide election in each of the states and in D.C. win the electoral votes there. Currently, except for the states of Maine and Nebraska, winning a plurality of votes in a state or in D.C. is sufficient for winning (the number of) all the (electoral) votes that the corresponding state or D.C. has in the weighted voting game. Here it is assumed that all the electors vote faithfully in the Electoral College and do not abstain.

Certainly, if some of the states award their electoral votes not according to the "winner-take-all" method, it may happen that the state may be represented in the Electoral College by electors who are to support different pairs of presidential and vice-presidential candidates. (Such schemes of voting, for instance, for individual electors have been used in the past [5, 6].) If this is the case, the number of players in the game will exceed the number of all the members in the Union. Indeed, each individual elector from any state that is not represented in the Electoral College by the only slate of state electors should be considered a separate player.

Generally, due to the manner of using the "winner-take-all" method for awarding electoral votes in the states of Maine and Nebraska, these two states should be considered as several players each. The state of Maine should be considered as three units out of which two units have one (electoral) vote each, and the remaining unit has two (electoral) votes. The state of Nebraska should be considered as four units out of which three units have one (electoral) vote each, and the remaining unit has two (electoral votes).

For the sake of simplicity, in this section, only 50 states and D.C. are considered players in the Electoral College weighted voting game. Thus, it is assumed that all the states, including the states of Maine and Nebraska, vote in the Electoral College as units, which these two states have done since adopting the Maine-like district scheme for awarding state electoral votes (since 1969 in Maine, and since 1981 in Nebraska; see Sect. 1.3.) The only exception was in the 2008 election, when (the electors of) B. Obama won one electoral vote in one of the three congressional districts in Nebraska [31]. It is also assumed that all the 50 states and D.C. use the "winner-take-all" method for awarding state electoral votes.

The NPV plan offers a different weighted voting game [1]. In this game, D.C. and state-signatories to the NPV plan form a collective player. This player has the weight that is equal to or exceeds the quota of the game, i.e., has the weight of at least 270 (electoral) votes. In the theory of voting, such a player is called a dictator, whereas the players who cannot affect the outcome of the game are called dummies. The outcome in the NPV compact weighted voting game is completely determined by the dictator—i.e., by D.C. and the state-signatories to the NPV plan—based upon the votes supplied by D.C., state-signatories to the NPV, and state-donors from the first group of the outside states in which voters cannot favor electors from the slates of electors of more than one pair of presidential candidates competing in these states.

Thus, the NPV compact transforms the Electoral College weighted voting game into a game between a dictator and a set of dummies some of which may be state-donors. The outcome in this game is always determined by the dictator.

If all the states and D.C. became signatories to the NPV plan, there would be no game. All the states would then act collectively as one unit. However, if not all the states decided to join the NPV plan, only the opposing states would "… retain their exclusive and plenary power to choose the method for awarding their electoral votes…," contrary to what the NPV originators and backers assert in their statement.

6.9 Can the States Pull Out of the NPV Compact?

The NPV originators assert that they cannot. However, it is unclear what constitutes grounds for this optimistic assertion.

First, the intent to withdraw from the compact agreement among the state-signatories to the NPV may emerge in any signatory state under the pressure that the voters from this state who voted in a presidential election may put on the state legislature. This may be the case if these voters believe that the application of the NPV election rules have led to an unfair result. It is especially possible if the outcome would have been different (and fair from their viewpoint) if the old Electoral College rules had been applied.

Second, one should look at the Constitution, federal statutes, and decisions of the Supreme Court relevant to compact agreements to evaluate the chances of such an intent to materialize in any state-signatory to the NPV plan.

Certainly, the analysis to follow makes sense under the assumption that the formation of a compact of state-signatories to the NPV plan (a) is approved by Congress, and (b) is considered constitutional by the Supreme Court.

Let us consider an illustrative example of the situation that is likely to trigger the pullout of a state-signatory to the NPV plan (assuming that the NPV election rules have been adopted and enforced) [1]. Let (a) the electors of both major party candidates receive almost all the votes cast, and (b) the results of the voting be decisive in a hypothetical presidential election such that no recounts can either automatically commence or be required by state or D.C. laws. Also, let D.C. and some 20 states be signatories to the NPV compact.

Further, let in each of the remaining 30 states (a) slates of state presidential electors compete for the right to represent the state in the Electoral College, and (b) the distribution of votes cast determine the winning slate of electors by a substantial margin. Also, let the margins of votes favoring the winning slates be such that the electors of both major party candidates receive the same number of votes in all the 30 states combined.

Finally, let in each of any 10 states from among the above 20 state-signatories to the NPV plan, (a) the margin of votes favoring presidential electors of candidate B constitute 200,000 votes, (b) in each of the other 10 states, the margin of votes favoring presidential electors of candidate A constitute 190,000 votes, and (c) 100,001 votes be the margin of D.C. votes favoring candidate A.

According to the NPV election rules, candidate A becomes the election winner with a one vote margin, and no recounts will be possible in both the 50 states and in D.C. in principle.

In contrast, under the old Electoral College rules, candidate B could have won the election by a landslide. Indeed, candidate B could have won as many as 498 electoral votes, depending on which states remain part of the NPV compact agreement before Election Day. For instance, let seven states with three electoral votes each and any three states with four electoral votes each form the above 10 states favoring presidential electors of candidate A. Further, let candidate A win only in one state with four electoral votes out of the above 30 states. Then candidate A, who is the election winner under the NPV election rules, would have been a recipient of only 40 electoral votes (21 electoral votes from the seven states with three electoral votes each, 12 electoral votes from the three states with four electoral votes each, three electoral votes from D.C., and four electoral votes from a state from among the 30 states).

Everyone even remotely familiar with the politics of American presidential elections can be sure that many voters, especially those who voted in the election, would be outraged and would blame the NPV election rules for delivering such an outcome. However, nothing other than a try to pull out of the compact agreement could be undertaken to change the election outcome if such an outcome occurred.

Therefore, one can expect that a lot of pressure would be put on state legislatures from state-signatories to the NPV to pull out of the NPV compact.

Now, let us turn to the grounds on which the NPV originators base their belief that the compact agreement among the state-signatories to the NPV plan is binding to the extent that it disallows the compact members to pull out of the agreement after Election Day and before the day in December of the election year when the Electoral College votes.

In [5], the NPV originators refer to a provision of the Impairment Clause of the Constitution (Article I, Section 10, Clause 1) [19], which they site as follows: "… No State shall… pass any… Law impairing the Obligation of Contracts." They also refer to the Supreme Court's materials from *Petty v. Tennessee-Missouri Bridge Construction* [67], particularly, to the phrase "… A compact is, after all, a contract…," which, however, is not from the Supreme Court decision in the case. This phrase is from the opinion of the dissenting judges in the case, but not from the decision delivered by the Court.

In contrast, the phrase "…The construction of a compact sanctioned by Congress under Art. I, Section 10, cl.3, of the Constitution presents a federal question… Moreover, the meaning of a compact in a question on which this Court has the final say…" is from the Court decision [67]. Moreover, in footnote 4 to the Supreme Court decision, the phrase "… While we show deference to state law in construing a compact, state law as pronounced in prior adjudications and ruling is not binding…" [67]. Both phrases, which are stronger than those from the previous paragraph, seem to suggest that if the NPV compact agreement is recognized as that of federal importance, the state's right to withdraw from this compact after Election Day, but before the Electoral College votes may not be easy to prove. Yet, in the worst case scenario for a state-signatory to the NPV compact that intents to leave the compact this way, there will still be a chance to challenge the binding power.

Indeed, the plenary right of the state legislature to choose a manner of appointing state presidential electors will remain a constitutional provision. This means that even if the interpretation of both the above provision from Article 1 of the Constitution and the Supreme Court words is favorable to the NPV originators, two provisions of the Constitution—Clause 3 from Section 10 of Article I and Clause 2 from Section 1 of Article 2—may be found to be in conflict.

6.10 Does the NPV Plan Have a Chance?

Everything depends on what actions the opponents of the NPV plan will undertake in the next few years and whether they will manage to make the case on the constitutionality of the plan before the Supreme Court. This cannot, however, be achieved by any particular individuals or by groups of individuals. The support of the unbiased media and state legislators is an inseparable part of the process of real

opposition to the NPV plan. The tactic of open discussion of the NPV plan and its alternatives should be used to counteract the tactic of stealth lobbying of state legislators that the NPV originators and backers currently employ in their attempt to succeed.

Unless this happens, in the absence of any organized opposition to the NPV, the chances of the NPV plan to succeed seem quite real, despite all the challenges considered in this chapter. The existing inertia, the lack of understanding of both the NPV plan and the current election system, and the absence of a public figure (or figures) to take the lead and help organize the opposition movement are among the factors contributing to the potential success of the NPV plan.

Filing lawsuits by the opposition to challenge the constitutionality of the NPV plan in courts requires hiring lawyers, which is unlikely to happen without a financial support that the opposition currently does not have. Also, in the absence of any organized opposition, propagandistic efforts of the NPV proponents and the certainty of many believers that the NPV compact is the best system to elect a President may result in forming a compact of states and D.C. underlying the NPV plan. Moreover, the NPV originators and proponents hope to hold presidential elections according to their rules soon. If this happens, it will be quite difficult to reverse.

Indeed, if the NPV plan is introduced, (the electors of) a President elected under the NPV election rules may receive at least a plurality of all the votes cast for presidential electors in the states not opposing the NPV plan though not necessarily subscribing to the plan. If this happened, the chances of the NPV election rules to stay for at least several presidential elections to come would increase dramatically. These chances would be even stronger if the winning candidate received the same number of electoral votes under the NPV election rules that this candidate would have received under the current election rules.

If, however, common sense prevails, and the constitutionality of the NPV plan is challenged in court, two positive outcomes can emerge [1].

If despite all the problems and contradictions to the existing Supreme Court decisions, the NPV plan is found constitutional, new interpretations of the Constitution will inevitably appear. These interpretations will be instructive to all those who study and administer presidential elections. Some long existing questions on unified voting standards throughout the country will inevitably have to be addressed. Among these questions are those regarding different methods for canvassing votes, as well as different equipment for counting votes, that are used in different states. These standards may be found mandatory if the totality of votes cast for slates of presidential electors (a) in 48 states, (b) in D.C., (c) in each of the three congressional districts and at large in the state of Nebraska, and (d) in each of the two congressional districts and at large in the state of Maine are constitutionally recognized as the national popular vote. Currently, since this totality of votes does not have any constitutional status, the voting standard problems may emerge only within the states, as happened in the 2000 election.

If, however, the NPV plan is found unconstitutional, all the doable alternatives will inevitably surface in the course of the hearings, and these alternatives will be difficult to silence even by the biased media.

Chapter 7
Equalizing the Will of the States and the Will of the Nation

Abstract The current U.S. presidential election system is quite complicated, and many Americans prefer a simple system they can better understand. Today, the "winner- take-all" method for awarding state electoral votes makes the will of the states matter and the will of the nation as a whole irrelevant in electing a President. Any direct popular election would make the will of the nation as a whole matter and the will of the states irrelevant. Thus, replacing the current system with a direct popular election system would mean replacing one extreme approach to electing a President with another. This chapter presents the author's plan to improve the current election system, which keeps the Electoral College, but uses it only as a back-up election mechanism. The plan would provide the same principle of equal representation of the will of the nation as a whole and the will of the states in electing a President that exists in Congress in making any bill a federal law. Under the author's plan, direct popular elections of a President and a Vice President would determine the will of the states and the will of the nation as a whole, and the states would be considered as equal members of the Union. Since the plan uses the current election system as a back-up mechanism, the chapter proposes a new method for awarding state electoral votes that may turn interested "safe" states into "battlegrounds."

Keywords Automatic plan · Gallup polls · Direct popular election · Federal System Plan · Modified election system · National Bonus Plan · New method for awarding state electoral votes · President of an electoral majority in the Electoral College · President of the people · President of the states · "Pseudo-electoral" votes

The reader who has read all the previous chapters may be concerned with the uncertainty about (a) why one should change the current election system, and (b) what one would expect from new systems that may have a chance to replace the current one.

Three reasons seem to be explanatory. First, the current election system is quite complicated, and many Americans simply are not interested in weighing its pros and cons. They want to have a simple system that they understand and that is in use

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in any elections in the country, except for presidential ones. Second, proponents of direct popular presidential elections try to convince the voters that this type of election is better for the country and that it is much fairer than what they currently have. Third, proponents of the National Popular Vote plan try to convince Americans that under this form of direct popular election, presidential candidates will allegedly compete in all the parts of the country, including small states.

However, holding direct popular elections may not be the best way to elect American presidents. Today, due to the way the "winner-take-all" method for awarding state electoral votes is used by the states and D.C. under the Electoral College-based presidential election system, the will of the nation does not matter in electing a President, and only the will of the states does. Under any direct popular election system, the will of the states would not matter, and only the will of the nation as a whole would. So replacing the current election system with any form of a direct popular election system would mean a switch from one extreme approach to electing a President to another. Voters in small states would hardly find a direct popular election system fairer than the current one if the candidates would compete and campaign only in densely populated metropolitan areas, where most of the voters reside.

The small states would matter in electing a President only if they were considered as equally important members of the Union, in just the same manner they are in electing a President in the House of Representatives, where each state has one vote, despite its size. If a state is not closely contested, the candidates would not find a reason to campaign there under any election system, except for the one in which every state is treated as an equal unit among all the 50 states and D.C. So under both the current system and any direct popular election system, the small states are likely to be ignored even if they are closely contested.

This chapter presents the author's plan to improve the current election system, which keeps the Electoral College, but uses it only as a back-up election mechanism. The plan would provide the same principle of equal representation of the will of the nation as a whole and the will of the states in electing a President that exists in Congress in making any bill a federal law. Under the plan, direct popular elections of a President and a Vice President would determine the will of the states and the will of the nation as a whole, and the states would be considered as equal members of the Union. Since the plan uses the current election system as a back-up mechanism, the chapter proposes a new method for awarding state electoral votes that may turn interested "safe" states into "battlegrounds."

7.1 Public Perception of the Current System and Its Alternatives

Possible extreme outcomes and stalemates in presidential elections may raise concerns about the current election system.

Some readers may believe that the time for certain changes in the system has come. They may expect that the changes would eliminate the very possibility of extreme situations in presidential elections. Some other readers may believe that an election system capable of delivering any extreme situations should be "punished" by replacing it with another one. (The direct popular election system is often viewed as an alternative to the existing one [6], [7]) Some readers may believe that the system that has successfully served the nation for more than two centuries should remain unchanged. Certainly, there may be some readers who do not care, especially those who do not vote in presidential elections. (Since more than 40 % of voters do not usually vote in presidential elections [68], this particular perception cannot, apparently, be ruled out). Finally, some readers may believe that any changes in the system or of the system itself are practically impossible, no matter how reasonable these changes could be.

The spectrum of possible perceptions of the election system seems to be in line with public opinion polls regarding abolishing the Electoral College. The Gallup polls conducted in February, April—May, and November 1967 showed that 58 %, 63 %, and 65 % of the respondents, respectively, were in favor of abolishing the Electoral College [6]. Public opinion polls held in 1968 and 1981 showed that 81 % and 75 % of their participants, respectively, also were in favor of such an action [10]. The Gallup polls conducted in October 2011 showed that 62 % of the respondents favored the abolition of the Electoral College [69]. Numerous modifications in the existing election system and variants of a new election system have been proposed over more than 200 years. Some of them were proposed by members of the government, especially by those of the Senate in 1968–1970 [70].

In addition, in 1967, the American Bar Association recommended replacing the existing system with a direct popular system of a particular kind. These recommendations were supported by the House of Representatives in 1969 and were close to gaining the needed support of the Senate in 1979 [4]. Nevertheless, scholars and political leaders are not united on this matter. While many of them oppose the idea of changing the system [10, 27, 71], some others suggest that certain changes in the system should be considered [9].

What underlies public perceptions of the election system? To answer this question, first, one should find out what this system was created for. Second, one should comprehend to what extent the currently existing election system, designed more than 200 years ago and modified many times since then, can satisfactorily serve society today.

The initial system was designed as a tool for electing a Chief Executive to govern the Union of the states [6, 9, 10, 22, 71]. As a result of a compromise, the elected Chief Executive was not supposed to have a mandate from the American electorate. This mandate was to be given to the Chief Executive either by electors or by the states in the House of Representatives. If electors were to fail to elect the Chief Executive, no run-offs in the Electoral College were allowed. Instead, the assembly of the states as equal members of the Union would choose a Chief Executive in this case. The Constitutional Convention participants viewed this assembly as the ultimate appointing power in electing a President.

Why did the Founding Fathers disallow the run-off elections in the Electoral College? They might have believed that the failure to elect a President there would have manifested a lack of agreement among electors on a leader to govern the Union at the time of holding the election. They might also have believed that no run-offs in the Electoral College could change the underlying intent of its members.

Changes that have been made in the election system since its creation have generated in the voters other views about the purposes of the system. Many of them believe that an elected President should have a mandate directly from the American electorate. In addition, throwing the election into Congress is often viewed as a disaster [8]. Therefore, numerous attempts to change the system have focused on eliminating the election of a President in the House of Representatives.

Artificially re-awarding electoral votes was proposed to replace the election of a Chief Executive in Congress. The idea of the replacement is always to elect a President who is a recipient of at least a plurality of the nationwide popular vote [70]. Popular elections with run-offs have been proposed many times, despite the fact that the use of such an election scheme can lead to stalemates in presidential elections. Indeed, people who firmly commit to particular beliefs may not change their vote in the course of the run-offs. If this is the case, the run-offs become senseless [22].

The proposed changes bear evidence that the views of both scholars in the field and many voters on the current election system do not coincide with those of the Founding Fathers. At the same time, despite all the deficiencies of the current election system, many voters believe that this system has successfully served the nation for more than two centuries [1, 9, 10, 22, 32, 71]. In any case, the discussion of the system usually emerges when the popular vote winner loses (or has a chance to lose) the election.

At first glance, one may expect that if the current election system always elected recipients of at least a plurality of the nationwide popular vote to the office of President, the results of the polls on abolishing the Electoral College would be different. However, even if this were the case, the concerns of advocates of the principle “one person, one vote,” which is not part of either the existing election system or of many of its known modifications [45, 72], would remain unaddressed. These concerns are often referred to as being in line with the Equal Protection Clause from the Fourteenth Amendment, the key in deciding the 2000 election outcome.

In addition, if certain election rules remain as fuzzy as they are, they may affect outcomes of presidential elections in the years to come. Finally, the current system seems to be too complicated to understand in depth, which may contribute to the unwillingness of many voters to vote in presidential elections. Some of them may consider it unreasonable to vote as long as many election rules remain as unclear and exploitable as they are.

Thus, finding whether the election system should be changed in any manner or be replaced with a new one seems expedient.

7.2 Three Basic Approaches to Improving the System

There are three basic approaches to improving the current election system that have been proposed over the more than 200 years since the creation of the Electoral College.

The first approach is based on the belief that the concepts and basic principles of the system should remain as they are. Some proponents of this approach believe that any changes in the fundamentals of the system may destabilize society. They also believe that those who push for the changes do not understand the danger of damaging the federal system of government and representation in the U.S. [27]. Some other proponents of the approach believe that necessary changes in the system can be made in a manner allowing one to avoid amending the Constitution.

Although beliefs of both kinds may seem reasonable, their substantiation is often unsatisfactory. In particular, the following two beliefs, plausible at first glance, are widely spread [27]:

(a) The Electoral College forces a winning presidential candidate to demonstrate "… both a sufficient popular support to govern as well as a sufficient distribution of that support to govern… ."
(b) Without the Electoral College, Presidents "… would be selected either through the domination of one populous region over the others or through the domination of large metropolitan areas over the rural ones… ."

However, the real situation seems to be contrary to these beliefs. The current election system gives superiority (if not a monopoly) to a small group of populous states always to have a chance to decide the election outcome. The 11 largest states can serve as an example illustrative of this statement. This superiority takes place under any low voter turnout in these 11 states and despite any voter turnout and the will of the voters in the rest of the country. In addition (see Sect. 4.4), the current system may (theoretically) allow only one large state always to determine the election outcome. The analysis of other beliefs of this kind can be found in the author's book [22].

Although many such beliefs regarding the election system are not substantiated, this does not mean that these beliefs do not have grounds. At the same time, any statements that these beliefs are in line with the attributes of the election system seem misleading and undermine the intentions of their authors.

Those who oppose these beliefs argue that the federal system of government and representation in the U.S. is based on the structure of Congress. This structure cannot be affected by changing the manner in which a President is elected [22]. Moreover, those who advocate a direct popular presidential election system in the U.S. may, apparently, refer to the Pledge of allegiance to the U.S. Flag [73]. They may believe that the words "… One nation … indivisible…" should be interpreted in favor of having at least one representative in the Executive branch of the government with a mandate from the whole nation. These people may also argue that the principles of the election system, designed by the Founding Fathers, were

appropriate only at the time of their creation. They may submit that what was good for loosely associated states of free settlers cannot serve the integrated and unified American society.

Although these arguments make sense, one should clarify what it means that an elected President has a mandate from the whole nation. It seems that one can speak about such a mandate only if the following two requirements are met: First, more than 50 % of all eligible voters should have voted in the election, and second, more than 50 % of the voting voters should have favored (currently, the electors of) the same presidential candidate [22].

In the framework of the first approach, the idea to introduce a direct popular election of a President without abolishing the Electoral College surfaced soon after the 2000 Election [55]. This idea is based on exploiting the right of the state legislature to choose a manner of appointing electors [19]. (A detailed analysis of this idea in presented in Chap. 6.)

Under the "winner-take-all" principle of awarding electoral votes, the proposed idea would only amplify the already existing distortion of the intent of the Founding Fathers. The states with different election powers (if the election power of a state is understood as the number of the state electoral votes) would still make the first attempt to elect a President, whereas according to the Constitution, the states can elect a President only when (a) electors have failed to elect a President, and (b) a President is elected in the House of Representatives, and each state has one vote despite its size.

Moreover, this idea confuses the very goal of the Constitution, which is "… to form a more perfect Union …" [19] rather than to outline a set of obstacles to be circumvented by the "ingenuity" of generations of Americans to come. Article 5 of the Constitution states when and how the Constitution should be amended. If more than one-third of the states do not want to change the system of electing a President, one should understand the reason underlying their viewpoint and debate it rather than force any decision on the matter upon these states.

No matter what new theories explaining the reasons underlying the creation of the Electoral College may be suggested in the years to come, it has been widely recognized that the idea of the Electoral College is part of the 1787 Great Compromise between the small and the large states that persuaded the small states to participate in the Union. Moreover, the "unfair" (as many scholars in the field believe) scheme for electing a President in the House of Representatives seems to illustrate that the large states agreed to sacrifice their obvious power in presidential elections for the sake of forming the Union. By signing the Constitution, the large states pledged to honor the right of the small states to be treated as equal members of the Union in electing a President in Congress.

The second approach is based on the belief that both the concepts and some basic principles of the election system can be changed though this may require changing the Constitution.

Some proponents of this approach believe that the Electoral College as an assembly of people should remain in a modified election system. However, methods for choosing electors should be changed, and the Maine-like district

method and the proportional method (see Sect. 2.9) were proposed as such changes [6, 30]. Some other proponents of this approach believe that the scheme for awarding electoral votes should be modified in such a manner that the winner of the nationwide popular vote would always win the electoral vote.

The so-called National Bonus Plan represents an attempt in this direction [10, 74]. One more group of proponents of the second approach focuses on changing the procedure for electing a President in Congress. Some even propose to replace this procedure with a run-off popular election if the Electoral College fails to elect a President [10].

Finally, as mentioned earlier, many proponents of reforming the existing system propose to replace it with a direct popular presidential election system [9]. These proponents believe that such a replacement is what the country needs to make the process of electing a President more transparent, more understandable, and more democratic. Certain merits and deficiencies of their plans have been analyzed and discussed, in particular, in [9, 10].

Among the plans to change the election system proposed in the framework of the second approach, one plan should specifically be mentioned. The so-called automatic plan, many times proposed, in particular, by political leaders [9, 10, 75, 76], consists of abolishing the office of elector while retaining all the other parts of the current election system. The idea of the plan is to authorize Congress to count electoral votes that are won by presidential candidates by popular vote directly and to eliminate the procedure of casting electoral votes.

In the author's book [22], electoral votes to be awarded by the states and D.C. and to be counted by Congress in the January that follows the election year are called "pseudo-electoral votes." The scheme for awarding and counting "pseudo-electoral votes" is also described there. The introduction of the automatic plan would eliminate an existing disparity between voters and electors in expressing their will. Currently, a voter may cast a vote in favor of only (the electors of) a pair of presidential and vice-presidential candidates among the pairs of the candidates on the national ticket. At the same time, a presidential elector may cast ballots for President and for Vice President in favor of the candidates from different such pairs.

The introduction of the automatic plan would make this impossible. Electors, whom the voters give the right to vote for President on behalf of the state of their residence, would not be able to distort the will of the voters. Introducing this plan would eliminate possible extreme election outcomes mentioned in examples from Sect. 2.2. Electing electors and electing a President would never be two unconnected elections. Only presidential candidates would be persons to whom "pseudo-electoral votes" would be awarded. Finally, the first attempt to elect a President on behalf of the states and D.C. would never devolve upon a group of only 538 American citizens.

At the same time, the Constitution requires the election of a President by the states to be consistent with the principle "one state, one vote." Therefore, the introduction of this plan would certainly change the original idea underlying the election system.

The third approach is based on the belief that certain parts of the current election system should remain attributes of the new one.

Various plans, called hybrids [7], have been proposed in the framework of this approach since the ratification of the Twelfth Amendment [70]. Three plans proposed in 1970, which contain helpful ideas, should specifically be mentioned.

The Federal System Plan was introduced by U.S. Senators Thomas Eagleton and Robert Dole. The plan proposes that a presidential candidate is elected to the office of President if this candidate is a recipient of a plurality of the popular vote nationwide, along with either (a) pluralities of the popular vote in each state from a majority of the states or (b) pluralities of the popular vote in each state from the states in which a majority of all the voters voted in the election.

If such a presidential candidate does not exist, a recipient of a majority of all the electoral votes that are in play in the election is elected President. Here, electoral votes are to be automatically awarded in the states and D.C. to the winner of the popular vote pluralities.

A recipient of an electoral vote majority may not exist in the election either. In this case, a President is chosen out of only two recipients of electoral votes. One is the presidential candidate who received the greatest number of electoral votes. The other is the candidate who received the number of electoral votes either equal to the same greatest number or the closest to this greatest number. Electoral votes that were won by the other candidates are reassigned between these two electoral vote recipients. The reassignment is done in proportion to the percentages of the popular vote received by these two candidates in the states whose electoral votes are reassigned. One of these two candidates with the greatest number of electoral votes "received" in this manner is elected President.

This plan incorporates both the automatic plan and the scheme of awarding electoral votes existing in the Electoral College. It abolishes electing a President in Congress, the third level of the current election system. The plan does not, however, address how only two candidates should be selected if more than two persons have won one and the same number of electoral votes. This plan also does not specify who is elected to the office of President if the two candidates "receive" one and the same number of electoral votes as a result of the above-mentioned reassignment of electoral votes.

Another plan introduced by Robert Dole combines the automatic plan, the existing scheme of awarding electoral votes, and the nationwide popular vote in choosing a President [70]. If a presidential candidate wins the popular vote in the election, this candidate is elected President. Otherwise, as in the Federal System Plan, a recipient of a majority of all the electoral votes that are in play in the election is elected President.

If neither such candidate exists, Congress elects a President out of the electoral vote recipients in a joint session. (A certain scheme for the participation of the District of Columbia is also proposed in the framework of this plan.) In this election, each member of Congress has one vote.

This plan does not address how many recipients of electoral votes out of more than two should be considered in electing a President in Congress. In any case, the plan modifies the existing scheme of electing a President in Congress.

A plan similar to Dole's was introduced by U.S. Senator William Spong. This plan also combines the automatic plan, the existing scheme of awarding electoral votes, and the nationwide popular vote in choosing a President [70]. A presidential candidate who receives a majority of all the electoral votes awarded in the election, along with a plurality of the popular vote nationwide, is elected President. If such a candidate does not exist, Congress elects a President in a joint session, where each member of Congress has one vote.

Like the Dole plan, this plan does not specify what presidential candidates should be considered in electing a President in Congress. In any case, similar to the Dole plan, this plan modifies the existing scheme of electing a President in Congress.

7.3 A New Plan for Electing a President

While the above three approaches to improving the existing election system may seem to cover all the plans proposed so far, the author's approach, outlined in [22], produces a different plan. The idea of the approach consists of retaining the existing election system (with only two changes) while incorporating this system into a new one, called the modified election system. In the modified system, the nationwide popular vote plays a key role in electing a President.

The author views the modified election system as a natural extension of the 1787 Great Compromise provision to have a dual representation of all the states in Congress. The people residing in each state are represented there via the House of Representatives, where the number of state Representatives reflects the number of the state inhabitants. In parallel, each state as a whole is represented in the Senate equally, by two Senators, despite the state's size. Any bill considered by Congress has a chance to become a federal law only if both chambers of Congress support it.

The author believes that a similar representation should exist in electing a President. Both all eligible voters in the country and states as equal members of the Union should "approve" a presidential candidate to let the person be elected to the office of President. Certainly, the approval of the voting voters may come in different forms, which should reflect a particular perception of society of who should be an elected President.

In the framework of the author's approach, both the Electoral College mechanism for awarding the so-called "pseudo-electoral" votes (see Sect. 7.2), and the mechanism that the House of Representatives currently uses for electing a President are considered protective mechanisms. The presence of both election mechanisms in the modified system guarantees that a President will be elected without run-off elections if no election stalemate occurs (see Chap. 3).

Only presidential candidates who received at least a certain number of "pseudo-electoral" votes should be considered in electing a President in the House of Representatives (which is the first of the above two changes). For instance, if three candidates receive 269, 267, and 2 "pseudo-electoral" votes, respectively, only the first two candidates should be eligible to be considered by the House of Representatives. This certain number can be calculated by means of a simple formula, proposed in [22].

The current Electoral College-based election system may elect President a compromise presidential candidate—who receives a majority of electoral votes in the Electoral College—[1, 18, 22], and this candidate may or may not be perceived by society as the best choice for the country. This may be the case, for instance, if the election winner does not win the popular vote nationwide, construed as the tally of votes cast for all the slates of state and D.C. presidential electors throughout the country.

In contrast, the modified election system always gives priority to the candidate who is better than the compromise one, produced by the current system, i.e., to a presidential candidate who receives a majority of the popular nationwide, along with majorities of the votes cast in each of at least any 26 states or in each of at least any 25 states and in D.C. (Here, the notion of a better candidate than a compromise one is applied independently of whether any compromise candidate physically exists in a particular presidential election.) If a better candidate than the compromise one does not exist in a particular presidential election, whereas the compromise candidate does, the modified election system makes this compromise candidate an elected President. Finally, if even a compromise candidate does not exist in a particular presidential election, the House of Representatives elects a President according to the rules that are in use in the current election system.

The receiving of a certain number of "pseudo-electoral votes" to participate in electing a President in the House of Representatives would be required only if there is no candidate who is perceived by society as better than the compromise candidate in the election. In the proposed modified election system, the awarding of "pseudo-electoral votes" would replace the process of appointing state and D.C. electors to represent them in the Electoral College. However, the awarding of "pseudo-electoral votes" would be employed only in those states in which voter turnouts were sufficient to consider this procedure legitimate. In all the places (states and D.C.) with a negligible voter turnout, state electors would be appointed as "… the Legislature thereof may direct…" [19]. Thus, both electoral votes from the places (states and D.C.) with a negligible voter turnout and "pseudo-electoral votes" from the rest of the places can turn out to be counted in Congress [22]. If no presidential candidate receives a majority of all the awarded "pseudo-electoral votes" and electoral votes cast by all the appointed electors, and there is no presidential candidate who is better than a compromise one, under the rules of the modified election system, a President will be elected in Congress as the Twelfth Amendment directs.

The society's perception of who should be elected President may vary, and it seems to depend on several factors.

The awareness of constitutional provisions underlying the election system, historical circumstances, emotional feelings about the country as a Union, and political propaganda are only a few such factors. Certainly, the above perception may not coincide with the currently assumed one. Thus, for instance, the compromise candidate, elected by the Electoral College, may not necessarily always be the best option for the country according to the society's perception.

From the author's viewpoint, the people's perceptions of the matter are purely subjective and may be discussed only at the level of "my opinion versus your opinion." Examples of such possible perceptions, which, however, do not exhaust the totality of them, are presented in [22]. At the same time, detecting which particular perception currently dominates in society may require holding national referenda.

One such possible perception is associated with the three concepts of the Presidency, introduced by the author in [22]. The discussion of these concepts may help better comprehend this perception, as well as better understand whether the current election system should be changed or replaced with another one.

The first concept of the Presidency is "President of the people." If a presidential candidate receives a majority of the popular vote nationwide in an election, he can be viewed as "President of the people." However, this majority can represent the will of the nation only if the voter turnout exceeds 50 % of all eligible voters on Election Day [1, 18, 22].

The second concept is "President of the states." If a presidential candidate is a choice of a majority of the places (states and D.C.) as equal members of the Union, one may call her/him a "President of the states." This concept was introduced by the Founding Fathers in the framework of the mechanism for electing a President in Congress. Article 2 of the Constitution determined basic principles of this election mechanism, and Congress developed these principles by adopting the rules of 1825 (see Sect. 2.5).

At the time of adopting the Constitution, the will of a state as a whole in electing a President could be expressed only by its delegation in the House of Representatives. Also, this will could be manifested only if electing a President was thrown into Congress. Today, the choice of a state or D.C can also be expressed by a majority or a plurality of the statewide (and district-wide in D.C.) popular vote.

The rules of 1825 require that only a majority rather than a plurality of a state delegation in the House of Representatives consisting of more than one-member can ascertain the vote of the state in electing a President there. Therefore, it seems logical to require that a "President of the states" elected according to the direct popular will of the states and D.C. would be a recipient of a majority of the popular vote in each of at least 26 states or in each of at least 25 states and in D.C. [1, 18, 22].

The second concept of the Presidency, proposed in [22], incorporates this requirement.

The third concept of the Presidency is "President of an electoral majority in the Electoral College." This concept was introduced by the Founding Fathers in Article 2 of the Constitution and was later modified by the Twelfth Amendment.

Currently, a "President of an electoral majority in the Electoral College" can be elected only according to the will of electors, who, constitutionally, are free agents and, generally, can elect whoever they want. However, a "President of an electoral majority in the Electoral College" can be elected directly by the states and D.C. If this were the case, the compromise candidate would always be a presidential candidate rather than any person picked by electors.

Proponents of the current election system, apparently, imply that a "President of an electoral majority in the Electoral College" (if such a person exists in the election) or a "President of the states" elected by the House of Representatives always represent the country's best choice for the office of President.

However, American society may view it differently. For instance, voters may believe that a presidential candidate who is both a "President of the people" and a "President of the states" according to the direct popular will of the states and D.C. is a better choice for the country. Moreover, this perception may hold even when a "President of an electoral majority in the Electoral College" also exists. (All the three presidential candidates can exist in a particular presidential election [18], and one candidate may "hold" any two of the above three or even all the three "titles.")

Besides this particular perception of which presidential candidate is a better (than the compromise) candidate, the American people may believe that, for instance, a presidential candidate who is only a "President of the people" is always the best choice for the office of President. Certainly, other perceptions are also possible [22].

The modified election system would work as follows:

1. "On the Tuesday next after the first Monday …" in the month of November of the election year, voters vote for presidential and vice-presidential candidates in their (voters') respective states and in D.C. Short ballots or similar voting schemes are used in the precincts.
   The states and D.C. certify the results of this voting (the popular vote distribution) in December of the election year. They either award "pseudo-electoral votes" to a pair of presidential and vice-presidential candidates in the manner in which the states choose electors, or appoint electors. The appointing of state electors is done only if the voter turnout in the state is negligibly small to award "pseudo-electoral votes" according to the will of the state.
   Congress tallies the (certified) popular vote received by the pairs of the candidates in the states and in D.C. and counts both the awarded "pseudo-electoral votes" and electoral votes (cast by the electors in the places with a negligible voter turnout) in the January that follows the election year.
2. Case 1. The nationwide voter turnout does not exceed 50 % of all eligible voters in the election. Then the election outcome is determined according to the current election rules. The following two situations are possible:

   (a) One pair of presidential and vice-presidential candidates receives a majority of all "pseudo-electoral votes" awarded by the states and D.C. and votes cast by the electors in places with a negligible voter turnout. This pair of the

candidates is considered elected to the offices of President and Vice President.

(b) No pair of presidential and vice-presidential candidates receives such a majority. Then the election of both a President and a Vice President is thrown into Congress, which is to elect both executives as the Twelfth and the Twentieth Amendments direct.

Case 2. The nationwide voter turnout exceeds 50 % of all eligible voters in the election. Then a pair of presidential and vice-presidential candidates may be chosen according to the people's perception of who should win the Presidency.

One such perception, considered earlier in this section, may give priority to a presidential candidate with a majority of the nationwide popular vote and majorities of the popular vote in at least 26 places out of 51 places (states and D.C.), voting in presidential elections. A presidential candidate who is a recipient of both is (a) a "President of the people" according to the direct popular will of the nation, and (b) a "President of the states" according to the direct popular will of the places. This candidate is elected to the office of President even if a "President of an electoral majority in the Electoral College" also exists in the election.

One may require that the voter turnout should exceed 50 % of all eligible voters residing in each of the above-mentioned (at least) 26 places (states and D.C.) to speak about a "President of the states" elected according to the will of the places [22]. However, the states may decide that this is not necessary and that a certain substantial percentage of all eligible state votes can express the will of the state. Certainly, D.C. voters may have the same position on the matter.

Thus, if the voter turnout does not exceed 50 % of all eligible voters in the country, the current election rules determine the election outcome. That is, if this is the case, a presidential candidate who received a majority of all the "pseudo-electoral votes" that are in play in the election (and, possibly, electoral votes cast in the places with a negligible voter turnout), i.e., a "President of an electoral majority in the Electoral College" is elected to the office of President. If, however, no such presidential candidate exists in the election in this case, the House of Representatives elects President a "President of the states" according to the Twelfth Amendment and in line with the 1825 rules.

Also, the current election rules determine the outcome when (a) the voter turnout exceeds 50 % of all eligible voters, and (b) no presidential candidate is both a "President of the people" and a "President of the states" according to the direct popular will of the nation and of voting voters in the states and D.C.

The presented description of how the modified election system works reflects a particular perception of society of who should be elected President. Though other perceptions are possible [22], the author views the presented perception as the one underlying the ideas of the Founding Fathers on electing a President [1, 18, 22].

The difference between the current and the modified election system is obvious. The modified system always gives preference to a presidential candidate who is perceived by society as a better candidate than the compromise one. Only if a better

candidate does not exist, or more than 50 % of all eligible voters do not vote in the election, does the existing election system take over.

In contrast, the current system always refuses any candidates other than the compromise one. This happens even if the compromise candidate is a choice of, say, less than 30 % of all eligible voters from less than 30 % of the places (states and D.C.). For instance, the Electoral College may elect President a presidential candidate even if 39 states and D.C. unanimously oppose this choice by favoring any other (though one and the same) candidate [18].

Certainly, the current election system may, eventually, elect President a presidential candidate who, according to the direct popular will of the nation and the will of voting voters in the states and in D.C, is a "President of the people," a "President of the states," and a "President of an electoral majority in the Electoral College." Examples of such election outcomes in the last 50 years are well known [22].

However, generally, the current system does not encourage presidential candidates to campaign across the country. Moreover, the existing election rules may make it reasonable to focus the election campaign on a relatively small bloc of "victorious states." (A bloc of the states is "victorious" if these states control at least a majority of all the electoral votes that are in play in the election.)

The modified election system would use a new method for awarding state electoral votes, first proposed in [18]. This method has the potential of turning almost all the states that are currently "safe" into "battlegrounds." The idea of this method is to eliminate any certainty that a major party candidate may have in the outcome of a statewide election. This can be achieved by making the number of state electoral votes to be received by the state's favorite dependent on how many counties he carries in the state.

Let the state's favorite—i.e., a presidential candidate who receives at least a plurality of the votes in a statewide election held to determine the state's popular vote winner—win by pluralities of votes in a majority of all the state counties. Then the state's favorite wins all the state electoral votes that are in play in the election. However, if this favorite does not win in a majority of all the state counties, the electoral votes are awarded according to the proportional method for awarding state electoral votes (see Sect. 2.9).

To illustrate how the proposed method for awarding state electoral votes would work, consider the state of Minnesota with 87 counties, which had 10 electoral votes in the 2008 election (and has the same number of the electoral votes in the 2016 election as well). If a candidate had received a plurality of the votes cast in the state in that election, along with pluralities of votes cast in each of at least 44 counties, he would have won all the 10 electoral votes.

Now, let us assume that candidate A from a major party received 60 % of all the votes cast, whereas candidate B from the other major party received 35 % of all the votes cast. Further, let us assume that candidate A won by at least pluralities of votes cast in each of 30 counties out of the 87 counties. Then candidate A would win only 6 electoral votes out of 10, and candidate B would win the remaining 4 electoral votes. If, however, candidates A, B, and C received 60, 30, and 10 % of all the votes cast in the state, whereas candidate A still won in each of some 30

counties out of 87, candidate A would receive 6 electoral votes, candidate B would receive 3 electoral votes, and candidate C would receive 1 electoral vote.

Not only does the proposed method encourage all presidential candidates who are on the ballot in a state to compete for every vote, it encourages them to compete in every county of the state. In the above example, losing 4 electoral votes can make a difference in a close election. For instance, in the 2000 election, this was exactly the margin of electoral votes that George W. Bush won. Also, Hawaii, Maine, Rhode Island, Nevada, and New Hampshire each awarded 4 electoral votes in the 2000 election.

Currently, if a presidential candidate is guaranteed to receive, say, at least 60 % of the votes in a state that awards all its electoral votes according to the "winner-take-all" method, she/he considers this state "safe," and she/he is likely not to campaign there. However, this 60 % of the votes may be received in a relatively small number of populated counties.

In contrast, under the proposed method for awarding state electoral votes, the state's favorite may expect to receive only 6 out of 10 state electoral votes, and she/he needs to campaign in the state to receive all the 10 electoral votes. Moreover, if this state's favorite hopes to receive 6 electoral votes out of 10 without campaigning there, her/his major opponent may wage a strong campaign in the state and decrease the number of electoral votes that the state's favorite expects to receive.

The proposed method for awarding state electoral votes may encourage presidential candidates other than the state's favorite to campaign in the state only if the favorite's expected share of votes does not let him win all the state electoral votes. This may be the case in the small states. Indeed, let a state be entitled to 3 electoral votes, and let the state favorite's expected share of votes in the state be 60 %. Then the favorite may expect to receive only 2 out of 3 state electoral votes, whereas, say, her/his opponent from the other major party may receive the remaining electoral vote. If, however, the state's favorite is likely to receive 85 % of all the votes cast, then he can expect to receive all the three electoral votes.

Thus, receiving 85 % of all the votes cast in a state controlling 10 electoral votes and in a state controlling only 3 electoral votes may lead to different outcomes for the state favorites and for their opponents in both states.

The idea of using the proportional method for awarding state electoral votes if the state's favorite does not win in a majority of the state counties looks fair. However, its implementation presents considerable practical difficulties in rounding-off the number of the electoral votes to be awarded to the candidates. For instance, in the above example for a state with 3 electoral votes and 60 % of the votes cast received by the state's favorite, it is not clear how to award the remaining one electoral vote. Indeed, if, say, two more presidential candidates receive 25 and 15 % of all the votes cast, respectively, it is not cleat how to remain in line with the Supreme Court requirements to have an equal weight for every vote cast in a statewide election [61, 62].

However, the same idea of eliminating any guarantees for the state's favorite can be implemented with the use of the Maine-like district method for awarding state electoral votes instead of the proportional method. The criterion of choosing one of

the two methods—the "winner-take-all" method or the Maine-like district one—remains the same. That is, if the state's favorite wins in a majority of the state counties, he is awarded all the state electoral votes as if the "winner-take-all" method were in force. If the state's favorite does not win in a majority of the state counties, the state electoral votes are awarded according to the Maine-like district method, as if this method were in force [1].

The proposed modified election system can be introduced only in the form of a new amendment to the Constitution. However, amendments to the Constitution aimed at changing the current election system have so far failed to be introduced [4, 6, 7, 10, 71].

The modified election system implies changing the first concept of the existing election system (see Sect. 2.3). This concept is the definition of a person elected President:

(a) A recipient of a majority of all the electoral votes that are in play in the election, which is established as a result of counting electoral votes in Congress in the January that follows the election year, and
(b) A recipient of a majority of state votes from (currently 50) state delegations if the election of a President is thrown into Congress, which is established by tallying the votes cast by state delegations in the House of Respresentatives in the January that follows the election year (one vote by each state delegation).

Without changing this conception, some extreme election outcomes, for instance, those presented in Examples 2.5 and 2.6 from Sect. 2.2 cannot be eliminated.

Though the rationale presented in this chapter deals only with electing a President, corresponding procedures for electing a Vice President can easily be developed [1, 18].

Finally, the author would like to summarize the major features the modified election system.

First, the modified election system builds on the current election system, rather than calls for changing any basic elements of the current election system. ("Pseudo-electoral votes" and the formula for selecting the number of persons to participate in electing a President in the House of Representatives are the only two exceptions.) It incorporates the existing system while allowing more options to choose a President.

Second, under the modified election system, the best presidential candidate is the one preferred by all eligible voters and by the places (states and D.C.), and the will of the places is expressed by the voting voters directly. From the author's viewpoint, the will of all eligible voters is expressed only if more than 50 % of all eligible voters voted in the election. If this is not the case, then a majority of the electorate either do not care or do not believe that (the electors of) presidential candidates deserve their votes in the election.

Third, under the modified election system, the first attempt to elect a President implements a "mixed" form of representation. That is, the requirement to elect President a "President of the people" secures equal representation of the American

people in the election, whereas the requirement to elect President a "President of the states" secures equal representation of the states in the election.

Under the modified election system, the awarding of "pseudo-electoral" votes and, possibly, electoral votes (in the places (states and D.C.) with a negligible voter turnout) constitutes the second attempt to elect a President. However, the second attempt is undertaken only if there is no person who is both a "President of the people" and a "President of the states" in the election. If the second attempt takes place, there is no equal representation of either the people or the states. The unequal representation is the same that exists in the Electoral College if all the electors from each state and D.C., chosen by popular elections, vote faithfully.

Should both attempts to elect a President under the modified election system fail, a particular form of equal representation of the states, though not via the direct will of voters from each state, is used in electing a President in the House of Representatives.

Does the modified election system have a chance?

Traditionally, political pundits seem to believe that the Electoral College is impervious to change, and it cannot be abolished, since the equal suffrage of the states in amending the Constitution [19] discourages attempts to reform this election mechanism. However, the progress that the National Popular Vote movement has made in pushing through the NPV plan, especially in several small states, has made some of the pundits believe that changing the essence of this election mechanism is within reach.

Since no real discussion and explanation of the NPV plan to the American people has been offered, it remains unclear whether the state legislators, who sponsor the NPV plan in these small states, understand what their states gain and what they lose. It seems that these state legislators trade the constitutionally guaranteed right of their states to have a say in deciding the election outcome for the quite illusory, unsubstantiated wishful thinking of the NPV plan originators. That is, these originators assert that under the NPV plan, votes in their states will be as important for major party candidates as will be the votes in the large states. In any case, despite the current support of respondents to the Gallup polls to abolish the Electoral College, it seems that there are not enough states to support a constitutional amendment calling for changing the current election system.

A fairer treatment of all the states in deciding the election outcome may result in their support of the use of the "one person, one vote" principle that underlies all other elections in the country. Thus, an election system offering such a treatment seems to have a chance to win the approval of at least the three-fourths of state legislatures necessary to introduce a corresponding constitutional amendment.

The modified election system allows a candidate with (a) the nationwide popular vote majority, and (b) popular vote majorities or (determined by the states) pluralities, in at least 26 states (or in at least 25 states and D.C.) to win the Presidency even if somebody else wins the Electoral College. (This could have been the case in the 2004 Election had some 65,000 Ohio voters switched, favoring the Democratic Party candidate.) However, to have the nationwide popular vote majority favoring the same person, more than 50 % of all eligible voters must vote.

If the nationwide voter turnout exceeds 50 % of all eligible voters in the country, and there is no such candidate, the candidate who wins in the Electoral College becomes the next President. If neither of the two candidates exists, the House of Representatives chooses a President according to the rules specified by the Twelfth and the Twentieth Amendments.

Should less than 50 % of all eligible voters vote, signaling that a majority of voters either do not care or believe that (the electors of) the participating candidates do not deserve their votes, either the Electoral College or the House of Representatives elects a President according to the existing election rules.

Only with more than 50 % of all eligible voters voting, may these new election rules—building on the existing ones—benefit society in close elections. This "more than 50 % requirement" to make the popular vote a decisive factor in electing a President, along with keeping the existing election system as a back up, differentiates the proposed modified election system from the Federal System Plan of 1970.

The rules of the modified election system make all the states vital for both major party candidates. To win the popular vote nationwide, both candidates are likely to compete in large states. To win in at least 26 states, both candidates are likely to compete in small states. As any close elections can hardly be won inside only 26 large and small states, both candidates are likely to compete in the medium-size states as well.

In contrast, the "winner-take-all" principle makes most large and small states "safe" for either major party candidate, so these states are almost ignored in the "battleground-kind" election campaigns, except for fundraising purposes.

Under these new rules, small states retain what they enjoy under the Electoral College and gain by becoming vital for winning in at least 26 states. Large states gain since the "winner-take- all" principle will not waste votes favoring the state's runner-up, making both major candidates interested in competing there. Medium states do not lose, as they remain valuable should the Electoral College mechanism decide the election outcome, and gain as a source for both the popular vote and prospective 26 "victorious" states. As a result, under the modified election system, election campaigns are likely to be run by both major parties in all the states.

Both the "one person, one vote" and the "one state, one vote" principles become decisive in electing a President. The "one state, one vote" addresses federalist concerns [10], [71] in determining whether there is a "President of the states" in the election according to the direct popular will of the states.

In contrast, the current election system determines the election winner according to the "one state, one vote" principle only if a President is elected by Congress. Moreover, in this case, the will of a state can be expressed only via the state delegation in the House of Representatives.

Since the modified election system retains the Electoral College as a back-up system, the chances of multi-candidate elections do not seem to increase. The use of direct popular will of voting voters in determining the election winner both nationwide and in the states opens doors for considering numerous ranked-choice voting schemes and approval voting [77].

The introduction of the modified election system requires a constitutional amendment. Such an amendment should address (a) details of the new election rules and the rights of the states within these rules, (b) detected flaws in the Constitution capable of causing weird election outcomes and constitutional crises, and (c) the automatic plan of counting electoral votes and "pseudo-electoral" votes to eliminate the "faithless elector problem."

The amendment should finally address the right of the American people to vote for President and for Vice President in presidential elections. If granted, this right would make irrelevant the right to vote for presidential electors in the states. However, state legislatures should retain the right to appoint electors in the states, as Article 2 of the Constitution directs, under any low voter turnout, when the awarding of "pseudo-electoral" votes cannot be considered legitimate.

The Founding Fathers devised the Electoral College as part of a compromise to keep the states of free settlers together as a nation. By leaving several key issues of this unique election mechanism unaddressed, they might have believed that new generations of Americans would propose a better election system or at least a better compromise as the country developed (see Sect. 2.2), rather than debating the Electoral College for more than two centuries.

The modified election system may turn out to be such a better compromise, where all the voters gain, and no state loses. This system (a) builds on the current one, (b) uses the existing election mechanisms only as a back-up system, (c) gives the American people a chance to elect a Chief Executive of the Union by directly voting for President and Vice President, (d) treats the states as equal members of the Union, and (e) equalizes the will of the nation as a whole and the will of all the 50 states and D.C.

The modified election system is likely to motivate more Americans to vote in presidential elections, and it is likely to encourage all presidential candidates to compete for votes throughout the country.

Chapter 8
Conclusion: Fundamental Merits, Embedded Deficiencies, and Urgent Problems of the U.S. Presidential Election System

The Conclusion briefly summarizes fundamental merits, substantial deficiencies, and certain problems of the currently existing U.S. presidential election system, which have been discussed in the book. Also, it outlines seven major topics relating to presidential elections on which public debates are likely to focus in the years to come: (a) what rules for electing a President and a Vice President are the fairest, (b) how to suppress voter fraud while not suppressing voter turnout; (c) how to improve the Election Day procedures that affect the integrity of the election process; (d) how to broadcast polling results as election campaign develops to avoid "brainwashing" the voters and not to reduce the turnout, (e) what voting technologies can assure the American people that every vote cast is counted, (f) how to improve civics education relating to the election system to make every eligible voter interested in voting in presidential elections, and (g) who should govern the national televised presidential debates, and how these debates should be governed.

The U.S. presidential election system was proposed by the Constitutional Convention participants in Philadelphia in 1787. Its basic principles were set in Article 2 of the Constitution, but the proposed system was modified as a result of the Twelfth Amendment ratification in 1804. Since then, Amendments 20, 22, 23, and 25, which directly affect the structure and work of the presidential election system, and Amendments 13, 14, 15, 19, 24, and 26, which deal with the rights of American citizens to participate in all U.S. elections, including presidential ones, have been ratified. However, the basic principles of the system, set in Article 2 and Amendment 12, have practically remained unchanged.

The essence of these principles can be described as follows: Only the states and the District of Columbia (since 1964) rather than the American people can elect a U.S. President and a U.S. Vice President, and only the states have two attempts to elect these two executives. The first attempt is implemented by the states (and, since the 1964 presidential election, by the District of Columbia) via the Electoral

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College, which chooses both a President and a Vice President. Should this first attempt fail (and this happened twice, in the 1800 and in the 1824 elections), the second attempt to choose both executives is given to the states only. This second attempt is implemented via Congress, where the House of Representatives chooses a President, and the Senate chooses a Vice President.

Many constitutional scholars and specialists on the American history strongly believe that the Constitutional Convention participants (the Founding Fathers) attempted to create a republic of independent, equal states, rather than a democracy (as a form of governing the country). They believe that the Founding Fathers wanted to avoid the "tyranny of majority" and to provide the independence and balance of all the three branches of authorities in the country—executive, legislative, and judicial—particularly, by rejecting the idea of direct presidential elections by the American people. Some of these scholars and specialists believe that the Founding Fathers were sure that a mandate from the nation to the Chief Executive, on who the Constitution vests all the executive power in the country, would give this branch of the country's authorities a more weight in governing the country than each of the other two branches would have.

8.1 Fundamental Merits of the System

A brief summary of the fundamental merits of the existing U.S. presidential election system to follow should be viewed as the author's attempt to analyze to what extent the existing system corresponds to underlying basic ideas and principles reflected in the Constitution and in the Supreme Court decisions relating to U.S. presidential elections. All the reasoning presented in the text does not reflect any emotional perceptions of this election system that American voters and residents may have.

1. In the absence of national and international disasters, the work of the U.S. presidential election system always ends on Inauguration Day. Either an elected President or a person from a set of eligible persons is assigned President and is sworn in by taking the oath. This set includes the list of eligible persons determined by a document adopted by Congress in line with the requirements of the Twentieth Amendment. Currently, the Presidential Succession Act of 1947 is this document (though its constitutionality is questioned by some prominent constitutional scholars). This act (a) has done away with the Presidential Succession Act of 1886, and (b) has reinstated the order of the first two people on the list that existed in the initial Presidential Succession Act of 1792.
   The state legislature from each of the fifty states and that from the District of Columbia appoint state and D.C. presidential electors, respectively. The appointed electors are to vote for President and for Vice President on the same day in the places of their residence (states and D.C.). Both state and D.C.

legislatures are free to choose a manner of appointing electors within their jurisdictions. Currently, presidential electors are appointed by holding popular elections in each of the states and in D.C., and the Constitution does not permit

(a) any repetition of voting to detect the will of the states or D.C. in electing state or D.C. electors to the Electoral College, and
(b) any repetition of voting to detect the will of elected (or appointed) electors (i.e. the Electoral College members from the states and from the District of Columbia).

2. The act of electing or appointing a President does not depend on the number of voters who may decide to vote for electors in the states of their residence and in D.C. Even if all the state eligible voters from any state (or eligible voters from D.C.) decide (a) not to vote for presidential electors at all, or (b) to vote against all the slates of the state (and D.C.) electors, the electors who are to represent the states (and D.C.) in the Electoral College will be appointed by the state and D.C. That is, Article 2 of the Constitution obliges every state to appoint state electors to the Electoral College in line with the manner of appointing state electors determined by the state legislature. Analogously, Amendment 23 of the Constitution obliges the District of Columbia to appoint its presidential electors to the Electoral College in line with the manner of appointing presidential electors determined by Congress for D.C. (In 1973, however, Congress officially transferred this authority to the administration of the District of Columbia.) The Constitution obliges all the electors to vote in their respective states and in the District of Columbia on the same day, which is currently the first Monday after the second Wednesday of December of the election year.
3. Making changes to the presidential election system that go beyond the authority of the states can be done only in the form of amendments to the Constitution. A proposal to consider a constitutional amendment is to be approved by either a two-third majority of votes cast in each of the two Chambers of Congress or by a special Convention that Congress may call for at the request of state legislatures from a two-third majority of all the states. To become part of the Constitution, every thus-approved amendment is to be ratified by either the state legislature in each of any three-fourths of all the states or by state Conventions called for in each of any three-fourths of all the states.
4. Any intermediate results of the work of the presidential election system can be challenged only in court (as happened, for instance, in the course of the 2000 election, when the voting results in the state of Florida regarding the composition of the state electors to represent the state in the Electoral College were challenged).
5. Each state and the District of Columbia can change the manner of appointing their presidential electors independently of the other states.

From the author's viewpoint, the listed merits of the system are fundamental, make this system unique, and may explain why this system has been in use from more than 220 years.

8.2 Embedded Deficiencies of the System

The following description of substantial deficiencies of the presidential election system takes into consideration only (a) provisions of the Constitution relating to the presidential election system, and (b) the Supreme Court rulings that explicitly determine how one should understand these provisions. It is these provisions and rulings rather than any

- opinions of the Supreme Court judges that are expressed in the course of discussing any constitutional matters,
- interpretations of both constitutional provisions and the above-mentioned opinions by constitutional scholars, and
- numerical estimates of the chances of weird, undesirable, and extreme situations to emerge in the course of presidential elections

that constitute the basis for this description. Certainly, the system has other deficiencies; however, those under consideration in this paragraph are the deficiencies embedded in the Constitution that may eventually cause the intervention of the Supreme Court in the election process.

1. Constitutionally, presidential electors are free agents, i.e., they are free to make their decisions in voting for both a President and a Vice President. The Constitution does not limit any elector (i.e., any member of the Electoral College) in her/his decision to vote in the Electoral College. That is, each elector can (a) vote for any two persons (for one as President and for the other as Vice President), (b) cast one of the ballots or even both ballots blank, or (c) cast the ballots that cannot be recognized as votes favoring any person. This state of affairs takes place despite the fact that

   - every elector from a state or from the District of Columbia belongs to a slate of electors submitted by the pair of presidential and vice-presidential candidates heading this slate in the state and in the District of Columbia, as well as in each congressional district of the states of Maine and Nebraska, and
   - it is assumed that every member of the Electoral College (elector) from every state and from the District of Columbia will vote in favor of the pair of the candidates whose slate of electors (a) won in this state, in the District of Columbia, and in congressional districts of the states of Maine and Nebraska, respectively, and (b) contains the name of this elector.

   Moreover, the above-mentioned two persons do not need to be either presidential or vice-presidential candidates in the election year.
   Currently, election laws in 21 of 50 states do not oblige a state elector to favor presidential and vice-presidential candidates who head the slate of electors that (a) is to represent the state in the Electoral College, and (b) contains the name of this elector. (These 21 states currently control 208 out of 538 electoral votes in the Electoral College.) Five of the other 29 states have election laws punishing

faithless electors. However, the constitutionality of these laws has never been challenged, and these laws have never been put to a test. Even under these laws, the elector may be punished only after she/he has cast the vote in the Electoral College. So, generally, these laws may not affect the elector's decision. In 2008, two states from the 29 states passed election laws that allow these states to nullify votes of faithless electors. However, the constitutionality of these laws has never been put to a test either.

The Supreme Court has never ruled that an elector must vote in line with the will of the state which this elector represents in the Electoral College. Yet different opinions on this matter have been expressed by the Supreme Court members in the course of considering various constitutional issues.

Examples of faithlessly cast votes by electors in the Electoral College are well known (see, for instance, Chap. 2 and the books [4, 6, 8]).

Thus, constitutionally, results of voting of more than 200 million eligible voters in the country and those of voting in the Electoral College in an election year may not necessarily coincide.

As mentioned earlier (see Sect. 2.2), theoretically, if for whatever reasons, all the appointed presidential electors vote faithlessly (by casting ballots that cannot be recognized as votes favoring presidential and vice-presidential candidates), the only provision to complete the election would then be the Twelfth Amendment, provided the Supreme Court confirmed that "the Vice President," mentioned in the amendment, is the sitting one and attributed (only) definition (b) (see Chap. 3) to the verb "to qualify" from the Twentieth Amendment.

2. The text of the Twelfth Amendment leaves it unclear how many persons (two or three) should be voted for as President in an election of a President thrown into the House or Representatives, when (a) at least three persons have received electoral votes as President in the Electoral College, and (b) none of these persons has received a majority of votes of all the appointed electors as President in the Electoral College.

   Indeed, according to the Twelfth Amendment, no more than three persons rather than two or three persons exactly can be voted for as President in the House of Representatives in an election of a President thrown into Congress.
3. The text of the Twelfth Amendment leaves it unclear how two persons who are to be voted for as Vice President in an election of a Vice President thrown into the Senate, should be selected when (a) none of the electoral vote recipients has received a majority of the votes of all the appointed electors in the Electoral College as Vice President, and (b) at least three persons voted for as Vice President in the Electoral College have received one and the same greatest number of votes.

   From the author's viewpoint, these embedded deficiencies make the U.S. presidential election system vulnerable and dependent on decisions of particular individuals rather than dependent only on constitutional provisions and legislations of Congress authorized by these provisions.

8.3 Some Urgent Problems of the System

A brief description of some urgent problems of the existing presidential election system is based on the analysis of opinions on this system expressed by some political leaders, American voters, journalists, commentators, etc. These opinions do not reflect to what extent this system is in line with its underlying ideas and principles reflected in the Constitution and with the Supreme Court decisions on matters relating to presidential elections.

1. The U.S. presidential election system is quite complicated to understand all its details in depth. Despite this system being studied in American schools, a sizable number of American voters are convinced that on Election Day—i.e., on the first Tuesday next after the first Monday in the month of November of the election year—they vote for President and for Vice President. Since only the names of pairs of presidential and vice-presidential candidates heading the slates of state and D. C. electors appear on the (short) ballots, many voters do not know that they do not vote for these pairs of presidential and vice-presidential candidates. American voters vote in their respective states and in the District of Columbia only for the slates of electors submitted by the pairs of presidential and vice-presidential candidates who compete in the states (and in D.C.), as well as in each congressional district of the states of Maine and Nebraska. Moreover, constitutionally, even this limited participation of voters in every state in electing presidential electors fully depends on the will of the state legislature. The Constitution allows the state legislature of every state to appoint all state electors in the Electoral College by themselves, without holding any election for these electors in the state. Many Americans do not understand that the presidential election system can cause election outcomes undesirable to them, and the election result of the 2000 presidential election in Florida seems to illustrate this.
2. As mentioned earlier, since 1824, there exists a tradition of counting "votes of all the voting voters" received by (the electors of) presidential candidates in all the states (and since the 1964 election, in the District of Columbia as well). The tally of all these votes, which does not have any legitimacy, is called the "national popular vote." This tally has this name despite the fact that, formally, it is a sum of the votes cast by eligible voters in different states and in D. C. for different slates of electors. Four times—in 1824, 1876, 1888, and 2000—the Electoral College elected President those presidential candidates who did not win the tallied national popular vote. Each time, this discrepancy was negatively received by the American people.

   Available poll results bear evidence that an overwhelming majority of the respondents believe that a President should be elected in direct popular elections by American voters rather than by the Electoral College. However, all the attempts to initiate a constitutional amendment to change the existing presidential election system have so far failed.

3. In the framework of the existing election system, votes of the voting voters have the same weight in determining the voting results only within a state and within the District of Columbia. This causes discontent among a sizable number of American voters, who believe that Presidents should be elected according to the principle "one person, one vote." It is this principle that is in use in all the American elections, except for presidential ones.
4. The deployment of the "winner-take-all" principle by state legislatures in 48 states and in the District of Columbia in electing presidential electors causes election campaigns of the major party candidates to focus on a few (10–15) so-called "battleground" or 'swing" states. In each of these "swing" states, the number of votes supporting pairs of presidential and vice-presidential candidates from two major political parties turns out to have been close (or even almost the same) for the last 20–30 years. In each of the other so-called "safe" states—many of which are densely populous ones, such as California, Texas, New York, and Florida—an overwhelming majority of all the voting voters usually prefer the candidates from one of the two major political parties in all the elections (except for, maybe, elections of the governors). In the framework of the "winner-take-all" principle, presidential candidates do not have any reason to actively campaign in the densely populous states. Such a tendency causes a great deal of discontent in many American voters from these "safe" populous states. Many of them strongly believe that presidential elections should be held according to the principle "one person, one vote" in the framework of direct popular elections.

   The author believes these problems to be urgent, since their presence in the system affects the confidence of American voters on the fairness of the U.S. presidential election system.

8.4 Seven Major Topics Relating to Presidential Elections

In recent years American society has become deeply divided about whether the current election system is fair and serves the country well. Those who believe that it is and does, do not even say that the U.S. cannot talk about how democratic national elections are in other countries as long as its own presidential election system does not serve the popular will.

Many Americans support the idea to do away with the Electoral College and elect presidents by popular vote, whereas others strongly oppose such a move and assert that it would weaken the federal structure of government. The accuracy of counting the votes cast remains in question for a sizable part of the electorate. Some voters believe that partisan authorities may artificially design voter queues to deter voters from voting in places in which support of their political opponents is substantial. There is no consensus on whether presenting a voter ID at a polling station should be a must, and whether convicted felons should retain the right to vote.

Finally, American society is becoming more and more concerned regarding the influence that numerous pre-election polls, sponsored by the media, may have on the voter turnout and election outcomes.

Strengthening the confidence of the American people in institutions of the U.S. democracy and encouraging eligible voters to exercise their right to vote are a challenge. As mentioned earlier in this book (see Chap. 7), the existing presidential election system is not easy to understand in depth, which leaves many eligible voters unaware of the value of their vote in presidential elections. An unsatisfactory civics education of both today's and future voters makes them vulnerable to both partisan political manipulation and ideological propaganda.

The American people, have both the right and the obligation to know how the existing presidential election system serves the nation so that they can decide (a) whether the whole system or any part of it should be replaced with other election mechanisms, and (b) what can be done within the existing system to address the above issues.

Public debates on the following seven major topics relating to the election system are long overdue: (a) The Electoral College v. the National Popular Vote plan and other plans to improve the current election system; (b) voter identification: how to suppress voter fraud while not suppressing voter turnout; (c) Election Day procedures and the integrity of the election process; (d) polling and elections: whether society is informed or "brainwashed" by the media regarding how election campaigns really develop; (e) voting technologies: how far the technologies have advanced since the 2000 Florida election in making the American people sure that every vote cast is counted; (f) civics education: what Americans know, and what they do not know about the election system that makes more than 40 % of all eligible voters not interested in participating even in presidential elections, and (g) who should govern the national televised presidential debates, and how these debates should be governed.

Though some of these topics have been addressed in surveys regarding the election system, for instance, in [78–80], as well as in numerous publications on the related issues, for instance, in [81], American society remains polarized regarding these issues, and further studies of the issues within the topics are needed. The following studies in each of the issues seem urgent:

The Electoral College. Since the 2000 election, a sizable part of society has shared the belief that a person who has received the most votes should be President. In contrast, many voters and residents continue to believe that despite all the controversies whirling around the current system, this system best reflects the preferences of the states, which is the underlying idea of the Electoral College. The emergence of the National Popular Vote (NPV) movement, aimed at changing the current election system without amending the Constitution, its strong support by a part of society, and an equally strong rejection of the NPV idea by another part of society bear evidence that both above-mentioned beliefs have grounds and cannot be ignored any longer.

The originators and proponents of the National Popular Vote plan for changing the current election system interpret the provision of Article 2 of the Constitution

favorable to their cause. That is, they assert that a compact formed by the states controlling at least 270 electoral votes combined can collectively decide who should be the next President, no matter what the rest of the country decides [5]. Certainly, this interpretation of the above constitutional provision is no more than a particular belief of a group of people, and it cannot be declared true or false until supported or rejected by the Supreme Court, as in the case with any constitutional matter.

However, this interpretation has already become a public policy currently in ten states—Maryland, New Jersey, New York, Illinois, Rhode Island, Massachusetts, California, Vermont, Hawaii, Washington—and in the District of Columbia, (currently) accounting for 165 electoral votes.

Opponents of the plan assert that not only does this plan violate the Constitution, in particular, the Equal Protection Clause from the Fourteenth Amendment, but that the NPV plan promises to the voters something that it cannot deliver—the equal interest of all the presidential candidates in campaigning in all the states [1].

The originators and proponents of the NPV plan blame the "winner-take-all" method for awarding state electoral votes for dividing the country into "safe" and "battleground" states and localizing the election campaign only in the "battlegrounds." Yet this plan is based on methods like "winner-take-all" in which a voter in a state cannot vote for electors from different slates of state electors.

The opponents of the NPV plan suggest that under the plan, the country will be divided into "battleground" densely populated metropolitan areas, where most voting voters reside, and rural, sparsely populated areas. They suggest that voting voters in rural areas constitute a small percentage of all voting voters and can be ignored by the candidates in any presidential elections, except for extremely close ones, rare for large electorates. Moreover, they suggest approaches to changing the system to treat the small- and medium-size states more fairly, which is likely to encourage presidential candidates to campaign in small states [1, 18, 22].

Should any group of states opposing the NPV plan decide to use methods for awarding state electoral votes other than the "winner-take-all," the "tally" of votes cast for electors of presidential candidates will no longer represent the popular will. The electoral votes that the compact of states would award according to the above "tally" under the NPV rules could no longer be viewed as those awarded on behalf of the whole country [1, 33, 58].

Without consensus in society on the NPV plan, and without a decision on its constitutionality by the Supreme Court, it may happen that only the state-signatories to the NPV compact will be contributors to the "tally" of votes cast for slates of presidential electors. If this were the case, the country would become divided into the states that would insist on following the current election rules, which could favor candidate A, and the state-signatories to the NPV compact, which would declare candidate B the election winner [33, 58].

The issue of changing the current election system in any manner should become a subject of public discussion, and possibly, a referendum, where the American people can vote on any plan offered as a replacement for the current system.

Voter Identification. Voter ID laws that some states have already instituted and some states would like to institute are a public policy concerning the integrity of the election process. Currently, there is no consensus in society on whether any such laws should be passed. Some prominent lawmakers, public figures, journalists, and voters believe that election fraud cannot be avoided unless every voter is required to present an ID at the polling station. Some others believe that this requirement is unnecessary due to an insufficient amount of fraud caused by the absence of voter IDs, whereas its enforcement will suppress voter turnout, especially that of minorities and elderly voters [82, 83].

Voter ID laws are not federal but state public policies, and these policies vary across the states. According to the National Conference of State Legislatures [83], currently, seventeen states (Georgia, Indiana, Kansas, Mississippi, North Dakota, Tennessee, Virginia, Texas, Wisconsin, Alabama, Florida, Hawaii, Idaho, Louisiana, Michigan, Rhode Island, and South Dakota) require a photo ID, whereas another 16 states (Arizona, Ohio, Alaska, Arkansas, Colorado, Connecticut, Delaware, Kentucky, Missouri, Montana, New Hampshire, North Carolina, Oklahoma, South Carolina, Utah, and Washington) require some form of a non-photo ID or its alternatives at the polling stations. Among the above seventeen states, nine states (Georgia, Indiana, Kansas, Mississippi, North Dakota, Tennessee, Virginia, Texas, and Wisconsin) allow the voters who fail to provide a voter ID to vote on a provisional ballot (though such an ID is required by the state law). However, these voters must provide an acceptable form of ID later on (within a few days after the election) to have their provisional ballots counted. In the other eight states (Alabama, Florida, Hawaii, Idaho, Louisiana, Michigan, Rhode Island, and South Dakota), the voter without an ID is allowed to cast a provisional ballot if either this voter signs a certain paper (for instance, the affidavit of identity) or a poll worker vouches for the voter. In any case, the eligibility of the voter is verified though no action from the voter is required.

At the same time, cases challenging both the status quo and the attempts to block voter ID laws are pending in several states.

There are conservative groups in the country that claim to have witnessed the registration of sizable numbers of ineligible and even non-existent voters, whereas there are liberal groups who claim that the voter fraud has never been sufficient enough to pass voter ID laws in the first place. Thus, the right of eligible citizens to vote in any election should not be compromised by any state laws, and the right of all eligible voters to have only legitimately cast votes counted should not be compromised either.

Election Day Procedures. Voting queues are another issue relating to the integrity of the election process, especially in federal elections, which constitutionally are conducted under different state laws.

Voter queues in presidential elections drew national attention when the 2000 and 2004 nail-biter elections warned American society that the queues might have affected the outcomes of both elections. Published studies suggest that, in the recent elections, long lines have contributed to discouraging from voting up to 2 % of all eligible voters, which could have made a difference in close elections in particular

"battleground" states. However, the voter queue problem, most recently actively discussed in the country during the 2008 election, does not seem to have stirred much interest.

In the 2000 election, George W. Bush won the presidency by a margin of just 537 votes in Florida. Thus, if at least 538 Floridians who came to the precincts did not have a chance to vote due to the widely reported long lines, one cannot be certain regarding the fairness of the election outcome [84].

In the 2004 election, fewer than 119,000 Ohio votes might have decided the election outcome. Bipartisan accounts suggest that in Columbus, an average of 21 would-be voters per precinct were discouraged by reported waits of up to fourteen hours. Simple arithmetic suggests that if this rate of discouragement held in all 12 of the most populated Ohio counties, with 6560 precincts—where official tallies showed John Kerry won a majority of votes—the election result might have been different [84, 85].

Election queues mostly form when the number of voting machines and support personnel are insufficient to handle swiftly the voters entering the polling station. Culprits include statistical underestimation, incompetence, equipment malfunction, and voter inexperience, especially in dealing with new machines. However, a deliberate manipulation may also be a factor [85].

Certain voting precincts can be intentionally "understaffed" with voting machines and personnel. Creating queues can be a potent weapon of partisan election authorities for suppressing voters believed to favor the other party. Among possible abuses that compromise elections, this tactic is difficult to detect, much less to prove. As there are no "exit polls" of voters who gave up because of long lines, red flags are not raised, and stealth disenfranchisement is a real possibility [86].

Malfunctions of voting equipment in the 2000 presidential election led to the Help America Vote Act (HAVA), passed by Congress in 2002 [87]. In contrast, the deployment of voting machines still does not have any federal oversight [85].

Service science suggests that establishing and enforcing voting standards, such as the maximum wait time to cast a vote, is the key to avoiding long lines on Election Day. Making a maximum waiting period a federal standard would provide "accessibility equity" for all voters [88].

The absence of reasonable voting standards is a double-edged sword. Partisan election administrators can artificially design voter queues in particular precincts to discourage would-be voters favoring their political opponents. Election administrators interested in fairly conducting elections do not have grounds to substantiate their requests for state or federal funds to meet even minimum expectations of voting voters (assuming that the administrators know how to meet them).

Polling and Elections. Predicting the outcomes of American presidential elections has become a business of the media with millions of customers both in the U.S. and around the world. While the predictions as such are undoubtedly entertaining, they affect the decisions of voters receptive to the opinions of political pundits, journalists, hosts of radio and TV talk shows, etc. Also, the prediction of the election outcome may affect the campaigns of presidential candidates due to changing the mood of potential financial donors to contribute to the "war chests" of

particular candidates. The closer the election, the more attentive are the world financial markets to the predictions [89]. There are well-studied bandwagon and underdog effects of election outcome predictions [6, 80], which suggest that predictions of presidential election outcomes are a powerful weapon capable of affecting these outcomes.

The most important effect the predictions of presidential election outcomes have is that on voter turnout, discouraging from voting those voters who trust the predictions both favorable and unfavorable to their favorites, no matter whether these predictions are trustworthy or misleading. However, despite the obvious impact of the outcome predictions on the voter turnout, the problem has never been studied in depth.

Voting technologies. Voting technologies, especially voting machines, have been a focus of society since the 2000 election. Several studies, including those conducted in the framework of the CALTECH-MIT project, have been done, and research in the field continues.

From the CALTECH-MIT project, some conclusions have been drawn on what impact voting technologies have had on the so-called residual ballots, i.e., blank, overvoted, and undervoted ballots, and several security issues associated with the use of electronic voting machines have been identified and studied. A summary of some of these studies has been presented in several surveys, for instance, in [90, 91].

Obviously, the accuracy of counting the votes by voting machines remains among the major issues affecting the integrity of the election issues and the quality of the whole election system.

Civics Education: Civic studies of the presidential election system are mandatory in American schools. Yet future voters study this subject superficially, without understanding the principles underlying the current election system, which the Founding Fathers embedded in the Constitution. Nor do they understand the value of votes cast by voting voters in the election under any particular rules of determining the election winner, including the Electoral College ones [92, 93].

The basic rules for determining an election winner should be surveyed and discussed, and educational materials on the subject, including those currently available on the Internet [94], should become part of civics education. Also, discussing various voting rules will offer a comparative analysis of the pros and cons of these rules, as well as an analysis of the perspectives on their use in U.S. federal elections, including presidential elections.

National Televised Presidential Debates. According to the available data [95], in 2012, there were 30,700,138 members of the Republican Party and 43,140,758 members of the Democratic Party. Among the 129,237,642 voting voters in the 2012 presidential election, 1,108,805 voters favored minor-party candidates [31]. Thus, even if all the members of both major parties voted in the 2012 election, about 54 million voting voters were independents. This number greatly exceeds the number of members of either major party at that time. This simple arithmetic seems to be in line with the Gallup Poll results of January 11, 2016, which show that 42 % of American adults consider themselves independents [96].

Yet one may argue that no matter how many voters call themselves independents, together, two major-party presidential candidates usually receive more than 95 % of all the votes cast. In the 1992 and 1996 elections, however, they received less than 81 and 91 %, respectively [31], but these two elections were an exception. The participation of a strong independent candidate in the national televised presidential debates in the 1992 election substantially affected that election outcome. At the same time, his absence from the national televised debates in 1996 (though as a candidate from the Reform Party in that election), apparently, contributed to a substantial drop in his popularity on Election Day.

The Commission on Presidential Debates (CPD)—a private, non-profit organization formed in 1987—has had a monopoly on holding presidential debates since the 1988 election. Soon after the Commission was formed, the League of Women Voters decided to quit sponsoring these debates. This happened once it became known that the election campaigns of the two major party candidates had reached a secret agreement on how the debates should be held and ruled [97].

Neither the Constitution nor any federal statutes regulate these debates. The Federal Election Commission (FEC) regulations allow any 501(c)(3) and (c)(4) tax-exempt organization to hold federal candidate debates if it does not endorse or oppose political candidates or parties. The only requirement to be a "staging organization" for these debates is "to follow pre-established criteria on which candidates may participate in the debates" and not to use the "nomination by a particular political party as the sole objective criterion to determine whether to include a candidate in a debate" [98].

The CPD rules require persons interested in participating in the national televised presidential debates (a) to achieve at least 15 % of the popular support on national polls conducted by "five selected national public opinion polling organizations," and (b) to be constitutionally eligible to the office of President and to be on the ballot in states controlling at least 270 electoral votes combined [99, 100].

Nobody knows which particular polls should be trusted and (why), when the support is to be demonstrated (and for how long), and whether all the presidential nominees are in the question of the top line. As egregious as this may seem, in the most developed democracy in the world, the CPD, a private firm, is free to dictate its fuzzy rules for presidential debates—a matter of national importance.

The historical "jump" of Ross Perot from 8 % of the popular support before the televised debates to almost 19 % on Election Day 1992 suggests that with respect to non-major party candidates, the CPD rules are a "Catch 22" [99]. Without gaining publicity via televised debates with major party candidates, a non-major party candidate is unlikely to achieve 15 % of the public support. Yet without this support, the CPD does not let the candidate into these debates.

While the CPD claims to be non-partisan towards either major party, its rules look completely partisan towards all the other political parties and independent candidates combined. Due to the CPD rules, in presidential elections, the American people are, in fact, forced to choose only between two major-party nominees, even

if unfavorable ratings of either nominee exceed 50 %, which seems to be the case in the 2016 presidential election [101].

Thus, these rules leave more than 40 % of independent voters underrepresented in presidential debates, as well as in presidential elections.

In the CPD televised presidential debates, both major-party candidates only name problems that concern Americans and promise to take care of them if elected. They can afford to do this since the non-major party candidates, willing to discuss these problems, are cut off from the debates even in the primary season. Nobody knows whether the promises made are trustworthy and even implementable (particularly, financially) since no solutions and calculations are offered. The debaters focus on personal attacks on their opponents and go after them on private matters.

The CPD debates look like cage fights. Agile and wily debaters win by personally harming their opponents, or making fun of them, or both. Particular issues, that lovely word of the candidates who often have no clue on how to deal with them in reality, are not discussed as deeply as they deserve. Nor are they often even mentioned. Instead of a competition of ideas, the debates offer only a comparison of candidate disadvantages.

Is this good for America?

The country can only lose by electing a President out of two candidates whose plans for the country have not been discussed in depth in front of interested voters and experts. The CDP discriminatory debate rules contribute to distorting the real preferences of the American people. If non-major party candidates participated in TV presidential debates, many independent voters would probably still favor major-party candidates. However, their choice would then be free rather than being affected by the CDP rules.

Can the non-major parties and independent voters change this status quo? Yes, they can.

The CPD would certainly change the debate rules if a strong competing force came into play, as usually happens in any private business.

Alternative TV debates and/or online debates are likely to draw the attention of both the American voters and all the presidential candidates, including the two major-party ones, especially if experts offer their opinions as well.

Three challenges associated with organizing and holding such alternative debates should be addressed.

First, the cost of technically communicating the debates to, for instance, the Internet audience, which will be much lower than that of the TV ones, needs to be covered. One should estimate the numbers and explore the sources of the coverage. Any alternative and/or online presidential debate staging organizations are to be allowed by the FEC to accept funds from labor unions and corporations to "defray costs incurred in staging candidate debates" [98]. Certainly, foundations caring about the election fairness should be allowed to sponsor such debates.

Though businesses will undoubtedly be glad to use this unique opportunity to advertize their products to millions of debate viewers, their contributions should be approved by the FEC in some form. The same is true for possible small private

contributions from the interested audience, and the grass-root financing of Senator Bernie Sanders' 2016 campaign bears evidence that there is room for this.

Second, the alternative TV and/or online debates should be run completely differently from the CPD "shows" that are currently offered in the TV debates. Though there still may be certain reasonable thresholds to overcome to be eligible to participate in the debates [102], both established political parties and independent presidential candidates should be able to participate. Criteria to consider candidates established should be set by experts and approved by the American people rather than being arbitrarily set by the CPD.

To be considered established, a non-major party presidential candidate or an independent one should demonstrate a certain level of public support, both locally and nationwide, to appear on TV programs, radio talk shows, etc., i.e., become noticeable in the public arena. It is possible that several such established candidates would first need to debate among themselves on the Internet, on TV and radio programs, and in the state and national newspapers. All interested persons can start these activities well in advance of the presidential election season, and the activity results will reflect public interest in their ideas and programs. This interest, measured by the level of the public support attained, will either let or not let them overcome the thresholds to be allowed to compete with the major-party candidates in any national televised presidential debates. The experience of running such debates for non-major party candidates and for the "newcomers" has long existed in Europe, and this experience may be helpful.

Once the set of presidential candidates from non-major parties and independent ones to be on the alternative TV and/or online debates has been determined, a list of issues to be discussed at the debates should be suggested by the potential viewers. Each debate should cover a particular issue or a group of connected issues from the list. The candidates should understand that they would be better off to be aware of the specifics of the issues which are the subject of each debate, since they are to argue with each other and also with invited recognized experts in the field. These experts will explain to the audience in a simple manner whether each candidate's proposal is implementable, will not harm the American economy and/or security, and will not make problems even more complicated. As a result of these debates, all interested Americans will see who of the candidates (a) shares their values, (b) is the most capable of solving problems that concern today's America, (c) is more knowledgeable, and (d) the best prepared to run the country.

Third, the alternative TV and/or online debates should be organized in such a manner that the candidates from both major political parties would not refuse to participate in them. Currently, the Internet reaches tens of millions of American voters, and presidential candidates need to earn their support by Election Day. In the era of television dominance, presidential candidates could afford to ignore their non-major party opponents [103, 104]. Particularly, with online debates, no candidate will dare to refuse to debate and let the opponents take advantage of her/his refusal to reach millions of voters. Also, deep concerns of many Americans about the future of the country and their distrust for both the legislative and the executive branches of the government have reached a critical level, as the 2016 election

campaign has demonstrated. At this state of affairs, one cannot any longer deprive concerned voters either from substantive debates on real problems that they face in their everyday lives or from seeing alternatives to both major parties. Any refusal to participate in substantive debates with non-major party candidates and experts may cost the major-party candidates a defeat in the election.

Alternative TV and/or online substantive presidential debates will not exclude the CPD debates but will help Americans see who best can solve the country's problems. The CPD debates should let the candidates demonstrate their ability to react quickly, look presidential, and lead. The alternative TV and/or online debates should let the voters judge which candidate understands their problems better and more deeply. However, making the debates of both types inseparable will keep any debate staging organizations from excluding established non-major party candidates and independents from the debates.

Certainly, the idea of running alternative TV and/or online presidential debates will likely engender a great deal of criticism, especially from the conservatives, since they may believe that such debates are a threat to the existing two-party political system. However, this could be the case only if both major parties veer far away from voter expectations. On the contrary, holding such debates may produce an outcome desirable to both major parties. That is, if the major-party candidates come to the debates better prepared and more convincing than all their opponents, they may gain party supporters and even new members for their parties.

In any case, presidential candidates from established non-major political parties and independents who have overcome the above-mentioned thresholds should not be deprived from participating in televised presidential debates by artificially imposed unreasonable discriminatory requirements that are impossible to meet. Nor should the voters be left by the major parties to choose a President exceptionally based upon the financial capabilities of these parties rather than on the merits of all the presidential nominees.

Alternative TV and/or online debates that allow the nominees of established non-major party candidates to participate will make every presidential election more accurately reflect the will of the people. All the people.

Finally, supporters of the two-party system may argue that alternative TV and/or online presidential debates will "siphon" votes from major party candidates and will likely throw the election into Congress. Even if this is the case, at least currently, the two-party House of Representatives will unlikely elect a President other than from a major party though it may produce a President who has lost both the popular vote and the electoral vote.

Also, it seems reasonable to remind the conservatives that throwing a particular presidential election into Congress and electing a President in the House of Representatives is part of the existing presidential election system. Moreover, as mentioned in Sect. 1.5, in designing this system, the Founding Fathers may not have expected the Electoral College to always elect a President. According to their vision, if the Electoral College failed, the final say would belong to the states as equal members of the Union. The Founding Fathers considered the Electoral College failure a result of the lack of consensus among the electors, particularly,

due to the difference in their opinions on who is the best to fill the office of President. Under today's presidential election system, the same lack of consensus among American voters on who is the best to be President may lead to the same failure of the Electoral College to produce a President.

If the voters know how the existing U.S. presidential election system works, they will likely make the right choice, being aware of the consequences of their vote. The author hopes that both the outlined seven topics to be discussed in the course of election campaigns and the present guide to the U.S. presidential election system may help American voters make this right choice on Election Day.

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