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The Case for Fractional Proportional Allocation with Runoff

Kevin Johnson, Ash Center Electoral College Symposium, April 2024



Framing premises

1. Ultimately, we need an amendment.
2. Crises can change what's possible; we need to be ready.
3. We need amendment options that optimize between fixing the most problems and gaining the broadest support.



5 problems from 3 sources

Problem	Primary Structural Source	In the Constitution?
<p>1. Inverted winners: The winner of the popular vote doesn't always win the Electoral College.</p> <p>2. Swing-state-dominated campaigns: Presidential campaigns ignore all but a handful of unrepresentative states. Voters in the rest of the country hardly matter. Presidential policies favor swing states.</p>	States' choosing winner-take-all	No
<p>3. Third parties can't win: Candidates who could win under different rules can't under ours, so they don't run; that reduces choice for voters, causes the "spoiler problem," and thwarts evolution of our politics.</p> <p>4. "Thrown to the House:" The contingency for no majority in the Electoral College is very undemocratic and could fail to break a tie.</p>	Contingency provision if no majority in Electoral College	Yes
<p>5. All votes are not equal: Voters in small states have significantly more weight than voters in large states.</p>	"Great Compromise" btw large & small states	Yes



Currently, winner-take-all is a much bigger problem than small-state advantage

- The 16 smallest states have split 8-8 in the last four elections.
- Trump did **not** win from 2nd place in 2016 because of small-state advantage. Trump won because of more efficient use of votes across 56 winner-take-all elections, resulting in lower margins of victory.

2016 Election	Trump	Clinton
Small states won	8	8
Average state-level margin of victory*	12.8%	19.6%

*Weighted average, based on electoral votes.



Currently, winner-take-all is a much bigger problem (cont)

- Trump's 2016 share of the electoral college vote barely changes if we adjust the Electoral College to remove the small state advantage.

	Total Electoral College votes	Trump Share 2016	Clinton Share 2016
Actual electoral college results	538	56.5%	43.5%
Census-adjusted electoral college results*	1658	56.9%	43.1%

- **The implication: Both parties are at risk** of winning the popular vote and losing the electoral college.

*state electoral votes made proportional to population, based on 2010 census.



Some sources of support and opposition

Support

Insiders from both parties want presidential campaign attention to their states. That favors ending winner-take-all.

Opposition

The Right opposes a direct popular election and ending the small-state advantage, based in part on state/federal grounds.

- Ending winner-take-all but keeping small-state advantage should have wider appeal than changing to a direct popular election.
- Republicans also want to keep a system that enables minority rule, but that could change if the next inverted winner is for the other side.



Core elements of an amendment

A modified version of the Lodge-Gossett Amendment of 1950

1. Human electors are replaced with electoral votes calculated to the right of the decimal point.
 - No change to how states' electoral votes are determined.
2. In each state, the **three** candidates with the most popular votes are awarded the state's electoral votes proportionally.
3. A candidate needs more than 269 electoral votes to be elected; Congress sets the runoff mechanism (a subsequent election or instant runoff).



Making every state matter

Examples:



2020 electoral votes:

Biden: 55
Trump: 0

Trump: 38
Biden: 0

Trump: 6
Biden: 0

Biden: 3
Trump: 0



Using top-3 proportional:

Biden: 35.31
Trump: 19.10
Jorgenson: .60

Trump: 19.85
Biden: 17.72
Jorgenson: .43

Trump: 3.81
Biden: 2.12
Jorgenson: .07

Biden: 2.03
Trump: .94
Jorgenson: .03

Votes needed to swing \approx .5 of an electoral vote

78,000

73,000

49,000

30,000



Why a runoff?

1. A runoff enables broader competition while arriving at a majority–supported winner.
2. We need it to be possible for our party system to evolve and change. A presidential runoff is key to creating that possibility.



Photo source: Britannica

Emanuel Macron, President of France, Founder of the centrist En Marche political party in 2016. The experience of Macron and En March exemplify how a runoff presidential system facilitates new party formation.



4 of 5 problems fixed and 2 of 3 sources removed

Problem	Under proposed amendment
1. Inverted winners	Becomes nearly impossible
2. Swing-state-dominated campaigns	Ended, and every state matters
3. Third parties can't win	Incentivizes new party formation
4. "Thrown to the House"	Replaced by a runoff
5. All votes are not equal	No change

Primary Structural Source	Under proposed amendment
States' choosing winner-take-all	Becomes impossible
Contingency provision if no majority in EC	Replaced by a runoff
"Great Compromise" btw large & small states	No change



Something for everyone

Republicans:

- Gain campaign attention to neglected red states.
- Keep small-state electoral advantage.
- Protect federalism and state-based elections.

Democrats:

- Gain results more reflective of national preferences.
- More permanent solution than NPV Compact.
- Gain campaign attention to neglected blue states.
- Inverted winners become close to impossible.

Others:

- Finally have the needed conditions to invest in and build a true alternative political party.

Voters:

- Matter everywhere
- Have more choice among viable options

Small states:

- Keep the same electoral college impact.

Large states:

- Gain more attention from campaigns and presidents.

Democracy advocates;

- Fix all problems with the system except making every vote equal.
- Could get help reducing vote inequality by expanding the House.



Status

- A draft version of the amendment describe here was prepared for introduction in the Senate in June 2020.
- At that time, the Supreme Court was considering *Chiafalo v Washington*, and a decision preventing states from binding electors' votes would likely have triggered interest in an amendment to address the risk of free electors, creating an opportunity for a more holistic solution.
- The draft was withdrawn following the ruling against elector freedom in *Chiafalo*.
- Hundreds of amendment proposal based on proportional allocation have been introduced in US history. Proportional allocation has been supported as an idea worthy of consideration by a wide range of scholars and by the Washington Post editorial page ([January 2nd 2021](#)).

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Questions and Feedback

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