

To: Senator Durbin, Senator Duckworth, and Representative Quigley

From: Maddie Stengel, citizen of Illinois' 5th District

Date: July 20, 2022

Dear Senators Durbin and Duckworth & Representative Quigley,

An ideological chasm is splitting our country and democracy teeters on that chasm's edge. As crises compound crises, America's collective patience is thinning. I was 19 when I voted in the 2016 election - my adulthood is still fresh. A time that should be overflowing with promise is instead plagued by skepticism. Each day, I cut ties with the future I imagined and try to make sense of a frighteningly apocalyptic reality. I am beginning to understand the phrase "my vote doesn't matter." Even still, I believe in the promise of equitable governance.

Before moving to Illinois, I lived in Texas, New York, and Minnesota. I have come to see the Prairie State as a unique middle-point in the country. Illinois has rural communities, metropolitan cities, a wide socioeconomic spectrum, and an array of independent cultures. We are well positioned to advocate for a better future - one that will allow rising generations to keep hold of our dreams.

I urge you to lead with bravery: abolish the Electoral College. Give direct power to the people by instituting a popular vote. Reforming our presidential election will re-engage voters and fight against the pervasive belief that voting "doesn't matter." By proposing a constitutional amendment, you will lead Illinois and the nation towards meaningful change.

A Brief History of The Electoral College

In 1787, the Founding Fathers debated the process of choosing a president. The split was between a vote of Congress and a popular vote of the citizens.¹ As a compromise, the Electoral

¹ American Bar Association. (2019, October). *ABA Legal Fact Check: Can the Electoral College be abolished?* Retrieved July 19, 2022, from

College was established. Article II, Section 1 of the U.S. Constitution reads (abbr):

Each State shall appoint...a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled...The Electors shall...vote by Ballot...they shall make a List of all the Persons voted for, and of the Number of Votes for each...The Person having the greatest Number of Votes shall be the President...

Today, Americans vote in November, but the final decision is left to 538 electors in December.

The process of selecting and governing electors is quite opaque. States determine both how electors are chosen and how they are held accountable. According to the National Association of Secretaries of State, some laws simply say that electors must vote for their party's candidate; others require electors to sign an oath. A handful of states will criminally penalize an elector that violates the requirement.²

Because the Electoral College is a creature of the Constitution, it can only be altered with a constitutional amendment. There are two ways to propose an amendment: 1) a two-thirds vote of both Houses of Congress, or 2) a request from two-thirds of the States (determined by a convention called for that purpose). Then, the amendment must be ratified by three-fourths of the State legislatures OR three-fourths of conventions called in *each* State.³

What's Not Working?

The Electoral College was never intended to represent raw public opinion; it was intended to settle the forefathers' debate. Electors are essentially ungovernable due to a gaping hole in the Constitution where accountability should be specified. Cases argued at the state level have resulted in contradictory outcomes and done little to clarify the issue.

<https://www.americanbar.org/news/abanews/publications/youraba/2019/october-2019/q--the-electoral-college--is-it-open-for-interpretation-by-the-c/>

²National Association of Secretaries of State. (2016, November). Summary: State Laws Regarding Presidential Electors.

³ National Archives and Records Administration. (2016, August 15). *Constitutional amendment process*. National Archives and Records Administration. Retrieved July 19, 2022, from <https://www.archives.gov/federal-register/constitution>

Since American democracy's inception, five candidates have lost the popular vote but won the presidency. Two of these five instances happened within my lifetime. Between 1948 and 1988, seven elections possessed one faithless elector (*i.e.*, an elector who votes in opposition to their state's popular vote).⁴ These mismatched results and rogue actors occur precisely *because* of the Electoral College system. According to a New York Times/Siena College poll, "A majority of American voters...believe their system of government does not work, with 58 percent...saying that...constitutional democracy needs major reforms or a complete overhaul."⁵ The biggest problem facing American democracy is the growing belief that it does not work.

The Supreme Court has not defined accountability for electors. In *Ray v. Blair*, the Court held that the Constitution does not "bar a political party from requiring" electors to pledge support for the national convention's nominees.⁶ However, the execution of such pledges is murky at best. After the 2016 election, two cases challenged this enforceability:

- ***Chiafalo v. Washington***: Washington State's Supreme Court upheld a state election law stating that electors must vote for the candidate they pledged to support. Those that do not could be fined up to \$1,000. The opinion said, "It is within a state's authority under Article II, Section 1 to impose a fine on electors for failing to uphold their pledge."
- ***Colorado Department of State v. Baca***: Against Colorado's secretary of state, a panel of the U.S. Court of Appeals for the 10th Circuit struck down a state law requiring electors to vote for the popular vote's winner. The panel wrote, "the Constitution provides no express role for the states after appointment of its presidential electors...Once appointed,

⁴ Merriam-Webster. (n.d.). *Dictionary by Merriam-Webster: America's most-trusted online dictionary*. Merriam-Webster. Retrieved July 19, 2022, from <https://www.merriam-webster.com/>

⁵ Epstein, R. J. (2022, July 13). *As faith flags in U.S. government, many voters want to upend the system*. The New York Times. Retrieved July 19, 2022, from <https://www.nytimes.com/2022/07/13/us/politics/government-trust-voting-poll.html>

⁶ American Bar Association. (2019, October). *ABA Legal Fact Check: Can the Electoral College be abolished?* Retrieved July 19, 2022, from <https://www.americanbar.org/news/abanews/publications/youraba/2019/october-2019/q--the-electoral-college--is-it-open-for-interpretation-by-the-c/>

(electors) are free to vote as they choose.”⁷

As these cases illustrate, though governed by the same Constitution, courts on the federal and state level reached polar opposite decisions. If the courts cannot define the governing legislation, how can the average American be expected to understand the process?

Solving the Problem

Polls show increasing support for reforming the Electoral College. In 2020, Gallup found that 61% of Americans support abolishing the College entirely.⁸ The proposition is simple: amend the Constitution to eliminate the Electoral College and transition the Presidential election to a popular vote.

Imagine this in November: citizens cast presidential ballots. Their votes go to a statewide tally. Upon completion of the state’s count, a projected winner is reported to Congress. At that point, an immediate recount takes place on the Senate floor. The official vote is called upon the completion of the federal count. Rather than pundits individually calling a projected winner, Congress makes one sweeping announcement: the presidential term is decided by the popular vote. The result is a genuine reflection of American citizens’ priorities, goals, and values.

While one amendment cannot completely restore faith in our government, it can clear the path for further repair. According to Pew Research Center, “84 percent [of Americans] think that trust in government can be improved.”⁹ This statistic should be a source of immense hope. In the midst of swirling misinformation and chronic distrust, Americans believe a better form of government can exist. It is up to you, leaders, to lead us towards that light.

⁷ American Bar Association. (2019, October). *ABA Legal Fact Check: Can the Electoral College be abolished?* Retrieved July 19, 2022, from <https://www.americanbar.org/news/abanews/publications/youraba/2019/october-2019/q--the-electoral-college--is-it-open-for-interpretation-by-the-c/>

⁸ Brennan, M. (2022, May 20). *61% of Americans support abolishing Electoral College*. Gallup.com. Retrieved July 19, 2022, from <https://news.gallup.com/poll/320744/americans-support-abolishing-electoral-college.aspx>

⁹ Dimock, M. (2020, February 19). *How Americans View Trust, Facts, and Democracy Today*. The Pew Charitable Trusts. Retrieved July 19, 2022, from <https://www.pewtrusts.org/en/trust/archive/winter-2020/how-americans-view-trust-facts-and-democracy-today>

References

- American Bar Association. (2019, October). *ABA Legal Fact Check: Can the Electoral College be abolished?* <https://www.americanbar.org/>. Retrieved July 19, 2022, from <https://www.americanbar.org/news/abanews/publications/youraba/2019/october-2019/q--the-electoral-college--is-it-open-for-interpretation-by-the-c/>
- Brenan, M. (2022, May 20). *61% of Americans support abolishing Electoral College*. Gallup.com. Retrieved July 19, 2022, from <https://news.gallup.com/poll/320744/americans-support-abolishing-electoral-college.aspx>
- Dimock, M. (2020, February 19). *How Americans View Trust, Facts, and Democracy Today*. The Pew Charitable Trusts. Retrieved July 19, 2022, from <https://www.pewtrusts.org/en/trust/archive/winter-2020/how-americans-view-trust-facts-and-democracy-today>
- Epstein, R. J. (2022, July 13). *As faith flags in U.S. government, many voters want to upend the system*. The New York Times. Retrieved July 19, 2022, from <https://www.nytimes.com/2022/07/13/us/politics/government-trust-voting-poll.html>
- Merriam-Webster. (n.d.). *Dictionary by Merriam-Webster: America's most-trusted online dictionary*. Merriam-Webster. Retrieved July 19, 2022, from <https://www.merriam-webster.com/>
- National Archives and Records Administration. (2016, August 15). *Constitutional amendment process*. National Archives and Records Administration. Retrieved July 19, 2022, from <https://www.archives.gov/federal-register/constitution>

Presidential election process. USA Gov. (2022, March 9). Retrieved July 19, 2022, from
<https://www.usa.gov/election>

US House of Representatives: History, Art & Archives. (n.d.). Retrieved July 19, 2022, from
<https://history.house.gov/>