

## It's really hard to change Electoral College rules

Nebraska Republicans are only the latest to try and fail.

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The fraction  $1/538$  is extremely small — equivalent to less than 0.2 percent. But last week, it proved big enough that a group of Nebraska Republicans [tried to change](#) how their state awards electoral votes in the Electoral College, the institution that elects the president.

Nebraska has just five of the Electoral College's 538 electoral votes — the inspiration for our publication's name — but it's just one of two states that don't award all of their electoral votes to the statewide winner in a presidential election. Instead, Maine and Nebraska award electoral votes to the winner of each congressional district — one per district — and give the other two votes to the statewide winner. That means that while Nebraska is a solidly Republican state, Democratic presidential nominees have a shot at winning one electoral vote from its competitive [Omaha-based 2nd Congressional District](#), which happened in [2008](#) and [2020](#). Looking to avert that possibility in 2024, [former President Donald Trump encouraged](#) Nebraska Republicans to move the state to a winner-take-all system — although the state legislature [voted down an attempt](#) to do so on April 3.

The Nebraska case is actually just the latest in a long run of proposals throughout American history to change how states award electoral votes. These schemes have often tried to give the proponents' party a better chance of carrying more of a state's electoral votes — and have rarely been successful in modern times. In fact, the last time a state altered how it awarded its electoral votes [was Nebraska in 1991](#), when the state converted from statewide winner-take-all to its current district-based system. More broadly speaking, a change to one state's rules is very unlikely to affect the outcome of a presidential election, but Republicans' recent efforts to secure even one additional electoral vote in Nebraska help illustrate how determined parties are to seek out even the smallest advantage in today's highly competitive electoral environment.

### Winner-take-all — for the most part

The Constitution [leaves it up to the states](#) to decide [how to allocate](#) their electoral votes, which equal the size of a state's congressional delegation (all representatives plus two senators, with [three votes assigned to](#) the District of Columbia). Today, every state except Maine and Nebraska uses a winner-take-all system based on the statewide presidential election result. But that wasn't always the case.

Using statewide electoral results is the long-standing norm

In the nation's early days, many states [awarded their electoral votes](#) by having the state legislature choose electors. Others used the popular vote at the state and/or district level, while some employed hybrid systems that used, for instance, a combination of the popular vote and legislature's preferences to pick electors. But political parties, seeking to maximize each state's power in the Electoral College, gradually moved most states [toward a system where one party](#) would usually win all of the state's electoral votes based on a statewide election. By 1836, almost every state (25 of 26) used the "general ticket" system, in which each party's individual presidential electors ran statewide, and the top vote-getters — who usually, [but not always](#), were from the same party — became the state's electors.

In the first half of the 20th century, states began simplifying the general ticket concept by using a "[short ballot](#)" in presidential elections, allowing voters to mark their ballots for a party's presidential and vice presidential candidates, which translated into a vote for that party's slate of electors. This shift made ballots less confusing and easier to use on increasingly prevalent voting machines. It also all but eliminated voters' ability to split their choices for presidential electors across multiple parties. Every state now uses some form of this ballot design to allot its statewide electoral votes, although a small number [still list the electors' names](#) next to the presidential ticket.

## **Attempts to change the system have been constant**

While the use of the statewide winner-take-all approach to divvy up electoral votes has remained dominant for nearly two centuries, it hasn't gone uncontested. Many proposals have circulated at the state and national level to change this process — often with a partisan goal of helping one party or another win more electoral votes.

One of the few attempts that actually changed a state's rules [came in Michigan ahead of the 1892 election](#), after Democrats captured the state government in the 1890 midterms and changed how the state awarded electoral votes. Instead of giving all 14 to the statewide winner, 12 were apportioned by congressional district result and the other two went to the winners of larger eastern and western districts. As a result, Democrats [picked up five electoral votes](#) even as the GOP carried Michigan, though it didn't influence the overall outcome, which Democrat Grover Cleveland won with room to spare in the Electoral College. But the Michigan situation also sparked a legal case that still resonates today: *McPherson v. Blacker*, in which the Supreme Court ruled [that the Constitution did give states the power](#) to apportion and choose electors as they preferred. Still, Michigan's district-based system was short-lived — Republicans retook control of state government in the 1892 election and reversed the change.

Fast forward to 2004, when Colorado voters [weighed in on a proposed constitutional amendment](#) to shift to a proportional allocation of electoral votes based on the popular vote. Notably, this campaign was on the ballot [thanks to Democratic-aligned efforts](#) in the wake of the 2000 election, when Republican George W. Bush won the presidency with 271 electoral votes (one more than required to guarantee a majority) to Democrat Al Gore's 266. Had the proportional system been in place in 2000, Bush would've narrowly *lost* because Gore [would've picked](#) up three of eight electoral votes in Colorado, which backed Bush statewide (Gore had 266 electoral votes instead of 267 [due to a faithless Democratic elector](#) who said [she would've voted for Gore](#)

if he could've won). However, [Colorado voters rejected the measure](#) 65 percent to 35 percent — a result Democrats are probably happy about because the state [has since become reliably blue](#) in presidential races.

At the national level, Bush's narrow wins in 2000 and 2004 helped spark [a broader state-by-state campaign](#), the [National Popular Vote](#) initiative, under which states would give all of their electoral votes to the national popular vote winner. Although constitutional questions abound, 16 states plus the District of Columbia (worth 205 electoral votes — 65 short of the critical 270-vote mark) have signed on to the campaign. Tellingly, these are all Democratic-leaning states, as Democrats [are more supportive](#) of using the national popular vote to elect the president than Republicans, who won the presidency in 2000 and 2016 despite losing the popular vote.

On the flip side, Democrat Barack Obama's victories in 2008 and 2012 ignited a number of failed Republican-backed measures to change electoral college systems in battleground states. In 2011, Pennsylvania Republicans (who took full control of the state's government and [redrew an advantageous congressional map](#) that same year) [proposed switching](#) from winner-take-all to a congressional district-based approach. Had it taken effect, Obama would've won only seven electoral votes in 2012 instead of all 20. Following the 2012 election, Republicans launched efforts to move to either proportional or district-based approaches in [Michigan](#), [Ohio](#), [Pennsylvania](#), [Wisconsin](#) and [Virginia](#). Once again, these proposals appear pretty shortsighted in retrospect: If enacted, they would've likely led Trump to win fewer electoral votes in 2016 because he won the statewide vote in four of those five states (all but Virginia). Despite all that, [some Wisconsin Republicans tried again](#) in response to Biden's narrow 2020 victory in the state.

Even this year's effort in Nebraska has plenty of antecedents: Republican-aligned legislators have filed bills in eight of the past nine legislative sessions to make Nebraska winner-take-all again. In April 2016, they even came within [one vote of overcoming a filibuster](#) to advance one of those proposals. But while they're likely to keep on trying, they [appear to have run out of time](#) to make it happen ahead of the 2024 election. Existing legislation [failed to make it out of committee](#), and a bid [to attach it to a separate piece of legislation](#) came up short last week after it was ruled not germane. Republican Gov. Jim Pillen — who backs the winner-take-all proposal — has also [noted that it lacks support from the 33 members](#) necessary to overcome [the robust filibuster rule](#) in Nebraska's 49-member unicameral legislature. (In fact, [a recent party switch](#) gave Republicans a 33-member supermajority, but the party switcher has opposed the proposal.)

That's not to say that all attempts to transform the Electoral College have had an obvious partisan intent. Close elections in 1948, 1960 and 1968 [helped revive](#) federal interest in changing the Electoral College following World War II. In the 1950s and '60s, [various congressional proposals](#) put forth [constitutional amendments](#) to implement district-based, proportionally based or hybrid systems. In 1969, the House [passed a constitutional amendment](#) to abolish the Electoral College and elect a president with a national popular vote, but the measure [faltered when Southern senators filibustered it](#) in the Senate.

Neither of the state-level changes in modern times had an obvious partisan intent, either. In the wake of the 1968 election, Maine shifted from winner-take-all to its district-based system in 1969 [to make it less likely](#) that a candidate could win all of its electoral votes with just over a

third of the statewide popular vote. And in 1991, Nebraska [changed to its district-based method](#) to encourage candidates to pay more attention to what was otherwise a safely Republican state.

## One electoral vote is unlikely to matter, but it could

While these sorts of proposals have usually failed to gain traction, they certainly receive a lot of attention. But even if one were to come to fruition, just how much of an electoral impact would it have? The truth is that just one state changing how it awards electoral votes is unlikely to affect the outcome of the presidential election. In 39 presidential elections since the Civil War, only one has been decided by a single electoral vote — [the highly disputed 1876 race](#) — and six others have been close enough that the Electoral College outcome hinged on the result in a single "[tipping-point](#)" state: 1880, 1884, 1888, 1916, 2000 and 2004. Of course, two of those results came in the past quarter century, during our current era of highly competitive elections, and the possibility that it could happen again in 2024 is realistic, if not very probable.

538 founder and former editor-in-chief Nate Silver [recently examined](#) the conditions under which one Republican electoral vote from Nebraska would effectively give Trump victory by producing a 269-269 tie in the Electoral College instead of a 270-268 win for Biden. (In the case of a tie, the House would [hold a contingent election](#) in which a candidate needs support from a majority of state *delegations* to win — a vote the GOP [is very likely to win](#).) Silver looked at the 64 possible outcomes based on swings in the six states Biden carried by the narrowest margin in 2020 — Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin — and found that the extra Nebraska vote altered the outcome in only one of these scenarios. Broadening the pool of swing states to include Florida, Minnesota, New Hampshire and North Carolina, just 7 of 1,024 combinations (less than 1 percent) involved that one vote shifting the outcome.

To be sure, some of these hypotheticals aren't far-fetched. For example, the single relevant combination in Silver's six-state analysis [involves a realistic scenario](#) where Biden holds onto the "Blue Wall" states of Michigan, Pennsylvania and Wisconsin while Trump flips the Sun Belt trio of Arizona, Georgia and Nevada. Ultimately, the Nebraska debate over a single electoral vote exemplifies how today's politics can be a game of inches. With the Electoral College not going anywhere anytime soon, parties will keep looking to claim every speck of ground they can, and Nebraska's 2nd District is just the latest battleground.

**CORRECTION (April 12, 2024, 10:30 a.m.):** A previous version of this article stated that only four presidential elections (1876, 1916, 2000 and 2004) since the Civil War had been decided by the outcome in a single "tipping-point" state. The article has been updated to reflect that this was also true of three other elections (1880, 1884 and 1888).