

# The Electoral College Explained

It's the Electoral College, not the national popular vote, that determines who wins the presidency.



A man follows US elections results on a TV in a restaurant in Shanghai on November 4, 2020. Credit...Alex Plavevski/EPA, via Shutterstock

Allyson Waller, *The New York Times* Online Edition, November 5, 2020.

It remains one of the most surprising facts about voting in the United States: While the popular vote elects members of Congress, mayors, governors, state legislators and [even more obscure](#) local officials, it [does not determine the winner of the presidency](#), the highest office in the land.

That important decision ultimately falls to the [Electoral College](#). When Americans cast their ballots, they are actually voting for a slate of electors appointed by their state's political parties who are pledged to support that party's candidate. (They don't always do so.)

This leads to an intense focus on [battleground states](#), as candidates look to boost their electoral advantage by targeting states that can help them reach the needed 270 votes of the 538 up for grabs. The Electoral College also inspires many what-if scenarios, some of them more likely than others.

## Where does the 2020 electoral count stand?

As of 9 p.m. Eastern on Nov. 5, Joseph R. Biden Jr. had 253 confirmed electoral votes and needed 17 more to win. President Trump had 214 confirmed electoral votes and

needed 56 more to win. Mr. Biden was leading in the popular vote, with about 73.6 million votes. About 69.6 million votes had been counted for Mr. Trump.

Six states [remained uncalled by The New York Times](#): Alaska (3 electoral votes), Arizona (11), Georgia (16), Nevada (6), North Carolina (15) and Pennsylvania (20).

## Can a president lose the popular vote but still win the election?

Yes, and that is what happened in 2016: Although [Hillary Clinton](#) won the national popular vote by almost 3 million votes, Donald Trump garnered almost 57 percent of the [electoral votes](#), enough to win the presidency.

The same thing happened in 2000. Although Al Gore won the popular vote, George W. Bush earned more electoral votes after a contested Florida recount and a [Supreme Court decision](#).

And in 1888, Benjamin Harrison defeated the incumbent president, Grover Cleveland, in the Electoral College, despite losing the popular vote. Cleveland ran again four years later and won back the White House.

Other presidents who lost the popular vote but won the presidency include John Quincy Adams and Rutherford B. Hayes in the elections of 1824 and 1876.

The House of Representatives picked Adams over Andrew Jackson, who won the popular vote but only a plurality of the Electoral College. A special commission named by the House chose Hayes over Samuel J. Tilden, after 20 electoral votes in Florida, Louisiana and South Carolina were disputed.

The Electoral College has also awarded the presidency to candidates with a [plurality](#) of the popular vote (under 50 percent) in a number of cases, notably [Abraham Lincoln](#) in 1860, [John F. Kennedy](#) in 1960 and Bill Clinton in [1992](#) and [1996](#).

## What happens in a tie?

Because there is now an even number of electoral votes, a tie is feasible. If that happens in the Electoral College, then the decision goes to the newly seated House of Representatives, with each state voting as a unit.

Although it's not detailed in the Constitution, each state delegation would vote on which candidate to support as a group, with the plurality carrying the day, said Akhil Reed Amar, a professor of law and political science at Yale University. If there is a tie vote in a state's delegation, the state's vote would not count. A presidential candidate needs at least 26 votes to win.

[Currently](#), Republicans control 26 state delegations, while Democrats control 22. Pennsylvania is tied between Republican and Democratic representatives, and Michigan has seven Democrats, six Republicans and one independent. That could change on Nov. 3 of course, because all House seats are up for election.

The decision on vice president goes to the newly elected Senate, with each senator casting a vote. Ultimately, any disputes about the procedure could land everything in the Supreme Court.

## What if electors break their pledge?

People call them “faithless electors.” In 2016, [seven electors](#) — 5 Democrats and 2 Republicans — broke their promises to vote for their party’s nominee, the most ever in history. They voted for a variety of candidates not on the ballot: Bernie Sanders, Colin Powell and Ron Paul, among others. It did not change the outcome.

Whether electors should be able to change their positions has been heavily debated, so much so that the [Supreme Court unanimously ruled](#) in July that states may require electors to abide by their promise to support a specific candidate.

Some scholars have said they do not wholeheartedly agree with the decision, arguing that it endangers an elector’s freedom to make decisions they want and that electors are usually picked for their loyalty to a candidate or party.

“They will do as promised if the candidates do a very good job vetting them and picking people who are rock-solid,” Professor Amar said.

[Thirty-three states and the District of Columbia](#) have laws that require electors to vote for their pledged candidate. Some states replace electors and cancel their votes if they break their pledge.

Certain penalties exist in other states. In [New Mexico](#), electors can be charged with a felony if they abandon their pledge, and in [Oklahoma](#) a faithless elector could face a misdemeanor charge.

## How did this system evolve?

The Electoral College was born at the [1787 Constitutional Convention](#) in Philadelphia.

The nation’s founders hoped to quell the formation of powerful factions and political parties, and they wanted a mechanism that did not rely solely on popular majorities or Congress. Despite the name, [it is not a college in the modern educational sense](#), but refers to a collegium or group of colleagues.

The system had some unusual results from the start, as evident in the [election of 1800](#), a tie in which Thomas Jefferson and Aaron Burr received an equal number of electoral votes. Congress broke the tie, and Jefferson became president and Burr became vice president. (Until the ratification of the [12th Amendment](#) in 1804, the candidate with the second-highest number of electoral votes became vice president.)

Today, electors meet in their respective states on the first Monday after the second Wednesday of December — Dec. 14 this year — to cast separate ballots for president and vice president, with the candidates who receive a majority of votes being elected.

Electors are chosen every four years in the months leading up to Election Day by their respective state's political parties. Processes vary from state to state, with some choosing electors during state Republican and Democratic conventions. Some states list [electors' names](#) on the general election ballot.

The process of choosing electors can be an “insider’s game,” said [Kimberly Wehle, a professor at the University of Baltimore](#) and the author of “What You Need to Know About Voting and Why.” They are often state legislators, party leaders or donors, she said.

## How many electoral votes does it take to win?

The important number is 270. A total of 538 electoral votes are in play across all 50 states and Washington, D.C. The total number of electoral votes assigned to each state varies depending on population, but each state has at least three, and the District of Columbia has had three electors since 1961.

## Are all states winner-take-all?

Most are, and it helps to think of voting on a state-by-state basis, Professor Amar said.

“It’s just like in tennis,” he said. “It’s how many sets you win and not how many games or points you win. You have to win the set, and in our system, you have to win the state.”

Two exceptions are [Maine and Nebraska](#), which rely on congressional districts to divvy up electoral votes. The winner of the state’s popular vote gets two electoral votes, and one vote is awarded to the winner of the popular vote in each congressional district.

There are [arguments](#) that the states with smaller populations are overrepresented in the Electoral College, because every state gets at least 3 electors regardless of population. In a stark example, sparsely populated Wyoming has three votes and a population of about 580,000, giving its individual voters far more clout in the election than their millions of counterparts in densely populated states like Florida, California and New York. And the American citizens who live in territories like Puerto Rico, Guam and the U.S. Virgin Islands are not represented by any electors.

“When you talk about the Electoral College shaping the election, it shapes the election all the time because it puts the focus on certain states and not others,” said Alexander Keyssar, a professor of history and social policy at Harvard University.

## Will the system ever change?

For years there have been debates about [abolishing the Electoral College](#) entirely, with the 2016 election bringing the debate back to the surface. It was even a talking point among 2020 Democratic [presidential candidates](#).

The idea has public support, but faces a partisan divide, since Republicans currently benefit from the electoral clout of less populous, rural states.

[Gallup](#) reports 61 percent of Americans support abolishing the Electoral College in favor of the popular vote. However, that support diverges widely based on political parties, with support from 89 percent of Democrats and only 23 percent of Republicans.

One route would be a constitutional amendment, which would require two-thirds approval from both the House and Senate and ratification by the states, or a constitutional convention called by two-thirds of the state legislatures.

Some hope to reduce the Electoral College's importance without an amendment. Fifteen states and the District of Columbia, which together control 196 electoral votes, have signed on to an [interstate compact](#) in which they pledge to grant their votes to the winner of the national popular vote. (Voters in one of those states, Colorado, [on Nov. 3 backed membership in the compact](#) after opponents of the measure collected enough signatures to put the law on the ballot as a referendum.) The local laws would take effect only once the compact has enough states to total 270 electoral votes.

Lastly, an election-related case could find its way to the Supreme Court, which would lend greater importance to the [judicial makeup of the court](#), Professor Wehle said. "It only takes five people with life tenure to actually amend this Constitution through a judicial opinion," she said.

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# *How the Voting Will Work When the Electors Gather*

Most states are offering livestreams to watch the proceedings, including battlegrounds won by President-elect Joseph R. Biden Jr. After Monday's vote, the process moves to Congress.



Stopping President-elect Joseph R. Biden Jr. from assuming office remains a long-shot strategy for Republicans. Credit...Hilary Swift for The New York Times

Isabella Grullón Paz and Lisa Lerer, *The New York Times* National Edition, December 14, 2020, A14.

The members of [the Electoral College](#) are gathering in their respective states on Monday to cast their official ballots for president. Ordinarily, the process is little more than a formal duty to rubber-stamp the results of the November election.

Not this year.

For weeks, President Trump and his allies have pressured Republican officials to ignore the popular vote in close-fought states won by President-elect Joseph R. Biden Jr. and appoint their own electors who would favor Mr. Trump. They have also asked courts to hand victory to the president in states he lost.

But judges and Republican state lawmakers have shown little appetite for subverting the democratic process, and the electors have remained. As they vote on Monday, Mr. Trump is essentially guaranteed to end the day as he began it: a one-term president.

Here's more on how the voting will work, and on the next steps in the process:

## Can I watch the Electoral College vote?

Yes — most states offer livestreams to watch the proceedings, including crucial battlegrounds won by Mr. Biden. Here are links for four of them: [Michigan](#), [Wisconsin](#), [Pennsylvania](#) and [Georgia](#).

The electors don't meet in one place or at one time; New Hampshire, Vermont, Indiana and Tennessee were the first to gather to vote at 10 a.m. Eastern. Proceedings in Georgia, Arizona and Pennsylvania start at noon.

Two crucial battleground states are voting in the afternoon: Wisconsin electors will gather at 1 p.m. Eastern and Michigan will be voting at 2 p.m.

California, the crucial state for Mr. Biden to achieve 270 [Electoral College votes](#), meets at 5 p.m. Eastern.

Electors for each state and the District of Columbia meet at a location chosen by the state legislature, most often the state's capitol. The Delaware electors are meeting in a gym. Nevada is the only state holding its meeting virtually this year.

## How does the Electoral College voting work?

The electors cast their ballots for president and vice president via paper ballot. Thirty-three states and the District of Columbia legally require their electors to choose whoever won the state's popular vote, so there should be no surprises there. The other 17 states don't "bind" their electors, meaning they can vote for whomever they choose.

The electors were chosen by state parties (if Mr. Biden won a state, for example, the Democrats' slate of electors casts the votes). Typically, electors are political activists, officials, donors and people with close relationships to the candidates — meaning they are very likely to vote for the candidate they pledged to support. In 2016, [seven electors lodged protest votes](#) for someone other than their party's candidate. But the likelihood of "faithless electors" switching sides and handing the election to Mr. Trump is essentially zero.

After the electors cast their ballots, the votes are counted and the electors sign certificates showing the results. These are paired with certificates from the governor's office showing the state's vote totals. The certificates are sent to Vice President Mike Pence, in his capacity as president of the Senate; the [Office of the Federal Register](#); the secretary of state of the respective state; and the chief judge of the Federal District Court where the electors meet.

## What happens next?

[Congress officially counts the votes](#) in a joint session held in the House chamber on Jan. 6, with Mr. Pence presiding. Mr. Pence opens the certificates — in alphabetical order by state — and presents them to four “tellers,” two from the House and two from the Senate, who count the votes. When Mr. Biden reaches a majority with 270 votes, Mr. Pence announces the result.

The proceeding is strictly prescribed by federal law, down to where various politicians sit in the chamber. (Mr. Pence gets the speaker’s chair, Speaker Nancy Pelosi sits to his left, and the “tellers” sit at the clerks’ desks.)

The session cannot be ended until the count is complete and the result publicly declared. At this point, the election is officially decided. The only remaining task is the inauguration on Jan. 20.

## Which Congress runs the process?

Since the new members will be sworn in on Jan. 3, the next Congress will conduct this joint session. Democrats will hold control of the House. And Republicans will control the Senate, regardless of the results of the Georgia runoff elections on Jan. 5, because Mr. Pence will still be in office to act as the tiebreaking vote if the chamber is split 50 to 50.

## Can members of Congress block the results?

There is no debate permitted during the counting of the electoral votes. But after the result is read, members of Congress get one opportunity to lodge their concerns.

Any objection to a state’s results must be made in writing and be signed by at least one senator and one member of the House. The two chambers would then separate to debate the objection. Each member of Congress can speak only once — for five minutes — and after two hours the debate is cut off. Each body then votes on whether to reject the state’s results.

Since the Electoral Count Act was passed in 1887, there have been just two instances of congressional objections, in 1969 and 2005. Neither passed either the House or the Senate.

## What’s the likelihood of Congress changing the outcome?

Stopping Mr. Biden from assuming office remains a long-shot strategy for Republicans.

For an objection to stand, it must pass both houses of Congress by a simple majority. If the vote followed party lines, Republicans could not block Mr. Biden’s victory.



Democrats control the House, so an objection would already be doomed there. In the Senate, Democrats would need to pick off only a couple of Republicans to side with them to vote down the objection. A number of Republican senators have declared Mr. Biden the president-elect.

With some Trump allies already planning objections, the congressional session is likely to make for good political theater. But the process has little chance of changing the outcome of the election.

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# Electoral College Vote Begins Across the Country

Electors have started to gather across the country to cast their votes for president, and the winner is not in doubt: Joseph R. Biden Jr. will be officially declared the president-elect.

*The New York Times* Online, November 14, 2020.

## The Electoral College begins vote that will formally designate Biden the president-elect.



North Carolina Electoral College representatives signing the Certificates of Vote in the State Capitol building in Raleigh, N.C., in 2016. Credit...Jonathan Drake/Reuters

The Electoral College vote started on Monday morning in states across the country, in a move that will officially designate Joseph R. Biden Jr. as the president-elect and pass a crucial milestone that President Trump has sought to upend with legal challenges and political pressure to overturn the results of a popular election.

“It’s not just out of tradition but to show folks, especially now more than ever, our system works,” said Gov. Chris Sununu of New Hampshire, a Republican, in opening remarks before the state’s four electors cast their ballots for Mr. Biden.

New Hampshire was one of a handful of states, also including Vermont and Tennessee, where electors gathered around 10 a.m. Eastern. Voting will continue throughout the day, with the schedule determined by individual states. California, the state with the most electors will most likely push Mr. Biden past the 270-vote threshold needed to win the presidency when it votes at 5 p.m. Eastern.

Though the meeting of the [Electoral College](#) is an important moment in American democracy, it is rarely one that becomes a major political event. But as the president has continued his quixotic campaign to subvert the election, the vote on Monday has loomed as an important deadline, made all the more unusual because there was no state in which the vote was close enough to leave its result in doubt.

Despite the definitive defeat in the Electoral College, Mr. Trump has remained defiant, spending his weekend attacking the Supreme Court for rejecting [a Texas lawsuit against four battleground states](#) and issuing more baseless accusations about the election from his Twitter account. The president has shown no indication he intends to concede the election.

The increasingly caustic remarks from the president have kept tensions high, with some states providing security for the sites where the electors will convene and protests expected in some swing states that Mr. Trump has targeted in recent weeks.

The vote will largely remove any cover for Republicans in Congress who have refused to acknowledge Mr. Biden as the president-elect. In providing Mr. Trump the room to dispute his loss, Republicans in Congress presented the Electoral College vote as the new marker for when a presidential victory should be recognized.

“Everything before Monday is really a projection,” Senator Lamar Alexander of Tennessee told Chuck Todd on NBC’s “Meet the Press” on Sunday. “If the president loses, and it appears that he will when the electors vote, he should put the country first, take pride in his accomplishments, congratulate Joe Biden and help him off to a good start.”

The Monday vote was not in doubt. But Mr. Alexander’s appearance on Sunday showed the party’s tortured position as it seeks to accommodate the anti-democratic push of its standard-bearer.

Part of that push had been a legally dubious effort to force Republican-controlled state legislatures in states Mr. Trump lost to ignore the popular vote and appoint their own slate of electors.

But in court case after court case, Mr. Trump was dealt loss after loss, often coupled with withering opinions decrying the effort as meritless, and electors met on Monday with no major court case lingering over the day.

— *Nick Corasaniti and Jim Rutenberg*

## Here's what to expect from the Electoral College today.



A watch party on election night in Houston. Credit...Ryan Christopher Jones for The New York Times

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After the votes are counted, the electors sign certificates showing the results. These are paired with certificates from the governor's office showing the state's vote totals. The certificates are sent to Vice President Mike Pence, in his capacity as president of the Senate; the [Office of the Federal Register](#); the secretary of state of the respective state; and the chief judge of the Federal District Court where the electors meet.

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### **What's the likelihood of Congress changing the outcome?**

Stopping Mr. Biden from assuming office [remains a long-shot strategy](#) for Republicans.

For an objection to stand, it must pass both houses of Congress by a simple majority. If the vote followed party lines, Republicans could not block Mr. Biden's victory.

— *Isabella Grullón Paz and Lisa Lerer*

Opinion

# The Filibuster That Saved the Electoral College

Like other Senate blockades of the civil rights era, it was about preserving white supremacy.

Jesse Wegman, *The New York Times* Online Edition, February 8, 2021.  
Mr. Wegman is a member of the editorial board.



Senator Birch Bayh Credit...Illustration by The New York Times; photograph by Henry Griffin/Associated Press

Debates over the filibuster tend to get theoretical fast. It's there to protect minority interests, defenders say. Without it, majorities will run rampant. Lost in the back-and-



forth is the reality of how the tool has been used so often in practice: to delay, if not destroy, legislation that promotes racial equality.

From the end of Reconstruction until the passage of the Civil Rights Act of 1964, the only bills killed by filibuster [were those dealing with civil rights](#).

For all the invocations of high-minded principles, the pattern is unmistakable. Again and again, white Southern senators, afraid of losing their accustomed seat atop the racial hierarchy, beat back progress with the blunt instrument of unlimited debate, or at least the threat of it. They [nearly took down](#) the Civil Rights Act, too. That failure ushered in the nation's first true experiment in multiracial democracy. But the Southerners still had the filibuster, and soon they had their revenge.

In the late 1960s, the country was on the verge of dumping the Electoral College and switching to a national popular vote for president. A relentless campaign by reformers in Congress had succeeded in convincing 80 percent of Americans to back a direct vote. National organizations with little else in common — including the American Bar Association, the Chamber of Commerce and the League of Women Voters — were on board.

The effort got a last-minute boost from the chaotic 1968 election, in which the segregationist third-party candidate George Wallace nearly deadlocked the race and forced it into the House of Representatives. Americans everywhere agreed that this 200-year-old relic was going to destroy the country.

In September 1969, the House voted overwhelmingly, 338 to 70, to approve a constitutional amendment abolishing the Electoral College. Surveys suggested as many as 30 states were ready to ratify, and several more appeared to be on the cusp.

Even the most stalwart opponents of a popular vote had resigned themselves to the likelihood that this was an idea whose time had come. The amendment stood an “excellent chance” in the Senate and a “better-than-even chance” in the states, [wrote two conservatives](#) in The New York Times Magazine.

“We were in a moment,” Jay Berman, a top legislative staff member for Senator Birch Bayh of Indiana, told me. Mr. Bayh had been pushing for a popular vote since 1966, shortly after the passage of the Civil Rights and Voting Rights Acts had ended the Jim Crow era and pulled America closer than it had ever been to a truly representative democracy. Electing the president directly was the next logical step in that progression.

“It’s very, very difficult to deal with institutional, transformative issues like this. And we had that moment,” Mr. Berman said. “That’s what makes it so galling.”

The “it” was the unceremonious collapse of the popular-vote amendment, which died on the Senate floor in late September 1970.

A lot happened in the year after it sailed through the House, including two failed Supreme Court nominations by President Richard Nixon, that delayed and distracted senators. But in the end, the amendment was killed off for good by a filibuster led by three Southerners — Strom Thurmond of South Carolina, Sam Ervin of North Carolina

and James Eastland of Mississippi, the long-serving chairman of the Judiciary Committee and one of the most powerful men in the Senate.

All three men were avowed segregationists, and the descendants of slaveholders. They had been battling any move toward racial equality for years. In 1957, Senator Thurmond filibustered a civil rights bill for more than 24 hours — a feat for which he prepared [like a long-distance runner](#), and which no one has since matched. The law passed in the end, as did the landmark bills of the mid-1960s. Mr. Thurmond and the other racists were determined not to fail again.

“There were no mysteries about what the Southern bloc intended to do. For them, this was a way-of-life issue,” Mr. Berman said. When I asked him specifically what way of life, he said, “The fact that Black people could vote, and vote without intimidation.”

As the Southerners were well aware, the Electoral College was a bulwark of white supremacy. It protected white dominance throughout the South, where Black voters who were no longer disenfranchised by Jim Crow could still be rendered invisible by state winner-take-all laws. Under these laws, the white majority in states like Alabama, South Carolina and Georgia always got its way. If the nation switched to a popular vote, each Black voter in those states would have just as much say as a white voter in electing the president.

“This was going to change the whole political structure in the South,” Mr. Berman told me. Once all votes were equal, it “would be opening a door to a process that they had no control over.”

The racial subtext went largely unspoken at the time. Instead, as the historian Alex Keyssar documents in his [comprehensive new history](#) of the Electoral College, the defenders of the status quo trotted out familiar if unfounded claims about the dangers of the popular vote: It would destroy America’s two-party system; it would undermine federalism; it would lead to widespread fraud; and so on. They accused those who argued that the president should be the person who wins the most votes of a “naïve” embrace of “mathematical purity.”

But what was going on was obvious enough, especially after 1968, when the Electoral College had nearly allowed an unrepentant racist to hijack the presidential election. “You didn’t need a mastermind to say, ‘Hey, what’s behind this?’” Mr. Berman said. “It was there. It was the elephant in the room.”

Throughout 1970, as Mr. Bayh struggled to bring the amendment to a vote, the threat of a filibuster lurked. He tried to fight fire with fire, threatening his own filibuster of Mr. Nixon’s nomination of G. Harrold Carswell to the Supreme Court. The nomination eventually failed, but Mr. Bayh had lost precious time.

The Southerners managed to delay the amendment with various tactics throughout the summer. By September, those tactics had been exhausted, and the filibuster began.

Mr. Bayh needed 67 votes to end the filibuster, known as invoking cloture. (A few years later, the Senate dropped the threshold for cloture to 60.) As September wore on, he was having trouble getting out of the mid-50s.

This double-supermajority hurdle infuriated Mr. Bayh and his staff. “We already needed a two-thirds vote!” Mr. Berman said, referring to the requirement for all constitutional amendments. “This was like, in football, a 15-yard penalty for piling on.” Only there was no penalty.

Still, Mr. Bayh was confident that if the amendment could get a full floor vote, it would pass. The dispute over the Electoral College wasn’t partisan, as it is today. “The paramount issue,” said Senator Howard Baker, the Tennessee Republican, “is the fundamental right of every citizen to cast a vote that has no more weight nor no less weight than that of any other citizen.”

On Sept. 29, 1970, the Senate voted on whether to end the filibuster and move forward with the amendment. The amendment’s supporters fell five votes short. No effort to switch to a national popular vote has come anywhere near as close since.

“Boiled down to the essentials,” Mr. Keyssar writes, “reform was blocked by a coalition of Southern Democrats and small-state conservative Republicans. The 34 senators who voted nay came from states with 27 percent of the nation’s population.”

Tom Wicker, the New York Times columnist, called the Electoral College filibuster “a blatant case of a little band of willful men who fear, and are therefore thwarting, both popular will and the political process that they extol.”

For Senator Bayh, who [died in 2019 at 91](#), “it was the greatest disappointment of his life,” Mr. Berman told me.

Mr. Berman rejects the idea that the filibuster has ever been necessary to protect the interests of the minority. “Minorities are safeguarded in the very institution of the Senate,” he said. “The filibuster is like whipped cream — a lot of calories but no substance. All it does is stop things.”

Jesse Wegman is a member of the [editorial board](#), where he has written about the Supreme Court and national legal affairs since 2013. He is the author of [“Let the People Pick the President: The Case for Abolishing the Electoral College.”](#) [@jessewegman](#)