

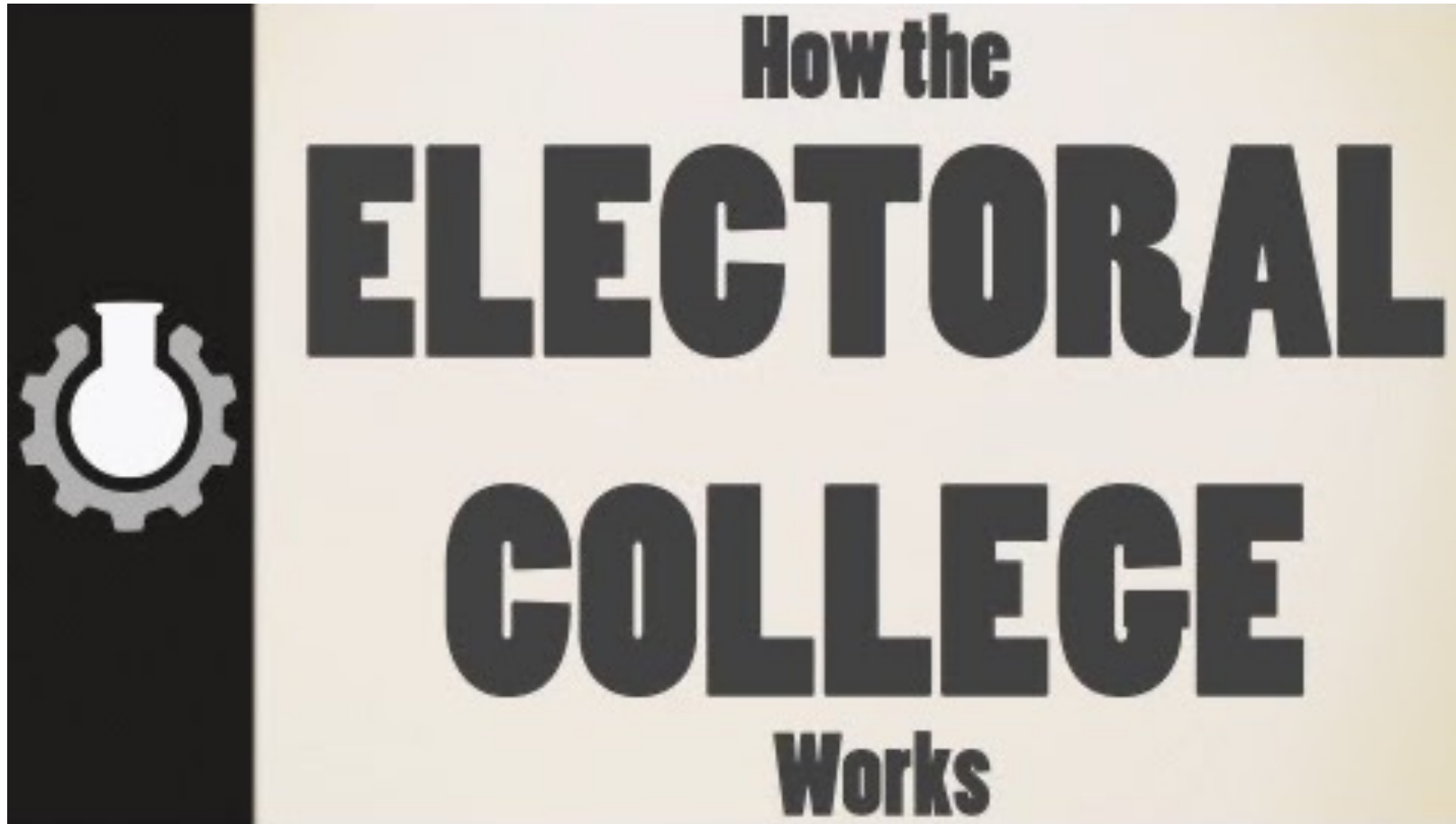
# Abolishing the Electoral College and other Election Changes

OLLI Fall 2020

- Until we know why we still have the Electoral College despite the many efforts at change, we're not going to be able to change it.

Why Do We  
Still Have the  
Electoral  
College?

An overview



## Article II, Section 1, Para. 2 & 4

- Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.
- The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

- No Constitutional Right to Vote for President
- States set all voter qualifications
- Congress' power limited to setting time and date
- Legislature decides how to choose electors- not necessarily by voters
- The slavery compromise, counting slaves as 3/5 of a person, is part of this because House seats based on white population plus 3/5 slaves

What's not here?

# Article II, Section 1, Para. 3

- *The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.*

Before we look at the overall impact of the Electoral College, let's look at what could happen in Congress under this scheme

- The nightmare world of a tie in the Electoral College or attempts to mess with the electors' certifications from the states.

This was called a “contingent” election. Many of the proposed constitutional amendments were trying to solve this problem without doing away with electors.



***The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves.***

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***Constitutional delegates were concerned with favorite son voting***

***The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President.***

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***Election of 1800- Both Jefferson and Burr had a majority but the same number. Goes to House. Also 1824.***

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***This was the much discussed concession to small states***

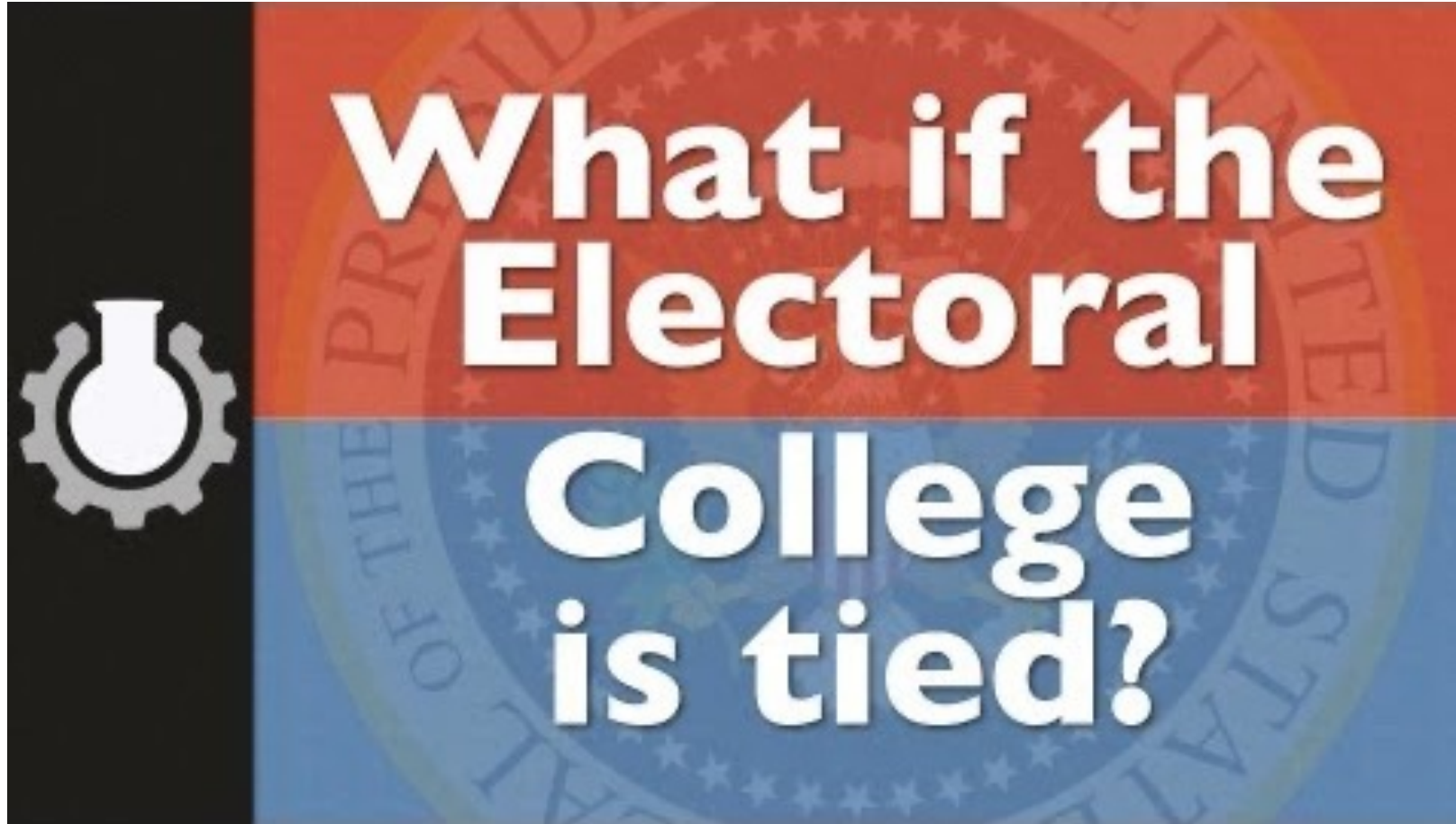
# Manipulation after the vote arises from this certification process

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***No rules for how to decide if state sends 2 sets of disputed certificates.***

Tie!



- 3 states (Florida, Louisiana and South Carolina submitted multiple and conflicting certificates of election to the Senate.
- Congress had no rules to govern this situation; they made them up as they went along.
- Generally accepted that there was a deal: Democrats wouldn't object to Rutherford B. Hayes' election, if he would remove the federal troops from the South. Thus ended Reconstruction.

Election of  
1876-  
highest %  
voter turnout  
of all time

# Multiple certifications?

- Florida's Republican legislature discussed this in 2000 .
- Scenarios discussed in 2020 -- Pennsylvania's Republican legislature certifying an alternate slate of Electors for Trump on the basis that the count was fraudulent. State legislators refused to consider this

Now, let's go back to choosing electors.

- Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.



## 1789-1800

- 1789- 10 states voted for President. The rest had not yet ratified the Constitution. 2 states chose the general ticket. In 4, legislatures picked the electors. 2 states had district elections and 2 had a combination of district and legislature.
- 1792- 15 states. 2 had general ticket , 9 legislature chose, 2 district and 2 combination.
- 1796-16 states. 2 had general ticket, 7 legislature chose, 4 district and 3 combination.

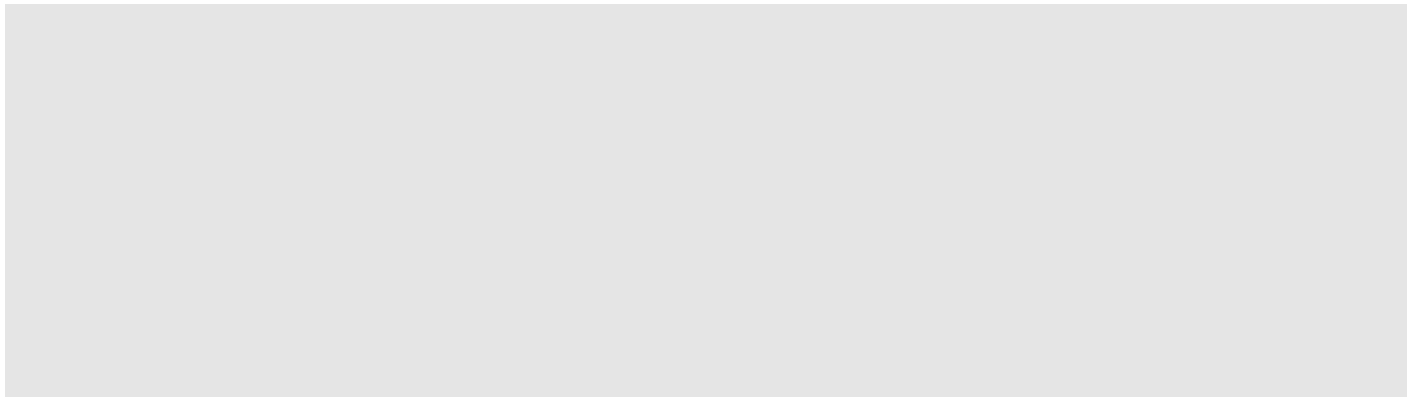
- 16 states. 2 general ticket, 10 legislature chose, 3 district, and 1 combination.
- Functioning political parties.
- Tie between Jefferson and Burr- both Democratic-Republicans. Federalists far behind.
- Parties had begun to see the possibilities of manipulating electors' votes.
- After 36 ballots in the House, Jefferson elected President.

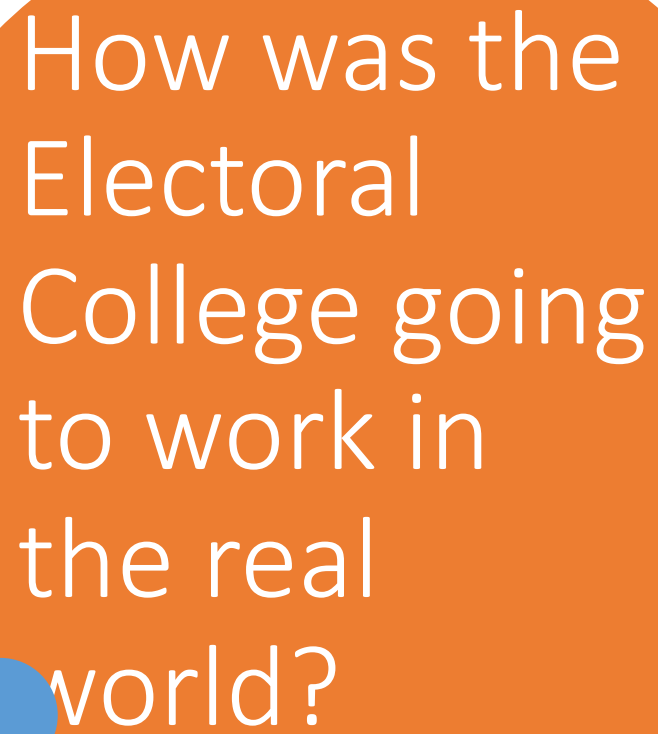
## Election of 1800

# Changes made by the 12<sup>th</sup> Amendment.


- The Democratic-Republicans had a supermajority in the 1802 Congress.
- They lost no time approving the 12<sup>th</sup> Amendment and sending it to the states, where it was ratified by June 1804 and in place for the 1804 elections.
- Electors still cast 2 ballots but a separate one for President and Vice-President.
- If no one had a majority in the Electoral College, the President is chosen by the House from the top 3 votegetters. If the no one gets a majority, for President, but there is a majority for Vice-President, the Vice-President is declared President.
- If the House can't elect a President or Vice-President, the Senate can choose a Vice- President from the top 2 votegetters, who then becomes President.

What could go wrong?





# How was the Electoral College going to work in the real world?

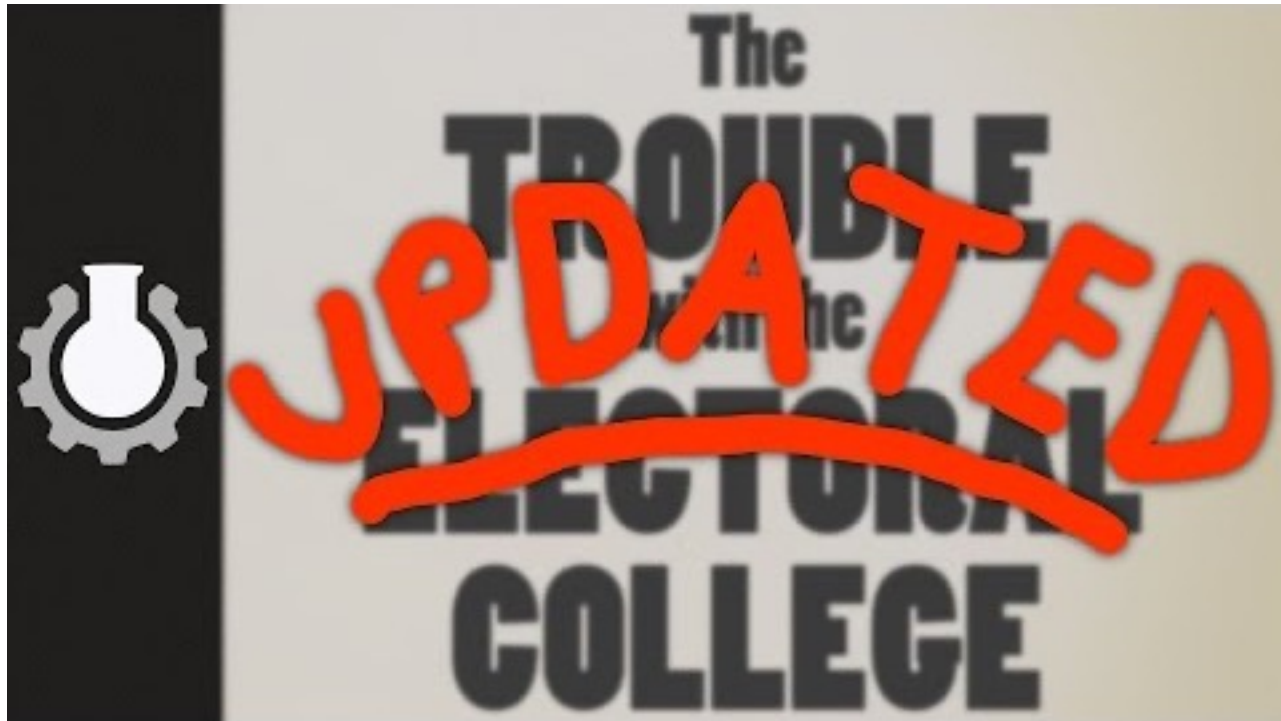
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- The Constitutional delegates had no Idea.
  - Or worse, they all had different ideas about what would happen.  
But that was a problem for another day.
  - What they did know is that George Washington would be elected the first President, and he was – unanimously.
  - Time to go home and argue this document is the greatest thing since sliced bread.

# General Ticket sweeps the field

- By 1848, all states except South Carolina had “general ticket” elections for electors
- “General ticket” is the candidate with the most votes takes all the electors
- Today, only Maine and Nebraska have district elections
- No one has proportional electors where the popular vote is divided according to % of votes



**The**  
**TROUBLE**  
with the  
**ELECTORAL**  
**COLLEGE**







**Now, imagine living in the gray zones and  
the blue zones voted opposite of you.**



**This is why we have an Electoral College.**

Civics 101  
You're welcome.

## Discussion

How would you evaluate the flaws in the Electoral College system?

# 1787-1950- Objections to National Popular Vote

- Variations in suffrage requirements across states meant votes weren't really equal
- Undermines federal structure and sovereignty of states
- Reduces power of small states
- Electoral College system , via slavery and Jim Crow, kept African-Americans under control; NPV wouldn't
- Pragmatic partisan party objections
- Of the few proposals , many linked a national popular vote with a runoff election

# Federalism Objection

- Mostly rhetoric
- But would require uniform national suffrage laws
- Fraud concerns since fraud anywhere would affect overall totals, not be limited to elector count one state

"Schoolhouse Rock!"  
McCaffrey & McCall



# Winner take all versus Proportional/ District Elections

- From 1787 until the 2<sup>nd</sup> half of the 20<sup>th</sup> century, most efforts to change the way the Electoral College functioned focused on modifying the Winner Take All allocation of electors to the candidate who had the most votes in the state

# Weaponizing Third Parties

- Winner Take All is a prohibitive bar to third parties winning
- But frequently they divide the votes of people with similar interests
- Most recent example – Ralph Nader in 2000 Florida votes

# Changing History

- 1844 Election- James Polk won because The Liberty Party took enough votes from Henry Clay in NY, and Polk won the Electoral College with the NY electors. Polk favored annexation of Texas by force and started the Mexican War. Clay was not in favor of force.
- 2000 Election. Would Gore have gone to war against Iraq?
- Numerous examples where the number of votes that went to third parties was greater than the margin between the two major party candidates. This matters in winner take all.



# Third Parties



[https://en.wikipedia.org/wiki/List\\_of\\_United\\_States\\_presidential\\_elections\\_by\\_popular\\_vote\\_margin](https://en.wikipedia.org/wiki/List_of_United_States_presidential_elections_by_popular_vote_margin)

# Popular versus Majority Vote Winner



# Try, Try Again

- If the Electoral College merely echoes the popular vote, it's superfluous. If it contradicts the voting majority, why tolerate it?

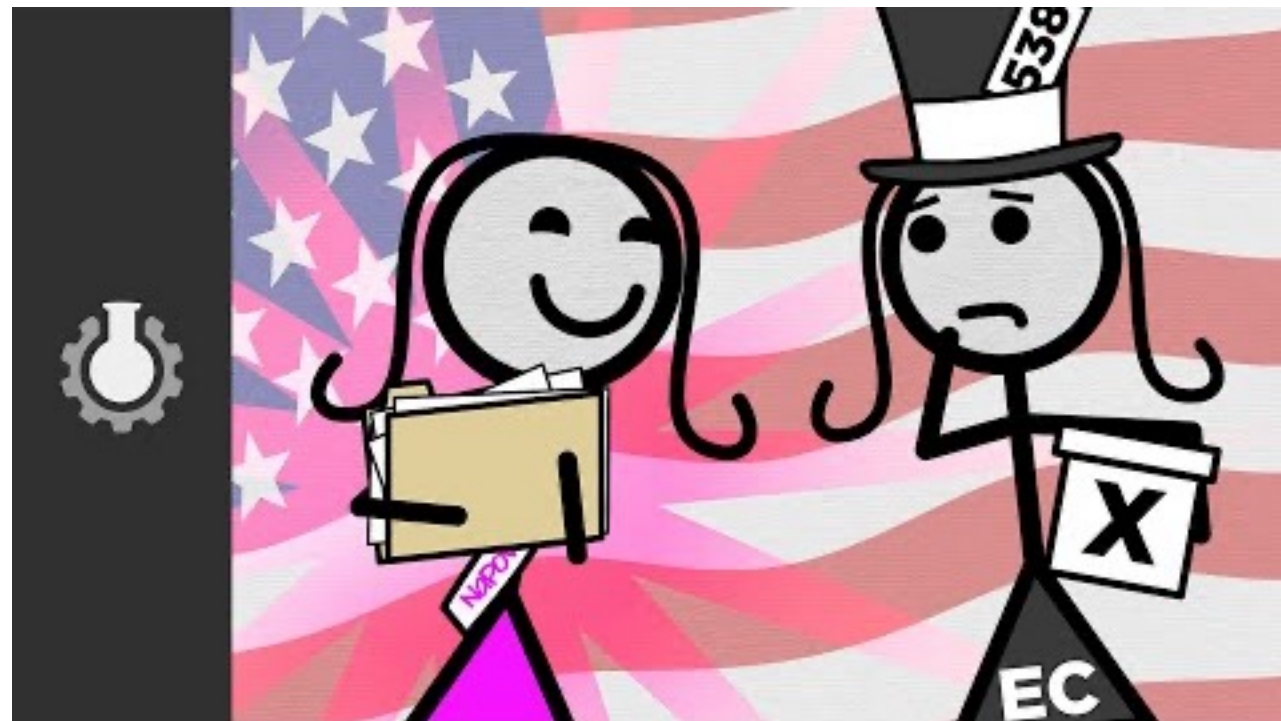
# So why don't we get rid of the Electoral College?

- Let me count the ways



# National Popular Vote Compact

How to select the popular vote winner without changing the  
Constitution





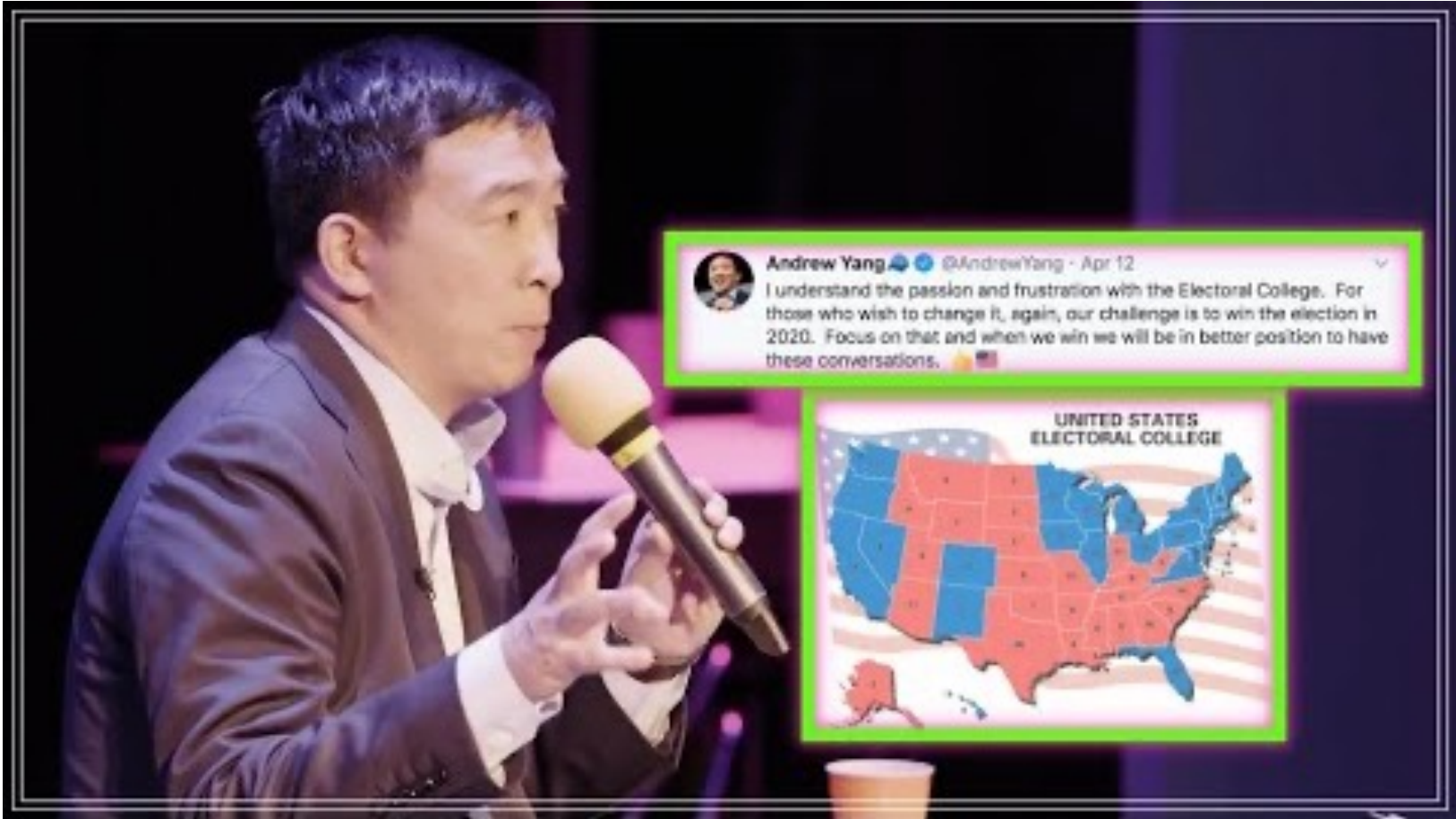
# Discussion



# From the Federalist Society



# Another View



# Some Objections





# National Popular Vote Interstate Compact Fun Fact

One of the originators of  
the idea is UI Law School  
Dean Vic Amar

# Ready to sign on?

Illinois has already passed the Compact

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What do you want to  
do now