**Episode 20: The Electoral College**

I’m Virginia Prescott, and this is Civics 101. It's the podcast refresher course on some basics that you may have forgotten or slept through in school.We invite you to submit your questions about how our democracy works through e-mail, Twitter and our listener line which is how today's question came to us.

[Voices] Hi this is Caitlin calling from Ohio.

Hi. My name is Terry and I'm from Concord Massachusetts.

My name is Aise, I'm from Alaska. And my question is how does the electoral college work?

Why was it formed?

Is the system outdated and our current democracy system?

Do we still need it?

Who comprises the Electoral College?

Is there anything we can do to the Electoral College? Thank you.

***[Virginia Prescott] Our guide for today Ron Elving senior editor and correspondent on the Washington desk for NPR News. So Ron you think we can help them?***

[Ron Elving] Yes I believe we can we can at least provide some information even if we can't give a satisfactory answer with respect to how long the Electoral College may be with us.

***[VP] Well how about when it began, when was the Electoral College formed?***

[RE] It's part of the Constitution. It's part of the very beginning of our presidential selection system. The people who put together the first Constitution, the founders if you will, the Founding Fathers we used to call them. They had a notion of choosing the president that was not really direct democracy. Many of them in fact use terms like mob-ocracy, they didn't want to have the people make the choice directly. So what they created was a system of people getting together some while after the popular vote and casting their votes as a kind of elite, really; group of editors if you will, who took the popular vote and took it under advisement and then cast the vote that they thought would reach the best conclusion and choose the best person for the job.

***[VP] Well that case is often made that the Electoral College is elitist and when they wrote the Constitution in the 1780s they had doubts about the raw votes of the regular people. Tell us more about the rationale behind that.***

[RE] They thought that there might be among other things too much domination by just a couple of states that have a candidate coming from New York or Virginia might just be too much in favor of his own state. And I say his because right from the beginning only white males were really empowered to vote. And they usually had to own property even to be voters at the very beginning of our democracy. And so they expected that there would be domination by those states and little states like Delaware had some concern about that. So they were holding out for a system that respected their rights if you will as states; as equal partners because we started out as 13 independent colonies that became the states. And at the time the Constitution was written they had a lot of autonomy.

***[VP] Where did the Founders get this model of the Electoral College?***

[RE] Basically it repeats the idea on which Congress was built so that the House of Representatives is supposed to be representative of the people and it's apportioned to the states depending on their population. So the bigger states got more votes in the house. Then, they created the Senate an equal body in terms of power and there would be exactly the same number of senators from each state. So Delaware got as many as Pennsylvania, two for each, and that is replicated in the Electoral College. Each seat in the House of Representatives is good for one vote in the Electoral College. And so as each seat in the Senate. So the total number of the members of Congress, 535, is also the number of votes in the electoral college, except we had three to the electoral college for the District of Columbia which does not get either senators or a member of the House of Representatives, but does get to have three votes in the Electoral College.

***[VP] So 435 people in the House of Representatives 100 senators plus three, so 538 electors. Those electors are actually representative of people, right?***

[RE] That's right. They are chosen by the people who vote in the November election. But the people who are choosing them generally speaking don't know that's what they're doing. They generally speaking thinking their vote is being cast for an individual nominated by one of the major parties or perhaps one of the minor parties or somebody else but they're voting for the candidate for president. They're voting for Donald Trump, they’re voting for Hillary Clinton and so on. They don't really stop and think that the fact of the matter is they're voting for an elector whose name they don't even know.

***[VP] So we're not electing a president in November but we're actually electing electors.***

[RE] Correct.

***[VP] OK. So let's talk about the system how it actually works how many electors one has to get to have a majority and how and how it proceeds from there.***

[RE] It can get tricky, and lately of course the biggest objection that's been raised is that the vote of the Electoral College has not been the same in terms of the bottom line who wins as the popular vote. It was not in 2000 when Al Gore won the popular vote nationwide, and again in 2016 when Hillary Clinton won the national popular vote by 2.9 million votes. That was about six times larger than Al Gore's popular vote margin, but did not win the Electoral College, and in fact was not close to winning the Electoral College; that was won of course by Donald Trump. So that's one element of the way things can go wrong. But in the past we've also had other situations where no one got a majority in the Electoral College and that happened in 1800 it happened in 1824, it had to go to the House of Representatives to then resolve that. And while that seems quite remote in time there is the prospect of that happening any time one candidate other than the top two gets enough votes in a state to win a state, that can really cause problems because it can possibly deny an absolute majority to either of the leading candidates. So that's another potential problem we haven't had lately, but that could bedevil the Electoral College in the future.

***[VP] So when we're sitting there on election night and watching the votes come in the candidate that gets 270 a majority of electoral votes is required to elect the president. So what actually happens then, do those people who are electors physically go and vote for president? How does that work?***

[RE] Yes they do. Which I think comes as a surprise to a lot of people they think that the Electoral College is just a notional thing, and that the number that they see on election night attached to their state is simply a symbolic kind of thing. But no, actually the electors are actual people and they go to their state capital and they actually have a vote on a specified day in December. It is actually the first Monday after the second Wednesday in December, and it is at a steady interval from the election which of course back in the old days it was necessary to just get the information as to how each state had voted and get that all back to the necessary parties so that they would know which electors should be going to the state capital. That's why it's so long after the November vote and they actually do vote in each one of the 50 states plus the District of Columbia and the results of that are then reported to the federal government where on January 6th when the new Congress meets the House of Representatives and the Senate complete the process of essentially ratifying, adopting, accepting, certifying the results of the Electoral College vote from December.

***[VP] Well since they are human beings they have opinions. Have there been cases of electors not voting along with the voters in their state and kind of going rogue?***

[RE] Absolutely. They are usually referred to, I don't know when this custom arose, but they have long been called faithless electors. I think going rogue sounds a little better than being called faithless. But right from the beginning that was a factor. And in the early going there was not nearly the sense of obligation or binding of the electors so people felt very much as though they were free to make up their own minds. Now in the very early going George Washington was such a popular and dominant figure there really wasn't any question that the electors were all going to vote for George. That was fine. But then very soon thereafter with the fourth presidential election in 1800 that became contentious indeed and there really was a great deal of skullduggery and back and forth between the various electors as to whom would be elected, even who would be the president or the vice president on the winning ticket. And the rules right from the beginning were quite different with respect to vice presidents; initially the idea was the top vote getter or the person who won the most votes in the Electoral College would be president and the runner up would be vice president. So can you imagine Donald Trump’s vice president being Hillary Clinton? That was the original system. It didn't last too long. It was one of the first things they corrected in the early 1800s because obviously the runner up did not make a suitable, shall we say ‘helpmeet’ to the president.

***[VP] So are the electors, are they public? Do we know who they are? You said we don't even know their name I mean are they, are they running as an elector?***

[RE] Yes they are. Technically that is what's going on. It's not as though it's a secret. But the names of the slate of electors for a given state is a list of some length in some states, obviously quite long in California, so they're not going to put that on the ballot. If you a voter would like to know who the electors are for the Republican Party or the Democratic Party in your state you can certainly find that out. It's not as though that's a secret. But it's also something that would be quite confusing on the ballot if you went in to vote for Donald Trump or Hillary Clinton and instead you saw this long list of names and you wondered who in the world are those people.

***[VP] Another aspect of the Electoral College system; there can be a tie. What happens in the case of a tie?***

[RE] If no candidate gets an absolute majority, and that's not a plurality by the way, you have to get 270 or more, if no candidate does and 269 ties are at least theoretically possible, we haven't had one at 269 since the country got as big as it is today we have not had a tie, but it could happen and we need to know what would happen and the answer is the same thing that would happen if no candidate in the three or four way race where to get an absolute majority and therefore it would go to the House of Representatives. It's been that way since the Constitution was written and the House of Representatives would then have a rather complicated and strange voting procedure whereby the votes are cast not by individual but by state so that each state would have to figure out how to cast its one vote, and that would be the way that the president was elected. Presumably if one party had 27, 28, 29, 30 of the states represented primarily by members of their party, in other words if the Republicans, as they do now, had a majority in most of the states; that would be the candidate who presumably would win.

***[VP] Hmm. Let's get to some of those questions right at the top from our listeners. 1, just after the November election, Senator Barbara Boxer, other legislators, op-eds, protesters, called for the elimination of the Electoral College. Has it ever seriously been challenged in the past?***

[RE] It has been challenged intellectually and it has been the subject of many many many many proposed amendments but it has never really been in any serious danger of being dislodged. For the same reason that the Constitution does not get amended very often period. We have not had very many amendments since the first 10 were adopted as part of the original document. So in all that time we've only had a little more than a dozen more. And so it's really really hard to amend the Constitution that's what it boils down to, some people remember the Equal Rights Amendment from back in the 1970s. It got two thirds majorities in the House and in the Senate and it went out to the states and most of the states very quickly ratified the Equal Rights Amendment which stated that that women basically had the same rights as men, period. And then they stalled a little shy of the magic number, which when it comes to amending the Constitution is three fourths of the states. Now three fifths is tough. Two thirds is almost impossible. A lot of the time three fourths is pretty much killer. And when you consider that 13 states can deny you three fourths because that would be a little more than 25 percent of all the states, 13 states. Look at the 13 smallest states and say to them, “we don't think you really need the protections of the Electoral College anymore. We will take care of you people down the road don't worry about it the way they did back in the 1780s. Don't worry you guys will be fine.” Would they accept that? I think it unlikely.

***[VP] How about the question. Someone winning the popular vote the other candidate winning the Electoral College that's happened as you mentioned four times twice in the last two decades. So far it has not been a serious challenge to our democracy not overthrowing the government but plenty of arguments that we do not have representative government. What do you think of that argument?***

[RE] It's a powerful argument. This is clearly not simple or pure democracy. It was not meant to be right from the beginning. There was a sense of not trusting the ordinary person to choose the president. Remember of course in the 1700s illiteracy was quite common. Literacy was not anywhere near being the rule. So many people's vote was perceived to be in some sense or another easily influenced by one kind of persuasion or another. So it was it was felt by those who were writing this document that while we were moving away from monarchy and we were moving away from a lot of the old world, we wanted to not go too far towards trusting the people. That does seem antique in the 21st century, and it seems hard to justify the extra power that that gives because of the two senators essentially giving that much power to the tiniest states. That's true in the United States Senate and that's a separate controversy or a related controversy. And it's really keenly felt when it's moved over here to the Electoral College where there really seems to be a dislocation in terms of democratic fairness. So it would seem to me at least that the only chance we would have though of getting rid of the Electoral College, going to something like a direct vote of the people, would be if both parties, Republicans and Democrats, felt themselves equally at risk in the Electoral College. In other words, either side could have their ox gored in a particular election, and here's how that might have happened. We had the 2000 cases we talked about. If in 2004 George W. Bush, having won the popular vote the second time he ran for president in 2004, had lost the Electoral College. Not so far-fetched an idea because he didn't win it by much. Had he lost Ohio in 2004 he would not have won the Electoral College. He could have lost Ohio only by losing another, say, 130, 140,000 votes out of his overall national total. It would not have altered his national popular vote win, but it would have cost him the presidency. Once both parties hadn't lost a presidency they had won in the popular vote to the Electoral College, then you might have had a conversation.

***[VP] Ox gored. Like what you did there Ron. Thanks so much for bringing us into the rather Byzantine world of the Electoral College.***

[RE] Yes, the 1700s were complicated, weren't they.