

History of State Winner-Take-All Laws

- Today, 48 states (all except Maine and Nebraska) have a so-called “winner-take-all” law that awards *all* of a state’s electors to the presidential candidate who gets the most popular votes inside each *separate* state.
- These winner-take-all laws are *state* laws—they are *not* part of the U.S. Constitution. The winner-take-all method of choosing presidential electors was never debated by the 1787 Constitutional Convention or mentioned in the *Federalist Papers*.
- Only three states had winner-take-all laws in the first presidential election in 1789, and all three repealed them by 1800. In 1789, electors were chosen from congressional districts in Massachusetts, from special presidential-electors districts in Virginia, and by counties in Delaware. The Governor and his Council appointed the state’s presidential electors in New Jersey. State legislatures appointed presidential electors in the other states.
- In the nation’s first competitive presidential election in 1796, Jefferson lost the Presidency by three electoral votes. Jefferson lost, in part, because presidential electors were chosen by district in the heavily Jeffersonian states of Virginia and North Carolina.
- On January 12, 1800, Thomas Jefferson wrote James Monroe (then governor of Virginia):

“On the subject of an election by a general ticket [winner-take-all], or by districts, ... all agree that an election by districts would be best, if it could be general; but **while 10 states choose either by their legislatures or by a general ticket [winner-take-all], it is folly and worse than folly for the other 6 not to do it.**”
- As a result, Virginia quickly passed a winner-take-all law in time for the 1800 election—thereby assuring Jefferson of *all* the state’s electoral votes.
- Meanwhile, the Federalist majority in the legislature of John Adam’s home state of Massachusetts—alarmed by rising support for Jefferson in the state—repealed the state’s district system—thereby assuring John Adams of all the state’s electoral votes in 1800.
- This triggered a domino effect in which each state’s dominant political party adopted winner-take-all so that it could deliver the maximum number of electoral votes to its party’s nominee. Ten states enacted winner-take-all by 1824 when Missouri Senator Thomas Hart Benton said:

“The general ticket system [winner-take-all], now existing in 10 States was ... not [the offspring] of any disposition to give fair play to the will of the people. **It was adopted by the leading men of those states, to enable them to consolidate the vote of the State.**”
- By 1836, all but one state had enacted laws specifying that their state’s voters would vote for presidential electors on a winner-take-all basis. By 1880, all states were using this system.
- In 1888, incumbent Democratic President Cleveland won the national popular vote, but lost the electoral vote. When Democrats won control of the legislature in the then-Republican state of Michigan in 1890, they replaced winner-take-all with district election of presidential electors. The Republicans challenged the Democrat’s change. In 1892, the U.S. Supreme Court upheld district elections and ruled in *McPherson v. Blacker*:

“The constitution does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket [i.e., the winner-take-all rule], nor that the majority of those who exercise the elective franchise can alone choose the electors. ... In short, **the appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States.**”
- The Republicans restored winner-take-all in Michigan when they regained control.
- Maine adopted district elections for its electors in 1969, and Nebraska did so in 1992.
- Massachusetts has changed its method of appointing electors 11 times.