



References to ‘the popular vote’ in reports on 2020 U.S. polls to elect Presidential Electors

In late 2016, the ‘popular vote’ was a much-reported aspect of the nation-wide polls to elect the USA’s 538 Presidential Electors, which took place under the [12th Amendment](#) to the U.S. Constitution, of 1804. That amendment modified the framers’ 1788 version of Article 2 Section 1, after [faults in that version](#) had led, in 1800, to Thomas Jefferson and Aaron Burr each being voted for as President by [73 Presidential Electors](#).

After that tie was resolved at the [36th House of Representatives ballot](#), in Jefferson’s favour, Aaron Burr became the third Vice-President. Burr accused Alexander Hamilton, who had been the first Secretary of the Treasury, under George Washington, of having worked against him in those House votes, and challenged him to a duel. In that duel, Burr shot and killed Hamilton, who had also opposed Burr in New York State politics.

The Presidential Electors that pledged to vote for Donald Trump - who the 2016 President of the Senate, [Joe Biden](#), dutifully declared, at a Senate sitting, to be the candidate duly elected as the President of the United States - had gained far fewer popular votes than those for the runner-up, Hillary Clinton, as Table 1 shows.

Presidential candidate	Party	Home State	Popular vote for the Electors		Pledged Electors	Electors’ actual votes
			No.	Per cent		
Hillary Clinton	Democratic	New York	65,853,514	48.18	232	227
Donald Trump	Republican	New York	62,984,828	46.09	306	304
Gary Johnson	Libertarian	New Mexico	4,489,341	3.28	0	0
Jill Stein	Green	Massachusetts	1,457,218	1.07	0	0
Evan McMullin	Independent	Utah	731,991	0.54	0	0
Darrell Castle	Constitution	Tennessee	203,090	0.15	0	0
Gloria La Riva	Socialism & Liberation	California	74,401	0.05	0	0
<i>Bernie Sanders*</i>	<i>Independent</i>	Vermont	111,850	0.08	0	1
<i>John Kasich*</i>	<i>Republican</i>	Ohio	2,684	0.00	0	1
<i>Ron Paul*</i>	<i>Libertarian</i>	Texas	124	0.00	0	1
<i>Colin Powell*</i>	<i>Republican</i>	Virginia	25	0.00	0	3
<i>Faith Spotted Eagle*</i>	<i>Democratic</i>	South Dakota	0	0.00	0	1
Others*			760,210	0.56	0	0
TOTALS			136,669,278	100.00	538	538

Table 1: 2016 popular vote for Presidential Electors versus the number of them actually elected

* Asterisk denotes ‘write-in’ candidates, whose names were not on any official ballot papers, as 41 States allow.

Commentators often referred to Hillary Clinton as ‘having won the popular vote’, presumably because candidates for the Electoral College that had pledged to vote for her had gained a [plurality](#) of that vote, but those candidates were collectively 1.82 percentage points short of having received an [absolute majority](#) of the popular vote.

If - as in the direct election of the [President of the Irish Republic](#) - U.S. voters were allowed to provide more information about their wishes by casting transferable votes, with their preferred order of the candidates indicated to the extent they wished, it [could be determined](#) which of the two

leading Presidential candidates received an absolute majority of popular votes cast.

In such an election, if 80% of Jill Stein’s ballots showed a later preference for Clinton over Trump - as would seem likely - a transfer of just 0.96 percentage points of Johnson’s 3.28% of the vote would have had Clinton gain over 50% of the popular vote, but a less marked preference flow would have left Trump winning an absolute majority of the popular vote. Voters’ ability to cast transferable ballots in [direct elections](#) of the President and Vice-President would require [amending](#) the USA’s 18th Century Constitution.

Until the popular vote is counted differently from the only method prescribed by law, which is the indirect use of the Electoral College, and a direct transferable vote is used, as in the Irish Republic, it cannot be truly said that any candidate gaining a minority of the popular vote has ‘won’ that vote.

There were eleven candidates that received part of the popular vote, only seven of whom were on official ballot papers in one or more States. The three Presidential candidates whose pledged Electors gained the highest popular vote above were the only Presidential candidates whose names, or pledged Electors’ names, [appeared on the ballot paper](#) in all fifty States and in the District of Columbia.

There were eleven candidates that received part of the popular vote, only seven of whom were printed on official ballot papers in some or all States as the candidates that the candidates for the Electoral College had [publicly pledged to vote for](#), if elected, when they met in their respective States.

The twelfth Presidential candidate listed above, [Faith Spotted Eagle](#), received the vote of one person elected to the Electoral College, but her name was neither on the printed ballot paper for the election, nor could it be ‘written-in’, as South Dakota is one of the nine of the 51 jurisdictions involved that does not permit ‘[write-in](#)’ ballots. The President and Vice-President are elected by a [Heath Robinson system](#).

What commentators neglected to mention is that the United States has no procedure or law that provides for any counting of that popular vote other than its use to elect the often obscure members of the Electoral College, [the 538 Presidential Electors](#). See comment in [QN68](#).

A U.S. Electoral College votes only once every four years, and then has no further role. By contrast, the lower houses in Westminster-style parliaments are effectively standing electoral colleges, with far less skewing than the U.S. model in favour of smaller States or Provinces.

They can carry a vote of no confidence in the Prime Minister or Premier, thus requiring the Governor-General or Governor to appoint a replacement, who must be able to withstand the same test while in office. There is no high barrier to the removal of a Prime Minister comparable with the U.S. impeachment process, which has never itself achieved the removal of a President despite now having been undertaken [three times](#).

New website: USA’s ‘Second-rate Democracy’

A consistent U.S. advocate for the single transferable vote, Douglas Amy, Professor Emeritus of Politics, of Mount Holyoke College in Massachusetts, has established the new website, ‘[Second-rate Democracy](#)’, which lists seventeen issues he thinks justify his use of that title for it.

The four of his issues below are prime electoral examples of how Australia’s constitutional regime benefited by its establishment in the late 19th Century, rather than the USA’s late 18th Century.

Issue 8 - Gerrymandering: The word comes from a signatory to the U.S. Declaration of Independence, Elbridge Gerry. The ‘[Latin earmuffs](#)’, Illinois’s 4th Congressional District in 2017, is an obviously outrageous setting of electoral boundaries. Both the USA and Australia used to suffer from the separate problem of malapportionment, but Australia’s law devolving boundary-setting on its impartial Australian Electoral Commission has, unlike the USA, stopped intentional gerrymanders.

Issue 9 - Electoral College: The last paragraph of the preceding article explains how Westminster-style *de facto* ‘electoral colleges’ operate in appointing Prime Ministers and Premiers much more flexibly and democratically than the USA’s 1788-1804 version ‘elects’ U.S. Presidents.

Issue 12 - Winner-take-all elections: In each of Australia’s lower houses, except for Tasmania and the ACT, which use [PR-STV](#) in 5-member electoral districts, the winner still ‘takes all’, but every such winner does need to be preferred to the runner-up by an absolute majority of voters. In every U.S. lower house, the winner only needs to gain a [plurality](#) of the votes cast, thus quite unfairly letting a minority candidate ‘take all’.

Issue 17 – Frozen Constitution: There have been 25 [successful amendments](#) that continue to modify the original U.S. Constitution, but only 8 altering Australia’s Constitution, though many of those U.S. changes were 11 afterthoughts in the last twelve years of the 18th Century. [A U.S. change](#) needs a $\frac{2}{3}$ majority in each federal House, and $\frac{3}{4}$ of State congresses to agree to it. In Australia, an absolute majority of the lower house, and a referendum carried by a majority of voters, and by a majority of voters in a majority of States, has always [sufficed](#).

CENTURY	18th	19th	20th	21st
USA	11	4	10	-
Australia	n.a.	n.a.	8	-

Table 2: Amendments still modifying the Constitution

This Parliament of Victoria ‘chooses’ four unelected MLCs to replace elected MLCs

Since the first of the four successive quadrennial general elections for Victoria’s Upper House, held so far using [PR-STV](#) counting, in November 2006, there have been [sixteen MLCs that have resigned](#) during their terms, and been replaced by persons that have not been elected to those positions by the voters. The number of MLCs involved per term is shown in Table 3 below.

Term	No. of unelected MLCs				
	Labor	Liberal	National	Green	TOTAL
1856-2006	-	-	-	-	-
2006-10	1	-	-	-	1
2010-14	3	2	1	-	6
2014-18	1	-	2	2	5
2018-	3	1	-	-	4
TOTALS	8	3	3	2	16

Table 3: Unelected Victorian MLCs by year and party

Table 4 below lists the four MLCs that have resigned before the second Andrews Labor Government has reached the first half of its 4-year term.

Vacating MLC	Substituted MLC	Date appointed	Political party
Philip Dalidakis	Enver Erdogan	August 2019	Labor
Mary Wooldridge	Dr Matthew Bach	March 2020	Liberal
Gavin Jennings	Lee Tarmalis	April 2020	Labor
Jenny Mikakos	Sheena Watt	October 2020	Labor

Table 4: Victoria’s unelected MLCs since the 2018 polls

Unfortunately, the PR-STV counting in five-member electoral districts that has applied for Victoria’s Legislative Council elections from 2006 was accompanied by an undemocratic method of filling casual vacancies, whereby the Parliament itself ‘chooses’ the replacement MLC. That ‘choice’ is notional, as only a single candidate is ever proposed.

Victoria’s democracy would benefit from the direct election of replacement MLCs that applies in the ‘[countback](#)’ method for Tasmania’s House of Assembly and the Legislative Assembly of the Australian Capital Territory, or even the ‘recount’ method for Western Australia’s Legislative Council.

Voters’ preference for PR-STV over a multiple plurality system led an NZ Council to change

The Far North District Council is, as its name suggests, the Council for the northern-most municipality on the North Island of New Zealand.

That Council voted, without dissent, to [change the system used to count votes](#) at its general elections from the default system, which is a [multiple plurality system](#), to the only permitted alternative, which is Proportional Representation using the Single Transferable Vote (PR-STV), with the [Meek method](#).

PR-STV will apply for the municipal general elections in 2022 and 2025 but, under NZ’s [Local Elections Act 2001](#), the Council elected at that 2025 election has to vote on whether it confirms that decision.

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