

EQUAL VOTES OUR FIGHT TO FIX THE ELECTORAL COLLEGE

FAQ

OUR PLAN

The Problem with Our Presidential Elections: Our Votes Are Not Equal

At the core of democracy lies a simple principle—that all votes should count equally. Whether you're white or black, rich or poor, from Rapid City, SD or Cedar Rapids, IA, your vote should count the same as the vote of anyone else. "One person, one vote!"

This principle is violated by the way we elect our president. Because of the winner-take-all system of allocating Electoral College votes, the only votes that count are those for the person who wins the state in which they were cast. In 2016, this resulted in over 52 million votes being ignored in the presidential election – that is hardly being counted equally.

All but two states (Maine & Nebraska) assign all their Electoral College votes to the winner of the popular vote in that state—regardless of the margin of victory. For example, in the last election:

- Hillary Clinton beat Donald Trump by just 45,000 votes in Minnesota, winning 46.4% to 44.9%. Yet she got 100% of Minnesota's 10 Electoral College votes, while Trump got zero.
- In Michigan, Trump beat Clinton by just 10,000 votes, but he got every single one of their 16 Electoral College votes, while she got zero.

This is the consequence of winner-take-all: the votes for president of millions of U.S. citizens get discarded, simply because they are not in the majority in a particular state.

The Results of This Inequality Undermine Our Republic

States originally adopted winner-take-all because it amplified the power of their votes. But once (practically) every other state had embraced winner-take-all, that effect was nullified, and presidential campaigns shifted their focus. Under winner-take-all, the only states in which it makes any sense for a presidential candidate to campaign are “battleground states”—states in which the popular vote can be expected to be so close that one side has a real chance to beat the other.

In 2016:

- Two-thirds of campaign events happened in just six battleground states—Florida, North Carolina, Ohio, Pennsylvania, Virginia, and Michigan.
- **Four battleground states**—Florida, North Carolina, Ohio and Pennsylvania—saw 71% of campaign ad spending and 57% of candidate appearances.
- The 14 battleground states saw 99% of ad spending and 95% of candidate campaign stops.

The consequence of this concentration for our democracy is profound. To get elected president, candidates must persuade not a majority of American voters, but a majority of voters in only 14 states.

Voters in battleground states tend to be whiter and older than Americans generally, so presidential platforms are skewed towards those populations. The issues that matter to younger Americans, and to people of color, are thus largely invisible (or hidden) in battleground campaigns. Winner-take-all in effect outsources the selection of the president to a fraction of America’s voters (**35% in 2016**)—a fraction that does not in any sense represent the majority of America. Even worse, these rules increase the probability of a “minority president”—a president who loses the popular vote, yet wins in the Electoral College. **Two of our last three presidents** have taken office after losing the popular vote, and that probability will likely increase over time.

This Inequality is Not in Our Constitution

Contrary to what most people might think, the winner-take-all allocation of electoral votes is not in the Constitution. It was adopted by 48 states to give themselves more power in the presidential election.

It is time for the Supreme Court to end it. The Constitution, through the Electoral College, does create some inherent inequality. But that is no justification for allowing the states to create even more—especially when the consequence of that inequality is to systematically skew the focus of presidential campaigns. There is

no good reason for this inequality. There is no democratic justification for it. It has made our presidential elections the least democratic of all our elections.

Here's Our Plan to Fix This Problem

Equal Votes is a crowdfunded legal challenge to the winner-take-all method for allocating Electoral College votes. Based on the “one person, one vote” principle already articulated by the Supreme Court in *Bush v. Gore*, we believe the winner-take-all system is unconstitutional—it is a violation of the Equal Protection Clause that ensures all of us, and all of our votes, must be treated equally under the law. The claim we will make throughout this legal case is that by allocating their Electoral College votes according to winner-take-all, these states effectively discard the votes of United States citizens in the only meaningful count for electing the president—in the Electoral College. We will ask those courts to apply the principle of “one person, one vote” to the winner-take-all system. Our goal is to have our case heard in time for the 2020 election.

We've pulled together an [all-star legal team](#), and together we've filed [four lawsuits](#) in four district courts on behalf of real voters affected by this system. We're representing [plaintiffs in these four states](#) whose votes for president are effectively discarded because the other party's candidate for president always, consistently, wins in their state.

To get this campaign going, we need your support. We have secured an initial commitment of pro bono legal work to enable us to launch this litigation project. But we will need to raise much more over the life of the litigation in order to win this case. [Join us in this fight by contributing whatever you can](#), and by [volunteering to help](#) in whatever way you believe is best.

The most important part of this fight will come from the many people we hope to rally to equality: “one person, one vote.” It's not just a principle of a fair democracy—it must also be the law.

THE TEAM

Equal Votes is a project of [Equal Citizens](#). Equal Citizens — a non-profit organization founded by Harvard Law Professor [Lawrence Lessig](#) — is dedicated to reforms that will achieve citizen equality.

Lessig is working with *Bush v Gore* lawyer [David Boies](#), former White House chief ethics lawyer [Richard Painter](#), NYU Professor of Constitutional Law [Samuel Issacharoff](#), and Duke Law Professor [Guy-Uriel Charles](#) to develop the strongest case and best litigation strategy, as well as with a wide range of scholars and

experts in the field of voting rights litigation. The cases are managed by pro bono legal counsel, both locally and nationally.

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Richard A. Harpootlian, P.A.

MEET THE PLAINTIFFS FROM BLUE STATES AND RED STATES

California

- Plaintiff **Paul Rodriguez** is an actor and comedian. He currently resides in the State of California, where he is registered to vote as a Republican and has been active within the Republican Party. Mr. Rodriguez has repeatedly voted in Studio City, California, for a Republican for President. Mr. Rodriguez plans to remain a permanent resident of California and will continue to vote in future presidential elections for the Republican candidate.
- Plaintiff **Assemblyman Rocky Chavez** is currently a resident of the State of California, where he is registered to vote as a Republican and serves as a

Republican state assemblyman representing the 76th District. Mr. Chavez has consistently voted for the Republican candidate for President in California elections. Mr. Chavez plans to remain a permanent resident of California and will continue to vote in future presidential elections for the Republican candidate.

- Plaintiff **League Of United Latin American Citizens (LULAC)** is the oldest and largest national Latino civil rights organization. LULAC is a nonprofit organization, incorporated under the laws of the State of Texas, with presence in most of the fifty states and Puerto Rico, including California. LULAC has chapters throughout California and has individual members who reside and vote throughout California, including members who have voted and will vote for the Republican, or third party, presidential candidate in California elections for the President. LULAC has long been active in representing Latinos and other minority interests in all regions of the State. LULAC conducts voter registration activities throughout California, and exercises its rights under the Constitution to engage in full and effective political participation for Latinos and minority voters.
- Plaintiff **California League Of United Latin American Citizens ("California LULAC")** is a nonprofit organization with members and chapters located in many cities and towns throughout the State of California. California LULAC has individual members who reside and vote throughout California, including members that have voted and will vote for the Republican, or third party, presidential candidate in California elections for the President. Since its founding, California LULAC has fought for full access to the political process, increased political power, and improved political opportunities for Hispanic Americans in California.

Massachusetts

- Plaintiff **William ("Bill") Weld** is a former Republican Governor of the Commonwealth of Massachusetts, where he is currently a resident and registered as a Libertarian. Governor Weld has never been a registered Democrat and has consistently voted for either the Republican, Libertarian, or other non-Democratic candidate for President. Governor Weld plans to remain a permanent resident of Massachusetts, where he plans to continue to vote in future presidential elections for the Libertarian candidate.
- Plaintiff **Richard (R.J.) Lyman** is a former appointed senior official under two Republican Governors of the Commonwealth of Massachusetts. Mr. Lyman is currently a resident of Massachusetts, where he is registered as a Republican. Mr. Lyman has never been a registered Democrat and has consistently voted for either the Republican, Libertarian, or other non-Democratic candidate for President. Mr. Lyman plans to remain a permanent resident of Massachusetts, where he plans to continue to vote in future presidential elections for either the Republican, Libertarian, or other non-Democratic candidate.

- Plaintiff **Robert D. Capodilupo** is currently a resident of Massachusetts, where he is registered to vote as a Republican, as well as a junior at Harvard University. He has never been a registered Democrat, and he voted in the Republican primary and for the Republican presidential candidate in the 2016 general election, the first election in which he was eligible to vote. Mr. Capodilupo plans to remain a permanent resident of Massachusetts, where he plans to continue to vote in future presidential elections for the Republican candidate.

Texas

- Plaintiff **League Of United Latin American Citizens ("LULAC")** is the oldest and largest national Latino civil rights organization. LULAC is a nonprofit organization, incorporated under the laws of the State of Texas, with presence in most of the fifty states and Puerto Rico. LULAC has chapters in most Texas counties and has individual members who reside and vote throughout Texas, including members who have voted and will vote for the Democratic, or third party, presidential candidate in Texas elections for President. LULAC has long been active in representing Latinos and other minority interests in all regions of the State. LULAC conducts voter registration activities throughout Texas, and exercises its rights under the Constitution to engage in full and effective political participation for Latinos and minority voters. Since 1971, LULAC has filed well over a hundred lawsuits on behalf of Latino voters throughout Texas, and has been successful in many of them.
- Plaintiff **League Of United Latin American Citizens of Texas ("LULAC of Texas")** is a nonprofit organization with members located in many cities and towns throughout the State of Texas. LULAC of Texas has individual members who reside and vote throughout Texas, including members who have voted and will vote for the Democratic, or third party, presidential candidate in Texas elections for the President. Since its founding, LULAC of Texas has fought for full access to the political process, increased political power, and improved political opportunities for Hispanic Americans in Texas.
- Plaintiff **Rev. Joseph C. Parker, Jr.** lives in Austin, Texas, where he has been registered to vote for over three decades. He is an African American attorney, a pastor, and a community leader whose father marched with Dr. Martin Luther King Jr. Rev. Parker votes in the Texas Democratic primaries for the President, and has voted for the Democratic candidate in every presidential election since he was eligible to vote. He plans to remain a permanent resident of Austin, Texas, where he will continue to vote in future presidential elections for the Democratic candidate.
- Plaintiff **Hector Flores** is the former president of LULAC and lives in Duncanville, Texas, where he is registered to vote. He is a Hispanic American and has voted for the Democratic presidential candidate in every presidential election since 1960. He plans to remain a permanent resident of

Duncanville, Texas, where he will continue to vote in future presidential elections for the Democratic candidate.

- Plaintiff **Sanford Levinson** lives in Austin, Texas, where he is a professor of constitutional law and is registered to vote as a Democrat. He has voted for the Democratic presidential candidate in every presidential election in which he has been eligible to vote. He plans to remain a permanent resident of Austin, Texas, where he will vote in future presidential elections for the Democratic candidate.
- Plaintiff **Yvonne Massey Davis** lives in Austin, Texas, where she is registered to vote as a Democrat. She is African American and has consistently voted for the Democratic presidential candidate in Texas presidential elections. She plans to remain a permanent resident of Austin, Texas, where she will continue to vote in future presidential elections for the democratic candidate.
- Plaintiff **Mary Ramos** lives in Houston, Texas, where she is registered to vote. She is a Hispanic American and has voted for the Democratic presidential candidate in every presidential election since at least 2004. She plans to remain a permanent resident of Houston, Texas, where she will continue to vote in future presidential elections for the Democratic candidate.
- Plaintiff **Gloria Ray** lives in San Antonio, Texas, where she has been registered to vote for several decades. She is African American, and she has voted in the Texas Democratic primaries for the President. Ms. Ray has voted for the Democratic candidate in every presidential election since she was eligible to vote. She plans to remain a permanent resident of San Antonio, Texas, where she will continue to vote in future presidential elections for the Democratic candidate.
- Plaintiff **Guadalupe Torres** lives in San Antonio, Texas, where she is registered to vote. She is a Hispanic American and has voted for the Democratic presidential candidate in every presidential election that she has been eligible to vote. She plans to remain a permanent resident of San Antonio, Texas, where she will continue to vote in future presidential elections for the Democratic candidate.
- Plaintiff **Raymundo ("Ray") Velarde** lives in El Paso, Texas, where he is registered to vote. He is a Hispanic American and has voted consistently for the Democratic presidential candidate; he has never voted for the Republican presidential candidate. He plans to remain a permanent resident of El Paso, Texas, where he will continue to vote in future presidential elections for the Democratic candidate.
- Plaintiff **Doris Williams** lives in Pflugerville, Texas, where she is registered to vote. She is African American and has voted for the Democratic presidential candidate in every presidential election in which she has been eligible to vote. She plans to remain a permanent resident of Austin, Texas, where she will continue to vote in future presidential elections for the Democratic candidate.

South Carolina

- Plaintiff **Eugene R. Baten** lives in Sumter, South Carolina, where he is registered to vote. Mr. Baten is an African American and is an elected Democratic Councilman in Sumter who has voted for the Democratic presidential candidate in every presidential election in South Carolina since 1970. He plans to remain a permanent resident of Sumter, South Carolina, where he will continue to vote in future presidential elections for the Democratic candidate.
- Plaintiff **Chester Willis** lives in Goose Creek, South Carolina, where he is registered to vote. Mr. Willis has voted for the Democratic presidential candidate in every presidential election since 1976. He plans to remain a permanent resident of Goose Creek, South Carolina, where he will continue to vote in future presidential elections for the Democratic candidate.
- Plaintiff **Charlette Plummer-Wooley** lives in North Augusta, South Carolina where she has been registered to vote since 1992. She is African American and has voted for the Democratic presidential candidate in every presidential election since 2004. She plans to remain a permanent resident of North Augusta, South Carolina, where she will continue to vote in future presidential elections for the Democratic candidate.
- Plaintiff **Bakari Sellers** lives in Denmark, South Carolina, where he has registered to vote. He is African American and has voted for the Democratic presidential candidate in South Carolina presidential elections since 2008. He plans to remain a permanent resident in the 6th Congressional District of South Carolina where he will continue to vote in future presidential elections for the Democratic candidate.
- Plaintiff **Cory C. Alpert** lives in Columbia, South Carolina, where he is registered to vote. Mr. Alpert has voted in every national, state, and local election since he was 18, including in 2016 when he cast a ballot in the presidential election for the Democratic candidate. Mr. Alpert plans to remain a permanent resident of South Carolina, where he will continue to vote in future presidential elections for the Democratic candidate.
- Plaintiff **Benjamin Horne** lives in Greenville, South Carolina where he is registered to vote. He voted for the Democratic presidential candidate in South Carolina in the last three presidential elections, including in South Carolina in 2016. He plans to remain a permanent resident of South Carolina, where he will continue to vote in future presidential elections for the Democratic candidate.

OUR PROGRESS



Step 1: Crowdfunding Campaign

In September, 2017, we launched a 30-day crowdfunding campaign to fund this project, and beat our crowdfunding goal of \$250k before the deadline!

The support we received far exceeded our expectations– a testament to how deeply the public cares about fixing the way we elect our presidents.

In those 30 days, over 35,000 people signed up to join our fight, and over 5,000 people donated to help us beat our crowdfunding goal before the deadline. During the campaign, the law firm of BOIES SCHILLER FLEXNER volunteered to lead the litigation pro bono.

[Read Lessig's summary on the crowdfunding campaign →](#)

[See the press coverage on our campaign →](#)

[Watch our campaign videos →](#)

Step 2: Filing Lawsuits

On February 21, 2018, a coalition of law firms led by Boies Schiller Flexner LLP coordinated the filing of four lawsuits in four states on behalf of a diverse group of Democrats and Republicans whose votes for President don't matter in the general election under the winner-take-all system.

On February 21, 2018, under the leadership of Boies Schiller Flexner LLP, a distinguished legal team including attorneys from law firms across the country coordinated the filing of four lawsuits in four states — California, Texas, Massachusetts, and South Carolina — on behalf of a diverse group of Democrats and Republicans whose votes for President don't matter in the general election under the winner-take-all system. All four of these cases raise constitutional claims grounded in the 14th and 1st Amendments. Two of the cases also raise a Voting Rights Act claim. By filing in four states, we'll be able to prove that this problem disenfranchises people all across our country, from east to west and south to north, and regardless of political party.

Here are some details of the four cases:

CALIFORNIA

We are filing suit against officials in California, a solid blue state with 55 electoral votes, on behalf of Republicans who say their votes for President are being discarded when California predictably nominates a slate of all Democratic electors.

- The plaintiffs in California are comedian and actor Paul Rodriguez, Republican State Assemblyman representing the 76th District, Rocky Chavez (both are Republicans who voted for Donald Trump in 2016), and California League Of United Latin American Citizens (LULAC).
- The case is filed in federal court in Los Angeles, in the [Central District of California](#). In 2016, 4,483,810 Californians voted for Donald Trump for President. Because of winner-take-all, those votes translated into zero electoral college votes.
- In the last five presidential elections, California has discarded nearly 25 million Republican votes for President. Republican candidates have received between 31 and 44% of the vote in each election. Those votes have earned Republicans exactly zero of the 274 presidential electoral votes cast by California in those elections.

TEXAS

We are filing suit against officials in Texas, a solid red state with 38 electoral votes, on behalf of Democrats who say their votes for President are being discarded when Texas predictably nominates a slate of all Republican electors. We are also claiming in Texas that the winner-take-all system violates the Voting Rights Act, because it fails to give meaningful effect to the preferences of Latino and African-American voters, whose votes have historically been diluted in Texas.

- The plaintiffs in Texas are the League Of United Latin American Citizens (LULAC), Rev. Joseph C. Parker, Jr. of Austin, former president of LULAC

Hector Flores of Duncanville, Mary Ramos of Houston, Lupe Torres of San Antonio, and Ray Velarde of El Paso. They represent Latino and African-American Democratic voters residing in Texas.

- The case is filed in federal court in San Antonio, in the [Western District of Texas](#).
- In 2016, 3,868,291 Texans voted for Hillary Clinton for President. Because of winner-take-all, those votes translated into zero electoral college votes.
- In the last five presidential elections, Texas has discarded nearly 15 million Democratic votes for President. Democratic candidates have received between 37 and 45% of the vote in each election. Those votes have earned Democrats exactly zero of the 208 presidential electoral votes cast by Texas in those elections.
- Latino and African-American voters have tended to support the Democratic presidential candidate by large margins, but their preferences have been discarded in the appointment of the state's presidential electors.

MASSACHUSETTS

We are filing suit against officials in Massachusetts, a solid blue state with 11 electoral votes, on behalf of Republicans who say their votes for President are being discarded when Massachusetts predictably nominates a slate of all Democratic electors.

- The plaintiffs in Massachusetts are former Republican Governor William Weld, R.J. Lyman, and Robert Capodilupo.
- The case is filed in federal court in Boston, in the [District of Massachusetts](#).
- In 2016, 1,083,069 people in Massachusetts voted for Donald Trump for President. Because of winner-take-all, that vote translated into zero electoral college votes for Donald Trump.
- In the last five presidential elections, Massachusetts has discarded over 5 million Republican votes for President. Republican candidates have received between 32 and 38% of the vote in each election. Those votes have earned Republicans exactly zero of the 58 presidential electoral votes cast by Massachusetts in those elections.

SOUTH CAROLINA

We filed a suit against officials in South Carolina, a solid red state with 9 electoral votes, on behalf of Democrats whose votes for President are being discarded when South Carolina predictably nominates a slate of all Republican electors. We are also claiming that the winner-take-all system in South Carolina violates the Voting Rights Act, because it fails to give meaningful effect to the preferences of African-American voters, whose votes have historically been diluted in South Carolina.

- The plaintiffs in South Carolina are Cory C. Alpert of Columbia, Benjamin Horne of Greenville, and Charlette Plummer-Wooley of North Augusta.
- The case is filed in the federal district court in Charleston, in the [District of South Carolina](#).
- In 2016, 855,373 South Carolinians voted for Hillary Clinton for President. Because of winner-take-all, that vote translated into zero electoral college votes for Hillary Clinton.
- In the last five presidential elections, South Carolina has discarded nearly 4 million Democratic votes for President. Democratic candidates have received between 40 and 45% of the vote in each election. Those votes have earned Democrats exactly zero of the 42 presidential electoral votes cast by South Carolina in those elections.
- African-American voters have tended to support the Democratic presidential candidate by very large margins, but their preferences have been discarded in the appointment of the state's presidential electors. Our lawsuit claims this as a violation of the Voting Rights Act.

Step 3: District Court

The district court will resolve our claim initially. We expect that the district courts will rule quickly on our claim, recognizing its importance to the presidential election system.

Our cases will be randomly assigned to single federal trial judges in the particular federal district courts in which we file the cases. That single judge will then manage the case while it is in district court, the first level of the federal system. These district court judges (also sometimes called “trial court judges,” because they are the judges in the system that conduct jury trials) have substantial discretion in how they handle a case. Some judges will force parties to move extremely quickly in filing motions or beginning the process of gathering evidence, but others will permit parties to move at a slower pace if they wish.

The district court judges will issue written rulings on our legal arguments after they examine our evidence and hear arguments from all sides.

[Read about why the federal courts will be good venues for our cases →](#)
[Learn more about the rest of the legal process →](#)

Step 4: Win/Appeal

Once the district court determines whether we win or lose, the case will likely be immediately appealable by the losing party to a federal court of appeals.

Once the district court determines whether we win or lose, the case will likely be immediately appealable by the losing party to a federal court of appeals. Courts of appeals are divided into regions, and they hear cases in randomly-assigned panels

of three judges. Our case filed in Massachusetts, for instance, can be appealed only to the Court of Appeals for the First Circuit, which is based in Boston and hears arguments in cases initially brought in Massachusetts, Maine, Rhode Island, New Hampshire, and Puerto Rico. Our case in Texas is appealable to the Fifth Circuit, based in New Orleans; in South Carolina, to the Fourth Circuit, based in Richmond, Virginia; and in California to the Ninth Circuit, based in San Francisco. In the court of appeals, both parties file new briefs making their arguments, and then lawyers argue their cases in front of the three judges assigned to the appeal.

Median decision times for each federal appellate court →

Learn more about the rest of the legal process →

Step 5: Petition the Supreme Court

The loser in the court of appeals may petition the Supreme Court to take up the matter, but the Supreme Court is permitted to turn down that petition. In order for the Supreme Court to hear a case, four justices must vote to put the case on the docket.

The difference between the Supreme Court and the lower courts is that the U.S. Supreme Court is not required to hear the case. Rather, the loser in the court of appeals may petition the Supreme Court to take up the matter, but the Supreme Court is permitted to turn down that petition. In order for the Supreme Court to hear a case, four justices must vote to put the case on the docket.

There are several factors that the justices of the Supreme Court will consider in determining whether to vote to hear the case, and we think they could point in our favor by the time the case reaches the High Court. For instance, the Supreme Court is likely to take a case in which a state law has been ruled unconstitutional, so if we win in the lower courts, the Supreme Court is very likely to take the case. The Supreme Court is also likely to take up the case even if only one appeals court in one region agrees with us, and one or more other courts disagree. That's because the existence of conflicting decisions is another factor the Supreme Court uses to determine whether to take up a case. Finally, if we don't win any victories in the lower courts, the Supreme Court still could hear the case if we convince at least four justices that this is an important and potentially meritorious issue of national importance. We certainly think it is.

Learn more about the rest of the legal process →

Step 6: Supreme Court Decision

CELEBRATE the end of winner-take-all in our presidential elections

THE PLAN

1. What is Equal Votes?

Equal Votes is a crowdfunded legal challenge to the winner-take-all allocation of Electoral College votes. We believe the winner-take-all system is unconstitutional — a violation of the Equal Protection Clause that ensures all of us, and all of our votes, must be treated equally under the law. Over 52 million votes were ignored in the 2016 election because of winner-take-all.

2. What's the plan?

The state-created winner-take-all allocation, which is not in the Constitution, gives the winner of a state all of the state's Electoral College votes. That means that if you don't vote for the winner in your state, your vote counts for zilch in the election. We have identified voters who are perpetually effectively disenfranchised by this system, and we will present their claim that they have been denied representation in presidential elections for decades because of winner-take-all. We believe applying the "one person, one vote" principle means that states must allocate their electoral votes proportionally based on the popular vote result of the states, which will make our presidential elections fairer and improve voter participation. Our goal is to have the Supreme Court rule on our lawsuits in time for the 2020 presidential election.

3. Who's behind Equal Votes?

People like you, who want our elections to be truly democratic and equal. Your donations will help Equal Votes, a project of [Equal Citizens](#) — a non-profit organization founded by Harvard Law Professor [Lawrence Lessig](#) — bring lawsuits that can change our unfair system in time for the 2020 election.

4. Why do you need to raise \$250,000?

We have secured an initial commitment of pro bono legal work to enable us to launch this litigation project. But we will need to raise much more over the life of the litigation in order to win this case. To prove our case, cover the initial litigation expenses, and build a campaign to support the litigation, we needed to raise at least \$250,000. We met our goal—now our legal team gets to work. But the costs of taking our case all the way to the Supreme Court will surely exceed our initial funds. You can chip in to support our efforts [here](#).

5. How will the money be spent?

While our legal team (including Lessig) will work pro bono, a critical part of our case will depend upon careful empirical analysis. That work is expensive. There are other litigation expenses beyond legal services that need to be covered. We are

also planning to run an ongoing awareness campaign to educate the public on the problems with the Electoral College and rally support for reform.

THE CONSTITUTIONAL ARGUMENT

1. What's the constitutional argument for Equal Votes?

The 14th Amendment to the Constitution establishes a principle of equality that has been applied to systems that affect the weight of a citizen's vote. This is the principle of "one person, one vote." Roughly speaking, that principle requires that governments weigh the vote of citizens as equally as possible. As much as possible, my vote should be worth the same as your vote. By ignoring the votes of anyone who did not vote for the winner of the popular vote in a specific state, the way we elect our president currently violates that basic, constitutionally protected right.

2. But doesn't the Senate violate that principle?

It does. Massively. But as the Supreme Court has held, that exception was a condition of the "Great Compromise" that formed the Union. The equality principle of the 14th Amendment is thus subject to that exception.

3. But isn't the Electoral College the product of the same kind of compromise?

Yes, it is. But we are not challenging the Electoral College. We are challenging the way states allocate their Electoral College votes. All but two states assign their votes according to the winner-take-all principle. We want to challenge that state-imposed rule.

4. But doesn't the Constitution give the states "plenary power" to allocate their electors however they want?

Yes, in *Bush v. Gore* (2000), the Supreme Court affirmed the principle that the states' power over electors is "plenary." But in *Bush v. Gore* (2000), the Supreme Court also affirmed that "plenary" does not mean that the states are completely free from constitutional constraint when they allocate their electors. As the Court said in that case:

Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another. ... It must be remembered that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." 531 U.S., at 104-05.

And as the Court reminded us in *Bush v. Gore* (2000), it has applied this principle directly to systems that affect presidential electors:

We relied on these principles in the context of the Presidential selection process in Moore v. Ogilvie, where we invalidated a county-based procedure that diluted the influence of citizens in large counties in the nominating process. There we observed that “the idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.” 531 U.S., at 107.

This is the essence of our claim: The majority in a state is given “greater voting strength” merely because they are the majority.

5. What do you mean by the majority in a state having “greater voting strength”? Can you explain that more?

Imagine a state with 1,000,000 votes. And imagine the Republican candidate gets 499,999 votes, and the Democratic candidate gets 500,001 votes. Under winner-take-all, all the Electors must vote for the Democrat — which means “one group” (the Democrats) are being “granted greater voting strength” than another (the Republicans). Though the state was essentially equally divided, the electoral votes give all the voting strength to the Democrats. Equal Votes is working to replace that unfair system with one that better reflects the wishes, and votes, of such a state.

6. Except for elections in which the minority candidate gets a majority of the Electoral College votes, why does winner-take-all matter?

That’s a big exception, of course. It’s happened twice in our last five presidential elections, and two of our last three presidents have taken office without having won the popular vote. According to our estimates, there is about a 20% chance in any given election that a minority candidate will be chosen as president.

But even if that doesn’t happen, winner-take-all distorts the election in other obvious ways. Because of winner-take-all, presidential campaigns are waged in “battleground” states only. In 2016, for example, two-thirds of campaign events happened in just 6 battleground states — Florida, North Carolina, Ohio, Pennsylvania, Virginia, and Michigan. Four battleground states — Florida, North Carolina, Ohio and Pennsylvania — saw 71% of campaign ad spending and 57% of candidate appearances. Altogether, the 14 battleground states saw 99% of ad spending and 95% of candidate campaign stops.

These battleground states — representing just 35% of voters — are substantially different from the United States as a whole. They are older, and they are whiter. Winner-take-all effectively outsources the selection of our president to a subset of America — a subset that does not truly or accurately represent America.

7. Have others made the same argument?

Yes. While no case has yet presented the issue as we intend to, there are a number of scholars and researchers who have pointed to the same concern as we

have. Most prominent among them is Professor Samuel Issacharoff, who, in 2005, wrote a powerful piece arguing that while the Electoral College is not unconstitutional, the state imposed rule of winner-take-all “maybe legally vulnerable.” You can read his article [here](#).

Likewise, in 2005, Christopher Duquette and David Schultz made a similar argument about winner-take-all. As they have calculated, the current system for allocating Electoral College votes produces “significant inequities in the voting power of citizens across states.” That difference, they argued, should make the current system “unconstitutional.” You can read their article [here](#), and a more recent piece by Duquette [here](#).

In this past election, Lessig became convinced of the argument based on a draft written by Atlanta attorney [Jerry Sims](#). Lessig wrote [about the argument on Medium](#).

But none have yet pressed the argument that *Bush v. Gore* effectively changes the standard for reviewing state rules affecting the voting system. We intend to make that argument applied to the “presidential selection” process.

THE OUTCOME

1. If you win, would that change the results of the 2016 election?

No. This lawsuit would be prospective only.

2. If this system had been in effect in 2016, would Clinton have been elected?

It’s unclear. That depends upon how the third party candidate votes are counted, and more importantly, how our plan would affect voter turnout. Currently, people in non-swing states know their votes don’t matter, so many of them don’t vote. If they realize their votes matter, there’s no telling what voter turnout could be like in non-swing states.

3. But isn’t the Electoral College designed to protect the small states? Wouldn’t a victory here weaken the power of the small states?

The Electoral College was certainly meant (in part) to protect the power of small states. But it doesn’t actually protect them.

As we described above, presidential campaigns are run in about dozen states today: Wisconsin, Pennsylvania, New Hampshire, Minnesota, Ohio, Iowa, Virginia, Florida, Michigan, Nevada, Colorado, and North Carolina. With the exception of New Hampshire, those are not “small states.” These are swing states. The current system forces presidential candidates to focus their whole campaigns on the views of these 14 states and ignore the other 36. This doesn’t make sense. Aren’t the residents of Texas and New York citizens as much as the residents of Colorado and Michigan are? Shouldn’t presidential candidates respond to their needs and

concerns, too? By allotting electoral votes proportionally, candidates will finally pay attention to states that have been ignored for decades.

4. Would states be able to allocate their Electoral College votes by congressional district rather than winner-take-all at the state level?

No. The same principle that shows why winner-take-all at the state level violates Equal Protection shows why allocation by congressional district violates the Equal Protection clause. Both create an unnecessary and unjustifiable inequality. Proportional distribution of electoral votes is more equitable than either of these other options.

5. Would winning this case threaten the National Popular Vote project?

Absolutely not. The essence of our case is the principle that votes should be counted equally. The NPV project is that principle, perfected. If the NPV project succeeds, then the president would be elected by a system that counted everyone's vote equally. That's why we strongly support the NPV project. But we can't put all [our eggs](#) in [one basket](#). While NPV would take many years to accomplish, Equal Votes is a change that can make our elections more democratic in time for the 2020 election.

In fact, we think Equal Votes and the NPV project work well together. We explain our argument in greater detail in this [blog post](#).

6. Will you win?

We believe that the Supreme Court, even this Supreme Court, will agree with us that winner-take-all violates the 14th Amendment's principle of "one person, one vote."

The principle of "one person, one vote" has been held to apply to the method for selecting the president as recently as 2000. If it were applied to the state winner-take-all rule, the states would have no sufficient justification to overcome the requirement of equality.

We are not saying we will certainly win. What is certain is that the rule will not change if we do nothing.