

Bill of Rights in Action



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THE CENSUS IN U.S. HISTORY



Library of Congress

A census taker talks to a group of women, men, and children in 1870.

The Constitution requires that a census be taken every ten years. This means counting all persons, citizens and noncitizens alike, in the United States. In addition to conducting a population count, the census has evolved to collect massive amounts of information on the growth and development of the nation.

Why Do We Have a Census?

The original purpose of the census was to determine the number of representatives each state is entitled to in the U.S. House of Representatives. The apportionment (distribution) of seats in the House depends on the population of each state. Every state is guaranteed at least one seat.

After the first census in 1790, the House decided a state was allowed one representative for each approximately 33,000 people. Following every ten-year census as the population of the nation grew, the total number of House seats was increased. Thus, Congress had to reapportion itself.

After the 1910 census, the House set the total number of House seats at 435. Since then, when Congress reapportions itself after each census, those states gaining population may pick up more seats in the House at the expense of states declining in population that have to lose seats.

Who is counted in apportioning seats in the House? The Constitution originally included “the whole Number of free persons” plus indentured servants but excluded “Indians not taxed.” What about slaves? The North and South argued about this at the Constitutional Convention, finally agreeing to the three-fifths compromise. Slaves would be counted in each census, but only three-fifths of the count would be included in a state’s population for the purpose of House apportionment.

After the Civil War, the Fourteenth Amendment changed the Constitution so that the number of House seats would be based on the census “counting the whole

IN THIS ISSUE

<i>The Census in U.S. History</i> by longtime contributor Carlton Martz	1
<i>Anne Hutchinson: Midwife of Religious Freedom</i> by guest writer Aimée Koeplin, Ph.D., with contributions by Damon Huss	5
<i>270 Votes to Win: The Electoral College in the United States</i> by CRF Senior Program Director Sarah Badawi	9

number of persons in each state, excluding Indians not taxed." By 1940, the federal government ruled that there were no longer any "Indians" (Native Americans) who should be classed as "not taxed." Thus, they are now also counted as part of each state's population.

There is another constitutional purpose of the census. The number of votes each state has in the Electoral College to elect the president includes the number of its apportioned House members plus its two senators.

Over time, the census has been expanded and used to measure the "progress" of the nation in many areas. State legislatures use census population counts to redraw their congressional district lines. Each year the federal government distributes about \$900 billion to states based on formulas grounded in census population statistics.

How Does the Census Work?

The first censuses were conducted by U.S. marshals and assistants appointed to personally contact individuals living within a certain area. These census takers made up their own forms, tabulated the numbers, and passed the results on to the secretary of state.

Over time, census takers were hired, trained, and provided standard questionnaires for each census. By 1970, the Census Bureau mailed nearly all households the questions for persons to fill out and mail back. The questions for the upcoming 2020 census are planned to be made available for most people to complete online.

There was no census agency in the federal government until 1840 when a census office was established for each census and then closed afterward. In 1902, the Census Office was made permanent to conduct the census, tabulate the data, and plan for the next one. It was later renamed the Census Bureau within the Department of Commerce.

In 1910, President William Howard Taft issued a proclamation assuring that census data collected on individuals would be confidential and not shared with other government agencies, even law enforcement. However, this protection was suspended during World War I to assist with draft registration.

Congress turned the confidentiality policy into law in 1954.

In 1978, Congress enacted a law that kept the personal information of individuals collected in the census confidential for 72 years before opening it to the public. This has been a boon for genealogy researchers.

A Messenger of Change

The census since 1790 has been like a messenger of change. What follows are some censuses that reported significant developments in the nation's history.

1790-1840: The early censuses were focused on counting heads for the purpose of apportioning the seats in the House of Representatives. Only the name of the head

of household was recorded. The 1790 census counted 3,929,625 individuals living in the original 13 states and its territories. The total slave population was 694,207. The 1800 census revealed that the U.S. population had increased by about a third, a rate of increase that held until the Civil War. Between 1810 and 1840, questions about manufacturing, commerce, and agriculture were added to the census.

1850: For the first time, the 1850 census listed all persons by name except slaves. "Free colored persons" were counted as well as the number of fugitive slaves who had escaped a state to seek freedom elsewhere.

1860: When the Civil War began in 1861, the federal government possessed huge amounts of census data about military age men and the economy of the South to compare with that of the North. The 1860 census also reported that the number of slaves had increased to 3.9 million.

1870: The 1870 census reported that the freed slaves in the South would now be counted as full persons rather than three-fifths. Thus, perhaps ironically, the former Confederate states would gain seats in the House of Representatives. Republicans, fearful of losing their majority in the House, had already enacted the 14th and 15th Amendments to guarantee the right to vote of the freedmen, now solid Republican Southern voters.

But when whites regained power in the South after Reconstruction ended in 1877, they suppressed black voting with laws and violence.

1880|1890: The 1880 census was the first to document a changing America from rural and agricultural to urban and industrial. The 1890 census demonstrated the end to the frontier since so few areas between the Atlantic and Pacific remained unsettled.

1910: The 1910 census report noted that there had been a decline in the number of immigrants from north-western European countries like England. At the same time there was a jump of "new immigrants" from eastern and southern European countries like Russia and Italy, and from Asian countries like China, Japan, and the Philippines.

1920: The new-immigrant trend was even more evident in the 1920 census. A nativist (anti-immigrant) wave swept the nation, especially directed against Jewish and Catholic immigrants from southern and eastern Europe and Asian immigrants. The National Origins Act of 1924 established a quota system that discriminated against immigrants from eastern and southern Europe and barred all immigration from Asian countries until it was repealed in 1965.

1940: The population increase in the 1930 census, during the Great Depression, was the lowest ever at

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7.2%. The census reported 14.4% unemployed in 1940, a high rate but not as high as the Great Depression's peak in 1933 with a 25% unemployment rate. After the U.S. entered the war in 1941, the government made heavy use of 1940 census data to estimate military manpower and industrial resource needs. The government also used 1940 census information to incarcerate individuals of Japanese ancestry, citizens and noncitizens alike, in internment camps.

1960: The census began to modernize in 1960. The Census Bureau began to mail census forms to households. The forms sent to most people were shortened to include only a handful of questions. A "long form" containing more questions was distributed to a sample of households.

1970: The 1970 census discovered that over 25 million Americans lived below the poverty level. The poverty rate for black people was three times that of whites. Congress passed anti-poverty programs and funded them based on the census number of people with incomes below the poverty level in each state. Census statistics were also used to detect discrimination against minorities and women in such areas as employment and to enforce voting rights.

2010 — The Last Census: The population of the U.S. in 2010 was 308.7 million, an increase of 304.8 million since 1790. The U.S. was still growing, but only at about 10% every ten years. The traditional family household, consisting of a husband, wife, and children under 18, was 41.7% in 2010. The female head of household with no husband present and children under 18 was 54.9%. The Census Bureau today collects data not only every ten years but also from more detailed ongoing surveys of people like the American Community Survey.

The Next Census in 2020

The 2020 census plans to encourage people to complete the questions "anytime and anywhere." Individuals will be able to use any online device. Those unable to do so or not responding will be mailed the printed questions to complete and mail back, or in some cases will be visited by a census taker. Most people will complete a short census form that will be available in English and a dozen other languages.

Among other things, the 2020 census will ask for the name, sex, date of birth, and race of every person living in a household. There will be 14 race categories to choose from plus the ability to check more than one.

The Citizenship Question

On March 26, 2018, Secretary of Commerce Wilbur Ross, whose department includes the Census Bureau, announced a new census question: "Is this person a

How the 2020 Census will invite everyone to respond



U.S. Census Bureau

Every household will have the option of responding online, by mail, or by phone.

Nearly every household will receive an invitation to participate in the 2020 Census from either a postal worker or a census worker.

 **95%** of households will receive their census invitation in the mail.



Almost 5% of households will receive their census invitation when a census taker drops it off. In these areas, the majority of households may not receive mail at their home's physical location (like households that use PO boxes or areas recently affected by natural disasters).



Less than 1% of households will be counted in person by a census taker, instead of being invited to respond on their own. We do this in very remote areas like parts of northern Maine, remote Alaska, and in select American Indian areas that ask to be counted in person.

Note: We have special procedures to count people who don't live in households, such as students living in university housing or people experiencing homelessness.

United States
**Census
2020**

This information from the U.S. Census shows the different ways people may complete their census form. By law, all information collected is the census is kept confidential.

citizen of the United States?" Secretary Ross explained that he was responding to a December 2017 letter by the Department of Justice (DOJ), which requested data using a citizenship question. The DOJ claimed that the question was "critical" to help enforce the Voting Rights Act of 1965.

Questions about citizenship had been asked frequently by U.S. censuses in the past. But this would be the first time since 1950 that a citizenship question would be asked of every person rather than a sample of people, which had been the recent practice.

The Constitution gives Congress authority over the census. But Congress has delegated authority to the Secretary of Commerce to conduct the census "in such form and content as he may determine."

Many states that happened to have traditionally Democratic majorities challenged the addition of the citizenship question in federal court. They claimed that given President Trump's policies against undocumented immigrants, many undocumented immigrants and their U.S.-citizen family members in their households would fear their census information would be released to immigration law enforcement. As a result,

Quick Census Facts on Where You Live

To find the latest Census Bureau information on where you live, follow these directions:

1. Go to www.census.gov/quickfacts
2. At the search strip, you can type your state, county, city, town, or zip code.
3. You will then see up-to-date census information on where you live.

they would not participate in the census. Of course, the confidentiality law of 1954 prohibits this, but this protection had been suspended before during the two world wars.

Secretary Ross overruled Census Bureau officials who recommended against a citizenship question after estimating that up to 6.5 million persons would probably not be counted if it was included in the 2020 census. This undercount could result in states with large immigrant populations losing seats in the House of Representatives and votes in the Electoral College. It could also mean cutting their share of federal funding for such things as highway construction and aid to schools.

Some Republican strategists hoped that data from a citizenship question could be used by states to form House districts based solely on the number of citizens rather than all persons, which has always been the practice. The loss of noncitizens in the apportionment count would shrink heavily immigrant-populated Democratic districts, forcing them to merge with others. The end result would be fewer Democratic districts and House seats. Such a change may or may not be constitutional.

Much of the controversy over the citizenship question had to do with the origin of Secretary Ross's decision to add it. In federal court trials, evidence showed that Secretary Ross himself started working to add a citizenship question soon after he was appointed by President Trump in February 2017. Ross consulted with White House advisors. At first, the DOJ rejected the idea. However, he persuaded Attorney General Jeff Sessions, then head of the DOJ, to reverse course and produce the December 2017 letter that Ross later tried to claim had spurred Ross's own request for a citizenship question to help enforce the Voting Rights Act.

In federal court, opponents of the citizenship question claimed it had nothing to do with voting rights enforcement and everything to do with weakening Democratic Party strength in the House and Electoral College. They pointed out that citizenship data to enforce the Voting Rights Act already existed from American Community Survey sampling. The Trump administration countered that a citizenship question would produce a more accurate figure.

On June 27, 2019, the Supreme Court delivered one of its most unusual decisions in *Department of Commerce v. New York*. The 5-4 majority was made up of the four so-called liberal justices and the generally more conservative chief justice, John Roberts.

Writing for the majority, Chief Justice Roberts upheld lower-court orders that blocked the citizenship question for the 2020 census. Roberts stated that its justification "appears to have been contrived." Roberts seemed to have accepted the opponents' argument that the Voting Rights Act justification was a cover-up for the real political reasons. There must be "genuine justifications for important decisions," Roberts wrote. He also stated Secretary Ross did not give "a full and accurate account of his decision."

Nevertheless, the 5-4 majority did not rule out including a citizenship question in the census as long as the justification for it was genuine. President Trump pressed the Justice Department to come up with another justification. But this effort was soon abandoned because prolonging the controversy would result in more court hearings that could seriously delay the 2020 census and violate the constitutional requirement to count the population to reapportion the House of Representatives.

WRITING & DISCUSSION

1. What do you think was the most significant historical development identified by the census in the article? Why?
2. Do you agree or disagree with the Supreme Court decision on the citizenship question? Why? Use evidence from the article in your answer.
3. Why is it important for every household to participate in the census?

ACTIVITY: Who Should Decide What Goes in the Census?

Divide the class into five groups. Each group will be assigned one of the following entities of government: the president, Congress, the Supreme Court, the secretary of commerce, Census Bureau officials.

1. After each group chooses a spokesperson, each group's task is to decide if their assigned entity should have the final say in approving the census questions every ten years, such as the question about citizenship, or whether census data should ever be released to law enforcement.
2. Each group should discuss the arguments for and against the citizenship question, as well as any other useful information in the article, in order to reach its decision.
3. Groups' spokespersons take turns announcing their groups' decisions. Keep a tally of the decisions.
4. Lead a whole-class discussion on the results of the groups' decisions, and then take a vote in class to see who in the government the class thinks should have the final say in what questions should be used in the census.

ANNE HUTCHINSON: MIDWIFE OF RELIGIOUS FREEDOM

Anne Hutchinson was a Puritan colonist in Massachusetts Bay Colony. She was banished from the colony as punishment for challenging theocratic rulers and went on to co-found Rhode Island with Roger Williams. The vigorous defense that she mounted in both her court and church trials was an important forerunner to the development of the constitutional notion of separation of church and state.

Migration to New England

From her earliest age, Anne Hutchinson was no stranger to religious controversy. Her father, Francis Marbury, was a minister in the Church of England and a Puritan reformer himself.

Puritanism was a religious movement focused on “purifying” the Church of England. Puritans wished to free the church of any vestiges of old Roman Catholic practices, which they viewed as contrary to authentic Christianity.

Marbury’s outspoken dissent from the orthodox views of the Church of England led to his arrest and trial for the crime of heresy. Marbury was convicted and sentenced to house arrest, and he was unable to preach in church or leave his home.

The time Marbury spent at home allowed him to make sure that his many children, including Anne, had the education that he wanted for them. For Anne, this meant that she received a much more thorough and robust education than she otherwise could have hoped for as a middle-class girl in 17th century England.

Anne Marbury married prominent Lincolnshire wool merchant William Hutchinson in 1612. They raised a large family together, and Anne became a highly respected midwife. Anne and William shared a commitment to Puritan theology and quickly became part of Puritan minister John Cotton’s inner circle.

The Hutchinsons were persuaded by Cotton to emigrate from England to the Massachusetts Bay Colony in 1634. The colony had been recently established by John Winthrop and the Massachusetts Bay Company to be a Puritan utopia, a “shining city upon a hill.” In New England, Puritans would be free to establish new churches and worship in the way that they thought best, free from the Roman Catholic imagery and practices that they had found objectionable in England.

Because the Hutchinsons were respected and wealthy members of the merchant class, the journey to the New World for Anne, Will, and their



Edwin Austin Abbey (1852-1911) created this famous illustration of Anne Hutchinson on trial in 1901. What character traits of Hutchinson do you think Abbey was trying to convey in this artwork?

twelve children was fairly comfortable. They sailed aboard the *Griffin*, a ship that had previously transported John Cotton and his family. Before leaving England, the Hutchinsons secured materials for a large house.

Anne believed that she had prophetic gifts; that she could foretell the future and determine whether a person was “among the elect.” In Puritan theology, if one is “among the elect,” it means one is destined to go to heaven.

On the passage over, Anne got into a theological argument with minister Zecharia Symmes. Hutchinson declared that she could tell that Symmes was *not* among the elect. Symmes was livid. He found Anne’s claims to prophecy (especially about his own salvation) theologically suspect. But he also thought it illegitimate for a woman to question a minister’s teachings. ▶

To make matters worse, in Symmes's view, Anne had developed a significant following among the passengers aboard the ship sympathetic to her theological views. Anne's claims to prophecy were buoyed by the fact that she had correctly predicted the date the ship would land in Massachusetts, although it was several days ahead of schedule. Upon arriving in Massachusetts, Symmes brought his complaints against Anne Hutchinson to deputy Governor Thomas Dudley.

Hutchinson in Massachusetts Bay Colony

When they arrived in Massachusetts, Anne and William built their home in the Shawmut peninsula area of Boston. They happened to be right next door to Governor John Winthrop. This meant that Winthrop was familiar with the Bible-study groups that began to meet in the Hutchinson home.

Anne's work as a midwife made her well-known among the families of the colony. She had a good reputation for her intellect and skills. Anne knew the Bible and had a theological mind to rival any of the ministers.

But, as a woman, there was no chance that Anne could preach as an official minister of the church. What she *could* do, and was even expected to do as a prominent, older woman of the community, was to lead younger women in Bible-study groups.

As a rule, Puritans placed a high value on reading the Bible and understanding church doctrine for oneself. (This was contrary to the Roman Catholic practice of receiving information about the Bible from ordained priests reading it in Latin.) But women typically received no formal religious instruction. This made it difficult for them to be able to read the Bible and know the necessary doctrines.

Home study groups, known as "conventicles," were a way for women to help one another in religious instruction. The conventicles in Anne's home became very popular. At times as many as 60 people were in attendance. A second weekly meeting was added, which included men as well as women.

The second weekly meeting was the beginning of trouble for Anne Hutchinson. It violated a tenet of Puritan theology that says that women should never be the teachers of men.

In addition, Governor Winthrop worried that Hutchinson's conventicles were trouble for *him*. Not only were they popular and well-attended, but one of the men who attended was Henry Vane, an English lord and chief political rival of Winthrop's at that time. Because Governor Winthrop lived next door, he was able to see just how popular Anne's meetings had become.

While Winthrop may have been threatened by the popularity of the meetings, he was also concerned about their contents. One of the key tenets of Puritanism is the idea of "predestination." This is the view that God has perfect knowledge of the future. And if God knows what will happen in the future, it has already been determined. Consequently, the question of whether one is going to heaven or hell has been predetermined.

Among the utopian Puritan colonists there was disagreement about whether one's predestined salvation was due to the "free grace" of God, or whether one had to *prepare* one's soul for God's grace through good behavior while on earth. Hutchinson, John Cotton, and others took the "free grace" position, in which there is nothing that a person can do to affect their own salvation.

John Winthrop and John Wilson, pastor of the Boston Church, took the "preparationist" position, claiming that although salvation comes from God, it is each person's responsibility to prepare his or her soul to receive God's grace through his or her actions (works). The free-grace faction found preparationism to be too close to the offensively Catholic position that a person can "earn" her way into heaven by her good works.

Winthrop, Wilson, and other preparationists were concerned that Anne Hutchinson was winning over many members of the Boston Church to the free-grace point of view. They found this especially concerning because they were in positions of authority. If people believe that their actions — whether good or bad, law-abiding or not — have no effect on their salvation, then those people would not have sufficient reason to follow the law, or to be obedient to civil and religious authorities.

As Governor of Massachusetts Bay Colony, Winthrop wanted to do everything in his power to ensure the success of the colony and to maintain the colony's royal charter (the king's permission to form an English colony in Massachusetts). They labelled Hutchinson as an "antinomian," someone who promotes lawlessness. (From the Greek: *anti* = against; *nomos* = law).

Hutchinson on Trial

Although Winthrop was keen to force Hutchinson to stop her meetings and stop spreading her free-grace message, it was unclear that he had the legal means to do so. Anne's meetings were held in her private home. And, as a woman, she had no official role. Even so, Anne was arrested and made to stand two trials: a civil trial before the Boston court, and a church trial

Excerpt from the Transcript of Anne Hutchinson's Trial

Mrs. Anne Hutchinson: ...You have power over my body but the Lord Jesus hath power over my body and soul; and assure yourselves thus much, you do as much in your lies to put the Lord Jesus Christ from you, and if you go on in this course you begin, you will bring a curse upon you and your posterity, and the mouth of the Lord hath spoken it.

before ministers of the church in Boston.

Forty judges and magistrates from all over Massachusetts were present at the civil trial for slandering ministers and “troubling the peace” of the colony. Anne was questioned about her conventicles, and whether she had insulted ministers of the church. Even without the benefit of legal counsel, Anne answered questions clearly and concisely, with fluent citations from Scripture. She stated her positions and articulated her reasons for holding them. During her examination Anne made the bold claim that she experienced direct revelations from God. She also incorrectly predicted the destruction and downfall of the Massachusetts colony. Winthrop, speaking on behalf of the other judges, declared her to be “a woman unfit for our society.”

Commentators tend to agree that Hutchinson acquitted herself extremely well at trial. Ironically, her polished comportment may have contributed to her legal undoing. Due to her outspokenness on religious matters and her unwillingness to back down or blindly accept pronouncements of religious and civil authorities, she lost both her civil and church trials. She was sentenced to banishment from the colony.

Banishment

William Hutchinson and others went with Roger Williams, himself a Puritan minister who had been banished from Massachusetts Bay Colony for preaching “dangerous opinions,” to establish a colony in what is now Rhode Island. After her church trial in April of 1638, Anne and her younger children went with about 60 people sympathetic to Anne’s cause to the Rhode Island colony. The Hutchinson group walked for six days. Anne was 45 years old and pregnant for the 16th time. Once in Rhode Island, she was reunited with her husband.

After William Hutchinson’s death in 1642, Anne and her seven youngest children moved to what is now New York State (then, New Netherlands). Unfortunately, they were caught up in the war between New Netherlands colonists and the Siwanoy tribe. Anne and most of her household were killed in a Siwanoy raid.

Legacy

Hutchinson, her trial, as well as her “heresy” have had a lasting impact on American history. This is most



This illustration shows the landing of Roger Williams in Rhode Island after assisting in the purchase of land from the Narragansett people.

easily seen in the importance that America’s founders placed on religious freedom and holding religion as a matter of individual conscience in some of America’s foundational documents. The Royal Charter for Rhode Island (1663) established that colony as a place where each citizen could follow the religion of his choice.

The Virginia Statute for Religious Freedom, written by Thomas Jefferson in 1777, outlawed requiring citizens of Virginia to support a certain church financially and outlawed religious tests for holding office. Jefferson reasoned that “Almighty God hath created the mind free.”

Just a few years later, Virginians were faced with legislation establishing public financial support for Christian churches. In response, James Madison published the “Memorial and Remonstrance Against Religious Assessments” in 1785, in which he argued against state funding for religion. Madison forcefully argued that religion is a matter for an individual’s private conscience. Madison also recognized the possibility that state funding for religion would cause people to leave the state, having “a like tendency to banish our citizens.” Madison’s choice of language calls to mind Hutchinson’s banishment, along with that of Roger Williams.

The Founders’ commitment to religious freedom is notable in the First Amendment: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” These first words opening the Bill of Rights emphasize the importance of freedom of conscience with respect to religion. Anne Hutchinson and other early religious dissidents left a legacy that guaranteed individual

religious freedom in what would become the United States of America.

Harvard College (later Harvard University) was founded in Massachusetts in 1636 but had no buildings or professors, yet. Two weeks after Hutchinson's civil trial ended in 1637, the General Court of Massachusetts — which included John Winthrop — issued funds to actually build the college. The purpose seemed to be hastening the training of new ministers who would defend Puritan orthodoxy. In 2002, *Harvard Magazine* referred to Anne Hutchinson as the “midwife of Harvard.”

Anne and William had 15 children, many of whom went on to have large families of their own. Hutchinson's descendants include Supreme Court Justices Melville Weston Fuller and Oliver Wendell

Holmes; several presidential aspirants including Stephen A. Douglas, George Romney, and Mitt Romney; and three U.S. Presidents: Franklin D. Roosevelt, George H.W. Bush, and George W. Bush.

WRITING & DISCUSSION

1. How did Anne Hutchinson's childhood experiences prepare her for her life as a Puritan leader in Massachusetts?
2. Why did the Puritan authorities feel particularly threatened by Anne's activities in Massachusetts Bay Colony?
3. In what ways did Jefferson's Virginia Statute for Religious Freedom and Madison's “Memorial and Remonstrance” reflect the values or beliefs preached by Anne Hutchinson?

ACTIVITY: The Life of a Shaker

*Women like Anne Hutchinson played an important role in the history of American religion. Below is a description of the life of another well-known religious non-conformist and leader, Mother Ann Lee who led the Shaker Christian sect. With a partner, read and discuss the following biographical sketch of Mother Ann Lee. Then, compare the **lives**, **beliefs**, and **legacies** of Mother Ann Lee and Anne Hutchinson.*

Ann Lee was born in Manchester, England, in 1736. She was the eighth child of a poor blacksmith. Her parents were too poor to give her an education, so she had no schooling. As a child, she worked in a textile factory.

As a young adult, she became part of a sect from France called the Shaking Quakers, or simply the Shakers. In their worship, they danced and shook themselves, based on their interpretations of passages in the Old Testament. The shaking, they believed, was sin working its way out of their bodies.

Ann tried to avoid marriage, but her father saw to it that she married Abraham Stanley in 1762. They were married in the Church of England. She and her husband had four children, none of whom lived past infancy. Ann believed their deaths were God's punishment of Ann for the sin of getting married.

She devoted herself even more to Shaker worship and started to lead worship among them. Local mobs began to persecute Shakers, sometimes violently, for their unorthodox worship. Civil authorities also jailed Ann and other Shakers for breaking the Sabbath by dancing, and Ann was often accused of blasphemy.

In 1770, when Ann and other Shakers were again jailed, Ann had a vision. She claimed to have seen Jesus Christ who revealed to her that all people must be celibate in order to achieve God's salvation. When she revealed her vision to the Shakers, they followed her and called her Mother Ann.

Through another series of visions, Mother Ann came to believe that the Shakers should relocate to America, which they did. They sailed to New York, arriving in 1774, and settled there. Since they were pacifists, like the Quakers, the Shakers were neutral during the American Revolution.

They established several communities in New York and other states. In a Shaker community, men and women lived separately and did not marry. After a few years, Shakers came to believe that Mother Ann was the second coming of Christ, or God's second incarnation on earth after Jesus Christ himself.

In the 19th century, Shakers were known for their creativity, especially in architecture and design, including the still commonly used Shaker broom and distinctive wooden furniture. Because Shakers did not procreate, their numbers could only grow through converts. By 2017, there were only two remaining Shakers, who lived in a community in Maine.



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270 VOTES TO WIN:

THE ELECTORAL COLLEGE IN THE UNITED STATES



Maryland GovPics, slightly cropped and used under a CC BY 2.0 license

This picture shows a meeting of the electors for the state of Maryland during the 2012 presidential election process.

In a U.S. presidential election, voters do not directly vote for their chosen candidate. When they mark their ballots next to the names of the candidates they want as president and vice president, they're actually voting for members of a body known as the Electoral College that will officially choose the president. Voters are choosing a slate (a group) of these electors in their state who are committed to a certain candidate. To win the presidency, a candidate needs at least 270 votes by electors nationwide out of the Electoral College's total 538.

Usually, the Electoral College vote reflects the will of the general voting public, but not always. In four clear-cut instances, the Electoral College vote has gone against the popular vote. In 1876, Rutherford B. Hayes lost the popular vote by about 300,000 votes. In 1888, Benjamin Harrison lost by about 100,000. In 2000, George W. Bush lost by about 500,000 votes. In 2016, Donald J. Trump lost the popular vote by nearly three million. All four men won the Electoral College vote, however, and the presidency.

Americans' opinion of the Electoral College is divided. In December 2016, the Gallup polling company found that 47% of Americans want to keep the Electoral College, an increase from 35% in 2004, while 49% wanted to amend the Constitution to switch to a national popular vote. However, a 2018 PRRI/*The Atlantic* poll found that 65% of Americans support a national popular vote, while only 32% support keeping the Electoral College. It seems safe to expect a lot more debate over this issue leading up to the national election in 2020. So how did the Electoral College come to be, and how exactly does it work?

Origins of the Electoral College

The framers of the Constitution debated extensively about how the president should be selected. Some were

fearful of a direct democracy. Some believed that voters would not be well-informed enough to vote responsibly. Most did not take into account the role that political parties might play in the process. And framers from slave states wanted to avoid an election system that would place them at a disadvantage given their large but widely disenfranchised populations.

The framers eventually laid out the Electoral College system in Article II of the Constitution. Each state's electors would vote for the president. Each state was given a number of electors equal to the total of its congressmen. It was left to the states to determine how those electors would be chosen. When all the electors' votes were tallied in each state, the candidate receiving a majority of the electors' votes from across the nation would be elected president. The person with the second highest vote count would be vice president.

But the first two presidential elections under the rules set out in Article II revealed serious flaws in this system. After George Washington's retirement, the election of 1796 was the first contested presidential election in U.S. history. Party politics and failed partisan schemes within the Electoral College resulted in the first and only time in U.S. history that a president and vice president came from different political parties: John Adams, a Federalist, became president, and Thomas Jefferson, a Democratic-Republican, became vice president.

Four years later in the election of 1800, each state was free to determine the time and method for choosing its electors. So the election dragged on from April until December. When the Electoral College finally did vote, the result was a tie between Thomas Jefferson and his candidate for vice president Aaron Burr. It was ►

up to the House of Representatives to break the tie, and it took them 36 votes to do so, finally in favor of Jefferson, who then became president.

Changes Under the 12th Amendment

Seeking to avoid further turmoil in the next presidential election, Congress took up the issue and passed the 12th Amendment, which was ratified by enough states by June 1804 to go into effect. Under the 12th Amendment, each state still gets a number of electors equal to the number of members in the House of Representatives for that state plus its two U.S. senators. An important change, however, was that electors would cast one vote for president and a separate vote for vice president (to avoid the Jefferson-Burr situation of 1800).

Furthermore, the Jeffersonians in Congress who dominated the debate on the amendment stressed the importance of majority rule. So they set up a system that they believed would reflect and preserve that goal. It was a system they thought would translate into a candidate winning a majority of Electoral College votes by winning the majority of support within the states.

The Electoral College Today

The 12th Amendment still left it up to the state legislatures to determine *how their state's electors would be selected*, as well as *how their electoral votes would be awarded*. Today, each state has its own rules for nominating these slates of electors, and sometimes these rules even vary by political party. Then, it is decided through a popular vote in each state on Election Day which group of electors will cast that state's votes for president and vice president. On an appointed date after Election Day, the electors meet in their respective states and cast their votes for president. (The electors do not ever meet all together in one place.)

But not quite every state awards their electoral votes in the same way. Forty-eight out of 50 states have moved away from the majority-rule rationale behind the 12th Amendment. In all states except Maine and Nebraska, whichever candidate gets the most votes, even if it's not a majority, gets *all* of that state's electoral votes. This is known as a plurality winner-take-all system. The table below shows how this works in practice in very close races.

Maine and Nebraska are the only two states that do not have a winner-take-all system of assigning electoral votes. They both use what is known as the

Congressional District Method, in which one electoral vote is assigned to each congressional district, and then the statewide winner of the popular vote gets the state's other two electoral votes. (Remember: the number of electoral votes each state has is equal to one per congressional district plus two for the number of senators each state has).

Under this system, it is possible for electoral votes to be shared between candidates. In the 2016 presidential election, for example, Hillary Clinton got three of Maine's electoral votes, and Donald Trump got one.

Given today's electoral complexities, what are the main arguments behind Americans' divided opinion on the Electoral College?

Arguments Against the Electoral College

1. It allows a president to be elected who does not win the popular vote. This has occurred at least four times.
2. It undermines the fundamental democratic principle of "one person, one vote." Since every state gets at least three electoral votes regardless of the state's population, the influence of voters in small states is artificially inflated. For example, under the current system, each elector for California — the most populous state in the union — represents 712,000 residents of that state. Each elector for Wyoming — the least populous state in the union — represents about 193,000 residents. In fact, the District of Columbia (whose residents have only been able to vote in presidential elections since the ratification of the 23rd Amendment in 1961) has the same number of electoral votes as Wyoming but has almost 135,000 more residents.
3. Deadlocks can happen. A third-party candidate or a close election can prevent any candidate from getting a majority of Electoral College votes. When no one candidate captures a majority of electoral votes, the House of Representatives — with each state delegation having just one vote — decides who is president. This has occurred twice in our history (in 1800 and 1824). On four other occasions, including the hard-fought elections of Abraham Lincoln in 1860 and John F. Kennedy in 1960, elections came within just 30,000 votes of having to be decided by the House, with three additional close calls in the elections of 1912, 1924, and 1968.

Examples of Close Plurality Winner-Take-All Results from the 2016 Presidential Election

	Electoral College Votes	% of Popular Vote Trump (R)	% of Popular Vote Clinton (D)	All Electoral College votes awarded to:
Michigan	16	47.6	47.3	Trump
Minnesota	10	45.4	46.9	Clinton

4. The Electoral College may hold down voter turnout. If opinion polls show one candidate far ahead in a state, then voters in that state who prefer another candidate may not bother to vote, figuring that their vote won't really affect the outcome of the election. And U.S. territories such as Puerto Rico and American Samoa have no electors at all, so residents of those territories cannot vote in presidential elections, even though they are U.S. citizens.
5. The Electoral College leads candidates to largely ignore states — large or small — that are either solidly “blue” or solidly “red.” They concentrate their efforts and attention almost exclusively on so-called battleground or swing states that have many votes in the Electoral College. In the final months of the 2016 campaign, candidates Trump and Clinton made a combined 178 campaign trips to 24 states, but 111 of those trips were visits to just six battleground states (Florida, Michigan, North Carolina, Ohio, Pennsylvania, and Virginia).

Arguments for the Electoral College

1. The Electoral College is a reflection of our federal system as described in the U.S. Constitution. It properly places power with states and their representatives rather than the national government.
2. No one region in the U.S. (South, Midwest, Northeast, etc.) controls enough electoral votes to elect a president all by itself. Therefore, successful presidential candidates must appeal to voters across multiple regions. This gives candidates for the presidency an incentive to campaign in smaller swing states with significantly large rural areas. For example, Donald Trump held rallies in Iowa, Nevada, and New Hampshire in the general election in 2016, even though those states have relatively few electoral votes. Iowa is in the Midwest, Nevada is in the Southwest, and New Hampshire is in the Northeast.
3. It has contributed to political stability by promoting the two-party system, which encourages the major parties to represent a wide range of interests. Since the first presidential election under our Constitution in 1788, third parties have only won one or more electoral votes 12 times. In 1912, Theodore Roosevelt from the Progressive Party, a third party, won six states and their electoral votes. He beat the Republican candidate William Howard Taft, but both lost to the Democrat Woodrow Wilson. The last third party candidate to win any electoral votes was George Wallace in 1968, who appealed to white racists with a pro-segregation platform and won five Southern

Change in the Allocation of Electoral College Votes by States from 1964 to 2020

	Election Year						Change
	1964	1972	1984	1992	2004	2012	
	1968	1976	1988	1996	2008	2016	
		1980		2000		2020	
State							
Alabama	10	9	9	9	9	9	-1
Alaska	3	3	3	3	3	3	0
Arizona	5	6	7	8	10	11	6
Arkansas	6	6	6	6	6	6	0
California	40	45	47	54	55	55	15
Colorado	6	7	8	8	9	9	3
Connecticut	8	8	8	8	7	7	-1
D.C.	3	3	3	3	3	3	0
Delaware	3	3	3	3	3	3	0
Florida	14	17	21	25	27	29	15
Georgia	12	12	12	13	15	16	4
Hawaii	4	4	4	4	4	4	0
Idaho	4	4	4	4	4	4	0
Illinois	26	26	24	22	21	20	-6
Indiana	13	13	12	12	11	11	-2
Iowa	9	8	8	7	7	6	-3
Kansas	7	7	7	6	6	6	-1
Kentucky	9	9	9	8	8	8	-1
Louisiana	10	10	10	9	9	8	-2
Maine	4	4	4	4	4	4	0
Maryland	10	10	10	10	10	10	0
Massachusetts	14	14	13	12	12	11	-3
Michigan	21	21	20	18	17	16	-5
Minnesota	10	10	10	10	10	10	0
Mississippi	7	7	7	7	6	6	-1
Missouri	12	12	11	11	11	10	-2
Montana	4	4	4	3	3	3	-1
Nebraska	5	5	5	5	5	5	0
Nevada	3	3	4	4	5	6	3
New Hampshire	4	4	4	4	4	4	0
New Jersey	17	17	16	15	15	14	-3
New Mexico	4	4	5	5	5	5	1
New York	43	41	36	33	31	29	-14
North Carolina	13	13	13	14	15	15	2
North Dakota	4	3	3	3	3	3	-1
Ohio	26	25	23	21	20	18	-8
Oklahoma	8	8	8	8	7	7	-1
Oregon	6	6	7	7	7	7	1
Pennsylvania	29	27	25	23	21	20	-9
Rhode Island	4	4	4	4	4	4	0
South Carolina	8	8	8	8	8	9	1
South Dakota	4	4	3	3	3	3	-1
Tennessee	11	10	11	11	11	11	0
Texas	25	26	29	32	34	38	13
Utah	4	4	5	5	5	6	2
Vermont	3	3	3	3	3	3	0
Virginia	12	12	12	13	13	13	1
Washington	9	9	10	11	11	12	3
West Virginia	7	6	6	5	5	5	-2
Wisconsin	12	11	11	11	10	10	-2
Wyoming	3	3	3	3	3	3	0

Source: U.S. Census

states. He still came nowhere near to winning that year's general election.

4. It is the system we have and in which candidates and the public know how to operate. Any change to it could bring negative unanticipated consequences. For example, the 12th Amendment was ratified in 1804 to solve problems in the previous two elections. Its supporters intended to instill majority rule in how states' electors voted. Today, however, 48 out of 50 states use a plurality winner-take-all system rather than a simple majority-rule system in electoral votes.
5. Switching to a national popular vote, in particular, could require significant changes to who runs elections and how. Article II of the Constitution leaves it up to states to decide how to appoint electors, as long as the number equals the number of senators and congressional representatives. A national popular vote would take that power from the states entirely. It is extremely rare to get states to ratify any constitutional amendment. This one would be just

as difficult, if not more so. It could also open the door to problems for the federal government in administering an election across 50 states. Imagine contested results in multiple states. That would be even harder to manage and resolve than, for example, the recount in the single state of Florida in 2000.

WRITING & DISCUSSION

1. What is a plurality winner-take-all system? Do you think this is a good way to decide elections? Why or why not?
2. Many times in our history it has been suggested that the Electoral College be changed or abolished. Why do you think this has not happened?
3. Look at the chart on page 11. Which states gained the most Electoral College votes since 1964? Which states lost the most votes? How do you think that will affect future presidential campaigns? What does this tell you about the importance of the U.S. census data?

ACTIVITY: What Should We Do About the Electoral College?

You have been appointed to a presidential commission tasked with making recommendations on whether the United States should change the system it uses for electing the president, and, if so, what that system should be.

Form groups of five commission members each. In your commission, re-read and discuss the arguments for and against the Electoral College. Then discuss and decide on *one* of the options listed below. (Most of these options will require a constitutional amendment.) Choose a spokesperson who is prepared to report on the reasons for your decision.

Option #1: Amend the Constitution to eliminate the Electoral College and switch to a national popular vote. Decide the presidency based on the candidate who receives the most votes in a national popular vote. Voters in territories as well as states would all be able to vote in the national election.

Option #2: Amend the Constitution to eliminate the Electoral College and switch to a majority popular vote with a run-off election. Decide the presidency based on the candidate who receives a majority (more than 50%) in a national popular vote. If no candidate receives a majority, then a run-off election between the two highest vote-getters would take place.

Option #3: Keep the Electoral College, but urge states to switch to district electoral votes. Each state gets electoral votes based on its number of congressional representatives plus its two U.S. senators. The district electoral vote system gives one electoral vote to each congressional district, and the overall winner in the state gets two electoral votes (those represented by the Senate seats). This is the system currently used in Maine and Nebraska. If every state were required to use it, a constitutional amendment would be necessary. But your commission could also simply recommend that each state adopt this system.

Option #4: Urge states to adopt the National Popular Vote Interstate Compact. This initiative, which has been approved by 12 states and the District of Columbia, is a pledge from its member states to give their electoral votes to whichever candidate wins the popular vote nationwide, regardless of which candidate wins in that state. The compact would go into effect once the electoral votes of the states signing on to it add up to 270; with the addition of Colorado in March 2019, the number now stands at 181. Because this initiative is coming *from* the states, many analysts have argued that it would not require a constitutional amendment, though they expect it to face challenges in the courts.

Option #5: Retain the Electoral College as it is.

Standards Addressed

The Census in U.S. History

National U.S. History Standard 10: Understands how the industrial revolution, the rapid expansion of slavery, and the westward movement changed American lives and led to regional tensions. High School: (2) Understands characteristics of economic development during the 19th century. . . . (5) Understands the impact of the Industrial Revolution during the early and later 19th century. . . .

National U.S. History Standard 15: Understands how various reconstruction plans succeeded or failed. High School: (1) Understands the elements of different plans for Reconstruction (e.g., how each plan viewed secession, amnesty, pardon, and procedure for readmission to the Union; the influence of the issue of Federalism on the debate over Reconstruction policy; the motives of the Radical Republicans). (2) Understands the 14th and 15th amendments to the Constitution (e.g., how citizenship was included. . . .). (4) Understands factors that inhibited and fostered African American attempts to improve their lives during Reconstruction. . . .

National U.S. History Standard 16: Understands how the rise of corporations, heavy industry, and mechanized farming transformed American society. High School: (2) Understands issues associated with urban growth in the late 19th century. . . .

National U.S. History Standard 17: Understands massive immigration after 1870 and how new social patterns, conflicts, and ideas of national unity developed amid growing cultural diversity. High School: (1) Understands challenges immigrants faced in society in the late 19th century (e.g., experiences of new immigrants from 1870 to 1900, reasons for hostility toward the new immigrants, restrictive measures against immigrants, the tension between American ideals and reality).

National Civics Standard 24: *Understands the meaning of citizenship in the United States, and knows the requirements for citizenship and naturalization.*

High School: (1) Understands the distinction between citizens and noncitizens (aliens) and the process by which aliens may become citizens. (3) Knows the criteria used for admission to citizenship in the United States such as five years residence in the U. S.; ability to read, write, and speak English; proof of good moral character; knowledge of the history of the United States; knowledge of and support for the values and principles of American constitutional government.

California History-Social Science Standard 11.1: *Students analyze the significant events in the founding of the nation and its attempts to realize the philosophy of government described in the Declaration of Independence.* (3) Understand the history of the Constitution after 1787 with emphasis on federal versus state authority and growing democratization. (4) Examine the effects of the Civil War and Reconstruction and of the industrial revolution, including demographic shifts. . . .

California History-Social Science Standard 11.2: *Students analyze the relationship among the rise of industrialization, large-scale rural-to-urban migration, and massive immigration from Southern and Eastern Europe.* (2) Describe the changing landscape, including the growth of cities linked by industry and trade, and the development of cities divide according to race, ethnicity, and class.

California History-Social Science Standard 11.7: *Students analyze America's participation in World War II.* (5) Discuss the constitutional issues and impact of events on the U.S. home front, including the internment of Japanese Americans. . . .

California History-Social Science Standard 11.8: *Students analyze the economic boom and social transformation of post-World War II America.* (4) Analyze new federal government spending on defense, welfare . . . and federal and state spending on education. . . .

California History-Social Science Standard 11.10: *Students analyze the development of federal civil rights and voting rights.* (6) Analyze the passage and effects of civil rights and voting rights legislation . . . with an emphasis on equality of access to education and to the political process.

California History-Social Science Standard 11.11: *Students analyze the major social problems and domestic policy issues in contemporary American society.* (1) Discuss the reasons for the nation's changing immigration policy, with emphasis on how the Immigration Act of 1965 and successor acts have transformed American society. (7) Explain how the federal, state, and local governments have responded to demographic and social changes. . . .

California History-Social Science Standard 12.2: *Students evaluate and take and defend positions on the scope and limits of rights and obligations as democratic citizens, the relationships among them, and how they are secured.* (6) Explain how one becomes a citizen of the United States, including the process of naturalization (e.g., literacy, language, and other requirements).

Common Core State Standards: SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.2, RH.11-12.10, WHST.11-12.10.

Anne Hutchinson: Midwife of Religious Freedom

National U.S. History Standard 4: *Understands how political, religious, and social institutions emerged in the English colonies.* **Middle School:** (5) Understands the role of religion in the English colonies (e.g., the evolution of religious freedom, treatment of religious dissenters such as Anne Hutchison, the concept of the separation of church and state). **High School:** (3) Understands characteristics of religious development in colonial America (e.g., the presence of diverse religious groups and their contributions to religious freedom; the political and religious influence of the Great Awakening; the major tenets of Puritanism and its legacy in American society; the dissension of Anne Hutchison and Roger Williams, and Puritan objections to their ideas and behavior).

California History-Social Science Standard 8.2: *Students analyze the political principles underlying the U.S. Constitution and compare the enumerated and implied powers of the federal government.* (5) Understand the significance of Jefferson's Statute for Religious Freedom as a forerunner of the First Amendment and the origins, purpose, and differing views of the founding fathers on the issue of the separation of church and state.

California History-Social Science Standard 11.3: *Students analyze the role religion played in the founding of America, its lasting moral, social, and political impacts, and issues regarding religious liberty.* (5) Describe the principles of religious liberty found in the Establishment and Free Exercise clauses of the First Amendment, including the debate on the issue of separation of church and state.

Common Core State Standards: SL.8.1, SL.8.3, RH.6-8.1, RH.6-8.2, RH.6-8.10, WHST.6-8.10, SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.2, RH.11-12.10, WHST.11-12.10.

270 to Win: The Electoral College in the United States

National U.S. History Standard 8: *Understands the institutions and practices of government created during the Revolution and how these elements were revised between 1787 and 1815 to create the foundation of the American political system based on the U.S. Constitution and the Bill of Rights.* **Middle School:** (4) Understands the development and impact of the American party system (e.g., social, economic, and foreign policy issues of the 1790s; influence of the French Revolution on American politics; + the rise of the Federalist and Democratic-Republican parties; the election of 1800. . . .) **High School:** (1) Understands influences on the ideas established by the Constitution (e.g., the ideas behind the distribution of powers and the system of checks and balances; the influence of 18th-century republican ideals and the economic and political interests of different regions on the compromises reached in the Constitutional Convention).

National Civics Standard 13: *Understands the character of American political and social conflict and factors that tend to prevent or lower its intensity.* **Middle School:** (3) Knows sources of political conflict that have arisen in the United States historically as well as in the present . . .

California History-Social Science Standard 12.6: *Students evaluate issues regarding campaigns for national, state, and local elective offices.* (6) Analyze trends in voter turnout; the causes and effects of reapportionment and redistricting, with special attention to spatial districting and the rights of minorities; and the function of the Electoral College.

Common Core State Standards: SL.8.1, SL.8.3, RH.6-8.1, RH.6-8.2, RH.6-8.3, RH.6-8.10, WHST.6-8.10, SL.11-12.1, SL.11-12.3, RH.11-12.1, RH.11-12.2, RH.11-12.3, RH.11-12.10, WHST.11-12.10, WHST.11-12.10.

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MOCK TRIAL CASE: *People v. Klein*

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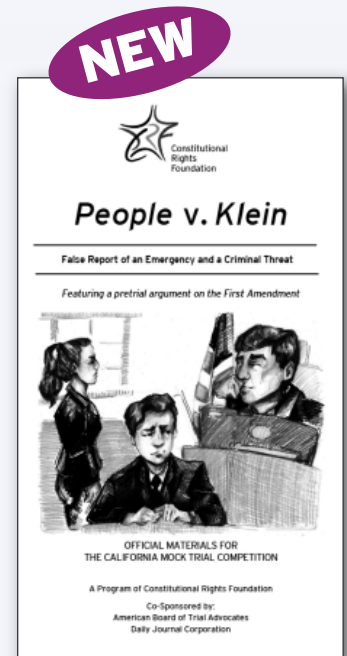
People v. Klein is the trial of Reagan Klein. Reagan is charged with two felony counts: making a false report of an emergency (in this case, commonly referred to as "swatting") and making a criminal threat. The prosecution alleges that Reagan threatened a coworker, Sawyer Smith, via a social media post and that Reagan had animosity against Sawyer because Sawyer had become a rising social-media influencer and because Sawyer was responsible for Reagan being fired from the restaurant where they both worked. The prosecution further argues that Reagan made a false "text-a-tip" to the police requesting police respond to a "hostage situation" at Sawyer's residence. A SWAT team responded to the call, and Sawyer was seriously injured.

The defense argues that Reagan neither threatened Sawyer nor made the false text to the police. The defense further argues that Reagan had no more animosity toward Sawyer than other coworkers who all disliked Sawyer's influencer personality and who had all engaged in the cyberbullying of Sawyer.

In the pretrial motion, the defense will argue that Reagan's social media posts were not a "true threat," and it is therefore protected free speech under the First Amendment self-incrimination.

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