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Comment

Birch Bayh

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The Honorable Birch Bayh†

M R. JOHN BANZHAF'S "mathematical analysis" of the Electoral
College is a welcome addition to the growing literature on the ques-
tion of electoral reform. *One Man, 3.312 Votes* is a timely and very
original contribution, providing the supporters of reform with a new
perspective on the antiquated Electoral College.

According to Mr. Banzhaf, the impartial computer has confirmed
what supporters of direct popular election long have claimed — the
present electoral system is inherently unfair and undemocratic. It in-
flates the voting power of citizens in the few largest states and dilutes
the voting power of the citizens of the vast majority of states. The
computer provides additional evidence that both the district and pro-
portional plans are also discriminatory, inflating the voting strength of
certain citizens and diminishing the voting power of others.

It is important to always keep in mind the fact, that Banzhaf's
analysis rests upon a theoretical model of the presidential election
process. Thus it offers a new, but limited perspective. By isolating the
electoral voting system from the election process, the author has con-
fined his study to measuring the distribution of citizen voting power that
results from any inequities in the so-called "ground rules" of the elec-
tion: the electoral vote and the "winner take all" formula. Nevertheless,
this is a very valuable contribution, for it provides us with an insight
into the basic fairness — or unfairness — of the present electoral voting
system.

Contrary to popular impression, as Banzhaf notes, voting power
is not merely the number of votes which an individual casts. Rather, in
a functional sense, it is the ability of a voter to actually affect the out-
come of an election. A democratic electoral system, it seems to me,
would equalize voting power, insuring each voter an equal oppor-
tunity to influence the final choice. The only electoral system that can
meet this test, of course, is direct popular election.

Under the present system, what chance does a citizen of one state
have to affect the presidential race in comparison to a citizen in another
state? Not surprisingly, Mr. Banzhaf finds that the "[c]itizens of the
small and medium-sized states are severely deprived of voting power in
comparison with the residents of the few very populous states. . . ."[1]

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1. Banzhaf, *One Man, 3.312 Votes: A Mathematical Analysis of the Electoral
College*, 13 Vill. L. Rev. 304, 313 (1967).

To illustrate this point, the author compares the voting power of an individual casting a single ballot with the voting power of *A, B,* and *C*, who vote as a bloc according to the majority. In 50% of the possible voting arrangements, *A, B,* or *C* can each affect the final disposition of the 3 votes. Their individual voting index, therefore, is 150. In contrast, the voter with only one ballot has a voting power index of 100. By extending this example, as Banzhaf points out, the basic inequities of the present electoral voting system are readily apparent. Simply, the voting power of an individual increases as the size of his voting group increases. A citizen of New York, as a result, has 3.312 times more voting power than a resident of the District of Columbia, a citizen of California has 3.162 times more voting power, and a citizen of Pennsylvania 2.638 times more power than a voter in the District of Columbia.

What Mr. Banzhaf has failed to emphasize in his simplified example, however, is that the voting power index of 150 is not really indicative of *A*'s (or *B*'s or *C*'s) relative power, as compared to the individual voter, in each of the possible voting arrangements in which *A* is a participant. *A*'s index of 150 is an average of his voting strength over 8 voting arrangements. If this is broken down, we find that in the 4 voting combinations where *A* actually could affect the outcome he has an index of 300. On the other hand, in the 4 arrangements where his vote cannot affect the outcome he has a power index of zero. Thus, the present electoral voting system, obviously, is discriminatory in two respects. In some instances it will greatly inflate the voting power of voters in the largest states. In other cases, however, it will deflate the same individual's ability to affect the presidential race.

What actually determines whether this individual will have inflated power or diminished voting strength? The missing ingredient, of course, is politics. The common practice of awarding all of a state's electoral votes to the winner of the popular election — the "winner take all" rule — places a premium on the votes of swing groups in the large, closely contested industrial states. For in this context a small popular vote margin can produce a sizeable bloc of electoral votes. In contrast, a populous state with a history of one-party voting will, despite its large electoral vote, suffer the same neglect as a much smaller state.

Electoral systems, as political scientists often remind us, are political institutions. They help shape, in varying degrees, the basic nature of the political struggle. Electoral systems are rarely, if ever, neutral. The present electoral voting system is no exception. For all practical purposes, the outcome of presidential elections today is determined by a small group of marginal voters in eleven or twelve large,

politically doubtful states. By inflating the value of these individual popular votes, our presidential election machinery effectively denies to millions of Americans an equal opportunity to affect the outcome of presidential elections.

Under any system that retains either the "winner take all" formula or the electoral vote (allotting each state a number of electoral votes equal to its number of Representatives and Senators), we face the prospect of elevating to the Presidency a man who is not the popular choice of the American people. As a result of the mysterious arithmetic of the present system, for example, a candidate could win an electoral majority by capturing popular vote pluralities — no matter how small — in only eleven of the largest states and the District of Columbia. In short, the voters of thirty-nine states would have absolutely no voice in the choice of a President, even if they were unanimous in their opposition.

As Chief Justice Warren pointed out, "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."[2] By eliminating the electoral vote and the unit rule, direct popular election would insure that a vote cast in one state would carry equal weight with a vote cast in any other state. Neither the present system, as we have seen, nor the district or proportional plans can offer this simple guarantee of voter equality in the election of the President.

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2. Reynolds v. Sims, 377 U.S. 533, 555 (1964).