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Comment

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COMMENT

NEAL R. PEIRCE†

THROUGH an imaginative use of modern computer techniques, John Banzhaf has given mathematical proof for a phenomenon which politicians have grasped intuitively since the early nineteenth century: the disproportionate weight of the votes cast by citizens of the large states under a unit-vote (or "winner take all") system of electoral voting.¹ Reduced to laymen's language, the formula is as simple as this: in a close election, the decision of a few hundred or a very few thousand voters can switch the outcome in a small state like Wyoming, thereby throwing three electoral votes from one column to the other. Nationally, the impact of the shift is likely to be minimal. But a shift of exactly the same number of popular votes is often sufficient to alter the outcome in one of the larger states, such as New York with its forty-three electoral votes or California with forty. Very often, the switch of one of these large states may determine the outcome of the entire presidential election.

Indeed, history shows several elections in which the national outcome hinged on a single large state.

In the election of 1844, a shift of 2,555 votes in New York could have reversed the Electoral College outcome, making Henry Clay President instead of James K. Polk.

In the election of 1880, a shift of 10,517 votes in New York would have made Winfield S. Hancock President instead of James A. Garfield.

In the election of 1884, a shift of 575 votes in New York would have made James G. Blaine President instead of Grover Cleveland.

In the election of 1888, a shift of 7,189 votes in New York could have kept Grover Cleveland in the White House, instead of electing Benjamin Harrison. (Cleveland actually won a popular vote plurality but lost in the Electoral College.)

† Political Editor, *Congressional Quarterly* and author, *THE PEOPLE'S PRESIDENT, THE ELECTORAL COLLEGE IN AMERICAN HISTORY AND THE DIRECT VOTE ALTERNATIVE* (Publication date March, 1968, Simon & Schuster, New York).

1. In 1824, Martin Van Buren, then a Senator from New York, opposed substituting a district system for the unit-vote system because a division into districts would tend "to reduce greatly the present weight of the large states in the general scale" by "preventing them from bringing their consolidated strength to bear upon the Presidential question." J. DOUGHERTY, *THE ELECTORAL SYSTEM OF THE UNITED STATES* 333 (1906). In an 1834 Senate debate, Thomas Hart Benton of Missouri supported a district plan because it would "break the force of the great states in the elections." 46 *NILES REGISTER* 421, 422 (1834).

In the election of 1916, a shift of 1,983 votes in California could have made Charles Evans Hughes President instead of Woodrow Wilson — even though Wilson had a half-million more popular votes across the country.

By contrast, the only election in which a vote shift in a small state could have determined the outcome was in 1876, when a shift of 185 popular votes in South Carolina would have reversed the electoral vote count to make Samuel J. Tilden President instead of Rutherford B. Hayes.

In 1948 and 1960, the shift of only two large states in which the vote was close would have thrown the election into the House of Representatives for decision. A shift of three states in 1948, or five in 1960, would have elected the losing Republican contender in each case.

Thus history backs up what Mr. Banzhaf has demonstrated mathematically: in any close election, the citizens of the large states have a disproportionately greater chance to affect the outcome — merely by the accident of their residence.

Earlier analysis in this field restricted itself to the power of states, *as states*, to influence the Electoral College outcome. Mr. Banzhaf's research takes the fruitful new step of examining the power to influence elections in terms of the individual voter, albeit in the context of his state voting base. This approach would certainly seem preferable, since, after all, it is people, not states, who have preferences in a presidential election. Since the Constitutional Convention, debate about electing the American President has become bogged down in a consideration of big-state versus small-state interests.² Yet, in truth, the argument

2. Fearful of a direct-vote plan being debated in the Convention, Charles Pinckney of South Carolina warned that "[t]he most populous States by combining in favor of the same individual will be able to carry their points." Connecticut delegates expressed the same fears. 2 THE RECORDS OF THE FEDERAL CONSTITUTIONAL CONVENTION OF 1787 30 (M. Farrand ed. 1911). The final plan of intermediate electors for President which the Convention agreed upon represented a delicate balance between large-state and small-state interests. The essential compromise in the plan, however, did not lie in the apparent concession to the small states involved in the Electoral College apportionment scheme which gave each state two electors corresponding to its Senators, no matter how small its population. That element was not even debated at the Convention or in the succeeding ratification debates; it had, in effect, been taken over from the "Connecticut Compromise" plan for congressional representation which the Convention had agreed upon more than a month and a half previously. What was considered the major concession to the small states was the intermediate elector plan which stipulated that in the event there was no majority in the Electoral College, the election would be determined by the House of Representatives, where each state would have a single vote. The delegates apparently believed that most elections would produce no Electoral College majority. They provided that the House could pick from among the top five electoral vote recipients, thus giving the smaller states a good chance to elect one of their men. The early growth of political parties, of course, made a majority vote for President in the Electoral College more likely. Only two elections — those of 1800 and 1824 — have gone to the House for resolution. Thus

has been completely irrelevant. None of the great battles of American political history — in Congress, or in presidential elections— has been fought on the basis of small versus large states. The arguments have had ideological, economic, and regional points of departure — but never has the line of demarcation been based on the size of the states.

Only in the aethereal realms of constitutional debate have the differences between big and small states been vital. Indeed, these distinctions are again in the limelight as debate begins on the latest proposals for electoral reform. On the one hand, some small-state champions claim that the existing system's grant of two "extra" electoral votes per state, regardless of population, must be preserved as a vital element for the protection of small-state interests and the federal system. Hopefully, Mr. Banzhaf's ample evidence should serve to show that any small-state advantages which the existing system would appear to offer are illusory in practice.³

But what of the large states? Can they now use arguments like Mr. Banzhaf's to claim that the existing Electoral College system should be preserved so that they can enjoy an unfair advantage in electing the President? The effort will doubtless be made. But it ignores one basic factor: the individual citizen's interest in combining his vote with those of voters who share his feelings in the most meaningful way in the final, decisive count. *No matter how great his theoretical power may be in a presidential election, a voter is effectively disfranchised if he happens to be in the minority in his state in his choice for President.* Under the unit-rule system, his vote (or the electoral vote representing him) is then actually cast for the candidate he opposes. And this is true whether he is liberal or conservative, white or black, John Bircher or new left, or a small-state or large-state citizen.

The apologists of special big-state power in the Electoral College have really been trying to defend the ability of liberally-oriented minority groups — Negroes, Jews, union members, and assorted "ethnics" — to exercise special weight in presidential elections.⁴ But in the era

the small states have never enjoyed any significant benefit from a provision of the Constitution that was thought to be the major concession to them in presidential elections.

3. The relative impotence of small states in Electoral College voting should also be clear from the fact that the twelve states with the most electoral votes (281 out of 538) could elect a President if they combined their votes. They are New York, California, Pennsylvania, Illinois, Ohio, Texas, Michigan, New Jersey, Florida, Massachusetts, Indiana and North Carolina.

4. In a 1956 Senate debate, Senator John F. Kennedy said the Electoral College's special advantages for big states with their urban minorities was necessary to balance the rural overrepresentation in state legislatures and the House of Representatives. "[I]t is not only the unit vote for the Presidency we are talking about, but a whole solar system of governmental power. If it is proposed to change the balance of power

of white "backlash" and organized groups of the militant right, it is no longer certain that the "bloc" vote in the big states — if it was ever as malleable as some depicted it — will be liberal in complexion. Certainly, there should be a firmer theoretical justification for the system through which we elect a man with the national and global powers of a modern President.

Just as valuable as Mr. Banzhaf's demonstration of big-state advantages under the existing unit-vote system is his proof that the proposed alternatives of a proportional system or district voting system would create new inequalities by reversing the current posture to one which favors the smallest states over the largest. In a sense, his findings confirm the arguments raised by both sides during the extensive 1956 Senate floor debate on Electoral College reform. Opponents of the existing system argued that it aided the big states, giving them an unfair "pivotal" position in presidential elections. But the proposed alternative of 1956 — a combined district-proportional plan — was opposed by Senators John F. Kennedy and Paul Douglas on the grounds that it would effect a fundamental shift of political power to the small states with their predominantly conservative, one-party orientation. In the end, the partisan implications of the district and proportional systems brought about their rejection in that debate.

Indeed, if the choice were simply between the existing unit-vote system and the proposed proportional or district systems, one would simply be deciding which group of voters — those in the large states or those in the small — should be given an unfair advantage in the choice of the President.

But there is an alternative: a direct vote of all of the people. As Mr. Banzhaf demonstrates, it is the *only* plan that would give every citizen a fair and equal voice in electing the chief executive. It is also the only plan that guarantees that the President would be the candidate who received the most votes.⁵ Moreover, no one has yet detected any partisan intent in the direct vote plan, unless it be to thwart the ambitions of states' rights Southerners, like Alabama's George Wallace, to obtain enough electoral votes to deprive both major parties of a ma-

of one of the elements of the solar system, it is necessary to consider all the others." 102 CONG. REC. 5150 (1956) (remarks of Senator Kennedy). The reapportionment decisions of the United States Supreme Court, affecting both state legislative and congressional districts, have changed the situation radically since the time that Kennedy spoke, reducing the necessity of one injustice to balance another.

5. The defenders of any electoral plan that would permit a man to be elected President who had failed to win a plurality of the popular vote should be willing to explain the justification for a scheme that results in the rejection of the people's choice. Would they claim that for some mysterious reason the votes of men from New York and California are to be given more weight than the votes of men from Delaware and Wyoming — or possibly the reverse? How could these inequalities be explained in the day of "one man, one vote?"

majority, thus forcing one of them to make special concessions as the price for the Presidency.

In a sense, it is quite fitting that Mr. Banzhaf's research, originally planned to assist in reaching high standards of fairness and equality in representation in our local and state organs of government, should be applied in the same decade as the reapportionment revolution to the equally important problem of achieving equal rights for all Americans in the choice of the man who represents them all, the President.