

8

THE FAULTY PREMISES OF THE ELECTORAL COLLEGE

George C. Edwards III

Political parties control the nomination of presidential candidates, but the Constitution spells out how the president will be chosen from among these nominees. Few issues vexed the delegates to the Constitutional Convention more than presidential selection. The method they eventually came up with—after rejecting proposals to have the president chosen by Congress, the people, or even the state governors—was the Electoral College. Modern supporters of the Electoral College defend it with arguments that, according to George C. Edwards III, are unpersuasive and inaccurate on their own terms and that neglect the foundational democratic principle of political equality. Noting that, among other problems with the Electoral College, both George W. Bush in 2000 and Donald Trump in 2016 were elected president despite losing the national popular vote, Edwards argues instead for a system of direct election of the president.

In the 2016 presidential election, Hillary Clinton won nearly 3 million more votes than Donald Trump. Nevertheless, Trump won the election and became president. His Electoral College victory in the face of popular vote defeat, the second such occurrence in the last five elections, raises once again the question of how we select the chief executive.

Political equality lies at the core of democratic theory. Robert Dahl, the leading democratic theorist, includes equality in voting as a central standard for a democratic process: “Every member must have an equal and effective opportunity to vote, and all votes must be counted as equal.”¹ Indeed, it is difficult to imagine a definition of democracy that does not include equality in voting as a central standard.

Because political equality is a central standard for democratic government, we must evaluate any current or proposed mechanism for selecting the president against it. A popular misconception is that electoral votes simply aggregate popular votes. In reality, the electoral vote regularly deviates from the popular will as expressed in the popular vote—sometimes merely in curious ways, usually by strengthening the victory margin of the popular vote leader, but at other times in such a way as to deny the presidency to the people’s preferred candidate.

The percentage of electoral votes received by a candidate nationwide rarely coincides with the candidate’s percentage of the national popular vote for several reasons, the most important of which is the winner-take-all (or unit-vote) system.² All states except Maine and Nebraska have a winner-take-all system in which they award *every* electoral vote to the candidate who receives the most popular votes in that state. In effect, the system assigns to the winner the votes of the people who voted *against* the winner.

The operation of the winner-take-all system effectively disenfranchises voters who support losing candidates in each state. In the 2000 presidential election, nearly 3 million people voted for Al Gore in Florida. Because George W. Bush won 537 more votes than Gore, however, he received all of Florida’s electoral votes. A candidate can win some states by very narrow margins, lose other states by large margins (as Bush did by more than 1 million votes in California and New York in 2000), and so win the electoral vote while losing the popular vote. Because there is no way to aggregate votes across states, the votes for candidates who do not finish first in a state play no role in the outcome of the election.

African Americans, who are the nation’s most distinctive minority group, are disproportionately concentrated in the Deep South. They rarely vote for the Republican candidates who win the states in that region. Thus, their votes are wasted because they are never added up across the country. It is not surprising that presidential candidates have generally ignored these voters in their campaigns.³ In a multi-candidate contest such as the ones in 1992, 1996, 2000, and 2016, the winner-take-all system may suppress the votes of the majority as well as the minority. In 1996 less than a majority of voters decided how the electoral votes of twenty-six states would be cast. In 2000 pluralities rather than majorities determined the allocation of electoral votes in eight states, including Florida and Ohio. In 2016, pluralities decided the electoral votes in fourteen states. In each case, less than half the voters determined how *all* of their state’s electoral votes were cast.

One result of these distorting factors is that there is typically a substantial disparity in almost all elections between the share of the national popular vote a candidate receives and that candidate’s percentage of the electoral vote. In 1876, 1888, 2000, 2016, and, arguably, 1960,⁴ the candidate who finished second in the popular vote won the election.

The unit-vote system also allows even small third parties to siphon more votes from one major-party candidate than the other and thus determine the outcome in a state, as Ralph Nader did in both Florida and New Hampshire in 2000. Indeed, by taking more votes from Gore than from Bush, Nader determined the outcome of the entire election. The results distorted the preferences of the voters because the preferred candidate in both Florida and New Hampshire in a two-person race was Al Gore, not George W. Bush, who ultimately won the states.

If no candidate wins a majority of the electoral votes, as happened in 1800 and 1824, the House of Representatives chooses the president. In such an election, each state's House delegation receives one vote, which would allow the seven smallest states, with a population of about 5 million, to outvote the six largest states, with a population of about 123 million. It is virtually impossible to find any defenders of this constitutional provision, which is the most egregious violation of democratic principles in American government.

The Electoral College violates political equality. It is not a neutral counting device. Instead, it favors some citizens over others, depending solely upon the state in which they live. The Electoral College is not just an archaic mechanism for counting the votes; it is also an institution that aggregates popular votes in an inherently unequal manner.

What good reason is there to continue such a system in an advanced democratic nation in which the ideal of popular choice is the most deeply ingrained principle of government?

CONSTITUTIONAL CONSISTENCY

Some defenders of the Electoral College argue that its violations of majority rule are just an example of several constitutional provisions that require supermajorities to take action.⁵ For example, it takes the votes of two-thirds of the senators present to ratify a treaty. The Framers designed all such provisions, however, to allow minorities to *prevent* an action. The Electoral College is different. It allows a minority to *take* an action—that is, to select the president. As such, it is the only device of its kind in the Constitution. Thus, the Electoral College does not prevent tyranny of the majority. Instead, it provides the potential for tyranny of the minority.

DEFENDING INTERESTS

One common justification for the Electoral College and its violations of political equality is that it protects important interests that a system of direct election by the people would overlook or even harm. Advocates argue that allocating electoral votes by state, with states casting their votes as units, ensures that presidential candidates will be attentive to and protective of states' interests, especially the interests of states with small populations. Most supporters of the Electoral College also

maintain that it is an essential bulwark of federalism and that electing the president directly would undermine the federal system.⁶

On their face, such claims seem far-fetched. In practice, candidates allocate proportionately more campaign stops and advertisements to competitive and large states than to small ones.⁷ Because these justifications for the Electoral College are so common, however, we must investigate them more systematically. (It is illuminating—and frustrating—that advocates of the Electoral College virtually never offer systematic evidence to support their claims.)

Proponents of the view that one of the major advantages of the Electoral College is that it forces candidates to be more attentive to and protective of state interests, especially the interests of states with small populations, base their argument on the premises that (1) states have interests as states, (2) these interests require protection, and (3) interests in states with smaller populations both require and deserve special protection from federal laws.

State Interests

States do not have coherent, unified interests. Even the smallest state has substantial diversity within it. No state includes just one point of view. That is why Alaska may have a Republican governor and one or more Democratic senators, and why “California, New York, and Massachusetts, among the bluest of states, often elect Republican governors. As historian Jack Rakove argues, “States have no interest, as states, in the election of the president; only citizens do.” He adds:

The winner-take-all rule might make sense if states really embodied coherent, unified interests and communities, but of course they do not. What does Chicago share with Galena, except that they both are in Illinois; Palo Alto with Lodi in California; Northern Virginia with Madison’s home in Orange County; or Hamilton, N.Y., with Alexander Hamilton’s old haunts in lower Manhattan?⁸

James Madison, recognizing how diverse each state is, opposed counting the presidential vote by state (as in the unit rule) and hoped that, at the least, votes would be counted by district within states. Disaggregating the statewide vote and allowing districts within states to support the same candidate would encourage cohesiveness in the country and counter the centrifugal tendencies of regionalism.⁹ Moreover, Madison did not want candidates to make appeals to special interests. As he proclaimed at the Constitutional Convention, “Local considerations must give way to the general interest”—even on slavery.¹⁰

Judith Best, who is perhaps the most diligent defender of the Electoral College, recognizes that heterogeneity exists within states but nevertheless argues that the citizens of each state share a common interest in managing their state’s resources, including roads, parks, schools, local taxes, and the like. True enough. She also argues that these interests are as important as or more important than the characteristics people in a state share with people in other states, such as race, gender, religion, and ethnicity.¹¹ Many women, blacks, Hispanics, farmers, and members of other groups would be

surprised to hear that local roads and parks are more important to their lives than the place they occupy in the economic and social structure of the country.

Equally important, Best makes a series of either logically or empirically incorrect statements about the relation between community interests and the election of the president. First, she confuses local communities with states. Her examples are largely of local, not state, issues, even though the policies of local governments vary widely within each state. Second, she argues that the president must be responsive to state interests to be elected and that candidates must “build [the] broadest possible coalitions of local interests” to win.¹² No evidence exists to support these assertions, and Best provides none. “State interest” is a dubious concept. Best cannot offer a single example of such an interest.

Do presidents focus on local interests when building their electoral coalitions? They do not. As we will see, candidates ignore most of the country in their campaigns, and they do not focus on local interests where they do campaign. Similarly, nowhere in the vast literature on voting in presidential elections has any scholar found that voters choose candidates on the basis of their stands on state and local issues. Indeed, candidates avoid such issues because they do not want to be seen by the rest of the country as pandering to special interests. In addition, once elected, the president has little to do with the issues that Best raises as examples of the shared interests of members of communities. There is no reason, and certainly no imperative, to campaign on these issues.

The Need for Protection

The Constitution places many constraints on the actions a simple majority can take. Minorities have fundamental rights to organize, communicate, and participate in the political process. The Senate greatly overrepresents small states and, within that chamber, the filibuster is a powerful extraconstitutional tool for thwarting majorities. Moreover, much more than a simple majority is required to overcome minority opposition by changing the Constitution.

With these powerful checks on simple majorities already in place, do some minority rights or interests require additional protection from national majorities? If so, are these minorities concentrated in certain geographic areas? (Because it allocates electoral votes on the basis of geography, the Electoral College protects only geographically concentrated interests.) Does anything justify awarding interests in certain geographic locations—namely, small states—additional protections in the form of extra representation in the electoral system that citizens in other states do not enjoy?¹³

Two of the most important authors of the Constitution, James Wilson and James Madison, understood well both the diversity of state interests and the need to protect minorities that are embodied in the Constitution. They saw little need to confer additional power to small states through the Electoral College. “Can we forget for whom we are forming a government?” Wilson asked. “Is it for *men*, or for the imaginary beings called *States*?”¹⁴ Madison declared that experience had shown no danger of state interests being harmed by a national majority¹⁵ and that “the President is to act for the *people* not for *States*.”¹⁶ Congress, whose members are

ected by districts and states, is designed to be responsive to constituency interests. The president, as Madison pointed out, is supposed to take a broader view. When advocates of the Electoral College express concern that direct election of the president would suppress local interests in favor of the national interest, they are in effect endorsing a presidency that is responsive to parochial interests in a system that already offers minority interests extraordinary access to policymakers and opportunities to thwart policies they oppose.

Interestingly, supporters of the Electoral College almost never specify what geographically concentrated rights or interests need special protection through the Electoral College. They certainly have not developed a general principle to justify additional protections for some interests rather than others. So let us do our own analysis of the distribution of interests in the United States.

The Interests of Small States

Do the states with small populations that receive special consideration in the Electoral College have common interests to protect? In the Constitutional Convention, Madison pointed out that it was not necessary to protect small states from large ones because the large ones—Virginia, Massachusetts, and Pennsylvania—had such different economic, religious, and other interests. Their size did not constitute a common interest. Indeed, rivalry was more likely to occur among large states than coalition.¹⁷ Madison was prescient. The great political battles of American history—in Congress and in presidential elections—have been fought by opposing ideological and economic interests, not by small states and large states.

A brief look at the fifteen states with the fewest electoral votes (that is, three, four, or five) shows that they are quite diverse.¹⁸ Maine, Vermont, New Hampshire, and Rhode Island are in New England; Delaware and West Virginia are in the Middle Atlantic region; North and South Dakota, Montana, and Nebraska are in the Great Plains; New Mexico is in the Southwest; and Wyoming and Idaho are in the Rocky Mountain region. Alaska and Hawaii are regions unto themselves.

Some of these states have high average levels of income and education, and others have considerably lower levels. Some are quite liberal and others are very conservative, and their policies and levels of taxation reflect these differences. Several of the states are primarily urban, but many others are rural. They represent a great diversity of core economic interests, including agriculture, mining, chemicals, tourism, and energy. Even their agricultural interests are quite diverse, ranging from grain and dairy products to hogs and sheep. In sum, small states do not share common interests. It is not surprising that their representatives do not vote as a bloc in Congress and that their citizens do not vote as a bloc for president.

Even if small states share little in common, are there some interests that occur only in states with small populations? Not many. The first interest that may come to mind is agriculture, with visions of small farmers tilling small plots of soil in small states. But most farmers live in states with large populations. The market value of the agricultural production of California, Texas, Florida, and Illinois alone substantially exceeds that of all seventeen of the smallest states combined.¹⁹ For that matter, agriculture does not lack for powerful champions, especially in Congress,

which has taken the lead in providing benefits, principally in the form of subsidies, for farmers. Rather than competing to give farmers more benefits, presidents of both parties have attempted to restrain congressional spending on agriculture. The Electoral College has not turned presidents into champions of rural America.

It is difficult to identify interests that are centered in a few small states. Even if we could, however, the question remains whether these few interests out of the literally thousands of interests in the United States deserve special protection. What principle would support such a view? Why should those who produce wheat and hogs have more say in electing the president than those who produce vegetables, citrus, and beef? Is not the Senate's disproportionate representation of states in which wheat and hogs are produced enough to protect these interests? There is simply no evidence that interests like these deserve or require additional protection from the electoral system.

ATTENTION TO STATE INTERESTS

As we have seen, a core justification for the Electoral College and its violations of political equality is that allocating electoral votes by state forces candidates to pay attention to state-based interests in general and the interests of small states in particular. In their enthusiasm for the status quo, some advocates go further and claim that, under the Electoral College, "all states are 'battlegrounds'" in the presidential election.²⁰

Although defenders of the Electoral College almost never specify what interests the Electoral College is protecting, they nevertheless argue that candidates would ignore these interests if the president were chosen in a direct popular election. They base this argument on the premise that candidates appeal directly to state interests and give disproportionate attention to those of small states.

Do presidential candidates focus on state-level interests in their campaigns? Do they devote a larger percentage of their campaign efforts to small states than they would if the president were elected directly? To answer these questions, we need to see what candidates actually do and whether there is evidence that the Electoral College encourages candidates to be more attentive to small states. If candidates are not more oriented to small states and the interests within them than we would expect in a system of direct election, then we have reason to reject one of the principal justifications for the Electoral College's violation of political equality.

Candidates' Speeches

One prominent way that a candidate could attend to the interests of a state is by addressing them in speeches to that state's voters. What do candidates actually say when they campaign in the various states?

The presidential election of 2000 provides an excellent test of the hypothesis that the Electoral College motivates candidates to focus on state-based interests. Because the outcome in every single state that year was crucial to the outcome of this extraordinarily close election, each candidate had the maximum incentive to appeal

to state interests. Nevertheless, neither George W. Bush nor Al Gore focused on state interests in their speeches, and they certainly did not focus on small state interests.²¹ Was the presidential election of 2000 unique in this way? Apparently not. A study of the campaign speeches of Bill Clinton and Robert Dole during the 1996 campaign found that they also did not focus their speeches on local interests.²²

Candidates' Visits²³

The most direct means for candidates to appeal to voters is to visit their states and address them directly. Modern transportation has made it relatively easy for candidates to crisscross the nation in search of votes. Proponents of the Electoral College argue that one of its principal advantages is that it forces candidates to pay attention to small states that would otherwise be neglected in a national election and to build a broad national coalition by appealing to voters in every region.

During the presidential general election of 2012, the major party presidential candidates visited just three of the twenty-five smallest states (including the District of Columbia): New Hampshire, Nevada, and Iowa. Barack Obama visited only eight states during the entire general election, and Mitt Romney visited ten. The states the candidates did visit were competitive states, especially large competitive states such as Florida and Ohio.

The emphasis on campaigning in swing states is not unusual.²⁴ In 2016, no presidential candidate visited any of the ten smallest states. Of the twenty-five smallest, they visited only seven. Once again, they focused their attention on large competitive states.

In addition to its failure to encourage candidates to visit small states, the Electoral College provides incentives to ignore many larger states during the general election. In 2012 the candidates never campaigned in California, Texas, New York, or Illinois, four of the five largest states. In 2016, Hillary Clinton made one stop in Illinois and Donald Trump visited Texas twice.

In the course of overlooking most states, candidates also avoid entire regions of the country. Democrats have little incentive to campaign in the heavily Republican Great Plains and Deep South, and Republicans have little incentive to visit the West Coast and most of Democratic New England.

In sum, the Electoral College provides no incentive for candidates to pay attention to small states and take their cases directly to their citizens. Indeed, it is difficult to imagine how presidential candidates could be less attentive to small states than they already are. Candidates are not fools. They go where the Electoral College makes them go, and it makes them go to competitive states, especially large competitive states. They ignore most small states; in fact, they ignore most of the country.

Candidates' Advertising

Candidates reach most voters through television advertising. Technology makes it easy to place ads in any media market in the nation at short notice. Do candidates

operating under the Electoral College compensate for their lack of visits to small or noncompetitive states by advertising there?

No. Some voters are bombarded with television advertising; others see none at all. In 2016, 99 percent of the advertising was done in fourteen battleground states, which included only 35 percent of the population.²⁵ Similarly, in the 2012 general election, almost all the advertising by the Democrats and Republicans occurred in the swing states.²⁶ Focusing advertising on competitive states is nothing new.²⁷ Thus, as in the case of candidate visits, the idea that the Electoral College forces candidates to take their cases to small states and build coalitions from all regions of the country is erroneous.

In sum, the fundamental justification of the Electoral College—that it forces candidates to be attentive to particular state interests, especially those concentrated in small states—is based on a faulty premise. In reality, the Electoral College discourages candidates from paying attention to small states and to much of the rest of the country as well.

PRESERVING FEDERALISM

One of the most serious assertions by those opposed to abolishing the Electoral College and instituting direct popular election of the president is that doing so would undermine the federal nature of the constitutional system. Defenders of the Electoral College base this assertion on the premise that the Electoral College is a key underpinning of federalism. In truth, it is unclear what federalism has to do with the presidency, the one elective part of the government that is designed to represent the nation as a whole rather than as an amalgam of states and districts. Federalism is certainly an important component of the constitutional system, but does federalism need the Electoral College to maintain it?

A Federal Principle?

The Founders did not design the Electoral College on the federal principle. The Electoral College does not enhance the power or sovereignty of the states. Moreover, the Founders expected electors to exercise their individual discretion when casting their votes. They did not expect electors to vote as part of any state bloc. No delegate at the Constitutional Convention referred to the Electoral College as an element of the federal system or even as important to the overall structure of the Constitution.

Similarly, the Founders did not regard the Electoral College as a means of implementing the Connecticut Compromise, which created a House of Representatives apportioned according to population and a Senate in which each state has two seats. The allocation of two electoral votes to each state corresponding to its Senate representation was not to further federalism. Instead, the extra votes were to serve as a corrective for large state power. The federative principle would have required that these extra electors be organized like the Senate as a separate body with an independent voice in the choice of the president.

The Electoral College was not designed to protect state interests. If it were, the Founders would have insisted that state legislatures choose electors, who would be agents of the state governments. But they did not do so. Indeed, the Electoral College was “an anti-states-rights device,” designed to keep the election of the president away from state politicians.²⁸

Essential for Federalism?

Even if the Electoral College was not designed as an aspect of federalism, is it essential for preserving federalism? We have already seen that the Electoral College does not cause presidential candidates to devote attention to the states as states in general or to small states in particular. Neither the existence nor the powers and responsibilities of state governments depend in any way on the existence of the Electoral College. If it were abolished, states would have the same rights and duties they have now. Federalism is deeply embodied in congressional elections, in which two senators represent each state just because it is a state and in which members of the House are elected from districts within states. Direct election of the president would not alter these federalism-sustaining aspects of the constitutional structure. A leading expert on federalism, Neal Peirce, has said it best: “The vitality of federalism rests chiefly on the constitutionally mandated system of congressional representation and the will and capacity of state and local governments to address compelling problems, not on the hocus-pocus of an eighteenth-century vote count system.”²⁹

Greater National Control of the Electoral Process?

Occasionally, a defender of the Electoral College laments the prospect that direct election of the president would foster greater national control of the electoral process. But this has already occurred. The Fifteenth, Eighteenth, Nineteenth, Twenty-third, Twenty-fourth, and Twenty-sixth Amendments to the Constitution all expanded the electorate. Federal, not state, law effectively determines most rules of voter eligibility, and in the wake of the vote-counting debacle in Florida in the 2000 election, federal law dictates the rules for voter registration, voter access to the polls, counting votes, correcting voters’ errors on their ballots, resolving challenges to a citizen’s right to vote, and ensuring that voting systems have minimal rates of error. The federal government also provides aid to states to improve their voting machinery and registration lists.

Federal standards are here to stay—within the framework of the Electoral College. Moreover, Americans and their elected representatives overwhelmingly support these laws and constitutional amendments. If anything, the enormous disparity in ballot designs across the states, many of which are needlessly complex, makes a strong case for greater uniformity.³⁰ The Caltech/MIT Voting Technology Project concluded that 4 to 6 million votes were lost in the 2000 election as a result of problems with ballots, voting equipment, and registration databases.³¹ As President George W. Bush said when he signed the Help America Vote Act of 2002, “The administration of elections is primarily a state and local responsibility. The fairness of all elections, however, is a national priority.”³²

PROTECTING NON-STATE-BASED MINORITY INTERESTS

Some observers claim that the Electoral College ensures a “proper distribution” of the vote, in which the winning candidate receives majority support across social strata, thus protecting minority interests.³³ This claim is nonsense. In 2016 Donald Trump won a smaller percentage than Hillary Clinton of the votes of women; African Americans, Hispanics, and Asian Americans; voters ages eighteen to forty-four; members of labor unions; those with less than \$50,000 annual household income; college graduates and those with postgraduate educations; Jews; liberals and moderates; urbanites; or those living in the East and the West.

In 2000 George W. Bush did not win a larger percentage than Al Gore of the votes of women, African Americans, Hispanics, and Asian Americans; voters aged eighteen to twenty-nine or those aged sixty-five or older; the poor; members of labor unions; those with less than \$50,000 of household income; those with a high school education or less and those with postgraduate education; Catholics, Jews, and Muslims; liberals and moderates; urbanites; or those living in the East and West.³⁴

It strains credulity to claim that Trump’s or Bush’s votes represented concurrent majorities across the major strata of American society. What actually happened in 2000 and 2016 was that the Electoral College imposed a candidate supported by white male Protestants—the dominant social group in the country—over the objections not only of a plurality of all voters, but also of most “minority” interests in the country. This antidemocratic outcome is precisely the opposite of what defenders of the Electoral College claim for the system.

WHY NOT ELECT EVERYONE BY THE SAME RULES?

A common refrain by advocates of the Electoral College goes something like this: “If you insist on majority—or at least plurality—rule, why don’t you insist on abolishing the Senate, in which seats are allocated to states rather than people?” The answer is straightforward. The Founders designed the Senate explicitly to represent states and the interests within them. The presidency is designed to do something quite different. The president is supposed to rise above parochial interests and represent the entire nation. Perhaps the most compelling argument that the president should be elected by direct popular vote is that the president and vice president are the only national officials in the country who represent the people as a whole and that the candidate who wins the most votes best approximates the choice of the people.

Similarly, some defenders of the Electoral College ask, “If you are so concerned that the people choose the president, what about all the nonelected judges and other officials in government? Shouldn’t we elect them as well?” Of course not. It is not feasible to elect department heads and other executive officials, no matter how the president is selected. The issue is not electing additional officials. The

issue is letting a plurality of voters elect the president who nominates judges and executive officials.

ADVANTAGE OF DIRECT ELECTION

It is difficult to see whose interests the Electoral College protects. Rather than protecting the interests of states and minorities, it reduces the incentives for people to vote in states that are safe for the locally dominant party's candidate. It also weakens the incentive for either the majority or minority party to attempt to persuade citizens to go to the polls and support its national ticket. Under the Electoral College, it makes no sense for candidates to allocate scarce resources to states they either cannot win or are certain to win, in which case the size of their victory is irrelevant.

Candidates would be much more attentive to small states and minorities with direct election than they are with the Electoral College. Because every vote counts in a direct election, candidates would have an incentive to appeal to all voters and not just those strategically located in swing states.³⁵ An extra vote in Massachusetts or Texas would count as much as one in Michigan or Florida.

Presidential and vice presidential candidate Robert Dole explained that, under direct election, candidates also would have to pay attention to areas within states that are now ignored because they are safe for one party or the other. Thus "the voters in the majority of States would receive greater attention and the objective of federalism would be served better."³⁶

With these incentives candidates would find it easy to spread their attention more evenly across the country. Because the cost of advertising is mainly a function of market size, it does not cost more to reach 10,000 voters in Wyoming than it does to reach the same number of voters in a neighborhood in Queens or Los Angeles. Actually, it may cost less to reach voters in smaller communities because larger markets tend to run out of commercial time, increasing the price of advertising.³⁷ Politicians know this, even if advocates of the Electoral College do not. That is why, in the election of 2000, the candidates "devoted nearly as much advertising to Yakima as in Seattle, as much to Traverse City as to Flint, as much to Wausau as to Milwaukee" when they campaigned within states.³⁸

Direct election of the president also would provide the incentive for candidates to encourage all of their supporters, no matter where they live, to go to the polls, because under direct election, every vote counts. Conversely, under the Electoral College, it does not matter how many votes a candidate receives in a state as long as the number of votes surpasses that any opponent receives. The goal is to win states, not voters. As Douglas Bailey, the media manager of the 1976 Ford–Dole campaign, put it, "There is a vast population [outside urban areas], with every vote counting, that you cannot ignore in a direct election."³⁹

It is possible, but by no means certain, that some candidates would find it more cost-effective under direct election to mobilize votes in urban areas or to visit urban areas where they would receive free television coverage reaching large audiences. Such actions would do nothing to undermine the argument against the Electoral

College, however. Small states cannot be worse off than they are now, because under the Electoral College, candidates rarely visit or campaign there. Direct election of the president cannot diminish campaign efforts that do not exist. Instead, direct election would provide increased incentives for candidates to campaign in most small states, as well as increased incentives to campaign in many large and medium-sized states. Direct election would disperse campaign efforts rather than deprive small states of them.

Direct election, unlike the Electoral College, thus encourages citizens to participate in elections and candidates to take their campaigns to these citizens, enhancing our civic life. Direct election would increase voter turnout and stimulate party-building efforts in the weaker party, especially in less competitive states.

Some critics of direct election mistakenly claim that it would splinter the two-party system. Their criticism is based on the premise that direct election would require a runoff between the two leading candidates. But it would not. Under the Electoral College, victorious presidential candidates—including, most recently, John F. Kennedy (1960), Richard Nixon (1968), Bill Clinton (1992 and 1996), George W. Bush (2000), and Donald Trump (2016)—have received less than a majority of the national popular vote about 40 percent of the time since 1824, and there is no relation between the vote they received and their later success in, say, dealing with Congress. Some of our strongest presidents, including James K. Polk, Abraham Lincoln, Grover Cleveland, Woodrow Wilson, Harry S. Truman, and Kennedy, received a plurality, but not a majority, of the popular vote.

Nor is the Electoral College the basis of the two-party system. Single-member districts and plurality election are, and the nation would be one electoral district under direct election. Thus direct election would not splinter the party system.

By contrast, direct election would protect the country from the mischief of third parties. The Electoral College's unit rule encourages third parties, especially those with a regional base, because by winning a few states they may deny either major-party candidate a majority of the electoral vote. Such a result was certainly the goal of Strom Thurmond in 1948 and George Wallace in 1968. Imagine giving these racist candidates leverage to negotiate with the leading candidates before the electoral votes were officially cast. Moreover, even without winning any states, Ralph Nader inadvertently distorted the vote and determined the outcome of the 2000 election.

CONCLUSION

In 2000 Republican George W. Bush was elected despite losing the national popular vote by more than 539,000 votes. In 2016, Donald Trump won the presidency despite running nearly 3 million votes behind Hillary Clinton in the popular vote. A shift of 59,300 votes in Ohio in 2004 would have elected Democrat John Kerry over George W. Bush, despite Bush's margin of nearly 3 million votes nationwide. In 2012 Republican Mitt Romney could have won the popular vote by a similar margin and still lost the election.

A core justification offered by defenders of the Electoral College and its violations of political equality is that it is necessary to protect important interests that

would be overlooked or harmed by a system of direct election of the president. Yet such claims are based on faulty premises. States—including those with small populations—do not embody coherent, unified interests and communities, and they have little need for protection. Even if they did, the Electoral College does not provide it. Contrary to the claims of the institution's supporters, candidates do not pay attention to small states. The Electoral College distorts the presidential campaign so that candidates ignore many large and most small states and devote most of their attention to a few competitive states.

The Electoral College is also not a bastion of federalism. It is not based on federative principles and is not essential for the continuance of a healthy federal system. As former Senate majority leader and Republican presidential nominee Robert Dole put it, direct election is “commonsense federalism.”⁴⁰

NOTES

1. Robert A. Dahl, *On Democracy* (New Haven, CT: Yale University Press, 2000), 37. See also Robert A. Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989), 110.
2. See George C. Edwards III, *Why the Electoral College Is Bad for America*, 2nd ed. (New Haven, CT: Yale University Press, 2011), chap. 3.
3. Darshan J. Goux and David A. Hopkins, “The Empirical Implications of Electoral College Reform,” *American Politics Research* 36 (November 2008): 860–864.
4. For a discussion of the 1960 election, see Edwards, *Why the Electoral College Is Bad for America*, 2nd ed., 67–70.
5. See, for example, Tara Ross, *Enlightened Democracy: The Case for the Electoral College* (Los Angeles: World Ahead, 2004).
6. Ross, *Enlightened Democracy*, 53; Judith A. Best, *The Choice of the People? Debating the Electoral College* (Lanham, MD: Rowman and Littlefield, 1996), 55; William C. Kimberling, “The Electoral College,” May 1992, <http://www.fec.gov/pdf/eleccoll.pdf>; James R. Stoner Jr., “Federalism, the States, and the Electoral College,” in *Securing Democracy: Why We Have an Electoral College*, ed. Gary L. Gregg (Wilmington, DE: ISI Books, 2001), 51–52.
7. Raymond Tatalovich, “Electoral Votes and Presidential Campaign Trails, 1932–1976,” *American Politics Quarterly* 7 (October 1979): 489–497; Scott C. James and Brian L. Lawson, “The Political Economy of Voting Rights Enforcement in America’s Gilded Age: Electoral College Competition, Partisan Commitment, and the Federal Election Law,” *American Political Science Review* 93 (March 1999): 115–131; Daron R. Shaw, “The Methods behind the Madness: Presidential Electoral College Strategies, 1988–1996,” *Journal of Politics* 61 (November 1999): 893–913; Daron R. Shaw, *The Race to 270* (Chicago: University of Chicago Press, 2007).
8. Jack Rakove, “The Accidental Electors,” *New York Times*, December 19, 2000, A35.
9. James Madison to George Hay, August 23, 1823. In *The Writings of James Madison*, vol. 9, ed. Gaillard Hunt (New York: G. P. Putnam’s Sons, 1900–1910), 47–55.
10. Max Farrand, ed., *The Records of the Federal Convention of 1787*, rev. ed., vol. 2 (New Haven, CT: Yale University Press, 1966), 111.

11. Best, *Choice of the People?*, 37.
12. *Ibid.*, 35.
13. See Robert A. Dahl, *How Democratic Is the American Constitution?* (New Haven, CT: Yale University Press, 2001), 50–53, 84.
14. Max Farrand, ed., *The Records of the Federal Convention of 1787*, rev. ed., vol. 1 (New Haven, CT: Yale University Press, 1966), 483.
15. Farrand, *Records of the Federal Convention of 1787*, vol. 1, 447–449.
16. Farrand, *Records of the Federal Convention of 1787*, vol. 2, 403.
17. Farrand, *Records of the Federal Convention of 1787*, vol. 1, 447–449.
18. I have omitted Washington, D.C., from this analysis because it is limited to the number of electoral votes of the least populous state and is not overrepresented in the Electoral College.
19. U.S. Department of Agriculture, *2007 Census of Agriculture*, vol. 1, chap. 2, table 2, 294–310. (This census occurs every five years.)
20. Ross, *Enlightened Democracy*, 41, 87; Michael M. Uhlman, “Creating Constitutional Majorities: The Electoral College after 2000,” in Gregg, ed., *Securing Democracy*, 106; Paul A. Rahe, “Moderating the Political Impulse,” in Gregg, ed., *Securing Democracy*, 63.
21. Edwards, *Why the Electoral College Is Bad for America*, 2nd ed., 122–124.
22. The speeches are provided by the *Annenberg/Pew Archive of Presidential Campaign Discourse* (CD-ROM), 2000. The results are reported in Edwards, *Why the Electoral College Is Bad for America*, 2nd ed., 124.
23. The author collected the data for 2000–2016. The data for 2000 and 2008 are reported in Edwards, *Why the Electoral College Is Bad for America*, 2nd ed., 3–6, 124–128.
24. Stanley Kelley Jr., “The Presidential Campaign,” in *The Presidential Election and Transition 1960–1961*, ed. Paul T. David (Washington, DC: Brookings Institution, 1961), 70–72; Daron R. Shaw, “The Effect of TV Ads and Candidate Appearances on Statewide Presidential Votes, 1988–96,” *American Political Science Review* 93 (June 1999): 359–360; Edwards, *Why the Electoral College Is Bad for America*, 2nd ed., 124–132. See also Larry M. Bartels, “Resource Allocation in a Presidential Campaign,” *Journal of Politics* 47 (August 1985): 928–936; Steven J. Brams and Morton D. Davis, “The 3/2’s Rule in Presidential Campaigning,” *American Political Science Review* 68 (March 1974): 113–134; Claude S. Colantoni, Terrence J. Levasque, and Peter C. Ordeshook, “Campaign Resource Allocation under the Electoral College,” *American Political Science Review* 69 (March 1975): 142–154; Steven J. Brams and Morton D. Davis, “Comment on ‘Campaign Resource Allocations under the Electoral College,’” *American Political Science Review* 69 (March 1975): 155–156.
25. Nonprofit Vote and US Elections Project, *America Goes to the Polls 2016* (Nonprofit Vote and US Elections Project, 2017), 12–13.
26. “Mad Money: TV Ads in the 2012 Presidential Campaign,” *Washington Post*, November 14, 2012, <http://www.washingtonpost.com/wp-srv/special/politics/track-presidential-campaign-ads-2012/>.
27. Edwards, *Why the Electoral College Is Bad for America*, 2nd ed., 132–139; “Testimony of Hon. Hubert H. Humphrey, U.S. Senator from the State of Minnesota,” *The Electoral College and Direct Election: Hearings before the Committee on the Judiciary*,

- United States Senate*, January 27, February 1, 2, 7, and 10, 1977, 95th Congress, 1st sess., 25, 35; “Testimony of Douglas Bailey,” *The Electoral College and Direct Election: Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary, Supplement, United States Senate*, July 20, 22, 28, and August 2, 1977, 95th Congress, 1st sess., 267, 258–273; as well as the testimony at the same hearings by Sen. Robert Dole (“Testimony of Hon. Robert Dole, U.S. Senator from the State of Kansas,” *The Electoral College and Direct Election: Hearings before the Subcommittee on the Constitution of the Committee on the Judiciary, Supplement*, 30), who also stressed the campaign distortions created by the Electoral College. See also Bartels, “Resource Allocation in a Presidential Campaign”; Shaw, “The Effect of TV Ads”; Shaw, *Race to 270*, chap. 4.
28. Martin Diamond, *The Electoral College and the American Idea of Democracy* (Washington, DC: American Enterprise Institute, 1977), 4.
 29. Twentieth Century Fund, *Winner Take All* (New York: Holmes and Meier, 1978), chap. 6.
 30. See Richard G. Niemi and Paul S. Herrnsen, “Beyond the Butterfly: The Complexity of U.S. Ballots,” *Perspectives on Politics* 1 (June 2003): 317–326.
 31. Caltech/MIT Voting Technology Project, *Voting: What Is, What Could Be*, 2001, <http://vote.caltech.edu/content/voting-what-what-could-be>.
 32. Remarks of President George W. Bush at signing ceremony for the Help America Vote Act of 2002, October 29, 2002, American Presidency Project, <http://www.presidency.ucsb.edu/youtubeclip.php?clipid=73161&admin=43>.
 33. Ross, *Enlightened Democracy*, 41, 87, 109, 142, 170, 182, 187, 188; Uhlman, “Creating Constitutional Majorities”; Rahe, “Moderating the Political Impulse”; Best, *Choice of the People?*, 14, 21, 23–24, 27, 36–37.
 34. Voter News Service Exit Polls; Gallup News Service, “Candidate Support by Subgroup,” News Release, November 6, 2000 (based on six-day average, October 31–November 5, 2000).
 35. See Eric R. A. N. Smithy and Peverill Squire, “Direct Election of the President and the Power of the States,” *Western Political Quarterly* 40 (March 1987): 29–44.
 36. *Electoral College and Direct Election*, 40.
 37. Goux and Hopkins, “The Empirical Implications of Electoral College Reform.”
 38. Michael Hagen, Richard Johnston, and Kathleen Hall Jamieson, “Effects of the 2000 Presidential Campaign” (paper delivered at the annual meeting of the American Political Science Association, August 29–September 1, 2002), 3.
 39. Quoted in U.S. Congress, Senate, Committee on the Judiciary, *Report on Direct Popular Election of the President and Vice President of the United States*, 95th Congress, 1st sess., 1967, 124.
 40. *Electoral College and Direct Election*, 39.