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The Case for Keeping the Electoral College

By Walter Berns

Debate over whether to keep the Electoral College or move to a system of direct popular election of the president is a hardy perennial of the presidential election season. In this article, the eminent constitutional scholar Walter Berns reminds us of the arguments in favor of the Electoral College and dissects the proposals of those who would nullify it without having to abolish it.

Although national attention continues to focus on an especially riveting nomination contest, a consequential change to the Electoral College, the so-called National Popular Vote plan, continues to churn in the background with little fanfare or scrutiny. I once began an article on the college by saying that “nothing fails to succeed like success.” That sentiment still rings true for me today. By “success”—and this was before the 2000 election in Florida—I meant that the college regularly produces a president with a clear and immediately evident claim to the office, in part because it exaggerates the margin in the popular vote. In 1996, for example, Bill Clinton’s 49 percent of the popular vote became 70 percent of the electoral vote.

But this has never been enough to satisfy the college’s critics, some of whom—former senator Birch Bayh (D-Ind.) and 1980 presidential candidate John Anderson, for example—have made a career of proposing constitutional amendments to abolish it, usually in favor of a system of direct popular elections. Now, having learned once again that the Constitution is not readily amended, they have come up with a plan to nullify the Electoral College without having to abolish it.

They have also come up with a big book on the subject, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*—some six hundred pages of text, tables, figures,

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appendices, biographies, and bibliographies explaining the plan—to encourage its adoption. Put simply, the plan is based on a proposed compact among states that collectively possess a majority of the electoral votes—at least 270 of the 538 votes—which means, depending on their size, as few as eleven and as many as forty-one states.

Under the compact, these states would agree to cast all their electoral votes in favor of the presidential slate capturing the most popular votes nationally. These votes would, as usual, be tallied after the election in November and before the meeting of the electors—“on the first Monday after the second Wednesday in December.” The electors in each of the contracting states would then cast their votes accordingly and regardless of the popular vote in their own states. We are to believe that the voters will not object to this because, when asked, they have consistently made it clear that they favor the popular election of the president, and the plan makes this possible after a fashion. The plan’s proponents favor it because it will correct all the alleged flaws in the current system.

No longer will two-thirds of the nation’s voters be “ignored” because they happen to live in “presidentially noncompetitive” states; nor will a vote cast in Wyoming, Montana, or Vermont be “worth” much more than one cast in New York, Texas, or California. And the candidates will no longer only focus on a few swing states like Florida and Ohio.

Under the new plan, every vote is equal. Chief among its supposed virtues is that it will most likely preclude the possibility of a minority president—meaning one who, like Abraham Lincoln, wins less than a majority of the popular vote.

Unlike the system that gave us the Florida fiasco in 2000, this plan puts the power to choose the president directly in the hands of the people. Who could possibly be opposed to this plan, its proponents ask. Once it is explained to them, Americans of every political persuasion will favor its adoption.

The plan—the brainchild of John R. Koza, a Stanford University professor of computer science—would take politics out of politics. Yes, indeed, which may explain why only two states (Maryland and New Jersey) have agreed to be part of it.

But of course. Why should the people of a state favor a plan under which the state electors might rightly cast their votes for a candidate other than the one favored by those voters? Why, to be specific, should Texas, a Republican state with thirty-four electoral votes, and New York, a Democratic state with thirty-one electoral votes, each agree to give all its votes to the presidential candidate favored by the other?

What would they gain by doing this? Or why should Nevada give its five votes to the candidate favored by its neighbor California with its fifty-five? Do they have the same interests? Nevada will be told it is a matter of democratic principle, and Nevada will say in response: “No, it is a matter of nuclear waste at Yucca Mountain.” Or, again, why should even little Delaware want to deprive itself of its constitutional right to vote as it pleases? And who is to say it is not right?

Furthermore, unlike Bayh, Anderson, and the other fairy-tale reformers, it probably does not trouble anyone actually engaged in politics that the presidential candidates do not bother to campaign in Wyoming and Montana or waste their time and limited funds going up, down, and around the states of New York and Texas, or any other state where most of the voters have long since made up their minds.

Nor does it bother them that a vote cast in Wyoming is “worth” almost four times more than one cast in California, a calculation achieved by dividing the state’s population by the number of its electoral votes: 164,594

(Wyoming) and 615,848 (California). But who cares? Anyone who wants to cast a really “weighty” vote can move to Wyoming or, almost as good, Montana, Nebraska, New Mexico, Utah, or West Virginia. The plan may ensure that all citizens have an equal say as to who the president will be, but it does so by ignoring some important political considerations.

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By political considerations, I mean, for example, whether it is important to give some weight to the states as states, which, however small in area or population, may have interests that deserve to be protected. But mostly I mean the character or the qualifications of the person holding this great office. These reformers seem not to care about such matters; they care only about how the president is chosen. It is a matter of principle for them, and nothing else counts.

This is the message of their big book, *Every Vote Equal*. Nowhere in its hundreds of pages is there anything about the qualities that make a good president, or how their plan will produce a better president, however “better” is defined. They have no interest in these political questions.

It was otherwise with the framers of the Constitution in the spring and summer of 1787. They, too, grappled with the issues of how the president was to be chosen and who—the Congress, the states, the people at large, or some part of them—would do the choosing.

As they saw it, the choice of a president was a matter of which proposal would be more compatible with the other parts of the political system. Only after a debate extending for several months did they settle on the Electoral College. It is not perfect, but anyone who would replace it is obliged to make a political case for his proposed alternative. Slogans about the right to vote, or who does or does not vote, or the equal weight of votes, are not enough.