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The Small States Are Disadvantaged and Ignored Because of the Current State-by-State Winner-Take-All Method of Awarding Electoral Votes

This memo discusses why the current system of electing the President does not prevent small states from being ignored in presidential elections.

- Small states (the 13 states with only three or four electoral votes) are the most disadvantaged and ignored group of states under the current state-by-state winner-take-all method of awarding electoral votes. The reason is that almost all of the small states are noncompetitive states in presidential elections, and political power in presidential elections comes from being a closely divided battleground state.
- The 12 small non-battleground states have about the same population (11.5 million) as the closely divided battleground state of Ohio. These 12 small states have 40 electoral votes—more than twice Ohio's 18 electoral votes. However, Ohio received 73 of 253 general-election campaign events in 2012, while the 12 small non-battleground states received none.
- Even if the definition of a small state is expanded to include the 25 smallest states, only three of the smallest 25 states (New Hampshire, Iowa, and Nevada) received any general-election campaign events in 2012.
- The current state-by-state winner-take-all system actually shifts power from small and medium-sized states to the accidental handful of big states that happen to be closely divided battleground states.
- The fact that the small states are disadvantaged by the current state-by-state winner-take-all system has been recognized by prominent officials from those states for many years. In 1966, Delaware led a group of 12 predominantly small states in suing New York (then a closely divided battleground state) in the U.S. Supreme Court in an effort to get state winner-take-all laws declared unconstitutional.
- Under the current state-by-state winner-take-all system, a vote for President in Wyoming or Delaware is equal to a vote in California or Texas—they are all politically irrelevant.

DETAILED DISCUSSION

The U.S. Constitution gives each state a number of electoral votes equal to the state's number of U.S. Representatives (which are apportioned on the state's population) plus the state's number of U.S. Senators (which is always two).

The seven smallest states each have one member of the U.S. House of Representatives and therefore have three electoral votes each. The 23rd Amendment (ratified in 1961) gave the District of Columbia three presidential electors.

Defenders of the current system of electing the President vigorously assert that the two "senatorial" electoral votes prevent small states from being ignored in presidential elections—even though we will see (below) that this assertion is demonstrably false.

Tara Ross, author of three books defending the current system,^{1,2,3} has testified before state legislative hearings on the National Popular Vote bill saying:

"Minority political interests, particularly the **small states, are protected** [by the current system]."⁴ [Emphasis added]

"Ultimately, **the Electoral College ensures that the political parties must reach out to all the states.**"⁵ [Emphasis added]

Gary Gregg II of the University of Louisville and editor of the book *Securing Democracy: Why We Have an Electoral College*⁶ says that a national popular vote for President:

"would mean ignoring every rural and small-state voter in our country."⁷

Professor Walter E. Williams of George Mason University says:

"Were it not for the Electoral College, presidential candidates could safely ignore less populous states."

All of the above statements are demonstrably false.

¹ Ross, Tara. 2012. *Enlightened Democracy: The Case for the Electoral College*. Los Angeles, CA: World Ahead Publishing Company. Second edition.

² Ross, Tara. 2017. *The Indispensable Electoral College: How the Founders' Plan Saves Our Control from Mob Rule*. Washington, DC: Regnery Gateway.

³ Ross, Tara; Cooper, Kate E.; and Ross, Emma. 2016. *We Elect a President: The Story of Our Electoral College*. Dallas, TX: Colonial Press L.P.

⁴ Oral and written testimony presented by Tara Ross at the Nevada Senate Committee on Legislative Operations and Elections on May 7, 2009.

⁵ Oral and written testimony presented by Tara Ross at the Nevada Senate Committee on Legislative Operations and Elections on May 7, 2009.

⁶ Gregg, Gary L, II. (editor). 2001. *Securing Democracy: Why We Have an Electoral College*. Wilmington, DE: ISI Books.

⁷ Gregg, Gary. Keep Electoral College for fair presidential votes. *Politico*. December 5, 2012.

Far from being “protected,” the eight smallest states⁸ are the most disadvantaged and ignored group of states under the current state-by-state winner-take-all method of awarding electoral votes.

There were 952 general-election campaign events during the 2008, 2012, and 2016 presidential campaigns. However, only one of the 952 events occurred in the eight smallest states. As can be seen from the table, seven of the eight smallest states were totally ignored in all three elections. The District of Columbia received one isolated event in 2008.⁹

Number of general-election campaign events in 2008, 2012, and 2016 in the eight smallest states (three electoral votes)

EV	State	2008 events	2012 events	2016 events	Population
3	Wyoming				568,300
3	D.C.	1			601,723
3	Vermont				630,337
3	North Dakota				675,905
3	Alaska				721,523
3	South Dakota				819,761
3	Delaware				900,877
3	Montana				994,416
24	Total	1	0	0	5,912,842

The population of the eight smallest states (5,912,842) is slightly larger than the population of the closely divided battleground state of Wisconsin (5,698,230). Because of the bonus of two electoral votes that every state receives, the eight smallest states have 24 electoral votes—compared to only 10 for Wisconsin. Yet Wisconsin received 40 general-election campaign events in these three elections. That is, Wisconsin received 40 times more general-election campaign events as the eight smallest states even though the eight smallest states have 2.4 times as many electoral votes as Wisconsin.

Yet, despite these facts, defenders of the current system of electing the President vigorously assert that the current system prevents small states from being ignored in presidential elections.

University of Denver Sturm College of Law Professor Robert Hardaway, author of *The Electoral College and the Constitution: The Case for Preserving Federalism*,¹⁰ has stated:

“If we had National Popular Vote, you take a state like **Alaska, which has a very low population. If it was a national popular vote no presidential candidate would be interested in going up there**, because the population is so low. But, ... if they have 3 electoral votes, that’s the compromise that brought this nation together, that’s a lot of votes, that’s a lot of electoral votes compared to the population, so you’ll see presidential candidates visiting some of those outlying areas.”¹¹

⁸ For simplicity, we frequently refer to the District of Columbia as a “state.” The 21st Amendment states that the District “shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State.”

⁹ Williams, Walter E. In defense of the Electoral College. *Gaston Gazette*. November 21, 2012.

¹⁰ Hardaway, Robert M. 1994. *The Electoral College and the Constitution: The Case for Preserving Federalism*. Westport, CT: Praeger.

¹¹ Debate at the Larimer County, Colorado, League of Women Voters on June 28, 2012 with Robert Hardaway of the University of Denver Sturm College of Law, Professor Robert Hoffert of Colorado State University, Elena Nunez of Colorado Common Cause, and Patrick Rosenstiel of Ainsley-Shea. 18:00 minute mark. http://www.youtube.com/watch?v=U_yCSqgm_dY.

Senator Mitch McConnell has argued:

“If the only vote total that counted was just running up the score, query, when would be the next time if you had a state with one congressmen or 2 congressmen and you had a tiny population, when would be the next time you would see or hear from any candidate for president?”¹²

A brochure published by the Freedom Foundation of Olympia, Washington stated:

“The seven smallest states (Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming) and the District of Columbia each have three electoral votes. **A national popular vote would render all low-population states almost permanently irrelevant in presidential political strategy.**”¹³

[Emphasis added]

Contrary to what the Freedom Foundation says, the small states are “permanently irrelevant in presidential political strategy” under the *current* system.

The reason why the small states are ignored in presidential campaigns becomes clear if we expand the discussion to the 13 smallest states (i.e., states with three or four electoral votes).

Number of general-election campaign events in 2008, 2012, and 2016 in the 13 smallest states (three or four electoral votes)

EV	State	2008 events	2012 events	2016 events	Population
3	Wyoming				568,300
3	D.C.	1			601,723
3	Vermont				630,337
3	North Dakota				675,905
3	Alaska				721,523
3	South Dakota				819,761
3	Delaware				900,877
3	Montana				994,416
4	Rhode Island				1,055,247
4	New Hampshire	12	13	21	1,321,445
4	Maine	2		3	1,333,074
4	Hawaii				1,366,862
4	Idaho				1,573,499
44	Total	15	13	24	12,562,969

As can be seen from the table, 10 of the 13 smallest states were totally ignored in all three elections. However, one of the 13 smallest states (New Hampshire) received a considerable amount of attention—46 of the 52 of the campaign events (88%) in these three elections. Maine received a modest amount of attention—a total of five of the 52 events over two particular elections.

The reason why New Hampshire received so much attention is that it was a closely divided battleground state in these three elections. The Democratic nominee received 55%, 53%, and 50.2% of the two-party vote in 2008, 2012, and 2016, respectively. Thus, both parties campaigned vigorously in New Hampshire because each perceived (correctly) that they had something to gain by campaigning in the state and something to lose if they didn’t. Note that the candidates campaigned *unusually vigorously* in New Hampshire in 2016 when the race was far closer (50.2%)

¹² McConnell, Mitch. The Electoral College and National Popular Vote Plan. December 7, 2011. Washington, DC. 19:36 minute mark.

¹³ Freedom Foundation. 2010. Brochure. Olympia, Washington.

than in 2008 or 2012. There were 21 events in 2016, compared to only 12 and 13 events in 2008 and 2012.

Maine received two events in 2008 and three in 2016 because Maine awards electoral votes by congressional district. The Democratic nominee easily won the non-competitive 1st district in 2008, 2012, and 2016 and easily won the state as a whole in all three elections. However, Maine's 2nd district was closely divided in two particular elections (2008 and 2016). Because the presidential candidates perceived (correctly) that they had something to gain or lose in Maine's 2nd district in those particular elections, they campaigned there. Indeed, Donald Trump carried Maine's 2nd district in 2016 and thereby won one electoral vote from Maine.

The 12 small non-battleground states in the table below have a combined population of 11,241,524. Coincidentally, Ohio has almost the same number of people as these 12 small states (11,568,495). Because of the bonus of two electoral votes that every state receives, the 12 small non-battleground states have 40 electoral votes, whereas Ohio has only half as many.¹⁴

However, under the state-by-state winner-take-all method of awarding electoral votes, political power does not arise from the number of electoral votes that a state possesses, but instead, from whether the state is a closely divided battleground state.

In 2012, the closely divided battleground state of Ohio received 73 general-election campaign events (out of 253). However, the 11.5 million people in the 12 small non-battleground states received none.

In 2008, 2012, and 2016, Ohio received a total of 183 general-election campaign events (out of 952). However, the 11.5 million people in the 12 small non-battleground states received only six.

¹⁴ Ohio had 20 electoral votes in 2008, but 18 after the 2010 census.

If we generously expand the discussion to the 25 smallest states (i.e., states with three to seven electoral votes), the fact remains the smaller states are the most disadvantaged and ignored under the state-by-state winner-take-all method of awarding electoral votes.

Number of general-election campaign events in 2008, 2012, and 2016 in the 25 smallest states (three to seven electoral votes)

EV	State	2008 events	2012 events	2016 events	Population
3	Wyoming				568,300
3	D.C.	1			601,723
3	Vermont				630,337
3	North Dakota				675,905
3	Alaska				721,523
3	South Dakota				819,761
3	Delaware				900,877
3	Montana				994,416
4	Rhode Island				1,055,247
4	New Hampshire	12	13	21	1,321,445
4	Maine	2		3	1,333,074
4	Hawaii				1,366,862
4	Idaho				1,573,499
5	Nebraska			2	1,831,825
5	West Virginia	1			1,859,815
5	New Mexico	8		3	2,067,273
6	Nevada	12	13	17	2,709,432
6	Utah			1	2,770,765
6	Kansas				2,863,813
6	Arkansas				2,926,229
6	Mississippi			1	2,978,240
6	Iowa	7	27	21	3,053,787
7	Connecticut			1	3,581,628
7	Oklahoma				3,764,882
7	Oregon				3,848,606
116	Total	42	53	70	46,819,264

As can be seen from the table, only three of these 25 states (New Hampshire, Nevada, and Iowa) received any significant amount of attention in all three years, and these three states accounted for 87% of the campaign events in these three elections (143 out of 165). Fourteen of the 25 smallest states were totally ignored in all three elections, and five states received only one isolated event each during the three elections.

In a 1979 Senate speech, U.S. Senator Henry Bellmon (R–Oklahoma) described how his views on the Electoral College had changed as a result of serving as national campaign director for Richard Nixon and a member of the American Bar Association’s commission studying electoral reform.

“While the consideration of the electoral college began—and I am a little embarrassed to admit this—I was convinced, as are many residents of smaller States, that the present system is a considerable advantage to less-populous States such as Oklahoma.... As the deliberations of the American Bar Association Commission proceeded and as more facts became known, **I came to the realization that the present electoral system does not give an advantage to the voters from the less-populous States. Rather, it works to**

the disadvantage of small State voters who are largely ignored in the general election for President.”¹⁵ [Emphasis added]

Senator Robert E. Dole of Kansas, the Republican nominee for President in 1996 and Republican nominee for Vice President in 1976, stated in a 1979 floor speech:

“Many persons have the impression that the electoral college benefits those persons living in small states. I feel that this is somewhat of a misconception. Through my experience with the Republican National Committee and as a Vice Presidential candidate in 1976, it became very clear that the populous states with their large blocks of electoral votes were the crucial states. It was in these states that we focused our efforts.

“Were we to switch to a system of direct election, I think we would see a resulting change in the nature of campaigning. While urban areas will still be important campaigning centers, there will be a new emphasis given to smaller states. **Candidates will soon realize that all votes are important, and votes from small states carry the same import as votes from large states. That to me is one of the major attractions of direct election. Each vote carries equal importance.**

“Direct election would give candidates incentive to campaign in States that are perceived to be single party states.”¹⁶ [Emphasis added]

The table below confirms the conclusions of Senators Bellmon and Dole. The table shows the number of general-election campaign events in 2008, 2012, and 2016 in all the states. The table is arranged according to each state’s number of electoral votes, with the smaller states appearing at the top.

As can be seen from a glance at the table, virtually all the non-zero numbers appear at the bottom of the table. The attention of presidential candidates is primarily focused on *certain* big states, namely the closely divided big states. Because almost none of the small states are closely divided in presidential elections, the current state-by-state winner-take-all method of awarding electoral votes shifts power from small and medium-sized states to the handful of big states that happen to be battleground states in presidential elections.

¹⁵ *Congressional Record*. July 10, 1979. Page 17748.

¹⁶ *Congressional Record*. January 14, 1979. Page 309.

Number of general-election campaign events in 2008, 2012, and 2016 in the all states

EV	State	2008 events	2012 events	2016 events	Population
3	Wyoming				568,300
3	D.C.	1			601,723
3	Vermont				630,337
3	North Dakota				675,905
3	Alaska				721,523
3	South Dakota				819,761
3	Delaware				900,877
3	Montana				994,416
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4	New Hampshire	12	13	21	1,321,445
4	Maine	2		3	1,333,074
4	Hawaii				1,366,862
4	Idaho				1,573,499
5	Nebraska			2	1,831,825
5	West Virginia	1			1,859,815
5	New Mexico	8		3	2,067,273
6	Nevada	12	13	17	2,709,432
6	Utah			1	2,770,765
6	Kansas				2,863,813
6	Arkansas				2,926,229
6	Mississippi			1	2,978,240
6	Iowa	7	27	21	3,053,787
7	Connecticut			1	3,581,628
7	Oklahoma				3,764,882
7	Oregon				3,848,606
8	Kentucky				4,350,606
8	Louisiana				4,553,962
9	South Carolina				4,645,975
9	Alabama				4,802,982
9	Colorado	20	23	19	5,044,930
10	Minnesota	2	1	2	5,314,879
10	Wisconsin	8	18	14	5,698,230
10	Maryland				5,789,929
10	Missouri	21		2	6,011,478
11	Tennessee	1			6,375,431
11	Arizona			10	6,412,700
11	Indiana	9		2	6,501,582
11	Massachusetts				6,559,644
12	Washington			1	6,753,369
13	Virginia	23	36	23	8,037,736
14	New Jersey				8,807,501
15	North Carolina	15	3	55	9,565,781
16	Georgia			3	9,727,566
16	Michigan	10	1	22	9,911,626
18	Ohio	62	73	48	11,568,495
20	Pennsylvania	40	5	54	12,734,905
20	Illinois			1	12,864,380
29	Florida	46	40	71	18,900,773
29	New York				19,421,055
38	Texas			1	25,268,418
55	California			1	37,341,989
538	Total	300	253	399	309,785,186

The fact that the small states are disadvantaged by the current state-by-state winner-take-all method of awarding electoral votes has long been recognized by other prominent officials from small states.

In 1966, the state of Delaware led a group of 12 predominantly small states (including North Dakota, South Dakota, Wyoming, Utah, Arkansas, Kansas, Oklahoma, Iowa, Kentucky, Florida, and Pennsylvania) in suing New York in the U.S. Supreme Court in an effort to get state winner-take-all statutes declared unconstitutional.¹⁷

Defendant New York's overriding importance at the time in presidential elections cannot be overemphasized. It was not only a closely divided battleground state, it possessed the largest number of electoral votes (45)—2 ½ times the number of electoral votes possessed by Ohio today.

David P. Buckson (*Republican Attorney General of Delaware at the time*) led the effort. Delaware's brief in *State of Delaware v. State of New York* stated:

“The state unit-vote system [the ‘winner-take-all’ rule] **debases the national voting rights and political status of Plaintiff’s citizens and those of other small states** by discriminating against them in favor of citizens of the larger states. A citizen of a small state is in a position to influence fewer electoral votes than a citizen of a larger state, and therefore his popular vote is less sought after by major candidates. **He receives less attention in campaign efforts and in consideration of his interests.**”¹⁸ [Emphasis added]

In their brief, Delaware and the other plaintiffs stated:

“This is an original action by the State of Delaware as *parens patriae* for its citizens, against the State of New York, all other states, and the District of Columbia under authority of Article III, Section 2 of the United States Constitution and 28 U.S. Code sec. 1251. **The suit challenges the constitutionality of the respective state statutes employing the ‘general ticket’ or ‘state unit-vote’ system**, by which the total number of presidential electoral votes of a state is arbitrarily misappropriated for the candidate receiving a bare plurality of the total number of citizens’ votes cast within the state.

“The Complaint alleges that, although the states, pursuant to Article II, Section 1, Par. 2 of the Constitution, have some discretion as to the manner of appointment of presidential electors, they are nevertheless bound by constitutional limitations of due process and equal protections of the laws and **by the intention of the Constitution that all states’ electors would have equal weight**. Further, general use of the state unit system by the states is a collective unconstitutional abridgment of all citizens’ reserved political rights to associate meaningfully across state lines in national elections.”

The plaintiff's brief argued that the votes of the citizens of Delaware and the other plaintiff states are

“diluted, debased, and misappropriated through the state unit system.”

¹⁷ *State of Delaware v. State of New York*, 385 U.S. 895, 87 S.Ct. 198, 17 L.Ed.2d 129 (1966).

¹⁸ Delaware's brief, New York's brief, and Delaware's argument in its request for a re-hearing in the 1966 case of *State of Delaware v. State of New York* may be found at http://www.nationalpopularvote.com/pages/misc/de_lawsuit.php.

The U.S. Supreme Court declined to hear the case (presumably because of the well-established constitutional provision that the manner of awarding electoral votes is exclusively a state decision). Ironically, the defendant New York is no longer a politically important battleground state (as it was in the 1960s). Today, New York suffers the very same disadvantage as Delaware and the other plaintiff states because New York, too, is politically noncompetitive in presidential elections. Today, a vote in New York in a presidential election is equal to a vote in Delaware—both are equally irrelevant.

Although the small states theoretically benefit from receiving two extra electoral votes (corresponding to their two U.S. Senators), this “bonus” does not, in practice, translate into political influence. Political power in presidential elections comes from being a closely divided battleground state—not from the two-vote bonus conferred on all states in the Electoral College.

Under the state-by-state winner-take-all method of awarding electoral votes, candidates have no reason to visit, advertise, build a grassroots organization, poll, or pay attention to the concerns of voters in states where they are comfortably ahead or hopelessly behind. Instead, candidates concentrate their attention on a small handful of closely divided battleground states.

The small states are the most disadvantaged and ignored group of states under the current state-by-state winner-take-all system because all but one of them are reliably Democratic or Republican in presidential races. Consequently, presidential candidates have nothing to lose by ignoring the small states and nothing to gain by soliciting votes in the small states.

Indeed, presidential candidates pay considerable attention to New Hampshire (with four electoral votes) because it is a closely divided battleground state. As a result, New Hampshire received 12 of the 300 general-election campaign events in 2008, 13 of the 253 events in 2012, and 21 of 399 events in 2016.

Meanwhile, the voters of the 12 other small states were ignored because the political division of their voters was outside the 46%–54% range that determines (more or less) whether presidential candidates consider a state to be worth contesting.¹⁹

A national popular vote would make a voter in each of the 12 small non-battleground states as important as a voter in battleground states such as New Hampshire. In fact, the National Popular Vote plan would make every vote in every state politically relevant in every presidential election.

Under the current state-by-state winner-take-all system, New Hampshire received 46 of the 52 (88%) of the general-election campaign events of the 13 smallest states in 2008, 2012, and 2016 (see table above). Because every voter in every small state would be equally important under the National Popular Vote compact, it would be inconceivable that presidential candidates would campaign in only one particular small state, while virtually ignoring the 12 other small states. The likely distribution of 52 campaign events would be that *each* of the 13 smallest states would receive an average of slightly more than one campaign event in *each* election under a nationwide vote for President.

The Electoral College is not the bulwark of influence for the small states in the U.S. Constitution. The bulwark of influence for the small states is the equal representation of the states in the U.S. Senate. The 13 small states (with 3% of the nation’s population) have 25% of the votes in the U.S. Senate—a very significant source of political clout in federal legislation. However, the 13 smallest states (i.e., those with three or four electoral votes) have only 26 extra votes in the 538-member Electoral College by virtue of the two-vote bonus. Although the 13 smallest states cast 3% of the nation’s popular vote while possessing 6% of the electoral votes, this extra 3% is a minor

¹⁹ See table 1.2.

numerical factor in the context of a presidential election. More importantly, this small apparent advantage is illusory because the one-party nature of 12 of the 13 small states in presidential elections makes them irrelevant to presidential campaigns. Even if this extra 3% were not illusory, it is negated by the fact that the 13 smallest states have been equally divided between Democrats and Republicans in the presidential elections between 1988 and 2016.

Tara Ross claims that

“NPV will lessen the need of presidential candidates to obtain the support of voters in rural areas and in small states.”²⁰

The political reality is that the National Popular Vote compact cannot possibly “lessen the need” of candidates to win the support of small states because candidates have *no need* whatsoever to solicit the support of the small states under the current state-by-state winner-take-all system. In fact, it is the winner-take-all rule that renders the small states “almost permanently irrelevant in presidential political strategy.”

In fact, a national popular vote is the *only* way to give voters in the nation’s small states a voice in presidential elections. For example, proposals to award electoral votes by congressional district or proportionally (section 9.23) would have no meaningful effect in states with only three or four electoral votes. Under a national popular vote, a voter in a reliably one-party small state would become as important as a voter in Ohio or Wisconsin or anywhere else in the country.

²⁰ Written testimony submitted by Tara Ross to the Delaware Senate in June 2010.