

Informed Choice, or Poorly Designed Lottery? The American System for Choosing Presidents



JANUARY 24, 2009

MICHAEL MUNGER
DUKE UNIVERSITY

LEAGUE OF WOMEN VOTERS
DEBATE ON...

*NATIONAL POPULAR
VOTE COMPACT*

Outline



- 1. Overview of the Argument
- 2. Original conception
- 3. Electoral college
- 4. National Popular Vote Compact
- 5. Summary of the Argument

1. Overview



- The U.S. is not a democracy, and shouldn't be
- The U.S. is a constitutional federal republic. This structure is stable, and the rule of law is well-established: our revolutions are electoral, not military
- The Electoral College has three features. The genius of the Electoral College is that it prevents a candidate from just winning the coasts, or just the city.
- The Electoral College increases turnout dramatically, compared to the Compact proposal.
- The Compact proposal is illogical, ill-conceived, and the wrong direction for America.

2. Original Conception



- The Founders, particularly James Madison, believed that 9 of 10 Presidential elections would be settled in the House of Representatives.
- The Electoral College was really just steam control, a way of involving the states, and even the population.
- But if there were 5, or 6, or 15 candidates, no way to get a majority of electors
- Problems:
 - 1. Duverger's Law
 - 2. Political Parties, almost immediately

2. Original Conception



- The function of the College of Electors in choosing the president can be likened to that in the Roman Catholic Church of the College of Cardinals selecting the Pope. The original idea was for the most knowledgeable and informed individuals from each State to select the president based solely on merit and without regard to State of origin or political party.
- The structure of the Electoral College can be traced to the Centurial Assembly system of the Roman Republic. Under that system, the adult male citizens of Rome were divided, according to their wealth, into groups of 100 (called Centuries). Each group of 100 was entitled to cast only one vote either in favor or against proposals submitted to them by the Roman Senate. In the Electoral College system, the States serve as the Centurial groups (though they are not, of course, based on wealth), and the number of votes per State is determined by the size of each State's Congressional delegation. Still, the two systems are similar in design and share many of the same advantages and disadvantages.

2. Original Conception: Democracy= Dangerous

The Founders' View, The Classical View....

"Democracy is precisely the constitution out of which tyranny comes; from extreme liberty, it seems, comes a slavery most complete and most cruel...When a democratic city gets worthless butlers presiding over its wine, and has drunk too deep of liberty's heady draught, then, I think, if the rulers are not very obliging and won't provide plenty of liberty, it calls them blackguards and oligarchs and chastises them...and any who obey the rulers they trample in the dust as willing slaves and not worth a jot." Plato, THE REPUBLIC, Book IV, 560A-564A

Is Democracy Dangerous?



- Roe v. Wade
- *Bill of Rights*
- U.S. Supreme Court
- U.S. Senate

There is NO moral force in the majority. It is just what most people happen to think.

The U.S. is not a democracy. It is a constitutional republic, with some rights reserved to the people, and some to the states.

One of the rights reserved to the states is EC representation. In fact, the Constitution PREVENTS changing Senate apportionment, even by Constitutional amendment

The worst of all worlds

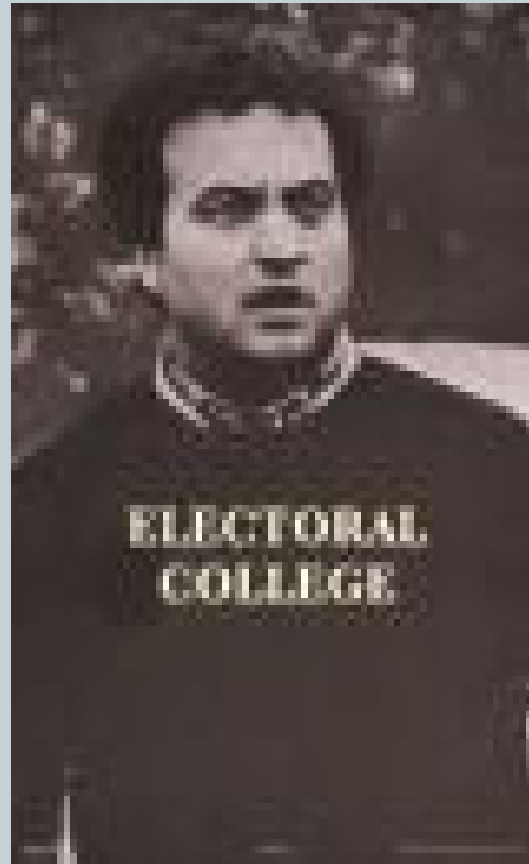


Democracy without *constitutional liberalism*...

1. Rule of law, protections of property and liberty
2. Limits on scope of issues within the jurisdiction of collective choice...

Democracy without these is the most terrifying kind of tyranny you can imagine. Americans, and the West, are confused about “good government.” The key is constitutional liberalism, not democracy.

3. Electoral College



3. Electoral College



- The “electoral college” is actually *an entirely separate legislature*, elected once every four years.
- Never actually meet, but they do pass one important piece of legislation: Elect a President
- Popular vote actually does NOT elect the President.
- Popular vote elects district and state “electors.”
- Electors are chosen by parties
- For first 100 years, more in some states, names of candidates did not appear on the ballot. Names of the electors appeared on the ballot.

5 Arguments *for* the Electoral College



- 1. The Electoral College, in recognizing a role for states in the selection of the president, reminds us of their importance in our federal system.**
- 2. The Electoral College encourages more person-to-person campaigning by candidates, as they spend time in both the big cities and smaller cities in battleground states.**
- 3. In close, contested elections, recounts will usually be confined to a state or two, rather than an across-the-country recount that might be required if we had direct election of the president.**
- 4. The Electoral College, with its typical winner-take-all allocation of votes, often turns a small percentage margin of victory into one that appears much larger, thus making the victory seem more conclusive and adding to the winner's perceived legitimacy.**
- 5. It's fun on election nights to watch states light up in different colors on television network maps of the U. S.**

5 Arguments *against* the Electoral College, or for Direct Popular Vote



- 1.** When the winner of the Electoral College is not the one who received the most votes of the people, the new president faces legitimacy questions.
- 2.** Most Americans believe that the person who receives the most votes should become president. Direct election is seen as more consistent with democratic principles than is the Electoral College system.
- 3.** The Electoral College gives disproportionate weight to the votes of citizens of small states. For example, a vote by a resident of Wyoming counts about four times more--electorally--than a vote by a California resident.
- 4.** If presidents were elected by direct popular vote, they would wage a campaign and advertise all across the nation, rather than (as they do in the Electoral College system) concentrating almost all of their time and effort in a handful of battleground states. The Electoral College system encourages candidates to pander to the interests of voters in a few closely contested states.
- 5.** The Electoral College system, especially in a close election, is subject to the mischief that might be caused by disloyal--or even bribed--electors.

Electoral College: Three Main Features....



1. indirectness
2. overrepresentation of small states
3. winner-takes-all selection of state Electors

Origins of the Electoral College



- The system for choosing presidents and vice presidents in the United States is widely derided, but not widely understood. The Electoral College was a triumph of institutional design, at least in terms of the problems of the 1780s.
- It is important to recognize that the US chief executive was to be chosen from 13 geographically distinct states of varying sizes. There were no communication networks, or even transportation systems, that could have allowed anything like modern political campaigns.

Origins of the Electoral College



- Perhaps even more important, it was believed that campaigns themselves were unseemly, and political parties were downright reprehensible. Madison's concern in Federalist No. 10 had been with the evils of "faction", but one might have substituted "party" and done little damage to Madison's central point.
- The system the framers of the US Constitution came up with was a compromise, an attempt to steer between the Scylla of popular opinion and the Charybdis of organized interests in the state legislatures or in the federal Congress.
- The idea of a separate "College of Electors", chosen in the states, by the citizens, but with each state controlling the means and process of selection of their own Electors, was finally settled upon by a committee of the Constitutional Convention, and accepted by the entire Convention in the final draft.

Indirectness



Citizens of states don't really vote for one of the tickets that have been campaigning during the months leading up to Election Day. Instead, each vote goes toward electing an Elector, or a person selected by the state party apparatus to represent the party in the Electoral College in the event that the party wins the vote. Importantly, the vote is *truly* indirect; it is perfectly possible for electors, who are already in most cases *faceless* (because their identities are secret), also to be *faithless*, voting for a different candidate from that party, or even for a candidate from another party. This is a fundamentally republican (small "r") feature of the Electoral College--citizens are selecting electors who will represent their interests, not choosing presidential candidates directly.

Most ballots now obscure the fact that votes are for electors, not candidates, but this was not always the case. For a century (or longer in some states) after the 12th Amendment in 1804 modified the Electoral College to its current format, the actual names of electors were listed on ballots. This led to some strange results. In addition to the problem of faithless electors, some states formally split their Electoral College delegations, most recently in West Virginia in 1916, which elected seven Republican electors and one Democrat

Overrepresent Small States



- Each citizen in a “small” state casts a vote that counts more than a citizen in a large state. The reason is that power in the Electoral College is apportioned according to an affine transformation of population. Roughly speaking, the equation for determining a state’s Electoral College votes is

$$\text{Electoral College Votes} = 2 + (\text{State Population} / 600,000)$$

But...this is only an average! Some states with small populations get many more votes, proportionately.

Overrepresent Small States



Consider the two states of Wyoming and California as an extreme example. Wyoming has a population of about 500,000, so gets $2 + (500,000/600,000) = 3$ Electoral College votes. (rounding)

California has a population of 35.5 m, and if equation (1) were perfectly accurate would have 60 votes. But because so many other states are smaller than the 600,000 quota determined by House membership, the relationship is only approximate: California's actual Electoral College allocation is 55 votes.

What this means is that the ratio of California to Wyoming Electoral College votes is

$$55/3 = 18.33$$

Overrepresent Small States



But the California-Wyoming population ratio is $35.5/0.5 = 71$.

The conclusion is inescapable: each vote cast in Wyoming “counts” nearly 4 times as much ($71/18.33 = 3.88$) as any one vote in California. True, California is still the great prize of the Electoral College, representing 10% of the total electoral vote for the presidency.

California counts *much* less under the Electoral College than it would under a pure “one person, one vote” scheme.

Winner Take All: Big States DO matter!



The key feature of the Electoral College, in terms of most current efforts at reform, is its winner-takes-all aspect. The reason that Florida was so important in 2000 was that all 25 of the state's electoral votes hinged on the few hundred ballots whose "chads" were in question. If Florida's electoral vote were proportional, instead of winner takes all, the split would have been 12 for Bush, 12 for Gore, and one electoral vote in contest. But it would not have mattered much, because Gore would have had 278 electoral votes overall, and Bush would have had 258 votes. The awarding of the last remaining Florida Electoral College vote would have been of no consequence, as 12 of the 25 Florida votes would have put Gore over the required 270 electoral vote majority.

Winner Take All



The impact, and value, of the winner-takes-all provision is hard to analyze. On one hand, in close races (such as Florida in 2000, or Ohio, Pennsylvania, or New Mexico in 2004), the value of each vote is magnified, possibly spurring higher turnout. On the other hand, in electorally “secure” states such as Texas, North Carolina, California, Massachusetts, or New York, there is little question what the outcome will be, and so turnout may be attenuated.

Winner Take All--Reforms



There have been a variety of attempts to change the winner-takes-all provision recently. This may be because this is the only aspect of the Electoral College system that requires no constitutional changes at the federal level. Since states are fully in charge of how they choose electors, they can also decide if they want to diverge from the winner-takes-all norm. California has recently considered legislation that would implement a proportional system; Colorado recently rejected a proposed state constitutional amendment (Amendment #36), which would have made that state's Electoral Vote allocation proportional; and several other states have decided to study the issue.

Maine and Nebraska have moved to a proportional system, awarding the two electoral votes associated with their US Senate delegations “at large”, and then dividing the remaining Electoral College votes according to which presidential candidate wins the popular vote in each congressional district. This latter approach is, frankly, a terrible idea. Congressional districts are so gerrymandered in the United States that House races in well over 90% of these districts are not competitive.

Winner Take All--Reforms



Example: In California, the vote totals are always in the 55%–44%, or 53%–45%, range. If California went to a proportional system, that would mean that, in a typical election, 30 Electoral College votes would go to the winning presidential candidate and 25 votes would go to the loser. But this is an election, so only net votes matter. What that means is that California transforms itself from the 800-pound gorilla of the Electoral College, with 55 votes, to a 5-net-vote (30–25) weakling.

A different proposal would be to change the allocation of Electoral College votes for entire nation, but that would require a constitutional amendment. And the net effects are hard to estimate, either for voter participation or for the perceived legitimacy of elections. On the plus side, it would be practically impossible for the popular vote and the Electoral College vote to differ. On the downside, it would be possible to win the election with large majorities in just a few large states, since both candidates would pick up at least some votes from every states, rather than being shut out.

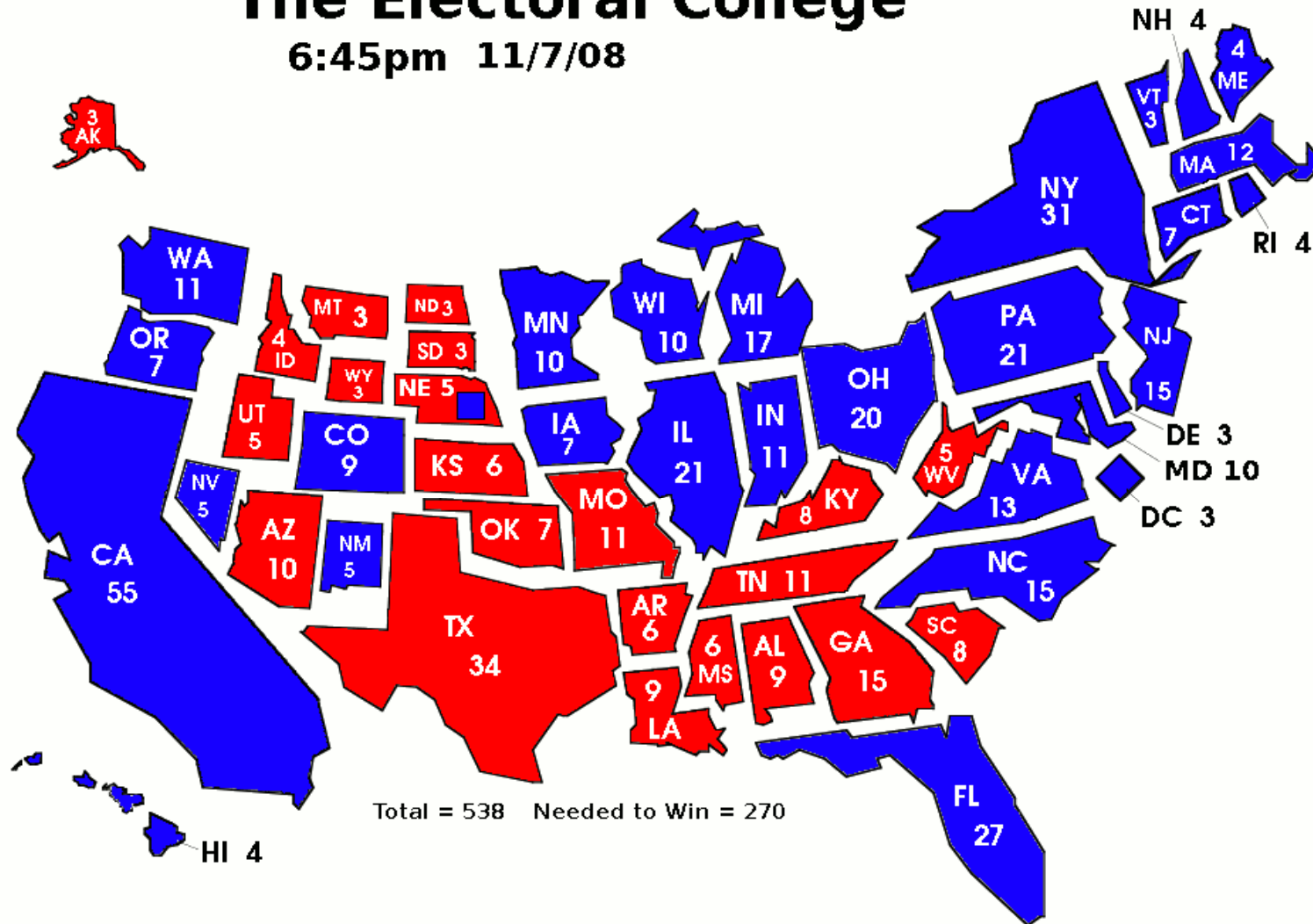
Overall



The point is this: for all its flaws, and complexities, the Electoral College withstands scrutiny remarkably well. Its amended form, dating from the 19th century, answers a number of needs of the 21st century far better than any alternative system that has been proposed. The reason is that the Electoral College is explicitly designed to require a winning candidate to appeal to large geographic areas, rather than just to voters in the population centers. The criticisms of the institutions of the EC, based on an assumption that there is a mystical “will of the people” that can be divined through elections, are misguided. There is no better system for controlling political excesses, and forcing presidential candidates to represent the entire nation, than that created out of the original wisdom and compromises of the early 19th century

The Electoral College

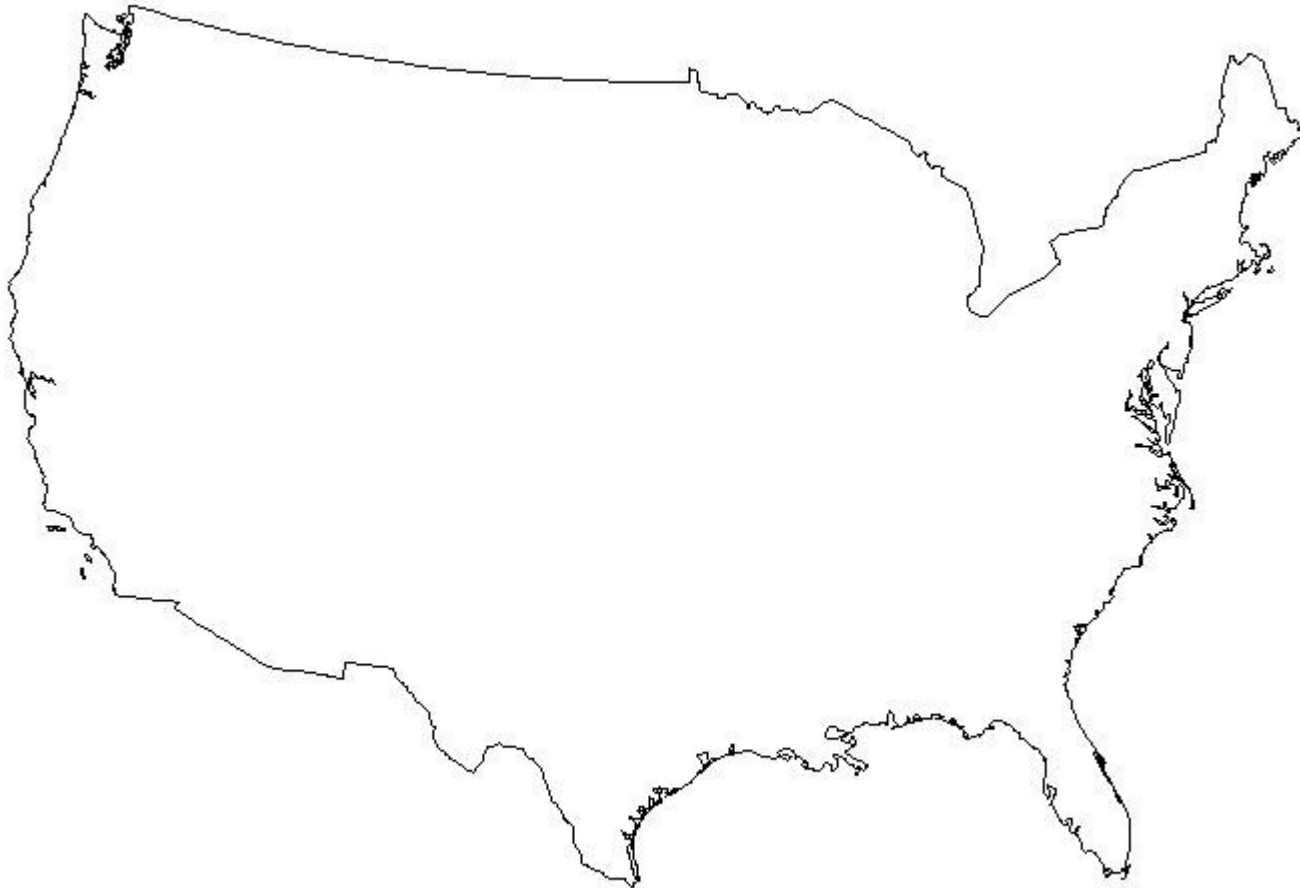
6:45pm 11/7/08



Obama: 365

McCain: 173

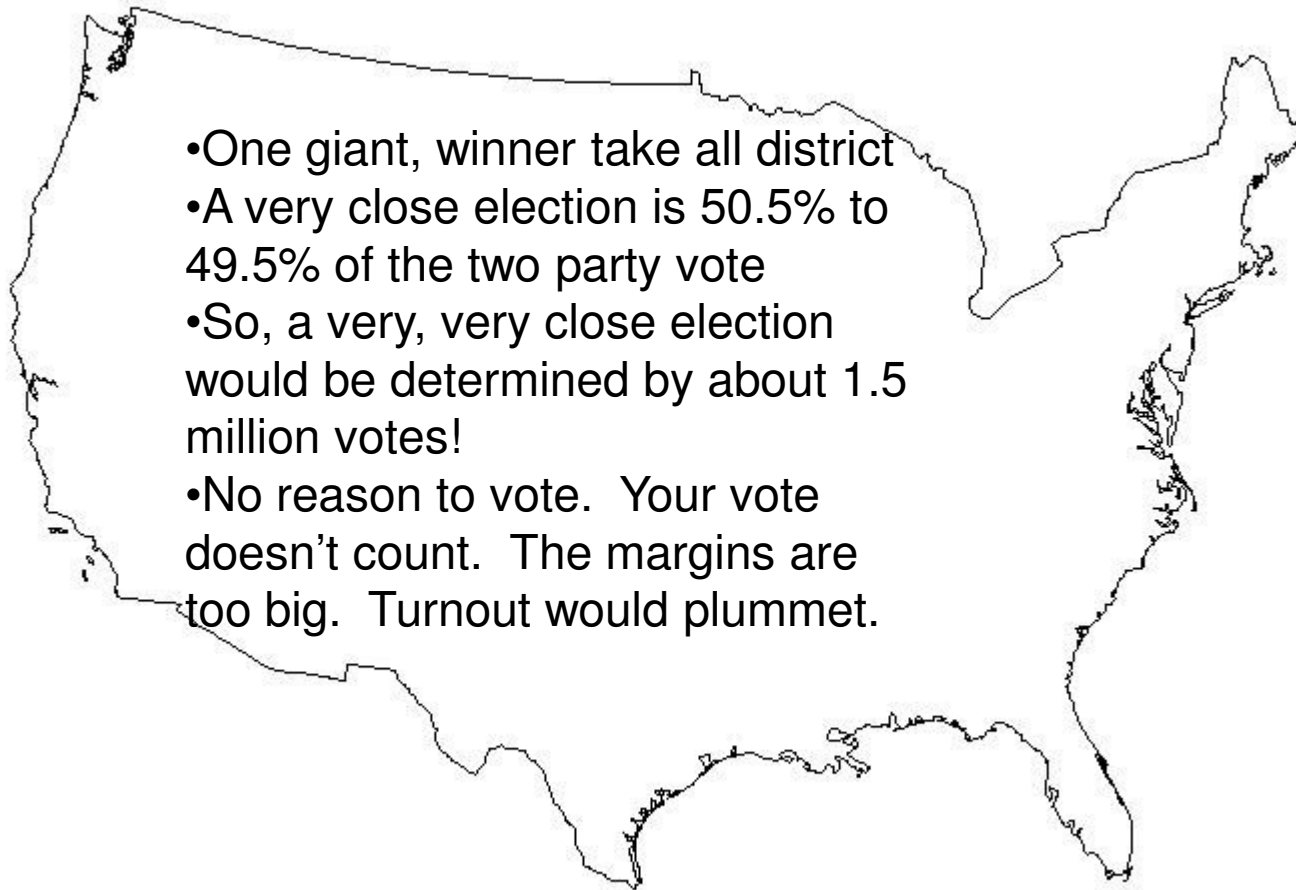
4. The Electoral Map if the Compact is Adopted



4. The Electoral Map if the Compact is Adopted

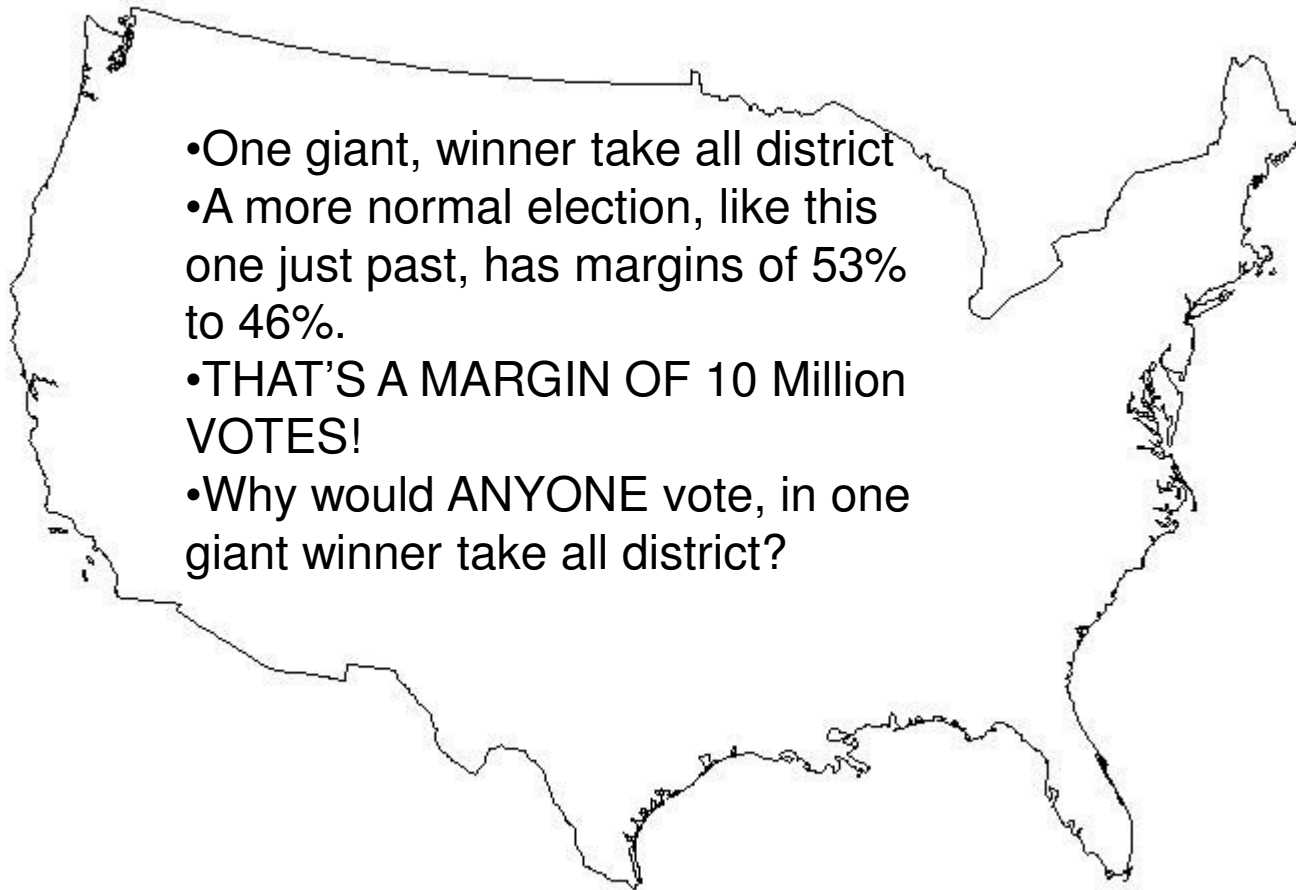


4. The Electoral Map if the Compact is Adopted



- One giant, winner take all district
- A very close election is 50.5% to 49.5% of the two party vote
- So, a very, very close election would be determined by about 1.5 million votes!
- No reason to vote. Your vote doesn't count. The margins are too big. Turnout would plummet.

4. The Electoral Map if the Compact is Adopted



- One giant, winner take all district
- A more normal election, like this one just past, has margins of 53% to 46%.
- THAT'S A MARGIN OF 10 Million VOTES!
- Why would ANYONE vote, in one giant winner take all district?

5. Review and Overview: Three features of the Electoral College



- Indirectness
- Winner Take All
- Advantages Small States

5. Summary



- The U.S. has never been, and should not be now, a democracy. Democracy is two wolves and a sheep, deciding what is for lunch.
- The U.S. is a constitutional republic, with safeguards for minorities.
- The Electoral College ensures that our Presidents cannot appeal just to the coasts, or just to the cities.
- The Electoral College prevents revolutions, and broadens the base of Presidents
- Most importantly, the EC raises turnout, and interest in elections, dramatically. The Compact is a TERRIBLE idea. Not a bad idea. TERRIBLE.