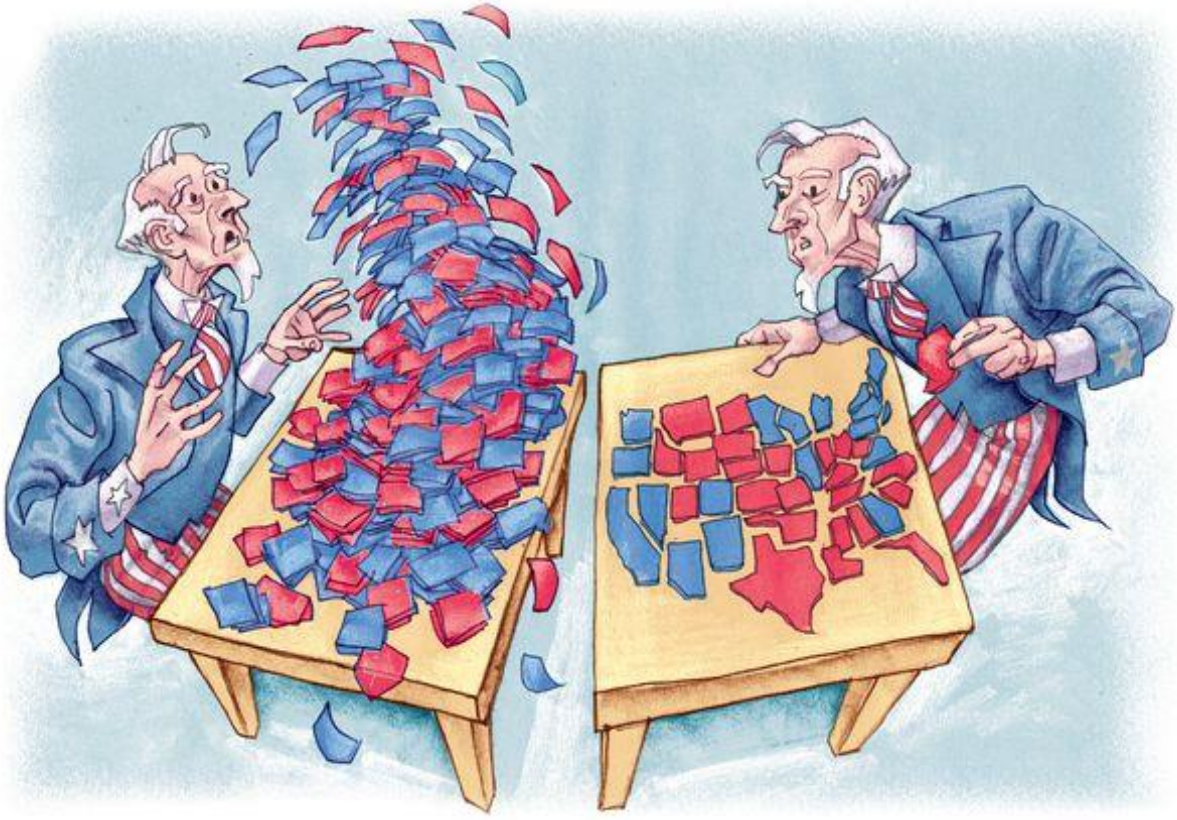
The Electoral College Saved the Election

From the 2020 primaries to the post-election furor,
the founders' system of election by states proved its democratic value.

By Christopher DeMuth; *The Wall Street Journal*; January 9, 2021



Scholars, pundits, and progressives widely despise the Electoral College. They think it antiquated, irrational, and undemocratic and argue for scrapping it in favor of a national popular vote.

But in 2020, when many hallowed American institutions submitted to street demonstrations and violence, the Electoral College proved a steadfast guardian of our democracy. It can't solve our problems on its own, but has given us a measure of stability to try for ourselves. A national popular election in 2020 would have made our problems immeasurably worse.

The essential feature of the Electoral College is voting for president by states. Each state has electoral votes equal to its delegation in the U.S. Congress—representatives (one for Vermont, 14 for Michigan, 53 for California, etc.) plus two senators. State legislatures determine the "manner" of casting their electoral votes, and 48 of them allocate those votes on a winner-take-all basis to the national ticket that receives the highest state popular vote. Maine and Nebraska select two electors by statewide vote and the remainder by congressional district.

As part of this design, states manage presidential elections along with those for other offices. They establish standards and procedures for voter eligibility, candidate ballot listing, mail-in voting, and vote counting, challenges, and recounts. The Constitution sets Inauguration Day as January 20; federal statutes set a uniform Election Day in early November and a careful sequence of intermediate dates—for states to certify their election results and then cast their electoral votes in December, and for their receipt by a joint session of Congress on January 6. To be elected president, a candidate must receive a majority of the electoral votes—at least 270 of the total 538.

Electoral votes are cast individually by electors, who gather in their state capitals in December. The Constitution's framers conceived of electors as intermediaries between voters and candidates, but political parties soon assumed this role, choosing party stalwarts as electors pledged to their candidates. That has made the Electoral College assemblies largely ceremonial (there have been occasional "faithless electors," but states can replace or penalize them). Still, the newspapers ran many stories about electors who trekked to their state capitals to cast their votes on December 14—diligently engaged in a constitutional practice that runs back to the election of George Washington in 1789.

The main complaints against the Electoral College are that it can elect someone who didn't win the nationwide popular vote and that it causes candidates to campaign heavily in "battleground states" while ignoring those they think they are certain to carry or not. The winner almost always finishes first in the popular vote but has failed to do so a few times, including in 2000 and 2016.

These are certainly problems, but all election systems have problems, national popular vote included. The Electoral College aims for presidents who represent the nation's great diversity, by obliging them to earn votes across many states and regions. It

frequently bestows a broad-based majority mandate on a candidate who has won only a plurality of the national popular vote, which is particularly important in messy elections with three or more candidates. Abraham Lincoln received only 40% of the popular vote in 1860—but 59% of the Electoral College. Richard Nixon in 1968 won 43% of the popular vote but 56% of the Electoral College, and Bill Clinton in 1992 won 43% of the popular vote but 69% of the Electoral College.

Election by national popular vote would dispense with the need for continental diversification. Campaigns would focus on large, voter-rich metropolitan areas and media markets, and on appeals to national demographic and occupational groups. Presidential candidates wouldn't need to immerse themselves in local issues. States, battleground or not, would disappear from the electoral calculus. The federal government would displace the states in regulating voter and candidate qualifications, voting requirements, and election procedures.

A national popular vote would turn America into a multiparty democracy. The two-party system, which took form as soon as Washington left the stage, is an artifact of the Electoral College and the states' winner-take-all rules: Third parties have no chance of winning the electoral vote, and symbolic parties (the Libertarians) and personal crusaders (Ross Perot, Ralph Nader) hurt the major-party candidate closest to their own views. To achieve real influence, issue-driven groups make peace with one or both of the major parties, knowing that their candidates will need to compete for the nation's political center in the general election. With a national popular vote, ideological movements and ambitious personalities would seek independent electoral mandates through distinctive, unmuddled parties. Incentives for party creation would be reinforcing: Each additional party would reduce the popular plurality needed to win the White House.

This problem has been a perennial stumbling block for national popular vote advocates. Their standard solution is a runoff election between the top two candidates. But a second national election would be costly and polarizing. Candidates would differentiate themselves with adamant appeals in the first election, and then, in the period before the runoff, bargain with the two frontrunners for support in exchange for cabinet appointments and policy commitments. But without a runoff, we are left with the

miserable prospect of presidents with narrow parochial pluralities in elections with large majorities voting for others.

In 2020, the Electoral College began showing its stuff in March, when Joe Biden, who had done poorly in early primaries, suddenly emerged from a pack of far more vivid candidates to become the presumptive Democratic nominee. Party elders, led by Barack Obama, realized the key to the general election would be moderate suburban voters, including Trump-weary Republicans—many of whom were terrified of Bernie Sanders's socialism and Elizabeth Warren's economic populism. Mr. Biden's opponents soon abandoned their campaigns.

A national popular vote would have accentuated rather than moderated the zealous enthusiasms roiling the Democratic Party. Mr. Sanders, Ms. Warren, and Mike Bloomberg could have run as standard-bearers for their own parties in November, with bold platforms and energized followers clashing with each other and with Mr. Biden. With a multicandidate race looming, with or without a runoff, others would have been tempted to join the fray—perhaps Pete Buttigieg as millennial problem-solver, Tom Steyer as Green Party candidate, or Kamala Harris as Black Lives Matter champion.

These particulars are pure speculation. The important point is that the Electoral College consolidated and steadied a raucous, unsettled political situation, while a national popular vote would have given rein to the divisions and confusions of a stressed-out nation, including those in the Republican Party. Mr. Biden presented a public face of moderation, someone who could manage his party's left wing and calm the streets. His campaign emphasized a return to presidential normalcy.

The great puzzle of 2020 is that President Trump didn't follow the Electoral College logic. He certainly understood its power. As an outsider in 2016, he had spied a strategic minority in the Midwestern battleground states—disenchanted working-class voters, prominently white men, who had been left behind by globalization and ignored by both parties. Their pivotal role converted Mr. Trump, once a popular-vote advocate, to the Electoral College.

But he reprised his 2016 strategy without seeming to realize that circumstances had changed. His base was rock solid, and the swing voters were now the upmarket suburban moderates, especially women, in the states that had proved decisive in 2016.

Broadly speaking, these voters appreciated Mr. Trump's record on the economy and employment (before the pandemic), judicial appointments, and breakthrough policies toward China and the Middle East—but were offended by his rowdy, abusive comportment and exhausted by his incessant tweeting and 24/7 domination of national life.

The Electoral College strategy would have been for Mr. Trump to adopt a thoroughly presidential mien as an incumbent who had outfoxed a hostile political establishment, delivered many policy successes, learned from his mistakes, and earned a second term. The brilliant GOP convention in August—with its emphasis on opportunity, diversity, and faith—pointed the way to an optimistic campaign rather than an angry one. But the president stuck with his rancorous persona. He ended up doing better than in 2016 with his working-class base and with black and Latino voters—but decisively worse with suburban Republicans and independents and in middle-class communities across the battleground states.

The Electoral College—having done all it could do to mediate the campaign, and having delivered in classic fashion on Election Day—saved its strongest performance for last. In the days following the election, Mr. Trump proclaimed he had won in a landslide only to have victory snatched away by massive election fraud. Many of his supporters—well aware that the Democrats, media, and permanent government were willing to play dirty where he was concerned—rallied boisterously to his side.

The president's claims were then adjudicated over several weeks in scores of local forums by hundreds of state and local election officials and state and federal judges, in six battleground states whose initial returns had gone narrowly for Mr. Biden—Arizona, Georgia, Michigan, Nevada, Pennsylvania and Wisconsin. The Trump team won a few procedural rulings but ultimately lost every significant case, drawing sharp rebukes for the flimsiness of its claims from several judges, including Trump appointees.

As the court losses mounted, Mr. Trump called on Republican legislatures to cast their states' electoral votes directly for him, and on state governors and election officials to recalibrate their election results in his favor. In every case, he was firmly rebuffed. The states certified their final election results, and the 538 electors, meeting on December 14, elected Mr. Biden, 306–232. Their votes were counted before a joint session of

Congress on January 6-7, where vote challenges were rejected on grounds of constitutional deference to the state certifications, even as a mob of Trump partisans stormed the Capitol, incited by the president's mad claim that the session might reverse the election result.

This was the Electoral College system of diversified, independent, state-centered authority in action—steering sturdily through gales of hysteria, settling an election in an exceedingly dangerous storm. There had been more than the usual election irregularities, arising from lax procedures for mail-in voting and late counting introduced shortly before the election, and these certainly justify a commission of inquiry and tighter procedures in future elections. But if enough fraud and chicanery had existed to steal the election, hard evidence would have turned up somewhere. The most conspicuous irregularities were Mr. Trump's own egregious efforts to subvert the Electoral College's structure and procedures, which are ending his presidency in ruination and disgrace.

It wasn't a pretty picture, but consider the picture under a national popular vote with national election standards and procedures. Incentives for vote rigging would be nationwide rather than limited to battleground states, and any recount would have to be nationwide as well. Election administration would perforce be vested in an agency of the executive-branch, which is headed by the president. The agency might be a bipartisan commission with lengthy terms of office, but to be effective it would need a tie-breaking vote cast by an official from one party or the other (or from one of multiple parties). It would be widely assumed that the incumbent president exercised significant control—and a president who would publicly berate state legislators and governors, and the Supreme Court and his own attorney general, as Mr. Trump did, would certainly try to exert such control.

We can only guess where such a spectacle might lead. Clearly, however, the settlement of a tumultuous election against a defiant incumbent shouldn't be left to the government he leads. Even in more-normal times, a uniform national election would give Washington troublesome leverage over the succession of the country's presidency. Succession is a difficult problem in a fractious democracy, but no one has come up with a better approach than the dispersed local stewardship embodied in the Electoral College. It is, indeed, one of our strongest defenses against the centralization of power

in the federal capital and the administrative state, which is an important source of our current distempers.

Mr. DeMuth is a distinguished fellow at the Hudson Institute. This article draws on his essay, "The Electoral College by Dawn's Early Light," appearing in the Winter 2020–21 issue of the Claremont Review of Books*.*