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The brewing attempts to game the Electoral College

By JOSHUA SPIVAK

Barack Obama's campaign manager may have to look for a new single favorite Electoral College vote to target in 2012. Nebraska's Unitary Legislature is looking to change the allocation of its Electoral College votes from a congressional district based system, which in 2008 resulted in Obama winning one of the state's five votes, to the winner take all system used by nearly every other state.

While there is only a small chance that this proposal could have an impact on the 2012 election, it does point out an issue that is now cropping up in the news every four years: Should states switch the electoral vote to "game the system" for the benefit of one party?

Switching distribution methods could be an easy game-changer. Though people think of the Electoral College as a simple winner-take-all affair, there is no mandatory system for allocating the Electoral College votes. Forty-eight states use the winner-take-all system, also known as the "Unit Rule."

The other two, Nebraska and Maine, hand out two votes to the winner of the state, and divvy up the rest based on the winner of each congressional district. Currently, the impact of this congressional district allocation is small. The two states combine for nine electoral votes, and in the current political environment, only a couple of those seats are possibly in play.

However, following the 2000 election debacle, everyone in politics is well aware that every Electoral College vote is precious. There have been blatantly political attempts to replace the unit rule in Colorado, North Carolina, and California and replace it with a district based-allocation.

In each of these cases, some members of the minority party in the state were looking to crack open the unit rule in order to grab a few (or in the case of California, possibly as much as two dozen) votes for their side. None of these proposals amounted to any action, but the threat is still out there. Initiatives are easy to get on the ballot and with enough money behind them, could easily slip through. And the results could easily flip an election.

There is good reason for the parties to be concerned about this tactic—it dates back to the 18th century. The Constitution is actually completely silent on the subject, and in those early years the states used one of three methods: winner-take-all, congressional district or having the state legislature decide how to divide the votes.

The early politicians were split on the best method of choosing electors. Some, including Thomas Jefferson, favored the localized district-based distribution. But state leaders quickly realized that the district plan deprived them of exercising the full power of their votes. The district system diluted the impact of the state's vote. Perhaps more importantly, the majority party in each state also preferred the unit rule because the party could use it to deliver the entire electoral bounty for its candidate.

Despite his ideological position, Jefferson himself benefited from such a switch, when his native Virginia transferred over to the unit rule in order to give Jefferson all of the state's

electoral votes in 1800, when he ran successfully for president. If not for that switch, John Adams would likely have won the presidency in 1800.

Jefferson also benefited from a similar miscalculation by the New York Federalists. The New Yorkers switched to the Unit Rule, but thanks to a shocking electoral triumph by the Aaron Burr-led Republicans, Jefferson gained all of those votes.

By 1836, all states except South Carolina (which had the Legislature apportion the vote) used the unit rule. However, there were still occasional attempts to switch back to a different plan in order to help the favored candidate. In a noteworthy example in 1892, Michigan switched to the district plan to help Grover Cleveland, and then switched back to the unit rule for the 1896 election.

So far, outside of Nebraska, we haven't heard any noise of switching. And there is actually a very good, non-ideological argument for the states to switch. Many of the big states, including California, New York and Texas are all but ignored in the presidential election. Switching them and others to the district based system would result in attention for their issues, and campaign spending, flowing to their states. That is actually what happened last time in Nebraska, which switched to the district system for the 1992 election.

But there is no other real benefit in terms of choosing the president. In fact, the district based system may be more likely to select a "wrong winner," i.e. someone who loses the popular vote but wins the general election. There is, however, a great danger to such a switch: A further blow to confidence in the system, and a greater chance that politicians try to change the rules in the middle of the game simply to benefit their own side.

If states and political actors see the benefit of switching method, then as soon as one party gains complete power in any state, it will be pushed to switch the state's Electoral College selection method to the one that best suits its preferred candidate, much like in the election of 1800. Rather than a set electoral structure, every four years would see a series of attempts to game the system.

The aftermath of the election of 2000, with both sides complaining that the other was trying to illegitimately skew the results, should have served as a wake-up call to the dangers of elections being seen as tools of post-vote political gamesmanship. But instead, it may have been a starting gun for future political figures.

While a change in Nebraska's vote won't have a great impact on the country, voters should be alert to the fact that others may be trying to do a similar move on grander scales. And letting others switch the rules to benefit one side is a certain way to damage the system.

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