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MEMORANDUM

TO: Members, Committee on State, Veterans, and Military Affairs

FROM: John F. Head

SUBJECT: Senate Bill 42

DATE: February 6, 2019

I am opposed to Senate Bill 042 for the following reasons:

1. Under this measure, a Coloradan's vote, as one of 137.5 million (the national vote in 2016), will not count for much. As is clearly intended by this ill-advised legislation, I would lose my vote as one of 2.7 million (the number of Coloradans who voted in the 2016 election) but instead be counted as one of the national popular vote. I would still have my one vote but it would count for less. Let me be clear: My vote as a Coloradan is a valuable right which I will not surrender – not so long as the Constitution protects it.

2. No doubt you have seen the attached maps which show the electoral votes in several recent elections (Exhibit A: 2016; Exhibit B: 2012; Exhibit C: 2008; Exhibit D: 2000). This is what the Constitution presently requires. If an interested party finds this lopsided voting pattern unacceptable, as I do, the response ought to be to consider who is being offered as a candidate and what policies are being promoted, instead of changing the rules so that your guy wins.

3. By changing the system as proposed, given the current political alignment, you will never see a Democratic presidential candidate campaign outside the populous states. In fact, you will have reinforced these lopsided voting patterns. The nation will have been gerrymandered, with the heavily populated urban centers carved off for the Democrats and the rest of the country left to the Republicans. Politically expedient? For sure. Constitutional? Clearly not. Healthy? I don't think so.

4. My point is demonstrated by applying the concept inherent in SB 42 to the Clinton-Trump contest:

(a) Approximately 35% or so of the registered voters will vote for a Republican or a Democrat in accordance with their registration, without the nominee even asking for their vote. Thus, with 137.5 million votes cast in 2016, Clinton would have gotten 35% of the votes (48.1 million) without doing anything.

(b) In applying the national popular vote system, so that the 65.8 million votes (which is what she actually got) would have won the election, all Clinton would have needed, to amass this number of votes on top of the rather automatic 35% baseline (48.1 million), is another 17.7 million votes from somewhere.

(c) Based upon the actual votes in 2016, she would have gotten those 17.7 million marginal votes, over and above the 35%, from just 6 states -- California, Texas, Florida, New York, Pennsylvania and Illinois. This is demonstrated by the attached Exhibit E, which shows, in yellow highlighting, the 18.3 million votes, over and above a baseline of 35%, which Clinton actually did get in the said 6 states.

(d) Under the present system, these 6 states represent 191 electoral votes but Clinton won only 104 of them. (See Exhibit F.) But, under the national popular vote system, state outcomes would be irrelevant.

(e) To be fair about it, if this analysis is valid, the states where Clinton won less than 35% must be taken into account. I have done so. It appears that Clinton got less than the baseline of 35% in 15 states, falling short by a total of 631,622 votes. (See Exhibit F.) This is less than 1% of the total number of votes that she got – in other words, peanuts. In fact, the number of votes in the said 6 states, over and above the baseline of 35%, amounted to 18.3 million, well over the 17.7 Clinton needed to carry her over the top and well in excess of her shortfall in the 15 smaller states.

(f) Texas, which went for Trump, had a total of 9.6 million votes. But, even with losing that state, Clinton got more votes in Texas than the total number of votes in the 10 smallest states. (See Exhibit F.)

(g) So, the hypothetical Democratic presidential candidate would ask, why bother with campaigning in the 15 small states when I can get all the votes I need in the 6 most populous? Good question. The answer is that a candidate, making the same calculation as I did, wouldn't.

(h) Don't like polarization? Just think what we would have if a Democratic presidential nominee had to campaign in no more than 6 states to win a national election.

5. In addition to SB 42 being a bad idea, it is also unconstitutional for the following reasons:

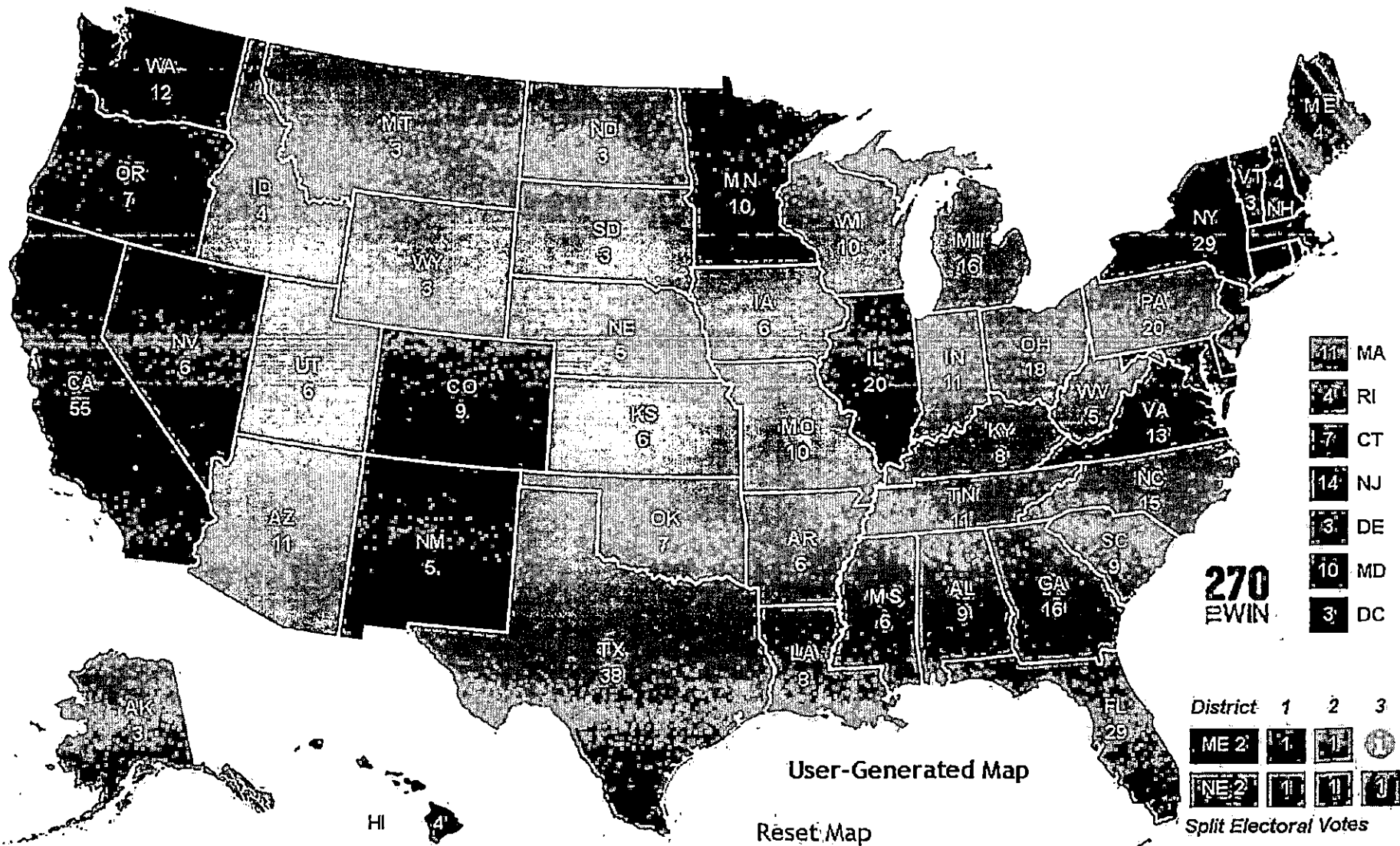
(a) Article II, Section 1, of the U.S. Constitution provides, “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress”

(b) The Twelfth Amendment changed this somewhat by specifying that, “The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate.”

(c) These Constitutional provisions require that the Colorado electors vote in a prescribed fashion for President and Vice-President. There is no loophole by which the State of Colorado, by virtue of legislation in the form of SB 42, can abrogate my vote by specifying that the 9 electoral votes from Colorado are to be cast in accordance with the national popular vote. If this work-around scheme is determined to be constitutional, then, while I may cast a ballot, I’ll be even more irrelevant than I already am.

6. My rationale for leaving the Constitution alone might be a little antique, but I suggest it operates, not only as originally intended but, in a fashion that I think important. It will help pull this country together if presidential candidates have a stake in winning the small states. As the Democrats should have learned from Clinton writing off entire sections of the country, she would have profited from a 50-state campaign. So would the rest of us, no matter who we voted for.

7. A better idea, that would make the Colorado voter’s vote count for more and count equally, is to apportion Colorado’s 9 Electoral College votes, beyond the two attributable to the senate seats, according to the vote in each congressional district – like Nebraska does. Exhibit G reflects the winning parties in 2016 by congressional districts. This would make each congressional district of equal importance, would make each voter’s vote count the same across the state and would make presidential contenders mount a campaign to secure all nine Electoral College votes. It would also encourage Democrats to nominate a candidate who can appeal to the entire country instead of just the population centers. Wouldn’t everyone be better off if presidential candidates had to earn the voters in, say, Holyoke, just like they have to earn the votes in Denver? And wouldn’t Colorado be better if the Holyoke voter’s vote had the same power as mine in Denver?



Map Updated: Jul. 20, 2017 at 22:15 UTC (6:15 PM EDT)

EXHIBIT A

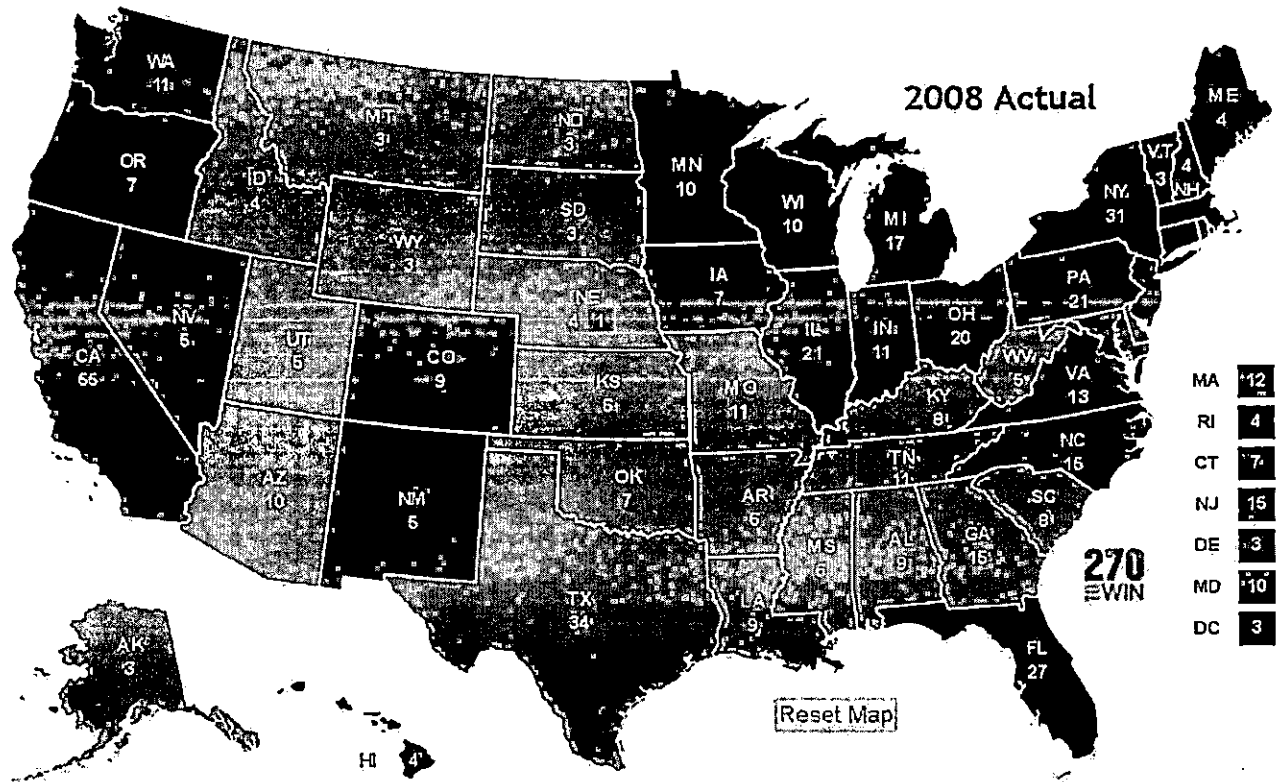


EXHIBIT C

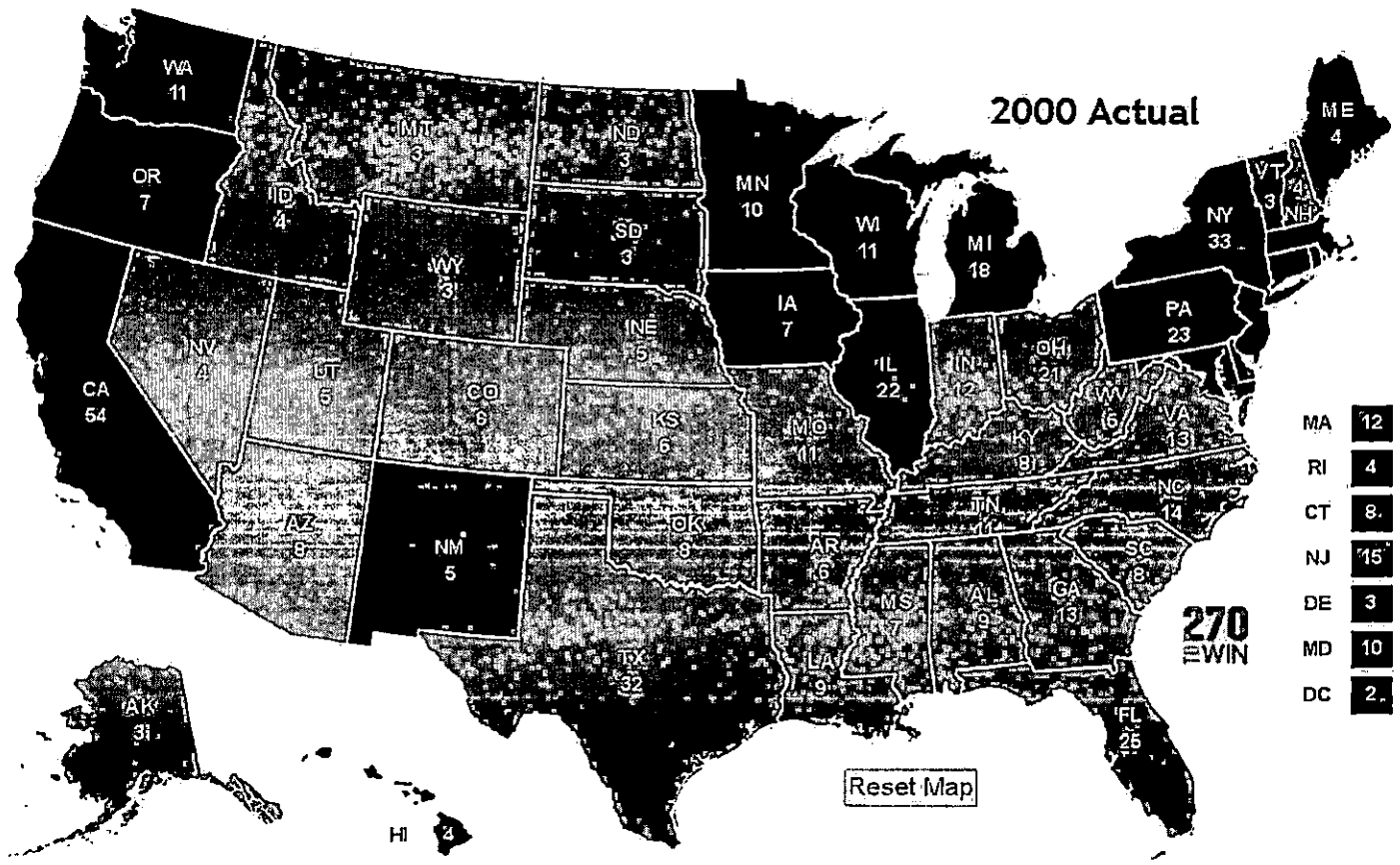


EXHIBIT D

	A	B	D	E	F	G	H	I	J	K	L	M
1		Total Votes	El Vts	Clinton votes			Trump votes			HC--Actual-35%	Margin over 35%	
2				Actual	%	El Vts	Actual	%	El Vts			
3	United States	137,537										
4	California	14,416	55	8,753,792	60.72%	55	4,483,814	31.10%	-	26%	3,708,192	5,045,600
5	Texas	9,626	38	3,877,868	40.29%		4,685,047	48.67%	36	5%	508,768	3,369,100
6	Florida	8,578	29	4,504,975	52.52%		4,617,886	53.83%	29	18%	1,502,675	3,002,300
7	New York	7,869	29	4,556,118	57.90%	29	2,819,533	35.83%	-	23%	1,801,968	2,754,150
8	Pennsylvania	6,008	20	2,926,441	48.71%		2,970,733	49.45%	20	14%	823,641	2,102,800
9	Illinois	5,719	20	3,090,729	54.04%	20	2,146,015	37.52%	-	19%	1,089,079	2,001,650
10	Ohio	5,708	18	2,394,164	41.94%		2,841,005	49.77%	18	7%	396,364	1,997,800
11	Michigan	4,713	16	2,268,839	48.14%		2,279,543	48.37%	16	13%	619,289	1,649,550
12	North Carolina	4,700	15	2,189,316	46.58%		2,362,631	50.27%	15	12%	544,316	1,645,000
13	Georgia	4,246	16	1,877,963	44.23%	-	2,089,104	49.20%	16	9%	391,863	1,486,100
14	Virginia	3,973	13	1,981,473	49.87%	13	1,769,443	44.54%		15%	590,923	1,390,550
15	New Jersey	3,665	14	2,148,278	58.62%	14	1,601,933	43.71%	-	24%	865,528	1,282,750
16	Washington	3,382	12	1,742,718	51.53%	8	1,221,747	36.12%	-	17%	559,018	1,183,700
17	Massachusetts	3,315	11	1,995,196	60.19%	11	1,090,893	32.91%	-	25%	834,946	1,160,250
18	Wisconsin	3,068	10	1,382,536	45.06%	-	1,405,284	45.80%	10	10%	308,736	1,073,800
19	Missouri	2,906	10	1,071,068	36.86%	-	1,594,511	54.87%	10	2%	53,968	1,017,100
20	Indiana	2,795	11	1,033,126	36.96%	-	1,557,286	55.72%	11	2%	54,876	978,250
21	Arizona	2,769	11	1,161,167	41.93%	-	1,252,401	45.23%	11	7%	192,017	969,150
22	Minnesota	2,738	10	1,367,716	49.95%	10	1,322,951	48.32%		15%	409,416	958,300
23	Maryland	2,737	10	1,677,928	61.31%	10	943,169	34.46%		26%	719,978	957,950
24	Colorado	2,707	9	1,338,870	49.46%	9	1,202,484	44.42%	-	14%	391,420	947,450
25	Tennessee	2,630	11	870,695	33.11%	-	1,522,925	57.91%	11	-2%	-49,805	920,500
26	South Carolina	2,233	9	855,373	38.31%		1,155,389	51.74%	9	3%	73,823	781,550
27	Alabama	2,095	9	729,547	34.82%		1,318,255	62.92%	9	0%	-3,703	733,250
28	Louisiana	2,067	8	780,154	37.74%	-	1,178,638	57.02%	8	3%	56,704	723,450
29	Oregon	1,942	7	1,002,106	51.60%	7	782,403	40.29%		17%	322,406	679,700
30	Kentucky	1,850	8	628,854	33.99%	-	1,202,971	65.03%	8	-1%	-18,646	647,500
31	Connecticut	1,586	7	897,572	56.59%	7	673,215	42.45%	-	22%	342,472	555,100

18,275,600

	A	B	D	E	F	G	H	I	J	K	L	M
1		Total Votes	El Vts	Clinton votes			Trump votes			HC--Actual-35%	Margin over 35%	
32	Oklahoma	1,555	7	420,375	27.03%	–	949,136	61.04%	7	-8%	-123,875	544,250
33	Mississippi	1,470	6	485,131	33.00%	–	700,714	47.67%	6	-2%	-29,369	514,500
34	Iowa	1,454	6	653,669	44.96%	–	800,983	55.09%	6	10%	144,769	508,900
35	Kansas	1,243	6	427,005	34.35%	–	671,018	53.98%	6	-1%	-8,045	435,050
36	Arkansas	1,241	6	380,494	30.66%	–	684,872	55.19%	6	-4%	-53,856	434,350
37	Utah	1,234	6	310,676	25.18%	–	515,231	41.75%	6	-10%	-121,224	431,900
38	Nevada	1,195	6	539,260	45.13%	6	512,058	42.85%		10%	121,010	418,250
39	Nebraska	844	5	284,494	33.71%	–	495,961	58.76%	5	-1%	-10,906	295,400
40	New Mexico	765	5	385,234	50.36%	5	319,667	41.79%	–	15%	117,484	267,750
41	Maine	748	4	357,735	47.83%	3	335,593	44.87%	1	13%	95,935	261,800
42	West Virginia	723	5	188,794	26.11%	–	489,371	67.69%	5	-9%	-64,256	253,050
43	Idaho	714	4	189,765	26.58%	–	409,055	57.29%	4	-8%	-60,135	249,900
44	New Hampshire	698	4	348,526	49.93%	4	345,790	49.54%	–	15%	104,226	244,300
45	Montana	521	3	177,709	34.11%	–	279,240	53.60%	3	-1%	-4,641	182,350
46	Rhode Island	464	4	252,525	54.42%	4	180,543	38.91%		19%	90,125	162,400
47	Hawaii	460	4	266,891	58.02%	3	128,847	28.01%	–	23%	105,891	161,000
48	Delaware	417	3	235,603	56.50%	3	185,127	44.39%	–	21%	89,653	145,950
49	District of Columbia	380	3	282,830	74.43%	3	12,723	3.35%	–	39%	149,830	133,000
50	South Dakota	362	3	117,458	32.45%	–	227,721	62.91%	3	-3%	-9,242	126,700
51	North Dakota	362	3	93,758	25.90%	–	216,794	59.89%	3	-9%	-32,942	126,700
52	Alaska	308	3	116,454	37.81%	–	163,387	53.05%	3	3%	8,654	107,800
53	Vermont	305	3	178,573	58.55%	3	95,369	31.27%		24%	71,823	106,750
54	Wyoming	277	3	55,973	20.21%	–	174,419	62.97%	3	-15%	-40,977	96,950
55				65,853,514		227	62,984,828		304			
56												
57	Notes:	Columns K and L represent 35% of the total Clinton vote in each state--these are the votes that a candidate can expect to get merely because of straight-line voting										
58		Column M represents the difference between the actual Clinton vote in each state minus the baseline of 35%										

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3	United States	137,537										
4	District of Columbia	380	3	282,830	74.43%	3	12,723	3.35%	-	39%	149,830	133,000
5	Maryland	2,737	10	1,677,928	61.31%	10	943,169	34.46%	-	26%	719,978	957,950
6	California	14,416	55	8,753,792	60.72%	55	4,483,814	31.10%	-	26%	3,708,192	5,045,600
7	Massachussets	3,315	11	1,995,196	60.19%	11	1,090,893	32.91%	-	25%	834,946	1,160,250
8	New Jersey	3,665	14	2,148,278	58.62%	14	1,601,933	43.71%	-	24%	865,528	1,282,750
9	Vermont	305	3	178,573	58.55%	3	95,369	31.27%	-	24%	71,823	106,750
10	Hawaii	460	4	266,891	58.02%	3	128,847	28.01%	-	23%	105,891	161,000
11	New York	7,869	29	4,556,118	57.90%	29	2,819,533	35.83%	-	23%	1,801,968	2,754,150
12	Connecticut	1,586	7	897,572	56.59%	7	673,215	42.45%	-	22%	342,472	555,100
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14	Rhode Island	464	4	252,525	54.42%	4	180,543	38.91%	-	19%	90,125	162,400
15	Illinois	5,719	20	3,090,729	54.04%	20	2,146,015	37.52%	-	19%	1,089,079	2,001,650
16	Florida	8,578	29	4,504,975	52.52%	-	4,617,886	53.83%	29	18%	1,502,675	3,002,300
17	Oregon	1,942	7	1,002,106	51.60%	7	782,403	40.29%	-	17%	322,406	679,700
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24	Pennsylvania	6,008	20	2,926,441	48.71%	-	2,970,733	49.45%	20	14%	823,641	2,102,800
25	Michigan	4,713	16	2,268,839	48.14%	-	2,279,543	48.37%	16	13%	619,289	1,649,550
26	Maine	748	4	357,735	47.83%	3	335,593	44.87%	1	13%	95,935	261,800
27	North Carolina	4,700	15	2,189,316	46.58%	-	2,362,631	50.27%	15	12%	544,316	1,645,000
28	Nevada	1,195	6	539,260	45.13%	6	512,058	42.85%	-	10%	121,010	418,250
29	Wisconsin	3,068	10	1,382,536	45.06%	-	1,405,284	45.80%	10	10%	308,736	1,073,800
30	Iowa	1,454	6	653,669	44.96%	-	800,983	55.09%	6	10%	144,769	508,900
31	Georgia	4,246	16	1,877,963	44.23%	-	2,089,104	49.20%	16	9%	391,863	1,486,100

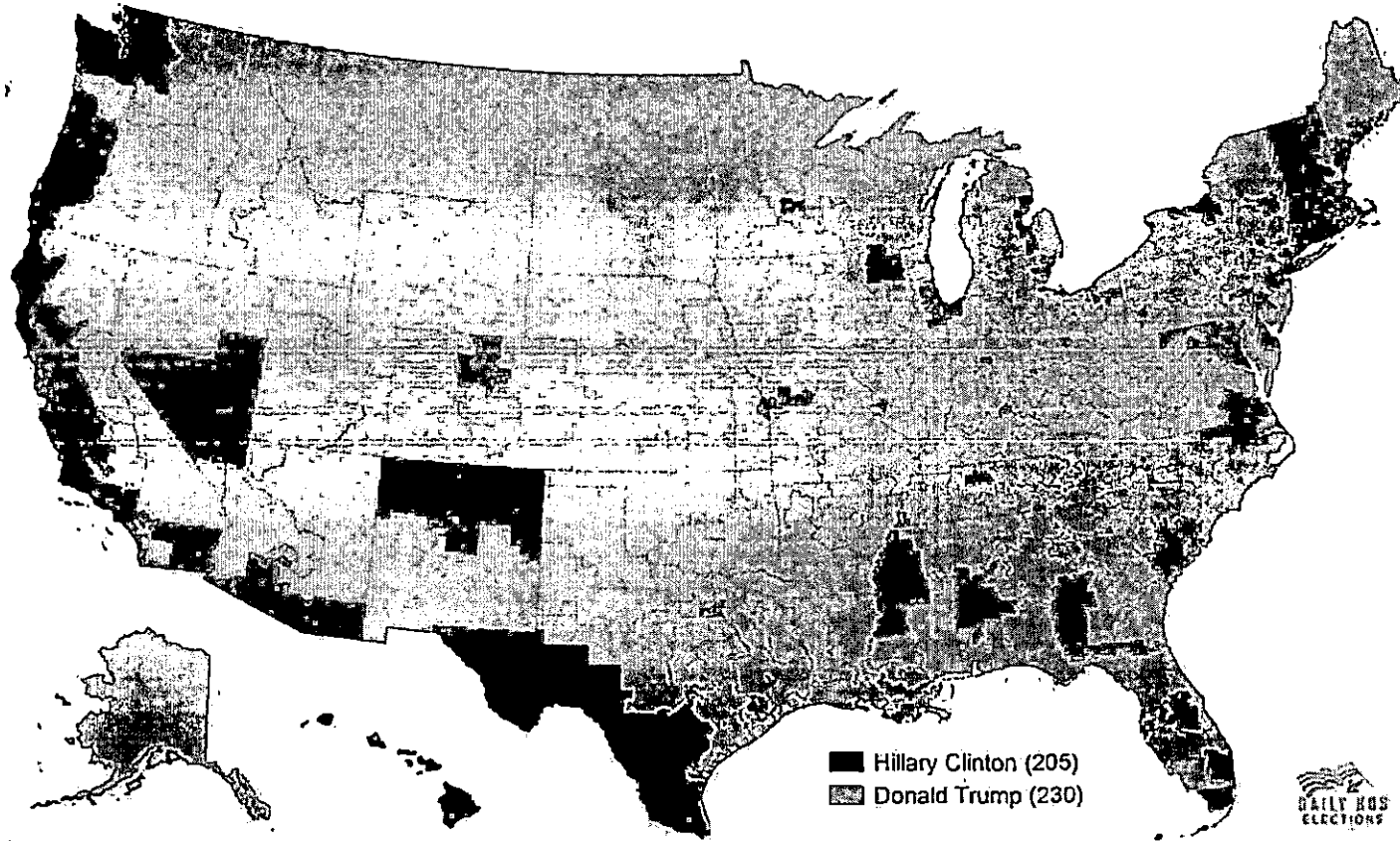
	A	B	D	E	F	G	H	I	J	K	L	M
1		Total Votes	El Vts	Clinton votes			Trump votes			HC--Actual-35%	Margin over 35%	
32	Ohio	5,708	18	2,394,164	41.94%	-	2,841,005	49.77%	18	7%	396,364	1,997,800
33	Arizona	2,769	11	1,161,167	41.93%	-	1,252,401	45.23%	11	7%	192,017	969,150
34	Texas	9,626	38	3,877,868	40.29%	-	4,685,047	48.67%	36	5%	508,768	3,369,100
35	South Carolina	2,233	9	855,373	38.31%	-	1,155,389	51.74%	9	3%	73,823	781,550
36	Alaska	308	3	116,454	37.81%	-	163,387	53.05%	3	3%	8,654	107,800
37	Louisiana	2,067	8	780,154	37.74%	-	1,178,638	57.02%	8	3%	56,704	723,450
38	Indiana	2,795	11	1,033,126	36.96%	-	1,557,286	55.72%	11	2%	54,876	978,250
39	Missouri	2,906	10	1,071,068	36.86%	-	1,594,511	54.87%	10	2%	53,868	1,017,100
40	Alabama	2,095	9	729,547	34.82%	-	1,318,255	62.92%	9	0%	-3,703	
41	Kansas	1,243	6	427,005	34.35%	-	671,018	53.98%	6	-1%	-8,045	
42	Montana	521	3	177,709	34.11%	-	279,240	53.60%	3	-1%	-4,641	
43	Kentucky	1,850	8	628,854	33.99%	-	1,202,971	65.03%	8	-1%	-18,646	
44	Nebraska	844	5	284,494	33.71%	-	495,961	58.76%	5	-1%	-10,906	
45	Tennessee	2,630	11	870,695	33.11%	-	1,522,925	57.91%	11	-2%	-49,805	
46	Mississippi	1,470	6	485,131	33.00%	-	700,714	47.67%	6	-2%	-29,369	
47	South Dakota	362	3	117,458	32.45%	-	227,721	62.91%	3	-3%	-9,242	
48	Arkansas	1,241	6	380,494	30.66%	-	684,872	55.19%	6	-4%	-53,856	
49	Oklahoma	1,555	7	420,375	27.03%	-	949,136	61.04%	7	-8%	-123,875	
50	Idaho	714	4	189,765	26.58%	-	409,055	57.29%	4	-8%	-60,135	
51	West Virginia	723	5	188,794	26.11%	-	489,371	67.69%	5	-9%	-64,256	
52	North Dakota	362	3	93,758	25.90%	-	216,794	59.89%	3	-9%	-32,942	
53	Utah	1,234	6	310,676	25.18%	-	515,231	41.75%	6	-10%	-121,224	
54	Wyoming	277	3	55,973	20.21%	-	174,419	62.97%	3	-15%	-40,977	
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57	Notes:	Columns K and L represent 35% of the total Clinton vote in each state--these are the votes that a candidate can expect to get merely because of straightline voting										
58		Column M represents the difference between the actual Clinton vote in each state minus the baseline of 35%										

15 States

63,672 votes

be low baseline

2016 Congressional Districts by Winning Presidential Party



Despite losing the national popular vote by 2.1 percent, Donald Trump carried 230 congressional districts and Hillary Clinton just 205