

THE STATE OF CONNECTICUT
JOINT COMMITTEE ON GOVERNMENT ADMINISTRATION AND ELECTIONS

*An Act Adopting the Interstate Compact to Elect the
President of the United States by National Popular Vote*

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Overview

I urge you to vote against the National Popular Vote legislation. It would create many new logistical and legal problems for our presidential election process. It would also effectively eliminate the Electoral College, an institution that has historically protected small to mid-sized states such as Connecticut. The 2016 election was admittedly tough in many ways, but the Electoral College is one of the few remaining marks of sanity in our presidential election system. Eliminating it would simply spread the problems of the primary system to the general election process.

Problems Created by NPV's Compact

- Differing States' Laws. NPV attempts to combine 51 different state (and D.C.) election processes together to obtain one national outcome. This will create chaos, litigation, and confusion. One of the three constitutional lawyers who originally proposed an NPV-like mechanism has conceded this difficulty.
- Disenfranchised Voters. Some voters may be disenfranchised because their votes will be counted in different ways, depending on their state of residence.
- Legal Issues. NPV's end run around the constitutional amendment process creates constitutional and legal problems, which will be the subject of much litigation.

Modern Benefits of the Electoral College

- The Benefits of Federalism. Presidential candidates must build national coalitions of voters. Historically speaking, the candidate with the broadest coalition will win. The process discourages presidential candidates from focusing too exclusively on one region, state, or special interest group.
- Moderation and Compromise. The Electoral College encourages Americans to work together, across state lines. A direct election system, by contrast, would result in multi-party presidential races, a fractured electorate, increasingly extremist third-party candidates, and constant recounts.
- Stability and Certainty in Elections. The Electoral College typically produces quick and undisputed outcomes. Any problems are isolated to one or a handful of states. Fraud is minimized because it is hard to predict where stolen votes will matter.

There are many other differences among states' laws: States differ in whether they allow felons to vote. They differ in their requirements for ballot qualification. States have different criteria for what triggers recounts within their borders. These differences could cause a whole host of problems. What if the national total is close—close enough to warrant a recount—but a recount can't be conducted because the margins in individual states were not close? Or perhaps recounts are conducted, but only in two or three states, each with a different idea of how to count a hanging chad. Perhaps other states see what is going on and choose to conduct recounts that their statutes previously deemed optional. The process would become politicized.

One well-respected constitutional lawyer, Prof. Vikram David Amar, has acknowledged the real dangers created by these issues. Amar's opinion is important: NPV is based upon an idea that he and two other professors proposed in 2001. Yet Amar notes that a "problem I see in the current National Popular Vote bill is that it does not guarantee a true national election with uniform voter qualification, voter mechanics, and vote-counting standards. Absent such uniformity, some states might have incentives to obstruct or manipulate vote counts."

Additional problems are created by the fact that NPV gives the presidency to the candidate winning *any* plurality. NPV is not looking for a majority winner. It is not even looking for a minimum plurality. Thus, a candidate could win with only 15 or 20 percent of votes nationwide.

Such an idea sounds far-fetched today, with America's two-party system firmly in place. But if elimination of the Electoral College undermines the two-party system, as many believe it will, then such results are entirely possible.

But it gets even worse. Under this scheme, Connecticut could be forced to award its entire slate of electors to a candidate who was not on its ballot. By the terms of the NPV compact, this candidate could be entitled to personally appoint the seven electors who will represent Connecticut in the Electoral College vote. He could even appoint people from out-of-state, if he thought they were more likely to be faithful to him in the Electoral College vote.

Finally, remember that NPV's compact is a temporary solution—easy to join and unjoin, by its own terms—as opposed to a constitutional amendment, which would be a relatively permanent solution. Imagine that NPV has just enough states to be operable during the 2020 election. The presidential campaigns are proceeding on the assumption that a national direct election will be in place on Election Day. But in late June, Massachusetts gets worried that the Republican will win the national popular vote. In disgust, its legislature decides to pull out of NPV's compact. Suddenly, NPV no longer has enough states to proceed. The country is again hosting a normal presidential election with the Electoral College in place. Well, unless some other state changes its mind and swiftly adopts NPV for purely political, partisan reasons.

This kind of flip-flopping back and forth is not good for the stability of the country or its presidential election system.

There are many other legal and constitutional issues created by NPV's compact: Is its interstate compact an illegal end-run around the constitutional amendment process? Will the compact require congressional approval? Does NPV's entire scheme fail under Court precedents such as

Why was this year so bad? Usually, voters seem somewhat constrained by the knowledge that a candidate must eventually go on to win the electoral vote in the general election. But last year, emotion took over. Republican voters have been irate with their leaders and angry with D.C. The populist aspect of the primaries allowed divisiveness, anger, and single-issue voting to be rewarded. Voters got swept up in their anger and forgot the real goal: to find a presidential candidate who can unify as many people as possible.

Unfortunately, Democrats forgot this goal, too. Hillary Clinton had legal and other problems that caused many parts of the country to distrust her.

In other words, neither party nominated a unifying figure. One party lost the election. The other didn't win so much as it avoided losing. Both parties will thrive again as soon as they remember that the Electoral College rewards coalition-building, first and foremost. Eliminating the Electoral College is the complete opposite of what we need right now. We need to *reinforce* incentives to unify and build coalitions, not eliminate them. The primaries should be made to look more like the Electoral College, not the other way around.

We've been here before. More than 100 years ago, the Electoral College proved its ability to heal divides.

In the years after the Civil War, the country was divided. Democrats were strong in the South, but they couldn't win presidential elections until they figured out how to obtain the votes of some non-southerners. The strengths of Republicans were reversed. Over time, the incentives inherent in the presidential election process helped to heal some of the divide between North and South. The parties were forced to reach out to a wide variety of voters, whether they wanted to or not. Such coalition-building and inclusiveness is healthy for our country.

Conclusion

If we effectively eliminate the Electoral College, as NPV proposes, then we are turning our general election process into something that too closely mirrors our failed and divisive primary system. We'd be dismantling an incentive structure that has historically pushed our country toward healing in difficult times. Reform in the election system is necessary, but that reform should be implemented in the primary process. The Electoral College should be preserved.

I urge you to vote against the National Popular Vote legislation that has been proposed.