



Written by [Joe Wolverton, II, J.D.](#) on January 31, 2016

Arizona Legislature Considering Bills to Bypass Electoral College

In due course, the license and lawlessness of democracy produces mob rule.

— Polybius, *Histories*, Book VI

A bill being considered by the Arizona state legislature would call for a radical change in the U.S. Constitution's process of electing a president.

Republican and Democrat members of the state House and Senate have united to support a pair of bills (HB 2456 and SB 1218) that would authorize the state to join a "Compact of States" for the purpose of contributing Arizona's 11 electoral votes to the winner of the National Popular Vote (NPV). The compact would effectively abolish the electoral college established by our Founding Fathers in the Constitution.



Currently, 10 states and Washington, D.C., have signed on to the agreement to bypass the electoral college and elect the president by way of a direct election by the people.

Constitutionalists in the Grand Canyon State have called for immediate action, as the majority of representatives in both houses of the state legislature appear to be backing the bills.

Despite minor differences in the various NPV bills being pushed through the state governments, there are a few aspects common to all of them. First, a member state shall hold presidential elections by statewide popular vote. Second, the chief election official of the state is required to certify the results of the election and report the final vote tally to his colleagues in the other members of the compact. Third, an official shall determine the "national popular vote totals" for each candidate in each state (even those not participating in the scheme). Finally, the electoral votes of each signatory state are awarded to the candidate who wins the national popular vote count.

The compact specifies that it shall take effect only after enactment of NPV legislation has occurred in states with a combined number of electoral votes equal to a controlling majority (currently 270). Should this occur, it would mean that whoever wins the national popular vote would become president.

In a document entitled "Every Vote Equal," published by National Popular Vote, Inc., the authors proclaim their supposed plan for dealing with the Electoral College:

The Electoral College would remain intact under the proposed compact. The compact would simply change the Electoral College from an institution that reflects the voters' state-by-state choices (or, in the case of Maine and Nebraska, district-wide choices) into a body that reflects the voters'



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nationwide choice. Specifically, the proposed compact would require that each member state award its electoral votes to the presidential candidate who received the largest number of popular votes in all 50 states and the District of Columbia.

Despite these well-worded assurances, however, should the NPV compact become the method by which the president is elected, the Electoral College will effectively be dead.

Although, strictly speaking, the Electoral College would remain intact, it would exist in name only. Its republican, anti-democratic essence would be removed, and it would be left as a mere Potemkin structure. That is to say, it would maintain the appearance of constitutional republicanism, but be bereft of any such workings and as such unable to provide any of the protections against tyranny for which it was originally designed.

Put simply, the National Popular Vote initiative would radically alter the constitutional process for picking a president and would do so without following the method provided in the Constitution for changing that document.

This insidious plot would be frightening enough were it merely the academic musings of some apparatchik in a think tank or university. Unfortunately, there is a substantial thrust behind passage of an interstate compact wherein the signatories would covenant to abide by the letter and spirit of the National Popular Vote plan.

Originators of the NPV insist that the compact would be legal without congressional approval. The Every Vote Equal organization points to a Supreme Court decision handed down in 1893 in the case of *Virginia v. Tennessee*, which declares that congressional consent is only necessary when an agreement threatens federal supremacy. However, this decision trumps the plain language of Article I, Section 10 of the Constitution, which clearly states: "No State shall, without the Consent of Congress ... enter into any Agreement or Compact with another State."

Regardless of the populist rhetoric, though, the purpose of the NPV is simple: to push the United States in the direction of a pure democracy. This is antithetical to the intent of the framers of the Constitution and to the opinion of democracy held by most of the wisest men in history.

In *The Federalist*, No. 10, for example, James Madison wrote that a republic is able to "refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice, will be least likely to sacrifice it to temporary or partial considerations." But "democracies," he said, based on his study of history, "have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security, or the rights of property; and have, in general, been as short in their lives as they have been violent in their deaths."

A very vital aspect of the republican frame upon which our federal government is built is the so-called Electoral College. Article II, Section 1 of the Constitution sets forth the manner by which the President is to be chosen: "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."

The men who constructed our federal government zealously guarded against permitting the harmful influence of democracy to infect the inner workings of our nation. In the case of the Electoral College, the Founders intended the body of electors to be a deliberative convention of wise men brought together for the sole purpose of soberly choosing a president from among the available candidates.



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In *The Federalist*, No. 68, Alexander Hamilton explained how the method chosen by him and his colleagues of electing the president was still influenced by the will of the people:

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any pre-established body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

Regarding the decision to rely on such a body to make such an important decision, Hamilton wrote:

It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements that were proper to govern their choice. A small number of persons, selected by their fellow citizens from the general mass, will be most likely to possess the information and discernment requisite to so complicated an investigation.

It was peculiarly desirable, to afford as little opportunity as possible to tumult and disorder. This evil was not least to be dreaded in the election of a magistrate, who was to have so important an agency in the administration of government. But the precautions which have been so happily concerted in the system under consideration, promise an effectual security against this mischief.

Finally, by eliminating the electoral college, the NPV simultaneously repeals the Tenth Amendment by effectually erasing states' boundaries along with those states' sovereignty.

If each state instead possessed a number of electoral votes equal only to the size of its delegation in the House, then California would have 53 electoral votes instead of 55 and Delaware would have one electoral vote instead of three. But the design conceived by the Founders skews representation in the Electoral College to the benefit of the smaller states, which like the larger states, are sovereign in their own spheres.

With the Iowa caucus coming up on Monday, every presidential contender is working his way through the Hawkeye State making his case to potential voters. Should the NPV become the law, however, the frequent trips to Iowa, New Hampshire, and other less populous states would end, essentially disenfranchising millions of middle class Americans.

Candidates wouldn't need to spend time and money in sparsely populated "fly over" states because NPV would elect the candidate who wins the most votes, thus the candidate would need only to woo voters in urban areas, ignoring those citizens living between the two coastal megalopolises.

The NPV bill pending in the Arizona state House of Representatives will be heard by the House Elections Committee on Monday, February 1 at 10:00 a.m. (Mountain Standard Time).

Photo: Arizona state flag with American flag



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