



Written by [Steve Byas](#) on March 8, 2019

## Delaware Senate Votes to Circumvent Electoral College

“We formed the Constitution for a reason and it has worked well for 250 or whatever years. Why would try to tinker with it or go around it?”

That question was posed by Hank McCann, a Republican Party official in Kent County, Delaware, in response to Thursday’s vote in the State Senate to add Delaware to the list of states joining an interstate compact to — as McCann so aptly put it, “go around” the Constitution. In a 14-7 vote, the Delaware Senate vote to enter into the agreement with other states to award their presidential electoral votes to the winner of the *national* popular vote, rather than by their state’s popular vote. In other words, the voters of a state could give 60 percent of their vote to one party’s candidate, but if another party’s candidate received more popular votes nationally, they would have to cast their electoral votes for a candidate who did not carry their state.



The “compact” is called the National Popular Vote (NPV). It would go into effect when enough states have joined it to be able to cast 270 or more electoral votes — a majority of the 538-member Electoral College — to determine the outcome of the presidential election, regardless of what the other states not in the compact think.

Presently, the U.S. Constitution stipulates that each state chooses electors, who then choose the president of the United States. Presently all states award their electoral votes based on the popular vote in their state. Although the term Electoral College does not appear in the Constitution, Alexander Hamilton described the system of choosing the president by electoral votes as “excellent,” and noted that it was the one decision reached at the 1787 Constitutional Convention that was without controversy.

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The Constitutional Convention also provided a way to make changes in the Constitution, known as the amendment process. All 27 amendments to the Constitution have been proposed by a two-thirds vote of each house of Congress, and 26 have been ratified by three-fourths of state legislatures. One amendment was ratified by a second method — state conventions. And since the Constitution provides that the president is to be chosen by the electoral vote system, any change to the Electoral College method would require an amendment to the Constitution. Because it is highly unlikely that such an amendment could ever get two-thirds vote of Congress and be ratified by three-fourths of the states, the NPV has decided to circumvent the Constitution with a “compact” of states.



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Article I, Section 10 of the Constitution clearly states, “No state shall, without the consent of Congress ... enter into any agreement or compact with another state.” Despite this clear wording, the proponents of the NPV have been able to push their proposal through 11 states (and the District of Columbia) that usually support the Democratic candidate for president, representing 181 of the needed 270 votes to elect a president.

One opponent in the Delaware Senate, Dave Lawson, said the agreement turns his state’s electoral votes over to mob rule. He did not buy the argument that the compact would be legal under the Constitution, saying, “That is absolutely neutering our Electoral College. They can say they’re not doing it — but it’s one in the same.”

Sadly, however, it appears that the Delaware House of Representatives — which has voted to join the NPV compact in the past — appears poised to pass the bill this time around, too, and send it to the governor’s desk.

When the Constitution was adopted, representation in the U.S. House of Representatives was determined by the total population of the state, not the number of voters in the state. Combined with each state’s two senators, the number of representatives would determine the total number of electors for a state. Thus, a state with five representatives and two senators would be allotted seven electoral votes.

Because of this, it does not matter who a state does or does not let vote — the state would not get any advantage in the election of the president, or in their total representation in the House of Representatives by expanding the franchise. But with this proposal — the National Popular Vote compact — a state would have an incentive to expand its voting population to include teenagers, and even pre-teens, and even non-citizens, so as to increase its clout in the election of the president.

If there were a dispute as to who won the national popular vote, who would settle that question? After all, states not in the compact would have no incentive to recount their own votes. A close popular vote election would probably render the outcome impossible to determine. Yet, the NPV advocates ignore all such concerns, and are ready to circumvent the clear wording of the Constitution.

The action of the Delaware Senate, and the other states that have joined the unconstitutional NPV compact, is a clear show of disrespect for the Constitution and those states that have chosen to continue to follow its requirements. Hopefully, there will be enough states that will reject this end-run around the U.S. Constitution.

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