



National Popular Vote: Progress or Problem? (Part 2 of 3)

In Part 1 of this series, we reported on the efforts underway by many to abolish the electoral college and to have the winner of the upcoming presidential election decided by a national popular vote (NPV). Several states have passed — and many others are considering — bills that would effect a de facto destruction of the Constitution's mandate regarding the method for election of the president.



Despite minor differences in the various NPV bills, 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 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' 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.



Written by [Joe Wolverton, II, J.D.](#) on October 30, 2012

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.”

Remarkably, there has been noticeable progress on the state level toward passage of one or another version of the NPV Interstate Compact (NPVIC).

In 2007, NPVIC legislation was introduced in 42 of the 50 state legislatures. It was passed by one or more of the legislative bodies in Arkansas, California, Colorado, Hawaii (where the Governor vetoed it), Illinois, New Jersey, and North Carolina. The same year, Maryland became the first state to enter the compact after its state legislature passed the NPVIC bill and Governor Martin O’Malley signed it into law. In 2008, New Jersey became the second signatory to the agreement when Governor John Corzine signed the measure into law on January 13 of that year.

Maryland and New Jersey were quickly joined by Illinois, Hawaii (after the legislature overrode a second veto), Washington, Massachusetts, Vermont, and the electorally rich state of California. The District of Columbia entered the compact last year when the Mayor signed the NPVIC bill sent to him by the 13-member City Council.

[Justia reports](#), happily for friends of the Constitution, that “[partisan efforts in Pennsylvania and Nebraska](#) to change the way in which those two states will divvy up their blocks of electors in the so-called electoral college in the 2012 election” have failed.

Presently, the number of participants in the compact sits at eight states (and Washington, D.C.). That number could increase as NPVIC measures have been introduced in all of the remaining 42 states.

Good news for the Constitution, however, is the [report from Friday, October 26](#) that many of these attempts to put the question of adoption of the NPVIC on the ballot in every state have also “fizzled.”

For more on this issue, read the third installment of this three-part series on the movement to abolish the electoral college. Part 3 will be published Wednesday, October 31.

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