



Popular Election of President: A Constitutional Consideration (Part 3 of 3)

As we reported in the earlier installments in this series, [ABC News is reporting](#) that scholars and pundits are once again pushing for the abolition of the Electoral College. They insist that the electoral college established by our Founders in the Constitution is outmoded and not in keeping with the realities of contemporary presidential politics. One proposal being promoted by those seeking to scrap the Electoral College is the National Popular Vote (NPV) initiative.



Constitutionalists will at once recognize problems in the National Popular Vote (NPV). First, let us consider the historical issues. That is to say, any democratization of the presidential election process is an affront to the express intent of the Founders. 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.

In [Federalist, Number 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 favourable 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.

If the NPVIC continues along its current trajectory, these precautions so “happily concerted” in our Constitution will be eliminated, along with the securities provided thereby to the mischief of democracy.



Written by [Joe Wolverton, II, J.D.](#) on October 31, 2012

There is another historical issue at hand. The Electoral College is part of an impressive federal arrangement invented by our Founding Fathers. The government established by them in the Constitution created a federal government with few and defined powers, while leaving the bulk of governing power in the hands of the sovereign states and the people. (As described elegantly in the [10th Amendment](#): “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”)

Furthermore, the states themselves were to be represented in the new federal government through a balanced bicameral congress composed of one house representing the people (the House of Representatives, where members are chosen according to population) and one house representing the states (the Senate, whose membership is divided equally among the states regardless of size). This intricate system was the result of a compromise known to history as the Connecticut Compromise, wherein the feud between populous states and smaller states was settled by giving to each a means of being represented equally in the legislative branch.

The relationship between the balancing of state interests in Congress and the design of the Electoral College was succinctly and superbly described by John Ryder, a member of the Republican National Committee from the state of Tennessee. In an article published in the *Washington Times* entitled “[Popular Presidential Vote Subverts Constitution](#),” Ryder wrote:

The Electoral College mirrors this arrangement by giving each state electoral votes equal to its membership in the House plus its two Senators. Thus, California gets 55 electoral votes because of its large population, but no state, even Delaware, has fewer than three electoral votes. It reflects the Founders’ compromise between large states and small states and between electing the president by Congress and electing the president directly by the people.

Bypassing the Electoral College through the proposed compact undermines that balance 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.

As the situation stands today, a successful candidate is required to build a coalition of electoral support from across the country. The frequent trips to Iowa, New Hampshire, and other less populous states witness this campaign reality. To be elected, a candidate cannot simply woo voters in urban areas while ignoring those citizens living between the two coastal megalopolises.

Should the National Popular Vote measure become the de facto law of the land, a candidate could simply spend time, money, and attention on the large cities in order to ensure garnering a plurality of votes on election day. As further explained by Ryder: “Under such an arrangement, presidential candidates would have no incentive to campaign anywhere except the major media markets in a few states. The country would, in essence, cede our presidential elections to the largest metropolitan areas, whose concerns are different from those of other areas of the country.”

Then, there is the issue of voter fraud. As Election Day draws nearer, many are coming to realize that [voter fraud is more than just a “myth.”](#) NPVIC would have the effect of rewarding voter fraud in large cities because every vote cast in such densely populated areas would be exponentially more valuable



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under the terms of the compact. As the situation stands today, however, fraudulently cast votes have an impact only on the outcome of the election in which it is illegally cast, leaving the elections in sister states wholly untainted. This would not be the case under NPV, as the popular vote would be the *sine qua non* of who is chosen to occupy the Oval Office.

Regardless of the dire warnings of those seemingly interested in setting aside the Constitution — *National Journal*, for example, declares: "[The Possibility of a Popular, Electoral Vote Split is Very Real](#)" — there are sound reasons to ignore these predictions of calamity and reject the movement toward a popularly elected president.

Our Constitution erects barriers around the states protecting them from usurpations on the part of federal authority and from the tyranny posed to them by coalitions of other states that would rob them of their sovereignty and effectual representation in the federal government. These barriers are under attack from the NPV and its advocates. Our nation is a republic, if we can keep it, and one way to avoid losing it is to reject the National Popular Vote initiatives when they are presented to us and to encourage our state legislators to do likewise.

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