

Eagle Forum Report

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A Recipe for Election Chaos

NATIONAL POPULAR VOTE BETRAYS VOTERS

Tara Ross is the author of *Why We Need the Electoral College* and *We Elect a President: The Story of our Electoral College*.

The Electoral College is on the chopping block — again. Many of those working against the institution are Democrats, driven by upset over the 2016 election. Now, however, anti-Electoral College activists are hoping to get Republicans on board with their idea.

NPV's plan will not work without the support of a few red or purple states. But don't be fooled. The Electoral College is not partisan. Anyone who strives to change it for political

purposes will be disappointed.

The legislation at issue is the so-called National Popular Vote bill. NPV asks state legislators to approve an interstate compact — a simple contract among states. Signatory states agree to award their presidential electors to the winner of the national popular vote, regardless of state outcomes. The contract would go into effect when states holding 270 electors have signed. So far, fifteen states plus Washington, D.C. (196 electors)

have agreed to the plan.

Each of those fifteen states is a blue state. How unsurprising, then, that some NPV advocates are now working to convince Republicans that elimination of the system will serve their interests. There simply are not enough blue states to get all the way up to 270 electors.

One NPV ad-

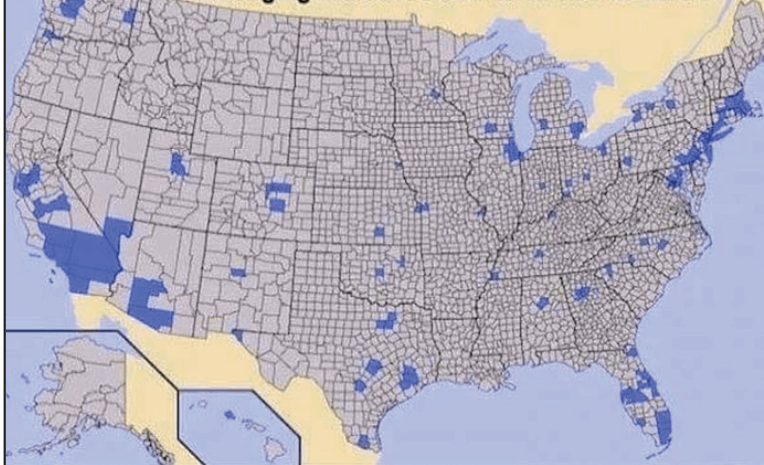
vocate has argued, for instance, that Republicans must move to a direct election system because of changing demographics: Republicans are “going to lose their ability to win the necessary swing state of Florida” soon. Another NPV consultant recently tried to scare up support by noting that the “so-called ‘blue wall’ is real.” Republicans cannot expect to win those states in 2020. Worried about the constitutionality of all this? Don't worry, another consultant soothes, “there is a conservative story in favor of a National Popular Vote.”

There is no “conservative story” for ditching constitutional provisions simply because they might work out badly for your political party in the short term. The Founders would surely be horrified at such a notion. After all, they were more concerned with what will serve the country over the course of decades and generations. They were students of history who knew that simple democracies are dangerous: Two wolves and a sheep voting on what's for dinner is unjust and tyrannical. Instead, the Founders created a republic — a government that would rely upon checks, balances, and separation of powers to pro-

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Now, imagine living in the gray zones and the blue zones voted opposite of you.

Half of the U.S. population lives in these counties



This is why we have an Electoral College.

Civics 101

tect the people from bare, emotional, or arbitrary mob rule.

The sheep should not get eaten for dinner just because he's outnumbered.

Nevertheless, NPV advocates are trying to convince Republicans and conservatives to adopt their dangerous idea based on a few demonstrably false arguments:

Myth: In the current system, only swing states are important.

Fact: Safe states are also vitally important. Democrats do *not* want to lose California, just as Republicans do *not* want to lose Texas. In 2016, Hillary Clinton took her “blue wall” states for granted. Those states got tired of being ignored, went red, and made their presence felt. No state can

state gave him the presidency. Bush could not have won without West Virginia in his corner.

Myth: Only one-sixth of the population lives in the top 100 biggest cities. NPV cannot create an overemphasis on urban areas, as some people fear. There aren't enough voters.

Fact: Real life can get in the way of mathematical theory. Candidates have limited time and resources. Urban areas will become disproportionately important in a direct election system, simply because it is the most efficient use of time and money. In 2016, Hillary Clinton received 20 percent of her vote from only two big states, New York and California — most of her votes there were from big cities. Clinton was penalized for her poor strategy under the existing system, but things will surely get worse in a new system that rewards candidates for driving up votes in such a manner.

Myth: NPV will hinder voter fraud.

Fact: It's the opposite (again). With the Electoral College in place,

dishonest actors must predict in advance where stolen votes will matter. But if one person can make such a prediction, then others can too. Problematic areas are closely watched, making fraud more difficult. Without the Electoral College, everything changes. In this new system, any vote stolen in any part of the country would make a difference. Those who are trying to prevent fraud would need to be on defense in every single precinct, nationwide. Stealing votes would become easier.

Myth: Florida will turn blue soon. Or the blue wall states will revert to voting Democrat. Republicans can not win

without these states. They need NPV.

Fact: As a matter of history, the Electoral College rewards the party that does the best job of coalition building. If Republicans want to win future elections, they should not eliminate the Electoral College. They should look inward to see what has gone awry. Why has coalition building become so tough? How can Republicans once again build strong coalitions as they did in the 1980s? This strategy works for Democrats, too.

Myth: NPV is constitutional because Article II gives the states broad authority to direct the appointment of electors.

Fact: States have broad authority to act, but Article II does not give them discretion to violate other portions of the Constitution. A state could not, for instance, hold an election in which only men get to vote. Such an election would violate the 19th Amendment. NPV's legislation would face serious constitutional challenges because its compact flies in the face of the formal constitutional amendment process laid out in Article V.

NPV's effort to effectively eliminate the Electoral College should be rejected. Americans would be better off remembering why our Founders created the Electoral College in the first place.

The delegates to the Constitutional Convention spent the summer of 1787 in an intense, philosophical discussion: How can a nation composed of sovereign states, both large and small, govern itself? How can a diverse people be represented during presidential elections? What system ensures that the voice of the people is heard, but also prevents tyranny of the majority?

The Electoral College was the answer to these questions then — and it remains the best answer today. 



be ignored. Every state matters.

Myth: In the current system, rural and small states don't matter.

Fact: It's the opposite. Consider that Mike Pence was dispatched to shore up support in the small (allegedly safe) state of Utah in October 2016 when it threatened to vote third-party. If small states are unimportant, then Republicans would not have worried about a small state going rogue. Likewise, how can West Virginia's effect on the 2000 election be explained, if small states do not matter? At the time, West Virginia was a safe blue state. George W. Bush saw an opportunity to flip it. He did, and the little

How NOT To Elect A President

by Janine Hansen, Eagle Forum National Constitutional Issues Chairman

Hillary Clinton would be our President if the National Popular Vote Compact was in force in 2016.

The NPV Compact is an end run around the Constitution. It states that once states with electoral votes equaling 270 enact the Compact, it will become the law without ever passing Congress and without being sent to the states for ratification as required to amend the U.S. Constitution.

NPV eliminates the geographic balance provided by the Elector-

ing 55 electoral votes. The Electoral College gives small states a slight advantage, but that advantage would vanish with NPV. Small states would become meaningless flyover states in presidential elections. Only big population states like California, Florida, New York, and Texas would matter.

The Electoral College protects us from vote fraud by providing 51 individual elections in the states and District of Columbia, not just one election which can more easily be sto-

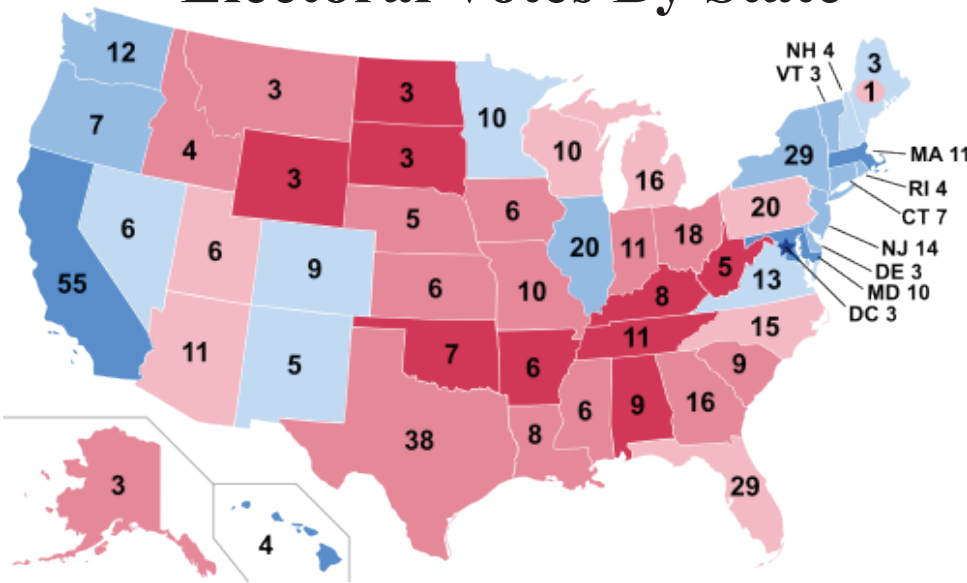
chief election officer would be *forced* to betray his state's voters to certify presidential electors for the candidate *who did not* receive his state's popular vote. This kind of manipulation and betrayal will infuriate the voters and subject those who supported such a vote-stealing scheme to their wrath.

There is no national authority for determining the accuracy of the NPV for president. The proposal requires the chief election official of each member state to determine the number of votes for each presidential slate in each state of the United States and the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a "national popular vote total" for each presidential slate.

So each Secretary of State or chief election officer would be responsible for determining the validity of the presidential election vote *in all 50 states and the District of Columbia*. Who is the arbitrator if states do not agree? There is no answer in the NPV Compact. We can expect endless court cases and no legitimate president elected for months.

Currently, the Director of the Federal Register is designated by the Archivist of the United States and is responsible for obtaining, from the states, the certificated results of the election. There is a careful process for determining the correct election results. There is nothing comparable to that well-defined and safeguarded process in the NPV Compact. How will the public be able to trust the election results by 51 chief election officers when there is no national process to certify the votes? Adding to the confusion, some states have even failed to send their election results to

Electoral Votes By State



al College, which makes all states, both small and large, liberal or conservative, important in a presidential election. A state's electoral votes are based on the same formula used for Congress which was established by the Great Compromise that brought into being the U.S. Constitution. Each state receives two electoral votes for its U.S. Senators plus one vote for each of its Congressmen. For example, a small state like Nevada has two U.S. Senators and four Congressmen equaling six electoral votes. California has two U.S. Senators plus 53 Congressmen equal-

ing 55 electoral votes. The Electoral College protects us against the instability of nationwide recounts and endless lawsuits. The NPV scheme would increase the stakes for voter registration fraud and vote fraud.

NPV sets up a system of betrayal of the voters. The proposed compact is not a pure popular vote, but a hybrid system that would keep the Electoral College in place by creating a vote-stealing scheme to compile a NPV winner. Under NPV, if a state votes for the Democrat presidential candidate, but the NPV winner is determined to be the Republican or the Independent, the Secretary of State or

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the Archivist of the United States.

What happens if, as a part of the Compact, a state's Secretary of State or chief election officer designates a different NPV winner from the one of the other states in the Compact designate? What if a chief election officer of a state wherein the popular vote differs from the NPV "winner" refuses to betray the voters in his state and does not certify the electors for the NPV "winner"? Will the other states take that state to court? Will it throw the election into the hands of the Supreme Court? What happens, as just happened in a North Carolina Congressional race, if voter fraud is discovered and the election is overturned? Does that nullify the NPV total and nullify the presidential election? Will it result in endless recounts and lawsuits? Does it delay the election of the president throwing the nation into a constitutional crisis and political chaos?

According to NPV Compact supporters, they are more than 72.6 percent towards their goal or just 74 electoral votes short of putting the Compact into effect! The following States, plus the District of Columbia, have already signed onto the NPV State Compact: California (55), Connecticut (7), District of Columbia (3), Hawaii (4), Illinois (20), Maryland (10), Massachusetts (11), New Jersey (14), New York (29), Rhode Island (4), Vermont (3), Washington (12), Colorado (9), New Mexico (5), Delaware (3), and Oregon (7), equaling 196 electoral votes.

NPV is targeting Republican states. They hire Republicans legislators, lobbyists and former Congressmen to go to any state where NPV is introduced in order to seduce more Republicans into supporting it. Saul Anuzis, former Republican Chair of Michigan, has worked for NPV for years lobbying across the country. In addition, Michael Steele former Republican National Chair is supporting NPV, even though the National Re-

publican Committee voted to oppose it. These operatives have been successful in getting bipartisan support in Republican states, including Arizona, Michigan, Missouri, and Oklahoma. Eight former chairs of the American Legislative Exchange Council have endorsed NPV.

The NPV Compact has no minimum percentage for a candidate to be declared the NPV Winner. In a three-way race, a candidate could win with 35 percent of the popular vote or even less. Because the NPV Compact has NO minimum percentage required for the NPV winner, voters could elect a candidate with no national mandate. Consider the national disaster of having no President elected for six to nine months after the election. Professor of law at the University of Denver's Strum College of Law, Robert Hardaway, wrote in the *Huffington Post* in November 2017, "How the Electoral College Saved the Day. Again." In it, he explains the endless recounts and court challenges that NPV would unleash:

Thankfully for the Republic, John F. Kennedy was successful in defeating the Republican proposal to abolish the Electoral College, and by implication also preserving the existence of the U.S. Senate. The wisdom of defeating such a proposal was reflected in the election of 1960, in which the popular vote was so narrow (within seven tenths of one percent), that had the Electoral College been abolished and a so-called "popular vote" system been in place, the narrow margin of popular votes **would have triggered re-counts in almost every state.** If one recalls the national trauma of recounts in but one state in the 2000 election — Florida — one can imagine the national nightmare of recounts and court challenges in all 50 states under a popular vote system. Indeed, **it has been estimated that without the**

Electoral College, it would have taken at least 6-9 months before a popular vote winner could be declared, if then...Indeed, without the Electoral College, Trump would almost certainly have had a claim to countless recounts in every state because of the narrow margin of popular votes in favor of Clinton.

During the 1992 presidential election, Ross Perot, a wealthy Independent candidate, received 19 percent of the vote that likely caused George H.W. Bush to lose his second term to Bill William Clinton.

Before Perot withdrew and then reentered the race, he was polling at 39 percent. Although Perot received no Electoral College votes, in a NPV Election that does not matter. If Perot had received 39 percent of the popular vote, he would probably have obtained enough votes to be named the NPV winner. Before the 1992 election, Republican Bush polled at 31 percent and Democrat Clinton polled at 25 percent.

Today there are more third parties, which would also deprive the major parties of votes, including the Libertarian Party, Independent American/Constitution Party, and Green Party. As many as 42 percent of Americans identify themselves as "Independents".

We should not allow the NPV to create instability by jeopardizing what the Electoral College has provided for over 232 years — the peaceful transfer of power. NPV is a dangerous threat to our Republic. 

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