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ISSUE BRIEF | Election Integrity

THE NATIONAL POPULAR VOTE INTERSTATE COMPACT: NO CHECKS, JUST IMBALANCES

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TOPLINE POINTS

- ★ The National Popular Vote Interstate Compact is a multi-state agreement that would effectively replace the Electoral College process defined in the U.S. Constitution with the national popular vote.
- ★ The compact would disenfranchise member state voters, remove the voices of the rural communities, and make ineffective election administration the universal standard.
- ★ With 48 more electoral votes, the compact would go into effect—and immediately face severe legal and constitutional challenges.

Introduction

The National Popular Vote Interstate Compact (NPVIC) is a multi-state agreement that would change how electoral votes are distributed in presidential elections ([Ballotpedia, n.d.](#)). The purpose is to effectively replace the Electoral College process defined in the U.S. Constitution with the national popular vote. Currently, electoral votes from any given state are determined by the popular vote of that state. The NPVIC alternatively requires that, once enough states sign the Compact to reach or exceed the 270 electoral vote threshold needed to elect a president, each member state within the Compact would designate their state's electors to whichever candidate won the national popular vote, regardless of which candidate the popular vote in their state selected.

In the 2024 presidential election, President Trump won the national popular vote. If the NPVIC had been in place, every single member state—most of them deep blue states with only a small minority of voters casting ballots for President Trump—would have been forced to award their electoral



votes to President Trump. As of 2024, the NPVIC had 209 electoral votes; if those votes had been awarded to President Trump, the electoral result would have been 521-17, representing 96.8% of votes in favor of President Trump. In reality, President Trump won 49.8% of the popular vote and candidate Harris won 48.3% of the popular vote ([USPollingData, n.d.](#)). The point of elections is to accurately transmit the electoral will of the people into election results; regardless of which political party the favored candidate is affiliated with, the NPVIC does not accurately represent the electoral will of the American people at all.

The NPVIC currently has 18 member states plus Washington, D.C., representing 222 electoral votes ([America First Policy Institute, 2026](#)). Only four more states, with a cumulative 48 votes, are needed as members for the Compact to immediately go into effect. Since 2007, multiple states have passed legislation joining the NPVIC, with Maryland leading the charge. Several other states are actively considering legislation that would tie them to this Compact, completely disregarding the reality that the NPVIC disenfranchises voters in member states if enacted, violates the United States Constitution, and undermines America's Founders' intent. The Electoral College exists to provide checks and balances on the distribution of voting power between urban and rural areas in the United States. Enacting the NPVIC would trade the thoughtful checks and balances of the Electoral College for a system of no checks, just imbalances.

The NPVIC Directly Contradicts American Electoral Principles and Structure

Enacting the NPVIC would seriously disenfranchise American voters in member states. There are several clear mechanisms of how this would occur. First, and most blatant, is the reality that under the NPVIC, state electors could be awarded to a presidential candidate who the majority of voters in that state did not vote for. If Virginia's popular vote went to the Republican candidate but the Democrat candidate won the national popular vote, then Virginia's electors would be given to the Democrat candidate *despite the fact that the majority of Virginians voted for the other candidate*.

Second, the NPVIC would eliminate the need for presidential candidates to appeal to both rural and urban voters, since winning the national popular vote would necessarily mean winning the election. Rather than listening to the voices of all Americans and visiting all geographies and demographics, campaigns would merely focus on the states with the most access to large populations with cheaper turnout options per person (for example, it is cheaper and more time effective to knock 20 doors in an NYC apartment complex than to drive to 20 houses out in Iowa cornfields). Issues would also shift from including the problems that rural populations face to focusing exclusively on urban population policy areas. This is no way to approach leading a country; a president must consider all populations, address issues pertinent to both rural and urban communities, and engage with voters in all types of states.

Third, the NPVIC would dramatically delay when election results come available. Because election administration varies widely state by state, member states would have to wait to allocate their electors until the results of the national popular vote are solidified, delaying final results until slow-counting states such as California (which in 2024 took 38 days to declare election results) come



in [\(La, 2024\)](#). Even for states with efficient election processes, their efficiency will be nullified by the states who are not. The Constitution specifically designates the power to conduct elections to each particular state. The NPVIC undermines this autonomy and makes the worst-performing states the universal standard. The citizens in every state deserve timely and transparent ballot counting and results to ensure the accountability of local officials and to preserve the credibility of the results. Delaying these to accommodate the preferences of citizens of other, less efficient states, undermines this important state role and would eventually lead to a “race to the bottom” where the poor processes of a few liberal states would undermine electoral quality across the nation.

Finally, the NPVIC completely rejects the express intent of the Founders. While creating the Constitution, the Founders specifically voted against adopting a national popular vote—twice—when deliberating the best way to provide checks and balances among the states. Harvard legal scholar Patrick Valencia writes,

[D]irect national popular election neither gained traction nor received extensive consideration among the Framers at the [Constitutional] Convention. Initially proposed by Gouverneur Morris on July 17, 1787, Morris himself even understood direct election had serious flaws, conceding that such a method would result in cabal, intrigue, and combination. But, Morris felt selection by the national legislature would lead to the executive becoming a creature of the national legislature, and was thus equally as flawed as his proposal. Many at the convention shared Morris’s worries, as reflected in the debate and votes—direct national popular election was put to vote twice, first on July 17, 1787, when it was voted against 9–1, and again on August 24, 1787, when it was voted against 9–2. Direct popular election was, therefore, the least favored method of selection of the executive. [\(Valencia, 2018\)](#)

The NPVIC is not at all aligned with the electoral principles and structure so carefully designed at the inception of our country, and, if enacted, would seriously disenfranchise voters in member states.

Constitutional Criticisms and Legal Implementation Roadblocks

In addition to criticisms based on disenfranchisement and Founder intent, the NPVIC faces significant legal concerns, which can best be put into two categories: constitutional separation of powers concerns and issues involving the implementation of the Compact which would deprive voter rights or otherwise be untenable.

Constitutional Criticisms

First, the Compact most likely violates Article I of the Constitution. Article I, Section 10, Clause 3 of the U.S. Constitution states: “No State shall, without the Consent of Congress ... enter into any Agreement or Compact with another State...” Congressional consent is required for compacts tending to increase state political power in a manner that may interfere with federal supremacy. By entering into such an agreement, member states consolidate political power at the expense of non-member states and the federal structure of the electoral college. The proposed Compact fundamentally alters presidential elections by creating binding obligations among states. Member states lose unilateral freedom to administer



presidential elector selection once the Compact becomes effective ([Virginia vs. Tennessee, 1893](#); [U.S. Steel Corp. v. Multistate Tax Comm’n, 1978](#); [Northeast Bancorp, Inc. v. Bd. of Governors of Fed. Rsrv. Sys., 1985](#)).

Second, states cannot use their authority under Article II of the U.S. Constitution to circumvent the electoral college. States’ otherwise far-reaching authority over electors remains subject to other constitutional constraints, Article II provides that each state appoints electors: “in such Manner as the Legislature thereof may direct.” However, the Constitution creates a federal election composed of fifty state elections, emphasizing the use of the phrase “each State” and describing the State as acting individually through its electoral college. Article II presumes electors reflect the political judgment of each individual state. Therefore, allocating electors according to votes cast entirely outside the state is inconsistent with the constitutional design. Article II should permit legislatures to choose electors, but not to abandon the state’s own election as the basis for that choice ([Chiafalo v. Washington, 2020](#); [McPherson v. Blacker, 1892](#)).

Third, the NPVIC effectively amends the Constitution without using the process required by Article V, rejecting an attempt to achieve by ordinary legislation a procedural alteration—the line item veto—to the constitutional structure and explaining that a new constitutional procedure must come through Article V. The Constitution intentionally created the Electoral College, and the Framers directly rejected direct national election by popular vote, to avoid consolidation of power and mob rule. The NPVIC effectively abolishes the Electoral College while leaving its formal structure intact ([Hawke v. Smith, 1920](#); [Clinton v. City of New York, 1998](#); [U.S. Term Limits, Inc. v. Thornton, 1995](#)).

Fourth and finally, a state legislature improperly delegates its constitutional authority when it conditions the appointment of its electors on election results determined by officials in other states. For example, a state’s electors could ultimately depend upon ballot counting in California, litigation in Pennsylvania, recounts in Wisconsin, and certification decisions in Arizona, simultaneously. This means that one state’s constitutional authority becomes dependent on executive and judicial decisions made elsewhere. This easily could become an unconstitutional extraterritorial exercise of state law.

These issues have not yet been addressed by the courts in the context of deliberating the NPVIC. State NPVIC legislation intentionally makes the act dormant to prevent lawsuits from becoming ripe as to any individual state’s decision to join the Compact. The uniform language of the NPVIC legislation explicitly states that the NPVIC is not effective until the signatory states cumulatively possess a majority of the electoral votes. Article III of the NPVIC states, “This article shall govern the appointment of presidential electors in each member state in any year in which this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes” ([National Popular Vote, n.d.-b](#)).

Because the text prevents the bill from taking effect in any state, there have been no successful court challenges. There is only one reported federal or state case, that squarely sought adjudication of the constitutionality of a state’s NPVIC enactment. In 2019, a lawsuit against the State of Washington in the Western District of Washington was brought expressly seeking a declaration that Washington’s enactment of the NPVIC was unconstitutional and should be struck from the state code ([Miller v. Washington, 2019](#)).



The complaint raised many of the theories mentioned, including that the National Popular Vote Interstate Compact violated the Compact Clause, Article I, § 10, cl. 3, because the agreement increased the political power of compacting states relative to nonmember states; that it violated Article II's Presidential Electors Clause; that it improperly allowed voters in other states to affect Washington's appointment of presidential electors; that it diluted Plaintiff's vote by effectively expanding the relevant electorate outside Washington; and that it violated the Privileges and Immunities and Equal Protection Clauses. The courts did not reject those constitutional theories on the merits. Instead, the suit was dismissed because Plaintiff lacked Article III standing and because the dispute was not ripe. Because the Compact had not yet accumulated enough electoral votes to become operative, claimed injuries depended upon future states joining the Compact. The district court characterized the injuries as speculative and contingent, so long as the NPVIC remained dormant.

Legal Roadblocks to Implementation

The NPVIC is not only susceptible to structural challenges but may also face a variety of citizen lawsuits on the question of its constitutionality. Administering the NPVIC may be impractical, even if enacted. By tying the results of one's states elections to another's, the NPVIC gives legal effect to ballots counted across state lines and under 51 different state election codes. Voters in one state may unanimously vote for one candidate, while the Compact forces them to send electors for another candidate to Washington. This means non-member states could potentially flip the electors of every member state even if the member-states themselves do not vote for the popular vote winner.

A primary concern is that the Compact allows the presidential electors of one state to be determined by votes cast under the election laws of other states. Citizens of a member-state who enacted voter-identification requirements, ballot-curing procedures, voter-registration standards, and recount rules through their own democratic processes would nevertheless have their state's presidential electors determined in part by votes cast under different legal standards elsewhere. The Compact therefore could give rise to Equal Protection claims analogous to those in *Bush v. Gore*¹, because similarly situated voters in participating states would have their votes effectively combined with votes cast under substantially different legal rules. Under the Compact, litigation challenging another state's election administration would no longer be remote or hypothetical; a participating state would have a direct interest in whether every other state, including non-members, complied with its own election laws because those practices would affect the nationwide vote total and thus, the electoral votes of other states.

Additionally, inconsistencies could create due process concerns if a presidential election turned on a very small national margin. Under the NPVIC, there are no nationwide recount mechanisms. Additionally,

¹ The Supreme Court held, 7-2, that the Florida Supreme Court's plan for a statewide manual recount of undervotes violated the Equal Protection Clause of the 14th Amendment. The Court's reasoning centered on the lack of uniform standards governing the recount. Florida had directed county canvassing boards to discern the 'intent' of the voter from ballots without specifying a consistent standard for that determination. Ballots varied with hanging or dimpled chads, making the interpretation of intent different from precinct to precinct and even ballot to ballot. The per curiam opinion reasoned that this discretion standard meant votes were not being counted equally.

there are different recount thresholds among the states, varying certification deadlines, multiple standards for provisional ballots, variation in standards for overseas and military ballots, inconsistent voter eligibility rules, and various ballot-rejection standards. In addition to the various equal protection claims that naturally flow from each of these issues, there are no national mechanisms to resolve them, and the lack of process would likely violate both the 5th and 14th Amendments by disenfranchising voters without an opportunity to be heard.

Historical Impact if the NPVIC Had Been Enacted

Only five times in American history have the victors of the electoral college and the national popular vote for president differed. In 1824, while no candidate won a majority in the electoral college, Andrew Jackson received a plurality of the national popular vote with 40%. However, the House of Representatives elected John Quincy Adams over Jackson after Speaker of the House Henry Clay and John Q. Adams brokered a deal giving Adams the White House and Clay being picked for Secretary of State.

In 1876, Samuel J. Tilden won the national popular vote 50.92% to 47.92%, but Rutherford B. Hayes won the electoral college 185 to 184, and no presidential election has had a closer margin since that year. In 1888, incumbent Grover Cleveland won the national popular vote 48.63% to 47.80%, but Benjamin Harrison won the electoral college 233 to 168. Just four years later, Cleveland famously returned to the White House by defeating President Harrison.

In 2000, in what is arguably the closest presidential election in modern U.S. history, in *Bush v. Gore*, the United States Supreme Court issued a ruling that resulted in George W. Bush winning the state of Florida and, consequently, the electoral college and the presidency. In that election, Vice President Al Gore won the national popular vote by 0.50% (48.4% to 47.9%), and Bush eventually won the electoral college 271 to 266. In 2016, Hillary Clinton won the national popular vote 48.2% to 46.1%, but Donald J. Trump won the electoral college 304 to 227.

A Vehicle for the Left's Agenda: Who Supports the NPVIC

In 18 of the 19 jurisdictions that have enacted the NPVIC, the legislation was signed into law by a governor on the Left. The only exception was Hawaii in 2008 when Governor Linda Lingle vetoed the NPVIC bill, but Hawaii's majorities in both chambers, of a different political party than the governor, overrode the veto.

John R. Koza and Barry Fadem founded the National Popular Vote organization and movement in 2006 ([National Popular Vote, n.d.-a](#)). Koza authored the NPVIC legislation and is currently Chair of National Popular Vote; Fadem is a partner at a California law firm and is currently President of National Popular Vote. Both individuals have a long history of engagement with the Left ([Lucas, 2019](#)).

Organizations that support the National Popular Vote include the League of Women Voters (LWV), which began supporting the NPVIC in 2010. The LWV has stated, "the Electoral College distorts the democratic promise of 'one person, one vote' by awarding electoral votes from each



state in support of a candidate instead of simply counting the total number of votes nationwide” ([Horine, 2024](#)). Additionally, Common Cause also supports the NPVIC and is on the record saying, “The winner-take-all Electoral College system that produces this anti-democratic outcome must be changed, so that voters in all 50 states have a say in choosing our president” ([Common Cause, n.d.](#)). Finally, Fair Vote has been active in advocacy of the NPVIC since 2006 and complains that the Electoral College allows for a handful of states to elect a president instead of the entire country ([Foodman, 2019](#)). LWV, Common Cause, and Fair Vote are both funded by groups on the Left, including the George Soros network ([Influence Watch, n.d.-a, n.d.-b, n.d.-c](#)), and major funding sources of the NPVIC itself also come from networks on the Left ([Influence Watch, n.d.-d](#)).

Conclusion

While tenuous, the potential for NPVIC enactment is still a possibility. The current electoral total of the NPVIC movement sits at 222, needing just 48 more electoral votes for the Compact to go into effect. The NPVIC website has targeted the following five swing states to achieve needed 270 electoral votes in 2027: Arizona (11 electoral votes), Michigan (15 electoral votes), Nevada (6 electoral votes), Pennsylvania (19 electoral votes), and Wisconsin (10 electoral votes) ([National Popular Vote, n.d.-c](#)). Signing all five would push the NPVIC electoral vote total to 283.

American voters deserve to know the poisonous potential of the NPVIC. It would disenfranchise member state voters by negating their votes if the national popular vote handed the election to another candidate. It would silence the voices of rural communities by effectively placing large cities and urban centers in charge of national elections, thereby eliminating the Electoral College’s checks and balances on state electoral power. It would also make poor election administration the universal standard while disregarding the Constitution, the Founders’ original intent, and current voter rights.

History has shown that the Electoral College system works very well—the White House regularly changes party hands in a peaceful transition of power, proving that it does not create a system where only one party could win. Both major political parties can and have regularly won the presidency through using the Electoral College. There is no good or fair reason to throw away a system that has worked for almost 250 years and presided over fair and open elections that give each citizen and each state a clear stake in our electoral process to replace it with the chaos and disenfranchisement in the NPVIC.

Not only should no new states consider joining the NPVIC, but existing member states should withdraw their membership. An existing member state can pass legislation including the following provisions, such as introduced in Maine, New Jersey, Washington, Connecticut, Hawaii, Maryland, and Massachusetts:

- Repealing the portion of state statute that enters the state into the NPVIC.
- Conforming amendments (amending any additional portion of the state statute referencing the NPVIC).
- Effective date (prior to six months before a Presidential election, in order to avoid potential legal conflict with the provision of the NPVIC claiming that withdrawal from the compact within six months of a presidential election is prohibited).



Free and fair elections will be a distant memory if the National Popular Vote Interstate Compact is allowed to take effect.



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