



Preserving the 10<sup>th</sup> Amendment and our Electoral College

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*THE ARGUMENT AGAINST THE*

# **NATIONAL POPULAR VOTE COMPACT**



# PRAGER UNIVERSITY: learn about the Electoral College

YouTube videos explaining the benefits of the Electoral College.

*Democracy is the road to socialism.*

- Karl Marx



## The Popular Vote vs. the Electoral College

PragerU

1 year ago • 661,533 views

Right now, there's a well-organized, below-the-radar effort to render the Electoral College effectively useless. It's called the ...



see [YouTube video](#) link here.



## Do You Understand the Electoral College?

PragerU

1 year ago • 722,143 views

Do you understand what the Electoral College is? Or how it works? Or why America uses it to elect its presidents instead of just ...



see [YouTube video](#) link here.

*The best argument against democracy is a five minute conversation with the average voter.*

- Winston Churchill

*The Founders had no intention of creating a **pure** majority-rule democracy  
pure democracies **do not work***

*in a pure democracy, bare majorities can **easily tyrannize** the rest of the country.*

from "The Popular Vote vs the Electoral College,  
produced by Prager University

# National Popular Vote Compact (NPV)



- **What is status of the NPV movement?**
- What is GOP's viewpoint of NPV?
- Does NPV benefit Arizona voters?
- Would the NPV promote voter fraud?
- Is NPV constitutional?

*Isn't the USA a democracy? **NO!!** We are a **Constitutional Republic.***

***Benjamin Franklin**, very famously, was asked by a Mrs. Powell of Philadelphia, "Well, Doctor, what have we got, a republic or a monarchy?"*

*With no hesitation whatsoever, Franklin responded, "**A republic, if you can keep it.**"*

*- Ben Franklin*



# NPV – what is status of NPV movement?

The **NATIONAL POPULAR VOTE** bill would guarantee the Presidency to the candidate who wins the popular vote across all fifty states and the District of Columbia.

*Exactly the premise our Founding Fathers rejected in creating the Electoral College*

The bill has been **passed in ten (10) heavily Democrat controlled states** (plus Dist of Columbia)

possessing 165 electoral votes – 61% of the 270 electoral votes needed to enact it.



■ States having enacted NPV

■ States with pending NPV legislation  
(Michigan, Pennsylvania)

# NPV – which states already passed it?



Ten (10) states have passed the NPV bill. *Shaded in BLUE to the right.*

All of these states have **voted for the Democrat party in each of the past six (6) presidential elections** between 1992 and 2012, and are part of the **Democrat’s “Big Blue Wall.”**

Winning party in the six (6) presidential elections between 1992 and 2012

DEMOCRAT						EVEN SPLIT		REPUBLICAN					
6X		5X		4X		3X		4X		5X		6X	
CA	55	IA	6	NV	6	CO	9	AR	6	AZ	11	AL	9
CT	7	NH	4	OH	18	FL	29	KY	8	GA	16	AK	3
DE	3	NM	5					LA	8	IN	11	ID	4
D.C.	3							MO	10	MT	3	KS	6
HI	4							TN	11	NC	15	MS	6
IL	20							VA	13			NE	5
MA	11							WV	5			ND	3
ME	4											OK	7
MD	10											SC	9
MI	16											SD	3
MN	10											TX	38
NJ	14											UT	6
NY	29											WY	3
OR	7												
PA	20												
RI	4												
VT	3												
WA	12												
WI	10												
242		15		24		38		61		56		102	

 -states which have passed the National Popular Vote bill



# NPV – which states are considering?

The states highlighted have recently introduced NPV legislation.

**Only Arizona** has the dubious distinction of having this legislation introduced by a **Republican !?!**

Winning party in the six (6) presidential elections between 1992 and 2012

DEMOCRAT						EVEN SPLIT		REPUBLICAN					
6X		5X		4X		3X		4X		5X		6X	
CA	55	IA	6	NV	6	CO	9	AR	6	AZ	11	AL	9
CT	7	NH	4	OH	18	FL	29	KY	8	GA	16	AK	3
DE	3	NM	5					LA	8	IN	11	ID	4
D.C.	3							MO	10	MT	3	KS	6
HI	4							TN	11	NC	15	MS	6
IL	20							VA	13			NE	5
MA	11							WV	5			ND	3
ME	4											OK	7
MD	10											SC	9
MI	16											SD	3
MN	10											TX	38
NJ	14											UT	6
NY	29											WY	3
OR	7												
PA	20												
RI	4												
VT	3												
WA	12												
WI	10												
242		15		24		38		61		56		102	

 - states which have passed the National Popular Vote bill

 - states which have introduced legislation for the National Popular Vote bill



# National Popular Vote Compact (NPV)

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- Would the NPV promote voter fraud?
- Is NPV constitutional?

Isn't the USA a democracy? **NO!!** We are a **Constitutional Republic**.

*"A **democracy cannot exist as a permanent form of government**. It can only exist until the majority discovers it can vote itself largess out of the public treasury. After that, the majority always votes for the candidate promising the most benefits with the result the **democracy collapses** because of the loose fiscal policy ensuing, always to be followed by a dictatorship, then a monarchy."*

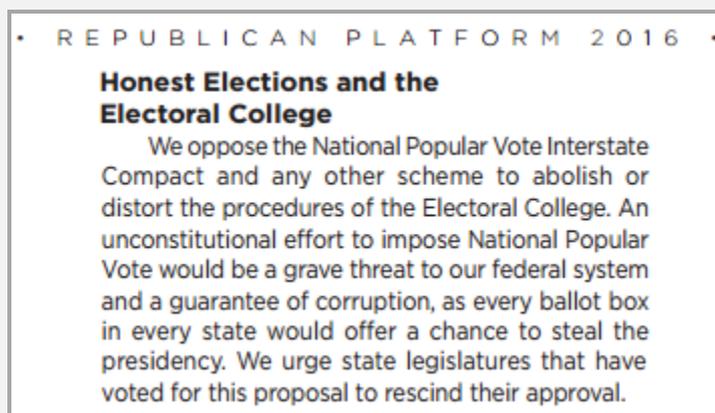
- Elmer T Peterson



# NPV – who’s against it? **GOP!**

## Strong GOP opposition to NPV

- **GOP 2016 PARTY PLATFORM** condemns Natl Popular Vote Compact ([see platform](#))
- **RNC** opposes National Popular Vote Compact by nearly **UNANIMOUS** vote of 167–1 ([see web link - Republican National Committee approves resolution opposing NPV; Aug 5, 2011](#))
- **MCRC EGC** condemns Natl Popular Vote Compact (*March 2016*)
- **AZGOP & MCRC** resolutions condemning NPVC to be voted upon at Jan 2017 mtgs ([see platform](#))
- Opposed by conservative think tanks such as:
  - **HERITAGE FOUNDATION** ([see Destroying the Electoral College: The Anti-Federalist National Popular Vote Scheme](#))
  - **CATO INSTITUTE** ([see Critique of the Natl Popular Vote](#))
  - **GOLDWATER INSTITUTE**
  - **JOHN BIRCH SOCIETY (JBS)**



# NPV – who's against it? ***GOP!***



## **GOP 2016 Party Platform** - condemns Natl Popular Vote Compact

### • R E P U B L I C A N P L A T F O R M 2 0 1 6 •

#### **Honest Elections and the Electoral College**

We oppose the National Popular Vote Interstate Compact and any other scheme to abolish or distort the procedures of the Electoral College. An unconstitutional effort to impose National Popular Vote would be a grave threat to our federal system and a guarantee of corruption, as every ballot box in every state would offer a chance to steal the presidency. We urge state legislatures that have voted for this proposal to rescind their approval.

## National Popular Vote Compact: A BAD DEAL FOR ARIZONA

by Rep Michelle Ugenti-Rita (R-Scottsdale, District 23); Chair of the House Elections Committee



With the presidential primary races concluded and the two major parties selecting their presumptive nominees, those candidates will turn their attention to the general election and the race for electoral college votes. While the competitive nature of the primary afforded greater attention on most, if not all states, the focus of the general election will be narrowed to states where the candidates believe they can win the necessary number of electoral college votes to prevail in the election.



Last legislative session, a bill was introduced which would have **dramatically altered the way Arizona's electoral votes would be awarded**. While I believe improvements can be made to the electoral college process, I voted against this legislation which was ultimately unsuccessful.

As the electoral college works today, each state has one elector for each member of Congress (Arizona has 11 electors). Arizona is a winner-take-all state, meaning the candidate who receives the most votes in the election receives all eleven electoral votes.

**Under the legislation proposed earlier this year, known as the National Popular Vote interstate compact (NPV), Arizona's eleven electoral votes would not be given to the candidate chosen by Arizona's voters.** Instead, they would be awarded to the candidate

deemed to have won the most popular votes across the country. This would mean in 2012, even though Mitt Romney won approximately 54 percent of Arizona's votes, our eleven electoral votes would have been awarded to Barack Obama because he received larger margins of victories in other states. This is **contrary to the intent of the founding fathers**, who sought to ensure states with larger populations could not easily overwhelm smaller states in filling the nation's highest office.

It was also **intended as a method to ensure each state's interests are represented**. If a candidate wanted to win Arizona's electoral votes, he or she would need to appeal to Arizona's voters by addressing issues they care about. **Under NPV, by appealing to voters in other states, a candidate could earn Arizona's electoral votes.**

A concept that would **strip Arizona voters of their right to determine which candidate best represents them** and upsets the checks and balances established in the constitution is **not in the best interest of Arizona**. During my tenure at the legislature and as chairman of the Elections Committee it has been my experience that any change to election law or any election related reform, however minor, in a complicated process that required thorough vetting to discover any **unintended consequences**. In the future, I would encourage proponents of wanting to change the way the nation's highest office holder is elected to ensure Arizona voters maintain their ability to elect who they choose and not be bound by the results of other state elections.

A handwritten signature in black ink that reads "Michelle Ugenti-Rita".

# RESOLUTION: **OPPOSING NATIONAL POPULAR VOTE**



*The following resolution will be brought before the MCRC and AZGOP mtgs for a vote in January 2017.*

**Whereas**, the Constitutional method of electing the President of the United States through the Electoral College was the method deemed best by the founding fathers of the United States of America for ensuring state sovereignty because all states, both large and small, are included in the presidential election process; and,

**Whereas**, the Constitution preserves the balance of power and authority between the federal and state governments through the mechanism of the Electoral College; and,

**Whereas**, the Electoral College has been tested and proven itself over 56 presidential elections as the method to best preserve our representative republican form of government, resulting in the election of a President by a majority of electoral votes not a mere plurality; and,

**Whereas**, the National Popular Vote Compact if successfully implemented would eviscerate the constitutional Electoral College process of electing the President of the United States; and,

**Whereas**, it is the moral and legal conviction that the Constitution is the supreme law of the land amendable only by means specified within Article V of the Constitution; and,

**Whereas**, the Constitution is the document that originated our constitutional republic which created the “rule of law”, which protects our freedoms, individual liberties, and our right to make individual choices. Those protections would be lost forever as this National Popular Vote Compact would move us from a republic into a pure democracy subjecting us to majoritarian rule; and,

**Whereas**, the Arizona State Legislature does not have the moral or legal authority to “reassign” the outcome of the vote of the citizens of Arizona across state borders without the consent of the governed.

**Therefore be it Resolved**, that the AZGOP opposes this attempt to undermine the U. S. Constitution and the Electoral College by way of the National Popular Vote Compact; and,

**Further be it Resolved**, that the AZGOP does fully endorse retaining the constitutionally approved and time-tested Electoral College method of awarding electoral votes to candidates to win the office of the President of the United States of America;

**And be it further Resolved**, the AZGOP strongly encourages our Arizona members of the State House and Senate to reject the National Popular Vote Compact and to neither sponsor nor vote in favor of such legislation should it be proposed.



# NPV – who's against it?

## ***conservative think tanks***

*Per CATO Institute; policy analysis no. 622 (Oct 13, 2008)*

Rather than encouraging national campaigns across all 50 states –

**NPV** would encourage presidential candidates to **focus** their efforts in **dense media markets** where costs-per-vote are lowest; many **states now ignored** by candidates will **continue to be ignored** under NPV.

*Per CATO Institute; policy analysis no. 622 (Oct 13, 2008)*

**NPV undermines** legitimacy of **presidential elections**; **weakens federalism** by eliminating the role of the states in presidential contests.

*Per Heritage Foundation; legal memo #73 (Oct 27, 2011)*

**NPV diminishes** the influence of **smaller states** and **rural areas** of the country; leads to more recounts and public distrust; and **encourages voter fraud**.

# NPV – who’s for it? *Progressives!*

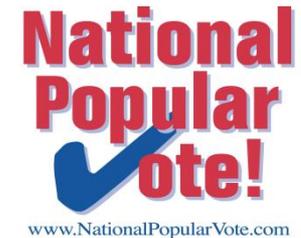


## Strong PROGRESSIVE support for NPV see list of [Progressive supporters](#)

**GEORGE SOROS** *strongly supports* the Natl Popular Vote Compact through the 501(c) organization **National Popular Vote Inc.** ([www.nationalpopularvote.com](http://www.nationalpopularvote.com)); through the 501(c) organization **Common Cause.** ([www.commoncause.org](http://www.commoncause.org))

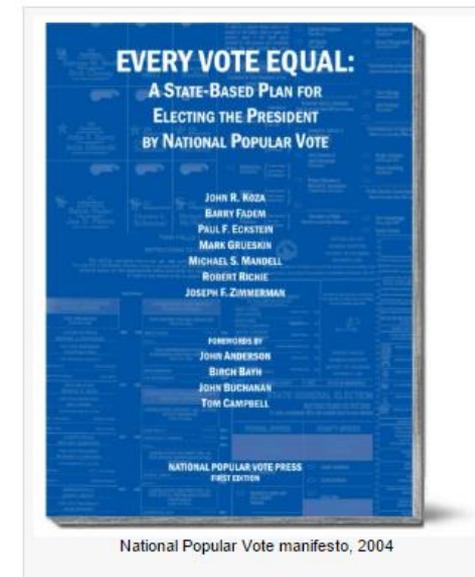


See [official ACLU statement](#) which proclaims that **ACLU Supports The National Popular Vote**



*funded by **Center for Voting and Democracy**, a liberal George Soros funded organization, which in turn is funded by **Open Society Institute**, another radical liberal George Soros funded organization.*

FairVote’s executive director, Rob Richie, co-authored *Every Vote Equal*, a book explaining how the National Popular Vote plan would work. This book has been referred to as the “NPV manifesto.”



# NPV – who's for it? *Political Operatives*



From: Constantin Querard <[grassrootspartners@cox.net](mailto:grassrootspartners@cox.net)>

Date: November 1, 2016 at 08:58:43

Subject: For AFTER the election!

One issue I work on is the National Popular Vote, and those folks are doing another seminar for legislators in Tuscon from that Thursday evening through Sunday if you and your husband would like to join them. The seminar is on Friday and the rest of the time is a restful free time... Room/Board is covered and your mileage is reimbursed as well... The topic is interesting and explores a unique power bequeathed by the founding fathers to state legislators that most have forgotten they have. With the state of the country as it is, and with growing concerns over fraud, illegal immigration, and the blue wall making it nearly impossible to elect Republican Presidents, it is time to have the debate. Plus, I think you'd really benefit from becoming more fluent with the arguments, so when some irate PC starts popping off about stuff they don't understand, you'll know how to respond.

So its from the evening of Thursday Nov 10th through Sunday the 13th. You can go home early if you want to (a few leave on Saturday and one guy has to come back up Friday afternoon after the seminar is done), but you're welcome to stay the whole time. Nice hotel, nice food, good rest, and a nice time meeting a few new legislators, etc.

Can you make it?

CQ

# 2016 session: AZ House of Representatives



AZ House, in its bill

**HB2456 (Natl Popular Vote)** sponsored by  
Republican JD Mesnard

passed the House by a vote of 40-16  
on Feb 4, 2016.

**Why** would the **Arizona legislature** vote in favor of the NPV compact?

Do our representatives want to **reassign** the electoral college votes **against the wishes** of a majority of **Arizona voters** in the general election?



**HOUSE OF REPRESENTATIVES**  
**HB 2456**  
national popular vote; interstate agreement  
Prime Sponsor: Representative Mesnard, LD 17

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**X** Committee on Elections

Caucus and COW

House Engrossed

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**OVERVIEW**

HB 2456 joins an interstate agreement to elect the President by national popular vote.

**PROVISIONS**

1. Enters Arizona into an agreement among the states, with all other jurisdictions legally joining, to elect the President by national popular vote.
2. Requires each member state to conduct a statewide popular election for President and Vice President of the U.S.
3. Allows any state and the District of Columbia to become a member through enacting this agreement.
4. Requires the chief election official of each member state to:
  - a. determine the number of votes for each presidential state;
  - b. add the votes together to produce a “national popular vote total” for each presidential state;
  - c. designate the presidential state with the largest national popular vote as the “national popular vote winner”;
  - d. treat an official statement containing the number of popular votes for each presidential state as a final determination conclusive as to the counting of electoral votes by Congress; and
  - e. immediately release to the public all vote counts or statements of votes as they are determined or obtained.
5. Requires the presidential elector certifying official of each member state to:
  - a. certify the appointment of the elector slate nominated in association with the national popular vote winner;
  - b. certify, in the event of a tie for the national popular vote winner, the appointment of the elector slate nomination with the presidential slate receiving the largest number of popular votes.
6. Declares that the presidential candidate designated as the national popular vote winner has the power to nominate the presidential electors for that state if the number of presidential electors nominated is less than or greater than that state’s number of electoral votes.
  - a. requires certification of the nominees appointment by the state’s presidential elector certifying official.



## HB 2456

7. Requires each member state to:
  - a. make a final determination of the number of popular votes cast for each presidential state; and
  - b. communicate an official statement of determination within 24 hours to the chief official of other member states.
8. Stipulates that this article governs the appointment of presidential electors in any year this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.
9. Provides that the agreement takes effect when states cumulatively possessing a majority of the electoral votes have enacted this agreement in substantially the same form and the enactments have taken effect in each state.
10. Allows the withdrawal of member states from the agreement, except that a withdrawal occurring six months or less before the end of a President's term does not become effective until a President and Vice President has qualified to serve the next term.
11. Requires the member's state chief executive to promptly notify all other states when:
  - a. this agreement has been enacted and taken effect;
  - b. the member state has withdrawn from this agreement; and
  - c. this agreement takes effect generally.
12. Terminates this agreement if the Electoral College is abolished.
13. Declares that if any provision of this agreement is held invalid, the remaining provisions are not affected.
14. Defines *chief election official*, *chief executive*, *elector state*, *presidential elector*, *presidential elector certifying official*, *presidential state*, *state* and *statewide popular election*.

### CURRENT LAW

Each state is required to appoint, in such manner as the Legislature directs, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress ([U.S. Constitution, Article II, Section I, Clause II](#)).

The chairman of the state committee of a political party which is qualified for representation on an official party ballot at the primary election and accorded a column on the general election ballot is required to: 1) appoint candidates for the office of presidential elector equal to the number of U.S. Senators and Representatives in Congress for Arizona; 2) and file, for each candidate, a nomination paper and affidavit with the Secretary of State ([A.R.S. § 16-344](#)).

### ADDITIONAL INFORMATION

Arizona has 11 electoral votes.

# 2016 session: AZ House of Representatives



## DEMOCRATS:

Virtually all voted in favor of NPV  
20 of 22 voting members (90.9%)

## REPUBLICANS:

Majority of voted in favor of NPV  
20 of 34 voting members (58.8%)

*Aren't we supposed to be smarter than this?*

party	representative	vote
R	ACKERLEY	Y
R	ALLEN J	Y
R	BARTON	N
R	BORRELLI	Y
R	BOWERS	N
R	BOYER	Y
R	BROPHY MCGEE	N
R	CAMPBELL	Y
R	CARTER	N
R	COBB	Y
R	COLEMAN	Y
R	FANN	N
R	FARNSWORTH E	N
R	FINCHEM	Y
R	GOWAN	Y
R	GRAY	Y
R	KERN	Y
R	LAWRENCE	N
R	LEACH	Y
R	LIVINGSTON	Y
R	LOVAS	N
R	MESNARD	Y
R	MITCHELL	N
R	MONTENEGRO	Y
R	NORGAARD	N
R	OLSON	N
R	PETERSEN	N
R	PRATT	Y
R	RIVERO	NV
R	ROBSON	Y
R	SHOPE	Y
R	STEVENS	Y
R	THORPE	Y
R	TOWNSEND	NV
R	UGENTI-RITA	N
R	WENINGER	N

party	representative	vote
D	ALSTON	Y
D	ANDRADE	Y
D	BENALLY	Y
D	BOLDING	NV
D	CARDENAS	N
D	CLARK	Y
D	ESPINOZA	Y
D	FERNANDEZ	Y
D	FRIESE	Y
D	GABALDÓN	Y
D	GONZALES	NV
D	HALE	Y
D	KOPEC	Y
D	LARKIN	Y
D	MACH	Y
D	MCCUNE DAVIS	Y
D	MENDEZ	Y
D	MEYER	Y
D	OTONDO	Y
D	PLUMLEE	Y
D	RIOS	Y
D	SALDATE	Y
D	VELASQUEZ	Y
D	WHEELER	N

'= 20 of 36 REPUBLICANS VOTED FOR NPV

'= 20 of 24 DEMOCRATS VOTED FOR NPV

contact your AZ Senate rep [here](#)

contact your AZ House rep [here](#)

(4 no-votes cast)

# National Popular Vote Compact (NPV)



- What is status of NPV movement?
- What is GOP's viewpoint of NPV?
- **Does NPV benefit Arizona voters?**
- Would the NPV promote voter fraud?
- Is NPV constitutional?
- By joining the NPV compact, do Arizona voters benefit?

*When people find that they can vote themselves money, that will herald the end of the Republic.*

*- Winston Churchill*



# NPV – does it benefit Arizona voters?

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***NO!*** but, let's look at the arguments:

- 1) More federally doled out **benefits and pork**? ***Why do we want to perpetuate this corrupt system? Why should Arizona be a part of the problem?***
- 2) More attention paid to Arizona by Presidential campaigns? ***Who does this really help? Only the paid political consultants pushing this plan.***
- 3) Arizona will quickly evolve into a **battleground state** soon anyway. ***In the near future, demographic changes will likely bring about the national campaign attention sought by the supporters of the NPV compact – rendering it useless for Arizona voters.***

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We know this could **potentially have huge benefits for Democrats** if one ill-advised Republican-leaning state, such as Arizona, were to adopt the NPV.

*If Democrats secured 268 electoral votes and their presidential candidate won the popular vote (legally or otherwise), **Arizona would be the traitorous state** that would hand the **presidency to the Democrats even if Arizona voters voted for the Republican candidate.***

# National Popular Vote Compact (NPV)



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- Does NPV benefit Arizona voters?
- **Would the NPV promote voter fraud?**
- Is NPV constitutional?

*Each state would surely lose control over our federal elections*

*How can each state have different voting regulations? Different voter codes for early ballot periods, voter registration, cleansing of voter rolls, etc.?*

*This would be a **race to the bottom** in terms of validating the **integrity of our voting system**.*



# NPV – arguments against

## Would the NPV encourage voter fraud? **Yes!**

There are strong arguments that the **NPV would encourage voter fraud**.

- 1) Democrats control the “Big Blue Wall” comprised of 19 states and 240 electoral votes as well as the largest, metro areas – all the while turning a **blind eye to voter fraud**. *A mere 1,000,000 illegal votes cast across California, Illinois and New York could throw every national election their way.*
- 2) Democrats and activist federal judges **continually block reasonable voter ID and voter verification laws** as well as attempts to clean up voter roles which are supported by a solid majority of Americans.
- 3) Advancements in technology and data mining paired with excessively long early voter periods and same day registration make for a **ripe environment for voter fraud and exploitation**.
- 4) State-by-state differences in voter laws would reduce Arizona to the **lowest common denominator**. Each of these differences is ripe for lawsuits, and could lead to rampant calls for **countrywide** recounts.

# National Popular Vote Compact (NPV)



- What is status of NPV movement?
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- Does NPV benefit Arizona voters?
- Would the NPV promote voter fraud?
- **Is NPV constitutional?**

*Democracy is the road to socialism.*

*- Karl Marx*



# NPV – arguments against

## Is the multi-state NPV compact constitutional?

There are strong arguments *against the constitutionality of the NPV compact*.

Under the NATIONAL POPULAR VOTE initiative -

The actions of as little as twelve (12) or thirteen (13) states could alter the US Constitution

*despite the clear Constitutional requirement of three-fourths of all states – or 38 states – to pass any Constitutional Amendment.*

This compact using NPV allows as few as 12 or 13 states to amend the constitution -- bypassing clear Article 5 language (*violation of Article 5*)



# NPV – arguments against

## Is the multi-state NPV compact constitutional?

There are strong arguments *against the constitutionality of the NPV compact.*

### New Mexico Law Review

*The Compact Clause and National Popular Vote: Implications for the “Federal Structure”*

published Dec 1, 2012; [Volume 44, Summer 2014](#)

### BYU Law Review

*“Why the National Popular Vote Compact is*

*Unconstitutional”* published Dec 1, 2012; [Volume 2012, Issue 5, Article 3](#)

#### BYU LAW REVIEW

#### V. CONCLUSION

The NPVC seeks to effect a fundamental change in the presidential election process. But like other state-initiated attempts to circumvent the federal constitutional framework for federal elections, the NPVC does so in a way that exceeds the states’ constitutionally delegated authority. As the Court admonished in *Thornton*, change, if it is to be undertaken, “must come not by legislation adopted either by Congress or by an individual State, but rather—as have other important changes in the electoral process—through the amendment procedures set forth in Article V.”<sup>223</sup>

#### NEW MEXICO LAW REVIEW

#### V. CONCLUSION

The Electoral College is a vital part of the Founders’ federalist Constitution. NPV pretends to be in line with this federalist structure, but its claims are disingenuous. In reality, NPV would destroy the federalist nature of the presidential election process. A system that today operates as a combination of democracy and federalism would change: It would instead operate as pure democracy. This change from federalism to pure democracy would be made even if a majority of states disapproved.

As a policy matter, eliminating federalism from the presidential election process will have many practical consequences that make such a change inadvisable. However, the disruption of federalism also has several legal ramifications that cannot be ignored.

NPV’s compact may not withstand scrutiny under Articles II, IV and V of the Constitution. It may also fail the Equal Protection requirements in the Fourteenth Amendment. But assuming it survives these challenges, it will also run into problems with Article I, Section 10 of the Constitution. The Compact Clause’s requirement of congressional approval will apply to this compact even under today’s lenient *U.S. Steel* standard.

If NPV’s compact is eventually presented to Congress for approval, Congress should decline to give its consent. Such radical change should never be made through a simple interstate compact and bare majorities in Congress. If this change is to be made, it should be made with the full cooperation and knowledge of the American people. The constitutional amendment process would require widespread debate and acquiescence before federalism is eliminated from the presidential election system. The Founders would have expected nothing less.



# Why the National Popular Vote Compact is Unconstitutional

Norman R. Williams

*Unable to secure passage of a federal constitutional amendment abolishing the Electoral College, several opponents of the Electoral College have sought to establish the direct, popular election of the President via an interstate compact according to which individual signatory states agree to appoint their presidential electors in accordance with the nationwide popular vote. Ostensibly designed to prevent elections, such as the one in 2000, in which the Electoral College “misfired” and chose the candidate who received fewer popular votes, the National Popular Vote Compact has been adopted by several states, including California. In this Article, I argue that the National Popular Vote Compact violates the Presidential Elections Clause of Article II of the U.S. Constitution. Although the text of the Clause seems to give states unlimited power to select the manner in which each state’s presidential electors are chosen, a close reading of U.S. history suggests the need and propriety of limiting the scope of state authority under the Clause. Not only did the framers of the Constitution expressly reject the idea of a direct, popular election for President, but also not one state either in the wake of ratification or at any time thereafter has ever sought to appoint its presidential electors on the basis of votes cast outside the state, as the National Popular Vote Compact requires. In the same way that similar historical considerations led the U.S. Supreme Court to limit the scope of state authority with respect to federal legislative elections, this history regarding the Presidential Elections Clause likewise counsels in favor of a more limited understanding of state authority under Article II. As such, if opponents wish to abolish the Electoral College, the sole constitutionally proper mechanism for doing so is a federal constitutional amendment, not an interstate compact negotiated by a handful of states.*

## V. CONCLUSION

The NPVC seeks to effect a fundamental change in the presidential election process. But like other state-initiated attempts to circumvent the federal constitutional framework for federal elections, the NPVC does so in a way that exceeds the states’ constitutionally delegated authority. As the Court admonished in *Thornton*, change, if it is to be undertaken, “must come not by legislation adopted either by Congress or by an individual State, but rather—as have other important changes in the electoral process—through the amendment procedures set forth in Article V.”<sup>223</sup>

### Recommended Citation

Norman R. Williams, *Why the National Popular Vote Compact is Unconstitutional*, 2012 BYU L. Rev. 1523 (2012)  
Available at: <http://digitalcommons.law.byu.edu/lawreview/vol2012/iss5/3>



additional information

# APPENDIX

2012 - BATTLEGROUND STATES

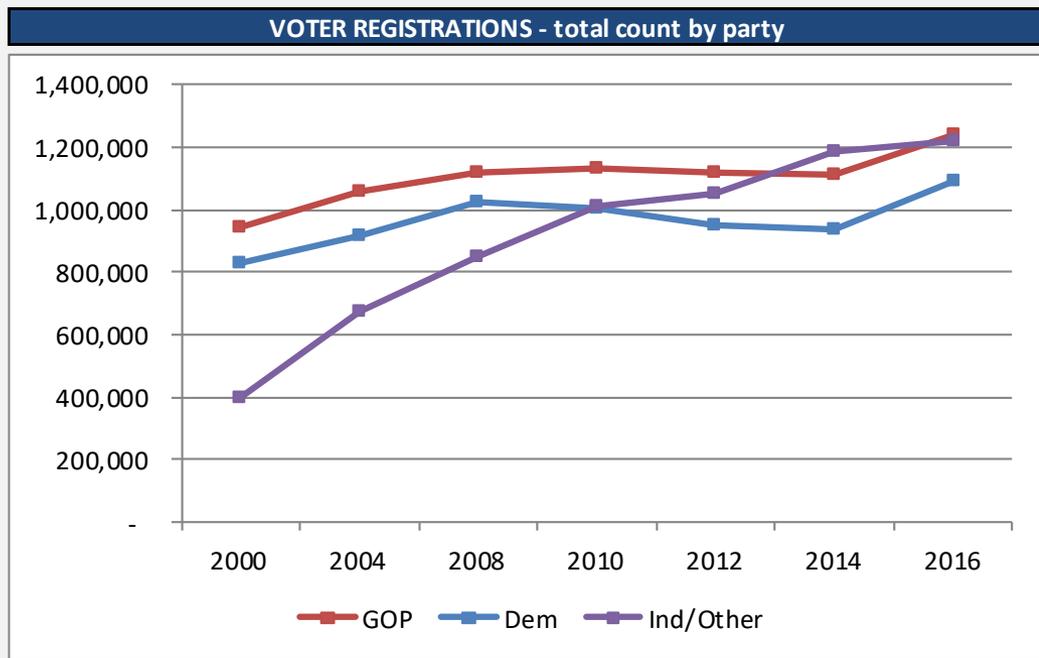




# NPV – arguments against

## Is Arizona's influence reduced by battleground states?

**WAKE UP!!** Arizona is now a battleground state!!



**VOTER REGISTRATIONS - total count**

year	GOP	Dem	Ind/Other	Total
2000	942,078	830,904	400,140	2,173,122
2004	1,055,252	914,264	673,815	2,643,331
2008	1,118,587	1,022,252	846,612	2,987,451
2010	1,131,802	1,002,937	1,011,679	3,146,418
2012	1,120,992	952,931	1,050,552	3,124,475
2014	1,114,713	936,417	1,184,400	3,235,530
2016	1,239,614	1,091,322	1,219,277	3,550,213

**VOTER REGISTRATIONS - percent by party**

year	GOP	Dem	Ind/Other	Total
2000	43.4%	38.2%	18.4%	100.0%
2004	39.9%	34.6%	25.5%	100.0%
2008	37.4%	34.2%	28.3%	100.0%
2010	36.0%	31.9%	32.2%	100.0%
2012	35.9%	30.5%	33.6%	100.0%
2014	34.5%	28.9%	36.6%	100.0%
2016	34.9%	30.7%	34.3%	100.0%

**VOTER REGISTRATIONS - year over year growth %**

year	GOP	Dem	Ind/Other	Total
2000				
2004	12.0%	10.0%	68.4%	21.6%
2008	6.0%	11.8%	25.6%	13.0%
2010	1.2%	-1.9%	19.5%	5.3%
2012	-1.0%	-5.0%	3.8%	-0.7%
2014	-0.6%	-1.7%	12.7%	3.6%
2016	11.2%	16.5%	2.9%	9.7%

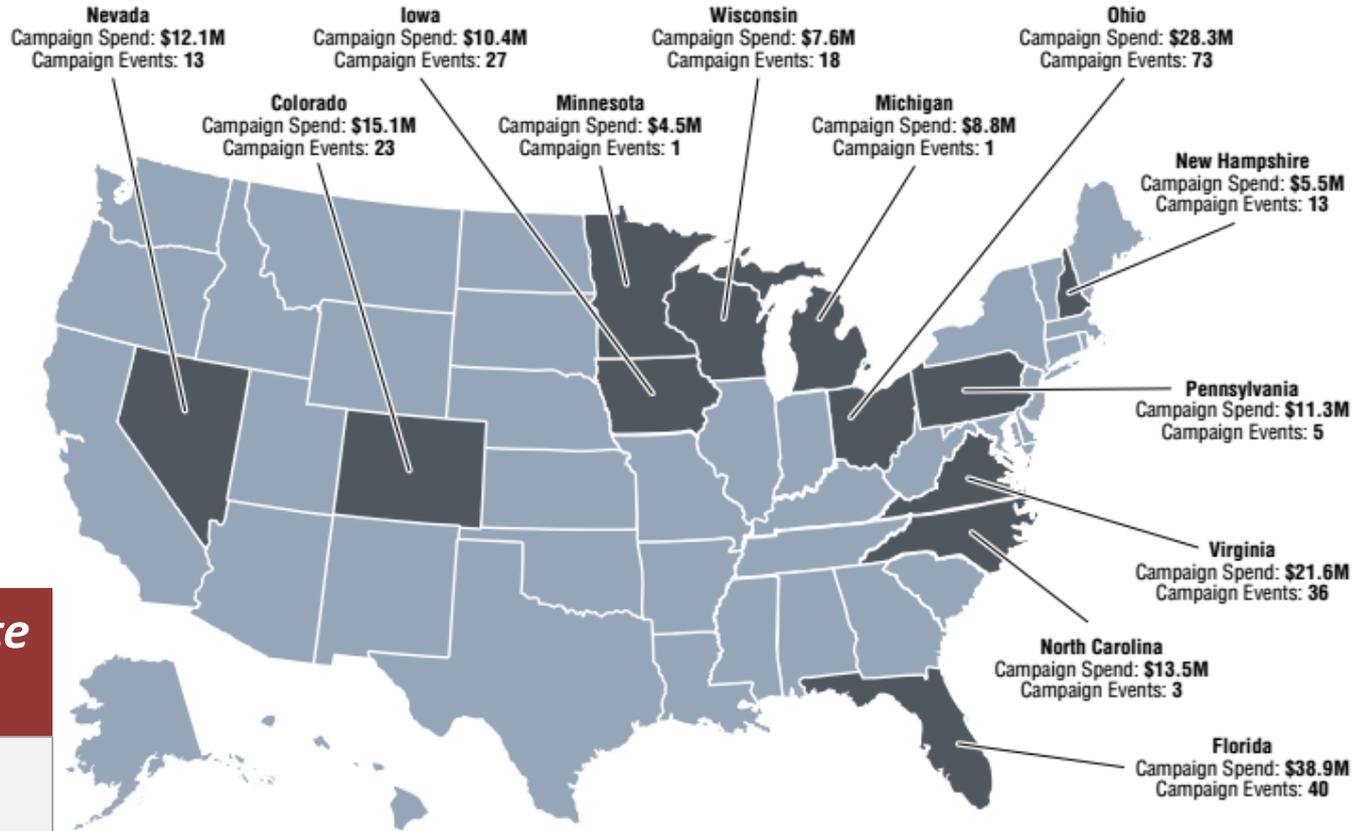
Today, **REPUBLICANS** only slightly outnumber **INDEPENDENTS** in our state; yet both **IND's** and **DEM's** are **growing faster** in Arizona.

PROGRESSIVE'S ARGUMENT: **Battleground votes mean more**



**2012 Presidential Campaign Spending and Post-Primary Campaign Events**

NationalPopularVote.com



**Spending focused in ...**  
this relatively small number of **battleground states.**

*If you think your vote doesn't count ...*  
under the current system, your vote really won't count under NPV.





# CONSTITUTION

1. Do you believe that the Constitution is the supreme law of the land?
2. Do you believe that we live in a constitutional republic or do we live in a democracy?
3. Do you believe that the Constitution would have been ratified without the inclusion of the Electoral College?
4. Do you believe that the Constitution would have been ratified without the inclusion of the Bill of Rights?
5. Do you believe that the Electoral College (Article 2, Section 1, Clause 3) is (1) Very Important, (2) Important or a (3) somewhat Important Article within the Constitution?
6. Do you believe that our constitutional republic protects (1) individual freedom, (2) individual liberty and (3) protects our Right to make individual choices and/ or does pure democracy equally protect the above mentioned freedoms?
7. Do you understand why the Electoral College was created to be included within the Constitution?
8. Do you believe that in order to change and or amend the Constitution the procedure as stated within Article 5 **MUST** be adhered to?
9. Do you believe that it would be un-constitutional to change and/or amend the Constitution in any way other than Article 5?



# **REASSIGNMENT**

- 1. Does the Arizona State Legislature (ASL) have unlimited power to create a statute reversing Arizona state law in the appointment of our presidential electors without the assent of the citizens of the State of Arizona?**
- 2. Does the ASL have the unlimited power to REASSIGN the expressed wishes of the electors without the assent of said electors?**
- 3. Does the ASL have the unlimited power to REASSIGN the expressed wishes of the electorates without the expressed assent of the electorate?**
- 4. Does the ASL have the unlimited power to REASSIGN the express wishes of the elector and the electorate and move those wishes across state borders?**
- 5. Does the ASL have the unlimited power to REASSIGN the wishes of the elector and electorate and join those wishes in collusion with a limited number of sister states (as few as 15) to determine the election of the president of the United States?**
- 6. Does the ASL have the unlimited power to create a statute affecting non-participating sister states in determine the outcome of the Presidential election?**
- 7. Does the ASL have unlimited power in creating a statute that could will infringe upon federal authority?**
- 8. Does the ASL want to get involved in a potentially long and very expensive legal battle with the tax payers money?**



# **PLENARY POWER**

**Definition: "Full, complete, entire" (Black's Law Dictionary)**

**So, does this mean that the Arizona State Legislature (ASL) have the plenary power to enact any law at any time without the assent of the citizens of the State of Arizona?**

**It is important to understand that certain Republican members of the Arizona House and Senate believe that they have plenary power and can exercise that power any time they wish and with total disregard to the wishes of the electorate.**

- 1. Are there limits on what the Legislature can do?**
- 2. What are those limits?**
- 3. Who decides when they have been violated?**
- 4. Does the Arizona State Constitution limit the States plenary power?**
- 5. Do the people reserve the power to propose laws and amendments to the State Constitution?**
- 6. Do the people reserve the right to accept or reject laws proposed by the State Legislature at the polls?**
- 7. What are the separation of power within the Arizona State branches of government that limit the plenary power of the State Legislator?**
- 8. What are the legal positions of the court systems within Th State of Arizona to include the Arizona State Supreme Court?**

# It is your decision:

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## IT IS YOUR DECISION

A CONSTITUTIONAL REPUBLIC  
(A REPRESENTATIVE GOVERNMENT RULED BY LAW)  
THE CONSTITUTION

THE "FIREWALL" THAT PROTECTS

INDIVIDUAL FREEDOM  
INDIVIDUAL LIBERTY  
INDIVIDUAL FREEDOM OF CHOICE



# It is your decision:

OR

A PURE DEMOCRACY  
(A DIRECT GOVERNMENT RULED BY THE MAJORITY)

IN ORDER TO HOLD POWER MAJORITARIANS MUST EVER INCREASE TAXES  
AND SPENDING TO SATISFY THE EVER INCREASING DESIRES OF THE  
MAJORITY

JAMES MADISON

“Democracies have ever been spectacles of turbulence and contention;  
have ever been found incompatible with personal security or the rights of property;  
and have in general been as short in their lives as they have been violent in their deaths....”

The word democracy is not mentioned even once in the Constitution



# THIS IS THE ISSUE PURE AND SIMPLE

A CONSTITUTIONAL REPUBLIC (RULE OF LAW)  
VERSUS A SYSTEM OF  
PURE DEMOCRACY (MAJORITARIAN RULE)