

# UNDERSTANDINGS NATIONAL POPULAR VOTE

Colorado SB19-042

## OVERVIEW

In forming the structure of our national government, the Founding Fathers designed the Electoral College to define how presidents would be elected. In the US Constitution Article 2, Section 1, and Clause 2: *“Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress...”* Later, the 10<sup>th</sup> Amendment enhanced each state’s authority in *“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.”* Finally, the 12<sup>th</sup> Amendment further modified the operation of the Electoral College in electing the president and vice-president.

The Electoral College was a compromise from the beginning between south and north as well as big and small states. Originally only white male landowners were authorized to vote, communications and travel were very slow and illiteracy was common. During this era, states were extremely autonomous. So the Founding Fathers used the Electoral College as a compromise to strengthen the agrarian elite, offer more federal power to the slave states, and counterbalance factionalism and polarization of the era.

The Founding Fathers designed the Electoral College to nominate presidential candidates and the House of Representatives elected them. Over time, the Electoral College’s operation has changed. The Electoral College was modified to function solely to elect the president / vice-president and to operate temporarily every four years. It is noteworthy that *no* other elected official is put into office in this manner. In addition to the modifications previous cited, Congress has introduced 700 additional proposals to reform the Electoral College and over the years, state legislatures have modified the method to award electoral votes.

Consistently states have endeavored to retain their territorial autonomy, but less so after the Civil War. States have implemented sometimes by law, sometimes by practice, the winner-take-all method of awarding electoral votes to consolidate the vote within a state. This method was not set forth by the Founding Fathers. With the winner-take-all electoral method, the candidates winning the most popular votes in a state are awarded *all* that state’s electoral votes. Under these circumstances, a presidential ticket can gain all of a state’s electoral votes on even a slim margin of popular votes. Currently 48 states use the winner-take-all system of awarding electoral votes while Maine and Nebraska use a proportional allocation of electoral votes.

## QUESTIONS

### 1. **Is National Popular Vote (NPV) an effort to subvert or eliminate the Electoral College?**

The NPV bill follows the US Constitution and current laws. It keeps the Electoral College intact by working within its framework. It applies the authority of the state legislatures to define how electors award their votes. It also utilizes the Impairments Clause of the US Constitution (Article 1, Section 10, Clause 1) to engage an interstate contract, known as a compact. Thus, NPV bill is compliant with the US Constitution and federal laws.

### 2. **Is every vote appropriately represented in the Electoral College?**

Under the current practices, the electors are not appropriately allocated. There is a limit in the number of representatives in the US House. This causes some representatives to stand for fewer citizens and others more. This proportional representation is mimicked in the Electoral College and leads to electors in small population states representing fewer voters than larger population states. For example, each Wyoming vote weighs 3 times more and each Vermont vote weighs 2.7 times more than a Colorado vote.

Further, if you average the 10 most populous states and compare the power of their residents' votes to those of the least populous states, you get a ratio of 1 to 2.5, most populous v least populous respectively. This may be "appropriate" but it certainly is not equal representation. Today the sparsely populated South and Midwestern states have Electoral College votes that are growing in power per elector.

In the 48 states where the winner-takes-all is used, as little as one vote difference will cast all of the electors to one side and disregard all votes to the opponent. For example, in the 2016 presidential election results in Colorado, the Republican votes were lost in the over-all national count. In other words, Republican votes in a traditionally blue state are washed aside by the winner-take-all method; likewise Democratic votes are set aside in traditionally red states. In both instances, the minor political parties and independents are ignored which translates into disproportionate elector representation.

### 3. **Do US citizens directly elect the President and Vice-president?**

The president and vice-president of the United States are the *ONLY* elected officials at any level that are *NOT* elected directly by the popular vote of their constituents. These offices are elected by appointed electors based on the winner-take-all method in all but 2 states, Maine and Nebraska, who employ a proportional award of the electoral votes.

### 4. **Are voter choices accurately voiced by the Electoral College?**

Electors award their votes in various ways, but electors are not mandated to vote in any given manner by the US Constitution. Most states require electors to cast their votes according to a winner-take-all formula derived from the popular vote in that state: meaning the winning political party garners all of the state's eligible electoral votes. It is noteworthy

that history documents just 1% of the electors casting faithless or rouge votes (not complying with the state guidelines) and faithlessness is minimally punished.

## **5. Will Colorado and rural states cede their independent voices to more populated areas?**

Looking at the population distribution in all states demonstrates a diverse voting voice among the populated areas. One-sixth ( $1/6^{\text{th}}$ ) of the US population is in the 100 biggest cities, one-sixth ( $1/6^{\text{th}}$ ) is rural and the remaining two-thirds ( $2/3^{\text{rds}}$ ) is suburban. Big cities tend to vote Democratic, rural areas tend to vote Republican, but suburban areas, the largest portion of the US population, are split between the two major parties. Plus, the nation's biggest cities represent only 10% of the nation's population and they are notably split in political preferences.

Even if the electors of the most populous states in the union (CA, TX, FL, NY, IL, PA) all voted the same (which is most unlikely based upon citizen voting patterns), alone they would be short 79 electoral votes to elect the president. Clearly, combining the most populous states or casting Colorado's 9 electoral votes with NPV alone cannot decide a presidential election.

Hence, Colorado is not ceding its votes to any other state because the National Popular Vote abandons the concept of state verses state. The distribution mentioned above illustrates diverse citizen voting across the nation. No one state votes 100% for either ticket. Every state has citizens voting for either political party and most presidential races are closely contested at the state level.

## **6. Does the Electoral College represent States or constituents in presidential elections?**

Under the current state-by-state winner-take-all method of awarding electoral votes, political parties and presidential campaigns tend to focus on states that are closely contested (widely referred to as "battleground" states), or that have large delegations of electoral votes, or both. In this environment, States compete for attention in the presidential elections and for the benefits that follow it. This attention translates frequently into politically influenced grants, favorable policies / rules and even funding being indirectly bartered for votes, especially in battleground states which become very influential while by-stander states are left out.

Recently, a Colorado politician said that elections "shouldn't be about 'red' or 'blue' states" (but rather about making sure that) every state has a voice." Shouldn't the presidential elections be about every voter having an equal voice? Plus, the presidential election using winner-take-all Electoral College is not the appropriate voice for States. States' interests are amply represented in Congress by the senators and representatives *elected by their constituents*.

We need to remember that the president and vice-president are the leaders of our *United States* and should represent *constituents* in all 50 States, the District of Columbia and US territories. The current winner-take-all Electoral College system amplifies minimal wins and

negates many voters' choices. It enhances political party influence and diminishes the voice of minority parties, independents and even states.

## **7. Do rural areas lack political influence?**

Under the current state-by-state winner-take-all method of awarding electoral votes, the 10 most rural states in the United States (AL, AR, KY, ME, MS, MT, SD, ND, WV, and VT) presently have diminished influence because *none* are battleground states, *not because they are rural*. In 2016, two-thirds ( $\frac{2}{3}$ <sup>rd</sup>s) of the general-election campaign events were in 6 states (FL, NC, MI, OH, PA and VA) and 94% of the 2016 events were in just 12 states (AZ, CO, FL, IA, MI, NC, NH, NV, OH, PA, VA and WI). Battleground states are denoted by close races and award all their electoral votes to one candidate in winner-take-all. Non-battleground states are ignored in presidential campaigns and likewise issues important to these states are also overlooked.

Two-thirds of the states are more rural than the nation as a whole and this rural nature is not synonymous with geographic size of the states. Again, looking at population counts in the United States, one-sixth ( $\frac{1}{6}$ <sup>th</sup>) of the US population is in its 100 biggest cities, one-sixth ( $\frac{1}{6}$ <sup>th</sup>) is rural and the remaining two-thirds ( $\frac{2}{3}$ <sup>rd</sup>s) is in suburban areas. Big cities tend to vote Democratic, rural areas tend to vote Republican, but suburban areas, the largest portion of the US population, are split between parties. Of the 12 smallest population non-battleground states, six are considered red states (AK, ID, MT, ND, SD and WY) are all mostly rural whereas six are blue states (DC, DE, HI, ME, RI and VT) of which only Maine and Vermont are mostly rural.

So political influence and campaigning are not issues of rural or geography, it is political realities of media costs, large attendances, economy-of-scale in campaigning, targeting states with large electors, and most importantly courting split voters in battleground states.

## **8. Does the Electoral College encourage voter participation in all states?**

In states where one major political party dominates, presidential candidates assume a predetermined voting outcome as do many constituents of the opposing party. Complicating the matter, presidential campaigns do not focus on issues in these states. As a result, some citizens living in these ignored states (by-stander / fly-over states) are disenfranchised by apathy. They know their individual votes will be overwhelmed under the winner-take-all Electoral College method. These disheartens voters often do not vote at all causing a detrimental impact on candidates and issues further down on the ballot. Such apathy causes voter turnout to be about 40% in by-stander states compared to 60% in battleground states.

It is important to remember that battleground status (aka purple states) shifts over time as the voters in each state change their voting patterns. For example, Colorado has shifted from one-party dominance (by-stander) to split-party (battleground) several times over the years. Unfortunately, as presidential campaigns focus on these shifting battlegrounds, voters in three-quarters of the states are ignored.

Another factor that reduces voter turn-out overall is the release of eastern returns under the winner-take-all allocation of votes. The accumulation of electors in the East can influence voter turn-out and sometimes determine the winner before voting booths are closed in the West,

## 9. Is there opposition to the NPV bill?

In October 2011, the Heritage Foundation, a conservative public policy institute, released a report opposing the NPV compact. That same month, *Roll Call* reported that the State Government Leadership Foundation, a project of the Republican State Leadership Committee, would begin a campaign to defend the Electoral College and counter recent NPV bill gains. Further activity, however, does not appear to have been undertaken by these groups as of October 2018, according to the Congressional Research Service.

## SUMMATION

In 2018 a Public Religion Research Institute (PRRI) study found nearly two-thirds (65%) of Americans believe that presidential elections should be decided based on a national popular vote, while about one-third (32%) believe they should be decided through the Electoral College in its current form. Looking at political preferences, more than eight in ten (81%) Democrats say presidential elections should be decided based on the popular vote. Republicans are split over how presidential elections should be decided: fewer than half (46%) say they should be decided by the popular vote while a slim majority (51%) favors the winner-take-all Electoral College. Political independents do not differ appreciably from the public overall.

Looking at just the Great Lakes region where several battleground states reside, Americans say they would prefer presidential elections to be decided by a national popular vote. Roughly two-thirds of Ohio (66%), Michigan (66%), Wisconsin (67%), Minnesota (69%), and close to three-quarters (73%) in Illinois prefer the popular vote over the winner-take-all Electoral College method.

A Colorado Public Radio's Purplish commentary reinforced this preference for a national popular vote in Colorado. However, after the 2016 election, Purplish noted Colorado Republicans markedly abandoned this position - perhaps recognition that in the past twenty years Republican presidential candidates, who were the second place winners of the national popular votes, were voted into office by the Electoral College.

Recently a Colorado politician remarked that NPV bill "...will have a profound negative impact on Colorado going forward..." plus the strictly partisan voting to enact this bill was "an affront to the very institution of our democratic republic." Individual votes on either side will have equal say using the national popular vote instead of throwing away nearly half of the votes in winner-take-all. In the presidential election, voters are all constituents of the nation first and of each state second. As for an affront to our democratic republic, passage of a state law is a true example of the elected representation of the people governing by the rule of majority. This is indeed the foundation of a democratic republic, not an affront!

The NPV bill has been endorsed by 3,125 state Legislators in all 50 states. It has some bi-partisan support and has been introduced in all 50 state legislatures. Further, it is endorsed by multiple organizations: League of Women Voters US and Colorado; former chairs of American Legislative Exchange Council; American Civil Liberties Union; Project Fair Vote; and NPV's advisory board including former Senators and Representatives of both major political parties. To date 11 states and DC have adopted NPV bill equaling 172 electoral votes out of 538. Soon Colorado's NPV bill (SB19-042) will add 9 more votes totaling 181 electoral votes of the needed 270 for implementation. According to the National Conference of State Legislatures, NPV bill remains currently under consideration in two states—Ohio (18 electoral votes) and Pennsylvania (20 electoral votes).

Today, the NPV bill is a viable option in our modern times. More citizens are enfranchised voters: African Americans, American Indians, women, 18 year olds and non-landowners, to name a few. US citizens are mostly literate and enjoy rapid modes of communication and travel. States' rights are protected by the equal representation in the US Senate and by proportionate representation in the US House of Representatives. The president and vice-president are the executive leaders of our *national* government and should therefore represent *all* US citizens, not just the few who determine the electors. Technology makes voting directly for our national officials feasible. Lastly, voter apathy needs to be addressed by making every vote count equally. This in turn will help focus political campaigns on more than just battleground states and encourage higher voter turn-out to the benefit of down-the-ballot voting.

Today we need to again modify this territorial state *winner-take-all* electoral process. We need to eliminate this winner-take-all method used in 48 states. This method awards *all* of the electoral votes to the presidential ticket that won even the slimmest of margins in a state thus distorting the voice of the people.

The NPV bill is a realistic compromise framed to accomplish this goal and to follow the directives of the US Constitution and federal laws. It applies the Impairments Clause of the US Constitution (Article 1, Section 10, Clause 1) enabling states to engage in an interstate contract, known as a compact. It guarantees through state legislated modification of the Electoral College a one-person-one-vote for the president and vice-president. It gives *voice to every constituent in all 50 states and the District of Columbia*. It enfranchises minority party members and independent voters by pooling all votes nationwide. It is time once again to update the methodology of the Electoral College employing a compromise: the cornerstone of democracy.

The **National Popular Vote** bill will guarantee that **every** voter in **every** state will be politically relevant in **every** presidential campaign.

Sources:

- American Democracy in Crisis, A PRRI/The Atlantic 2018 Voter Engagement Survey by Robert Jones, <https://www.prrri.org/research/american-democracy-in-crisis-voters-midterms-trump-election-2018>
- Every Vote Equal by John Koza, et al 2006
- Guest Opinion by US Senator Gardner, Denver Post, 2/23/19
- <https://www.cpr.org/news/purplish/electoral-college-dropouts>
- <https://www.NationalPopularVote.com>
- [www.archives.gov/federal-register/electoral-college/electors.html](http://www.archives.gov/federal-register/electoral-college/electors.html) 2/3/2019
- The National Popular Vote (NPV) Initiative: Direct Election of the President; Interstate Compact Congressional Research Service, October 25, 2018; <https://crsreports.congress.gov/R43823.PDF>
- “The Electoral College Distorts the Vote. And It’s Going to Get Worse” by Katy Colin, Washington Post, 11/17/2016

Author: Understanding National Popular Vote by Kathy Ewert, March 8, 2019