

2008-2009 LWVUS Study – National Popular Vote

	Opponents Say:	Supporters Say:	Note
<u>1. Constitutional Issues</u>			
Constitutional Power	<p>Although U.S. Constitution gives state legislature power to determine how state's electors are chosen, there could be legal challenges to a compact between several states on selection of electors.</p> <p>Abbreviations: EC - Electoral College – NPV - National Popular Vote NPVC - National Popular Vote Compact</p>	<p>Constitutional amendment to eliminate Electoral College (EC) would accomplish goal of electing president by popular vote, but it is a very long, difficult process with uncertain results. Over 70% of population favors direct election for president. NPVC would be a more rapid, direct path to direct vote and would be in interest of the electorate</p>	<p>League already has position to support a national direct vote. Question of study is whether to adopt NPVC to accomplish this direct vote.</p>
Political Compacts	<p>Opponents say political compact - one that tends to enlarge political power of compacting states at expense of either federal gov't or non-conforming states - may function differently from other types of interstate compacts (boundaries /economics)</p>	<p>Interstate Compacts are Legitimate - involving myriad of topics. They have long been a part of U.S. history & are sanctioned by Constitution. Over the years, courts have upheld such compacts & ruled that they bind parties to terms of agreement.</p>	
Congressional Approval	<p>Constitutionally, political compacts are permitted between states, but require congressional approval. Specific Clause - any change creating shift in political power requires consent. Without congressional consent the NPV Compact may not be enforceable. [Approval not always sought for previous compacts, and 4 early state adaptors have not sought approval.] Senators could balk if perceive NPV as disenfranchising portion of their state constituency. While Supreme Court declined to hear cases regarding method of appointing electors; there is no assurance for future.</p>	<p>Supreme Court rulings have established most compacts do not require congressional approval. However, to avoid time-consuming litigation on this procedural issue, backers have decided to seek congressional consent.</p> <p>In deference to exclusive power of states to decide manner of awarding electoral votes, the question might be presented to Congress in form of a bill to grant consent to Compact on behalf of District of Columbia. Proponents believe that positive action on this legislation would imply tacit congressional consent to NPVC as a whole.</p>	
Non-Compacting States	<p>Opponents say that electors from states not part of the Compact would have little influence on selection of the President. Interests of states which have not signed the Compact could be greatly diminished.</p>	<p>Voters in non-compacting states will have their vote counted equally to everyone else in the country. All votes will be equal (compacting or non-compacting state).</p>	
Constitutional Protections	<p>U.S. Constitution protects all states in electoral process. NPV Compact could shift political power between states that are/are not party to Compact. Whether there is good broad geographic base for Compact not clear until we know which states enter the compact.</p>	<p>No constitutional amendment needed to implement NPV Compact. Under Constitution, states already have right & power to implement the change. Supreme Court cases have established that wording gives exclusive & complete power of appointment of electors to states - up to each state to decide how power is exercised, as they deem fit (considering no other provisions are violated).</p>	

2. Evaluating Fairness			
<p>Support for Winner</p> <p>State's Identity & Rights</p>	<p>Voters supporting candidate who wins their state want their electors to support that choice.</p> <p>EC disenfranchises voters, but NPV Compact could disenfranchise the majority of a state's voters as national winner is not necessarily candidate who wins vote within their own state.</p> <p>Compact would reduce rights of state itself & increase rights of individuals in all states. Each state would relinquish an independent role by mandating it be party to the Compact - voting in a certain manner.</p>	<p>Voters assume candidate with most votes wins an election. When "victor" actually receives fewer votes, people question system. It is unnerving to electorate when a country supposedly based on majority rule ends up with a "minority" president. Problem eliminated under NPV Compact. Elected by popular majority makes "stronger" presidents with greater democratic legitimacy. Direct vote nationwide gives equal weight to each vote.</p> <p>Question is whether it is more important for winner in particular state to receive state's electoral votes or for winner of entire country to be selected as president. States' rights advocates argue former, but this assumes that voters within state care more about their state identity than their own personal vote. Public polls indicate that only about 20% support current system of awarding electors; 70% oppose current system, 10% undecided.</p>	
<p>Battleground States</p>	<p>With NPVC, Candidates would tend to campaign primarily in areas of dense population. The concerns of sparsely populated rural areas would be ignored as candidates speak to issues resonating with urban populations.</p>	<p>Under current EC system, campaigns intensely focus on a <u>few key states</u> which determine victory or loss. Voters in other 'safe' states become observers only, except as funding sources to fuel campaigns in toss-up states. This means some votes are worth more than others. / Under NPV candidates have to be sensitive to all states, bringing more voters directly into the electoral process versus spectator rank. Voters across country would have sense that their vote would count-providing greater interest & attention to campaign /governance.</p>	
<p>Influence of Winner</p>	<p>11 largest states together have the 270 electoral votes, they could determine outcome of election (after individual votes around nation are counted)</p>	<p>"Collusion" among all the large states is extremely unlikely as they have little in common politically. * NPV support has been across-the-board so far</p>	<p>First 4 signature states vary in size. (*See list in 'pro' paper.)</p>
<p>The Approach</p>	<p>Some opponents simply think it inappropriate or unfair to take an approach that avoids the amendment process - a 'work-around' the Constitution state by state.</p>	<p>Opponents portraying approach of interstate compact as <i>inappropriate</i> & disregarding U.S. Constitution ignore fact that many amendments have begun as state actions. Included in these: the very right to vote for president; abolition of property holders requirements for voters; voting extension to women, blacks and persons under 21. [ERA not yet passed.] All were begun by state legislation, followed by constitutional amendment. Few called it an 'end-run' or questioned motive of supporters.</p>	

Small States	Since there would be more 'votes' in the more populous states, candidates would give more attention to the larger states. Electoral College protects small states.	Political power of small states would be increased (not decreased) under NPV. Currently few of the 22 least populous states are battlegrounds. With NPV each vote is important regardless of state or state size. Closeness of race within state is less relevant.	Argument exists whether the EC does or does NOT protect small states.
3. Mechanical Issues			
Enforcement	Enforcement methods unclear; might mean lawsuit against non-complying states. Compact might be unenforceable with potential to disrupt EC procedures. Timing <i>Unclear</i> what authority, if any, could force a state pulling out during "blackout period" to return or how long this might take. Other NPV Compact provisions suspend the rules of Compact & return to EC if another state pulls out too close to the election – this <i>could</i> cause disruption.	Drafters of NPVC have anticipated problems (such as a state legislature, for partisan reasons and after signing onto NPVC, changing rules for awarding electoral votes—after people have voted, but before EC meets). There is a mechanism which permits a state to withdraw from Compact, but only according to timetable (prohibited July 20 th until January 20 th during election years). During this time a compacting state cannot withdraw or repeal its law. Case law supports enforcement of such a provision holding that interstate compacts are contracts binding parties to agreement. Further, Americans are committed to notion of fair-play and would react strongly to efforts by one state to "break the rules."	Black out time frame includes dates of 6 major events relating to presidential election (national conventions, campaign period, Election Day, Meeting of EC, counting of electoral votes, & Inauguration Day).
Close Elections 'Real vs Wrong' winners Winning Levels Plurality	No matter the nationwide vote, the requirement for majority of votes (270) in EC helps establish legitimacy for president in very close election. NPV does not improve on current system by requiring majority win.	With landslide election there is less chance of a "wrong winner," but the more divided the country, closer the elections (greater chance of "wrong winner" where candidate with fewer popular votes wins office). We now appear to be in an era where many elections are close. NPVC would eliminate the possibility of a "wrong winner." Changing 'winner-take-all' rules can be done as originally adopted, enacting state laws. NPVC does not address that. What NPV does do is give nation a president elected with most votes nationwide.	'Wrong winners' have been elected 4 times in US history. Neither NPV nor EC require majority win – such as could be seen in runoffs or with Ranked Choice Voting
Recounts	NPV Compact contains no authority to carry out recount in close election and must rely on state's current procedures, could delay final result nationwide. Compacting state can sue other to do recount, but can non-compacting?	Drafters anticipate that need for recount (or certain close state recount) will diminish under NPV as count can be close in battleground states, but numbers are not that close on nationwide basis. Should it be necessary, plans & resources still responsibility of individual states, but larger pool makes this less likely.	
Election Fraud / Voter Suppression	Fraud investigations at national level would be more difficult when an election is to be decided by national popular vote totals (NPV or otherwise).	Adoption of NPV Compact may diminish problem. Currently, with only few battleground states in play, temptation increased by skewed weight of votes in battleground states. Under direct vote (NPV) nationwide, one fraudulent vote has far less effect on outcome <i>and</i> massive fraud more difficult.	

<u>4. Other Issues</u>			
Pre-clearance Voting Rights Act	For preclearance states (and areas) "any voting qualification or prerequisite to voting, or standard practice, or procedure with respect to voting" must be approved ahead of adoption. Compact could be challenged.	NPV Compact is in total harmony with terms & purpose of VRA - enacted to guarantee equality of vote throughout US. NPV goal is to create an equal vote for all voters throughout U.S.	
Faithless Electors	Doubtful, but opponents fear that with NPV Compact some electors might feel an injustice would occur to their home state if they cast their vote for national winner and thus may be tempted to violate Compact.	NPV Compact more likely to protect against faithless electors than does EC – faithless electors not a very practical concern. Considering support winner would need to garner nationwide win, candidate would probably earn at least another half of remaining votes in non-compacting states as well – such strong support would discourage faithless electors. Also, state electors casting votes will be from party that won nationwide	Of 21,915 electoral votes cast in 55 presidential elections from 1789 to 2004, only 11 were surprises - 1 an accident; 9 considered 'grand-standing' after election Only 1 (1796) cast in hopes of changing election.
<u>5. League issues</u>			
Uniform Standards	<p>THE LWVUS supports uniform standards for all elections. While current EC system is also not uniform (Maine & Nebraska), neither is NPV Compact.</p> <p>Nationwide change by constitutional amendment is better than any measure adopted on a state-by-state basis.</p> <p>While the LWVUS supports abolishing the EC, the method used to replace it must be considered carefully.</p> <p>This plan is not perfect.</p>	<p>NPV Compact aims to have all states become members of compact, thus sharing goal of uniform & universal method of presidential election. The fact that Compact will become effective when states representing 270 electoral votes have joined does not change ultimate goal. Most importantly, NPV creates uniform standards because EVERY national vote would be counted equally.</p> <p>While U.S. is a democratic-republic not a direct democracy, LWVUS supports direct election of the president. One person - one vote - for one seat. League rejects arguments for federalism over those for individual voters' rights in this matter. We have held position for over 30 years, nothing before has been as practical and possible as the NPV compact.</p>	

Chart prepared with posted materials by Barbara Klein, committee member on NPV study 2008-2009