



NATIONAL POPULAR VOTE V. THE ELECTORAL COLLEGE

Debunking the Myths

By: Tara Ross

Myth: NPV would force presidential candidates to run truly national campaigns because votes in every corner of the country would have equal weight.

Fact: Eliminating the Electoral College would undermine the need for national campaigns and promote campaigns aimed at heavily populated urban areas. Candidates have limited time and resources and must strategize and prioritize. Campaigns aimed at big cities would be immensely more productive, as a matter of pure math. In a world without the Electoral College, rural areas and small states will never again matter in the presidential election.

Myth: Most states are ignored by presidential campaigns because of the Electoral College. Only swing states matter. NPV would fix this.

Fact: The identity of “swing” and “safe” states changes all the time. Texas used to vote reliably Democrat, just as California used to vote reliably Republican. Georgia, Kentucky, and Louisiana all voted for Bill Clinton, but they were considered very safe Republican states in 2008. An honest assessment of American history shows many other such examples. No political party has ever been able to ignore any state for too long without feeling the ramifications at the polls.

Myth: The person who wins the national popular vote should win the White House. The Electoral College does not guarantee such results and is thus undemocratic.

Fact: The question is not “democracy” v. “no democracy.” The question is “democracy with federalism” (the Electoral College) v. “democracy without federalism” (NPV). America’s unique blend of democracy and federalism has served the country well. In this context, it encourages presidential candidates to create national coalitions. A candidate must do more than simply rack up a majority of voters in one region or among the voters of one special interest group. He must appeal to a variety of Americans before he can win a majority of states’ electoral votes.

Moreover, NPV proponents too quickly dismiss the possibility that the presidential election system will change as the rules of the game change. These changes will make it impossible for candidates to achieve majority support: NPV allows any plurality winner to take the White House. Multi-party races will become more common, and voters will be more easily fractured, splitting their votes across several candidates. If a President is elected with the support of 30% of Americans, is this “better” or “more fair” than our current system? No election system can make a majority of Americans agree on the identity of the best President. But the Electoral College offers the next best thing: It can be won only by a candidate who achieves simultaneous victories

across many states; thus, it is better able to identify a good compromise candidate that satisfies most Americans, as represented by their states.

Myth: NPV is not an “end-run” around the Constitution because the winner-take-all method of distributing electoral votes is not in our founding document.

Fact: NPV's compact turns the current presidential election system on its head. If it is legal, it is only because NPV has found a loophole in the law. The compact will certainly be contested. There are many reasons to argue that the compact is unconstitutional, as has been detailed elsewhere.¹

Legislators should remember that the Constitution was the product of much give and take. It never would have been ratified, at least by the small states, but for the compromises that were made at the Constitutional Convention. Indeed, the small states explicitly objected to a national direct election for President (as proposed by NPV); they feared that the large states would trump them each and every presidential election year. Moreover, the delegates deliberately created a difficult constitutional amendment process (requiring approval from 2/3 of Congress and 3/4 of the states). This tough process exists, at least in part, to protect the small states from tyranny by the large states. Finally, the Constitution values federalism and the ability of states to act on their own behalves. NPV attempts to undercut all of these protections, yet claims to be in line with the Founders' intent. Such a claim is disingenuous, at best.

Myth: The nation's presidential election system will continue to operate smoothly with NPV in place.

Fact: Logistical problems will be unavoidable with NPV. NPV will leave 51 sets of local election laws in place (each state, plus D.C.). Today, the varying states' processes are irrelevant because each state is conducting its own election with its own election outcome. NPV would change this. It would instead attempt to derive one single, coherent result from 51 separate election processes. It's an impossible task. Consider: states have different provisions for recounts, ballot qualification, felon voting, and early voting. What happens when Florida and California are each conducting recounts with different definitions of a hanging chad? The 2000 election will look like a picnic in comparison. Or what happens when Connecticut voters have more time to early vote than Texas voters, and a voter in Texas files a lawsuit contesting the election results?

The most basic rule of democracy is that all voters in one voting pool should operate under the same set of laws. NPV would ensure that this most basic rule is constantly violated. Equal Protection problems, lawsuits, and constant uncertainty are sure to result.²

Tara Ross is the author of Enlightened Democracy: The Case for the Electoral College

1. TARA ROSS, THE FEDERALIST SOCIETY FOR LAW & PUBLIC POLICY STUDIES, LEGAL AND LOGISTICAL RAMIFICATIONS OF THE NATIONAL POPULAR VOTE PLAN (2010), available at http://www.fed-soc.org/doclib/20100910_RossEngage11.2.pdf.

2. *Id.*