

The National Popular Vote Plan for Electing the US President

League of Women Voters of Alaska

The National Popular Vote bill (NPV) will guarantee election of the presidential candidate who wins the most popular votes in the November election. Under the National Popular Vote bill, all the electoral votes from the enacting states would be awarded to the presidential candidate receiving the most popular votes in *all* 50 states (and DC). The bill would take effect only when enacted by states possessing a majority of the electoral votes – that is, enough to elect a President (270 of 538).

NEW League Position (Adopted 2010)

[LWVUS] believes that the direct-popular-vote method for electing the President and Vice-President is essential to representative government. The League of Women Voters believes, therefore, that the Electoral College should be abolished. We support the use of the National Popular Vote Compact as one acceptable way to achieve the goal of the direct popular vote for election of the president, until the abolition of the Electoral College is accomplished. The League also supports uniform voting qualifications and procedures for presidential elections. [Underlined words are new.]

Q1. Why should we care about direct elections?

A. Currently, voters are not treated equally in the presidential election. 2/3rds of the states are ignored during campaigning and 98% of the money is spent in just 15 states. A second place candidate can win the presidency. The **root cause** of all of this is the 'winner take all' rule that has been adopted by state statute and can be changed by state statute. Over 70% of our population supports direct elections. Direct election of the president and every vote equal is fundamental to our goal of making democracy work.

Q2. Won't this give way too much power to the states enacting this bill?

A. NO. Every vote will be equal in every state. When the NPV bill takes effect, it will guarantee the presidency to the candidate who receives the most votes in ALL 50 states (and District of Columbia, which today casts three electoral votes).

Q3. Would adoption of NPV disadvantage small states or non-participating states?

A. Small states are disadvantaged NOW! The League has long supported direct elections (and abolition of the Electoral College); our current League policy is grounded in the fact that NPV would increase the political power of small states by making every vote equal. Hawaii and DC have already adopted NPV because they recognized its benefits. Of our 13 smallest states, six are safely Republican, six are safely Democratic, and while money is raised in all of them, only one (NH) gets campaign attention. With NPV each vote is important. ALL states will be 'battlegrounds.'

Q4. Is this plan constitutional? What permits states to adopt the National Popular Vote plan?

A. The Constitution says: "Each State shall appoint, in such Manner **as the Legislature thereof may direct** a number of electors..." The Supreme Court has called state power over how the Electoral College works an exclusive and complete power of the states: "In short, the appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States." [U.S. Supreme Court case of *McPherson v. Blacker* 1892]. Additionally, states are also empowered to enter into interstate compacts – and regularly do so. (Note: The Compact includes a clause that it will be dissolved if there is a constitutional amendment that abolishes the EC)

Few states began with the winner-take-all rule, but adopted it primarily for partisan reasons. NPV is a legitimate approach to fixing our broken elections via an interstate compact, while maintaining the state's power and responsibility to determine how electors are awarded. Interstate compacts involve a myriad of topics, have long been part of U.S. history and are sanctioned by the Constitution. Courts have upheld compacts and ruled that they bind parties to the agreement's terms. Even opponents of NPV routinely concede that it is indeed constitutional.

Q5. Wouldn't a constitutional amendment be a better approach than the National Popular Vote?

A. NPV is a non-polarizing issue supported by both parties. Over 70% of Americans favor a national popular vote for president. While an amendment to eliminate the Electoral College would accomplish this goal, it has been decades since that approach has seen any significant movement. Many conservatives prefer to maintain states' rights and would resist an amendment to abolish the Electoral College. The NPV plan works within the current system to bring about direct elections with multi-partisan support. Those people who support an amendment should remember that many amendments began as state actions. States took the lead in granting suffrage to women, to African Americans and to 18-to-20-yr olds and in establishing elections for United States Senators. It was state action, not Constitutional amendments, which led all states to hold popular vote elections to allocate electors and to eliminate wealth qualifications for voting. The Constitution clearly gives states the power to guarantee election of the national popular vote winner - NOW.

Q6. Is it fair for only a minority of our states to change something as fundamental as our presidential election system?

A. A state already can affect national outcomes by changing its Electoral College rules. If Florida and North Carolina had passed laws to allocate electors according to results in congressional district, as they debated doing (and as Maine and Nebraska currently do), John Kerry would have won in 2004. This, even though George Bush had 3.5 million more votes nationwide than Kerry.

Polls show that large majorities of voters in all states support a national popular vote. The first six states to enact NPV – Hawaii, Maryland, New Jersey, Illinois, Massachusetts and Washington, (as well as DC) – vary in size and geography. NPV has passed at least one chamber in such small states as AR, DE, ME, NM, OR, RI, and VT. Backers expect about half of the states will have enacted NPV by the time it goes into effect.

Q7. Would voters mind their electors going to a candidate who won the national popular vote, but did not win the popular vote in their state?

A. As a League member stated on the Convention floor in 2010, "We elect the President of the United States, not president of our individual state" - just as we elect a governor of our state and care less about the 'count' in our district only. Polls repeatedly indicate that more than 70% of voters want the national popular vote winner to be president – and only slightly less when this specific question about electors is asked. Under NPV, the election will be governed entirely by the understanding that the popular vote winner will be elected, with state-by-state vote totals on election night. Presidential elections are fundamentally about people (not states) choosing a president. People want their president to be the candidate with the most votes in the whole country – exactly what NPV guarantees.

Q8. Does NPV comply with the Voting Rights Act?

A. NPV complies with preclearance and other provisions of the Voting Rights Act, which upholds equal protection under the law. With NPV, all voters will have an equal chance to elect their president. NPV backers include the NAACP, Asian American Action Fund, Brennan Center, Nat'l Coalition on Black Civic Participation, Nat'l Black Caucus /State Legislators, Nat'l Latino Congreso & ACLU

Q9. What authority oversees the compact? What about lawsuits? Enforcement? Fraud? Faithless electors? Recounts?

A. Interstate compacts are a constitutionally protected right of states to enter into binding contracts with one another. NPV drafters have anticipated possible problems like a state legislature trying to undo its approval of the compact for partisan reasons. States can withdraw from the Compact, but not from July 20th of an election year until January 20th. Case law supports enforcement of such a six-month blackout period, which includes the national conventions, general election campaign period, Election Day, meeting of EC, electoral vote count, & inauguration. NPV is an identical legal contract among states; a state would be sued for trying

to withdraw during this period. No state has ever been allowed to withdraw from a compact other than by the rules of the compact. Furthermore, Americans, committed to notions of fair play, would oppose any effort to "break the rules." Indeed, states already could theoretically try to change their winner-take-all rules at the last minute for partisan gain, but they don't.

While some states could and should improve their post election audit methods, it is harder for fraud to have an impact nationwide where victory margins are typically measured in millions of votes rather than the margins of mere hundreds or a few thousand votes in swing states under our current rules. If there were suspicion of fraud in a NPV election, results could be investigated and challenged under existing laws – and improvement in those laws will help all our elections.

Faithless electors (almost non-existent historically) have no incentive to 'defect' with NPV. Party faithful are picked as Electors. The winning candidate's electors (all party faithful) will cast the votes in the states that have passed NPV.).

The 'recount' issue is the same if a popular vote is earned through an amendment or NPV. Congress could establish universal recount rules under current law. Until then, recounts remain the responsibility of states. Needing a recount would be very rare because a larger pool of votes makes recounts less likely and there would be only one pool of votes. Our current system creates artificial crisis with 51 separate opportunities for a recount and regularly results in contentious state recounts, as in Florida in 2000.

Q10. Who joins with LWV in supporting NPV?

A. NPV has been endorsed by nearly 2,000 state legislators and major newspapers like the *New York Times*, *Chicago Sun Times* and *Los Angeles Times*. LWV *joins many* leading good government groups in supporting NPV, like the Brennan Center, Common Cause, Public Citizen, FairVote, Sierra Club and civil rights groups mentioned earlier.

For further information visit the drafters' website: www.nationalpopularvote.com (see the 'myths' page) Also see FairVote's FAQ page: www.fairvote.org/what-is-the-national-popular-vote-plan

Important Points:

- 2/3rds of our states are Spectator states (ignored) because of 'winner take all' rules in current system.
- Over 70% of population supports direct elections.
- NPV is a practical way to achieve a national popular vote NOW in a way that is truly nonpartisan.
- **Every Vote Equal – in every state**

Our League is sharing this FAQ sheet to help you better advocate for this plan to adopt direct elections.

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