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In support of the Electoral College and in opposition to National Popular Vote

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The Founders' intent for the Electoral College was to select the President through a state-by-state process that represents each state's own interests. Legislatures have experimented with that process over time. In every presidential campaign and election, however, the Electoral College has functioned as intended: it has represented states as states in the election of our federal chief executive. While the process has not been exactly as the Founders anticipated, it has almost certainly worked even better.

Proposed state legislation around the country seeks to overturn the Founders' design. The National Popular Vote (NPV) interstate compact is nothing less than a hijacking of the Electoral College. It would create the effect of a direct national election, turning the entire nation into one giant single-member district in presidential campaigns. This idea was debated and rejected by the American Founders. It has been put forward over and over again as a constitutional amendment, but has always failed. And so NPV seeks to achieve the same ends by other means.

Unsurprisingly, NPV emerged in the aftermath of the 2000 election. One of California's Al Gore Electors, John Koza, was also a brilliant computer scientist and major donor to left-wing causes. He had thought about the Electoral College once before, as a graduate student, when he had tried to turn it into a board game. It flopped, but he found success with another invention—the scratch-off lottery ticket. Koza successfully lobbied states to create scratch-ticket lotteries; he invested his royalties in politicians like John Edwards, Al Franken, Bernie Sanders, and Al Gore.

After 2000, Koza began looking for a way to change the Electoral College. Gore had lost because his slim popular vote majority was concentrated in major metropolitan areas. The Electoral College system had rewarded George W. Bush for attracting votes across a much broader and more balanced geography. (Republicans touted the county-level electoral map, which showed Bush's broad support as a sea of red with blue coasts and blue dots for cities and Indian reservations.) Koza decided the Electoral College should go, but recognized that a constitutional amendment requires something close to a national consensus. He looked for an easier way, and found it—arguably, at least—in the power of states to appoint electors.

The framework of the Electoral College was created at the Constitutional Convention. It flowed out of the compromise that created Congress. Both the House and Senate are based on states—no House district line can cross a state line and every state gets exactly two senators (the latter is the only constitutional provision which cannot be amended). The Electoral College uses the mathematics of Congress—each state has the same number of presidential electors as it has members of the House and Senate. And article two, section one, of the Constitution empowers state legislators to decide how the state will appoint those electors.

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: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

A careful reading of the Constitutional text makes clear that the state itself appoints electors—legislators only determine the process. The Electoral College allows legislators to devise a system to represent their state’s own political will in the presidential selection process. Legislatures have directly appointed electors and have allowed for their election individually. Legislatures have instituted elections for electors by district—the process currently used by Nebraska and Maine. And today, the other 48 states (and the District of Columbia) elect a slate of electors for whichever presidential candidate wins the most votes in that state.

NPV advocates claim legislators can also ignore their own voters entirely, neither appointing electors directly nor allowing state voters to choose. The NPV interstate compact requires states that have adopted it to appoint electors based on the nationwide vote. Koza recognized that this would create the effect of abolishing the Electoral College and establishing direct election of the president, but without changing the Constitution. Even the *New York Times*, which has editorialized in support of Koza’s plan, described NPV as an “end run” around the Constitution.

Eight states have enacted NPV legislation. The compact only takes effect, however, if enacted by enough states to represent at least a majority of electoral votes (270). States that have adopted NPV are California, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, Vermont, Washington, and Washington, D.C., for a combined 132 electoral votes. It has been voted down or failed to reach the floor in nearly every other state, as legislators come to realize just how radical and possibly unconstitutional is NPV.

Every method of appointing electors, from the founding until today, has respected the states as states. NPV represents a radical move away from that understanding—so radical that it may violate the very constitutional provision it claims to use. The job of a legislator in carrying out article two, section one, is to determine “the manner” by which their “state shall appoint” electors. To give away that appointment to something outside the state is a violation of that trust. Put another way, NPV not only upends the Founders’ intent, but is likely wrong when it claims that the Constitution allows legislators to simply give away a state’s electors.

NPV also claims that the power over the manner for appointing electors trumps the Constitution’s compacts clause. That provision, in article one, section ten, requires congressional consent for any agreements among the states. Because NPV makes no allowance for such approval, it could easily be struck down on that ground alone. This guarantees a legal challenge to NPV that would at least put the agreement into doubt until resolved.

The most serious problem with NPV, however, is not its violation of the Founders’ intentions or the Constitution. Even if the interstate compact was eventually upheld by the federal courts, NPV would destabilize national politics without providing any of its supposed benefits.

NPV’s slogan is “Every vote equal.” Its advocate’s claim that the fact that presidential campaigns focus their resources in “swing states” is a problem and that NPV is the solution. Both claims are dubious. All campaigns have scarce resources—limited money, time, volunteers, and attention—that they focus on

particular groups of voters. Even in a single-member district, campaigns make choices about whom to talk to, what to say to particular groups of voters, and whom to ignore. The Electoral College is not the cause of this political reality.

What the Electoral College does with this reality is good for democracy. By imposing state boundaries on presidential campaigns, the Electoral College pushes national politics downward—closer to the people—and inward toward the most politically balanced states. It creates an incentive for campaigns to work hard to win a few more votes in a state where their candidate is slightly behind. It makes it pointless for campaigns to drive up the totals in states where they enjoy the strongest support. These twin incentives created by the Electoral College are part of why American national politics tends to remain closely divided and relatively moderate.

National Popular Vote would only eliminate swing states because it would eliminate states altogether for the purposes of presidential campaigns. In doing so, it would simply give more power to pollsters and consultants to segment up the American populace according to characteristics far less benign than state citizenship—wealth, race, religion, and so on.

The other problem NPV claims to solve are those infrequent elections—like 2000—where the Electoral College produces a winner who did not receive the most votes nationwide. This has happened three times in American history (some claim 1824 as a fourth example, but not every state held a popular election that year). Yet a close examination of these elections proves the genius and importance of the state-by-state Electoral College process.

In the presidential election of 1876, Samuel Tilden won nearly 51 percent of the popular vote. Yet the results were disputed in four states: Oregon, Florida, South Carolina, and Louisiana. Election fraud—in particular the violent suppression of black voters—skewed the numbers in favor of Tilden. Because the Electoral College contains the presidential election within each state, Congress was able to sort out the individual election disputes and, in the end, determined that Rutherford Hayes was the rightful victor. Without the Electoral College, vote fraud would have controlled the outcome in 1876. On the other hand, without vote fraud, Hayes might have won a national popular vote majority.

Eight years later, Grover Cleveland finally put the Democratic Party back in the White House for the first time since the Civil War. By adding New York, Connecticut, and Indiana to the Democrats strong support across the South, Cleveland won the Electoral College along with a slim popular vote plurality. Running for reelection four years later, this coalition faltered. Cleveland again won a plurality of the national vote, but lost New York and Indiana and thus the Electoral College and the presidency. Cleveland and the Democrats enjoyed strong popularity in one region, but the Electoral College requires something more. Cleveland understood the lesson and won back the White House in 1892 by not just regaining New York and Indiana but winning in Wisconsin and California as well.

The 2000 election was similar to Cleveland's initial reelection contest. Gore won a narrow popular vote majority from a particular region—call it urban America. The Electoral College required more. And it isolated the election dispute into a single state where it could be dealt with and scrutinized. NPV would manipulate the Electoral College to do the very opposite of what the Founders intended and in a way that would lead to litigation, uncertainty, and political instability.