



Updated October 29, 2019

NPV—The National Popular Vote Initiative: Proposing Direct Election of the President Through an Interstate Compact

Origins

The National Popular Vote (NPV) Initiative is a nongovernmental advocacy campaign that promotes direct popular election of the President and Vice President through an agreement among states, the National Popular Vote Interstate Compact (for additional information, see CRS Report R43823, *The National Popular Vote (NPV) Initiative: Direct Election of the President by Interstate Compact*).

NPV's origins have been traced to the 2000 presidential election. In that contest, Republican nominee George W. Bush won the presidency with a majority of 271 electoral votes to his Democratic opponent Al Gore Jr.'s 266, but Gore received 537,209 more popular votes nationwide than his opponent. This outcome, sometimes referred to as an electoral college "misfire," particularly by opponents of the system, occurred because (1) the Constitution requires a majority of electoral votes, not popular votes, to win; and (2) most states award electoral votes on a "winner-take-all" basis—the popular vote winner takes all the state's electoral votes, while none are allocated to the runner-up. It is therefore possible to win the presidency by winning in states that control an electoral vote majority, while the opposing candidate wins more popular votes nationwide, but fewer votes in the electoral college. A second such election occurred in 2016, when Republican candidate Donald J. Trump won the presidency with an electoral college majority of 304 votes to his Democratic opponent, Hillary Rodham Clinton's 227, although Clinton received 2,869,686 more popular votes nationwide.

While the potential for a candidate to be elected with a majority of electoral votes but fewer popular votes than his or her opponent is an inherent characteristic of the electoral college system as it exists today, the 2000 and 2016 presidential elections were the first such occurrences since 1888. Particularly in 2000, a contentious legal struggle over results in the electorally decisive state of Florida revived criticism of, and concerns about, the existing procedures. Critics argued the electoral college system was fundamentally undemocratic because it could elect a President who won fewer popular votes than his or her opponent (for additional information, see CRS Report RL32611, *The Electoral College: How It Works in Contemporary Presidential Elections*). It should, they asserted, be replaced by direct popular election, which they claim guarantees the candidate who wins the most popular votes also wins the presidency. Defenders countered with arguments based on tradition, federalism, and the moderating influence of the electoral college system. In the late 20th century, Congress considered constitutional amendments to establish direct election or reform the

electoral college, but none of the proposals met the constitutional requirement for proposal. Amendments must be approved by a two-thirds vote in both houses of Congress and then be submitted to the states for ratification (for additional information, see CRS Report R43824, *Electoral College Reform: Contemporary Issues for Congress*). Dissatisfaction with the 2000 election prompted exploration by public interest groups and nongovernmental organizations into potential alternative procedures that could establish effective direct popular election without having to meet the rigorous constitutional requirements for an amendment. These efforts ultimately led to the NPV, which its supporters introduced in 2006.

How the NPV Would Work

The NPV Initiative proposes an interstate compact, an agreement among the states that would effectively achieve direct popular election of the President and Vice President without a constitutional amendment. Each state that joins the NPV agrees to appoint electors pledged to the candidates who won the nationwide popular vote. Election authorities in the member states would count and certify the vote, which would be aggregated and certified as "the nationwide popular vote." Member state legislatures would then appoint the slate of electors pledged to the nationwide popular vote winner. They would do this regardless of who won the popular vote in their state. The compact would come into effect only if its success were assured—that is, only after states controlling a majority of electoral votes (270 or more) had joined the compact. States could withdraw from the compact, but if they did so within six months of a presidential election, the withdrawal would not take effect until after that election.

The NPV Initiative relies on the Constitution's grant of broad authority over presidential electors to the states. Article II, Section 1, authorizes them to appoint presidential electors "in such Manner as the Legislature thereof may direct...." Although presidential electors in every state have been chosen by popular vote since 1864, this practice is not expressly required by Article II. As a result, NPV advocates maintain that changing the mode of election from the voters to the state legislatures, based on the national popular vote, complies with the Constitution.

National Popular Vote Inc., a California-based nonprofit corporation established in 2006, publicizes the NPV and promotes and manages a nationwide campaign to gain state participation.

Debate Over the NPV

In addition to guaranteeing that the candidates winning the most popular votes would always win the presidency,

proponents claim that under NPV, candidates would campaign more widely, instead of focusing resources and candidate time on “battleground” states, and would direct greater attention to issues relevant to other parts of the country. Opponents assert that NPV would diminish the role of states and eliminate the combined federal and national aspect of presidential elections, that it would circumvent the founders’ intentions for use of the amendment process, and that it might lead to more, rather than fewer, disputed elections.

NPV has also been subject to scrutiny on legal grounds (for additional information, see CRS Report R43823, *The National Popular Vote (NPV) Initiative: Direct Election of the President by Interstate Compact*, specifically pp. 20–30). Some observers maintain that in order for the NPV to take legal effect, it must be approved by Congress, in accordance with Article I, Section 10, clause 3, of the Constitution. Others question whether the NPV might unconstitutionally infringe on the role of the electoral college or conflict with the Voting Rights Act by diluting the voting strength of state minority populations.

Progress and Prospects

Since its 2006 debut, the NPV Initiative has been introduced at various times in all 50 state legislatures and the Council of the District of Columbia. Since 2007, 15 states and the District of Columbia have joined the NPV Compact. They are listed (1) by the year of adoption and the order in which they adopted for years in which multiple states joined; and (2) by the current number of electoral votes per state. Together, they account for a total of 196 electoral votes, 72.6 % of an electoral college majority, but 74 fewer than the 270 or more required by the compact before the NPV could be implemented.

- **Maryland** (10), 2007;
- **New Jersey** (14), 2008;
- **Illinois** (20), 2008;
- **Hawaii** (4), 2008;
- **Washington** (12), 2009;
- **Massachusetts** (11), 2010;
- **District of Columbia** (3), 2010;
- **Vermont** (3), 2011;
- **California** (55), 2011;
- **Rhode Island** (4), 2013;
- **New York** (29), 2014;
- **Connecticut** (7), 2018;
- **Colorado** (9), 2019;
- **Delaware** (3), 2019;
- **New Mexico** (5), 2019; and
- **Oregon** (7), 2019.

In 2018, Connecticut joined the NPV Compact, followed by Colorado, Delaware, New Mexico, and Oregon in 2019. Accession by these states marks the most sizable advance for the compact in several years.

In addition to the four states identified above, the National Conference of State Legislatures’ State Elections Legislation Database identified 16 others in which the compact was introduced in 2019.

As of October 2019, NPV-related measures were still “live,” or “pending,” in two states where the legislature continued in session: North Carolina (15 electoral votes) and Wisconsin (10). They remain the only states with the potential to join the NPV Compact in 2019. In nine other states, proposals to join the compact were introduced but not enacted or carried over to future legislative sessions: Arizona (11 electoral votes), Florida (29), Idaho (4), Indiana (11), Maine (4), Mississippi (6), Nevada (6), Ohio (18), and Virginia (13).

The legislatures of the five remaining states with NPV Compact legislation introduced in 2019—Georgia (16 electoral votes), Kansas (6), Minnesota (10), New Hampshire (4), and South Carolina (9)—have adjourned their 2019 sessions at the time of this writing. These states, however, provide that measures not addressed are “carried over” to the next session. NPV-related proposals before these legislatures will therefore remain eligible for consideration in their 2020 sessions.

NPV opponents have countered by introducing measures to repeal acts joining the compact passed by the legislatures of Connecticut, Hawaii, Maryland, Massachusetts, New Jersey, and Washington. To date, none of these has been approved, although as of October 2019, repeal legislation in New Jersey was “live,” since that state’s legislature was still in session, while a repeal bill in Washington will “carry over” to the 2020 session.

In a recent development, “Protect Colorado’s Vote” (PCV), an advocacy group established to oppose the NPV Initiative in that state, launched a campaign in early 2019 to place the legislature’s action joining the initiative on the 2020 ballot as a referendum item. On August 29, Colorado’s Secretary of State reported that more than the necessary 124,632 registered voters had signed the referendum petition. The legislation will therefore appear on the November 5, 2020, ballot. A vote in favor would sustain the legislation, while a vote against would repeal it and terminate Colorado’s membership in the NPV Compact.

Concluding Observations

The decision of four states to join the NPV Compact in 2019 marks the most activity in a single year since 2008. It remains to be seen whether their actions generate additional support or momentum in others. If so, this could lead to further progress toward the implementation threshold of states controlling 270 electoral votes. This current progress, however, has arguably stimulated the first organized opposition to NPV, as evidenced by efforts in Colorado to repeal the state’s accession to the compact. If NPV continues its current momentum, opposition may continue to grow, while additional challenges could be raised on constitutional grounds, as noted earlier in this report.

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