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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 can be 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.

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 presidential election result was the first such occurrence since 1888. Combined with a contentious legal struggle over results in the electorally decisive state of Florida, the process 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 first constitutional requirement for an amendment, approval by a two-thirds vote in both houses of Congress, which must precede submission of an amendment 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 in establishing 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. 17-26). 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, 14 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 189 electoral votes, 70% of an electoral college majority, but 81 fewer than the 270 or more required by the compact before the NPV could be implemented.

- **Maryland** (10), 2007;
- **Hawaii** (4), 2008;
- **Illinois** (20), 2008;
- **New Jersey** (14), 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; and
- **New Mexico** (5), 2019.

In 2019 Colorado, Delaware, and New Mexico have joined the NPV Compact by the time of this writing. On March 15, 2019, Colorado Governor Jared Polis approved the legislature's action by which the state joined the NPV compact; with Governor John Carney's March 28 signature, Delaware joined NPV; and New Mexico Governor Michelle Lujan Grisham signed legislation joining the compact on April 3. Accession by these three states, in company with Connecticut's 2018 approval, marks the most sizable advance for the compact in several years.

According to the National Conference of State Legislatures State Elections Database, the NPV Compact has been introduced during the 2019 session in at least one chamber of the legislatures of 14 additional states that are jointly allocated 150 electoral votes. These include Arizona (11), Florida (29), Georgia (16), Idaho (4), Indiana (11), Kansas (6), Maine (4), Minnesota (10), Nevada (6), New Hampshire (4), North Carolina (15), Ohio (18), Oregon (7), and South Carolina (9). Among these, as of late April, the Assembly of the Nevada legislature and the Oregon Senate had approved NPV. Most of these legislatures, however, will adjourn their 2019 sessions sometime between late April and June, so if any further action were to be taken on NPV membership in 2019 in these states, it would most likely take place during this period.

The decision of three 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 the states whose legislatures remain in session at this time. If so, this could lead to further progress toward the goal of states allocated 270 electoral votes. If no trend emerges, the initiative's future prospects would arguably remain uncertain, barring unforeseen circumstances. In conclusion, however, it should be noted that if the NPV were to reach its goal, its implementation would not be certain, as it would then likely be challenged on constitutional grounds, as noted previously in this In Focus product.

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