



July 10, 2008

**“Agreement Among the States to Elect the President by National Popular Vote”**

The National Popular Vote bill would guarantee the Presidency to the candidate who receives the most popular votes in all 50 states (and the District of Columbia).

The National Popular Vote bill has been enacted by Hawaii, Illinois, New Jersey, and Maryland. These four states possess 50 electoral votes — 19% of the 270 necessary to bring the law into effect. The bill has passed 20 state legislative chambers, including one house in Arkansas, Colorado, Maine, Massachusetts, North Carolina, and Washington, and both houses in California, Hawaii, Illinois, New Jersey, Maryland, Rhode Island, and Vermont.

The bill is currently endorsed by 1,027 state legislators — 439 sponsors (in 47 states) and an additional 588 legislators who have cast recorded votes in favor of the bill.

The proposed “Agreement Among the States to Elect the President by Nationwide Popular Vote” is a state-based way to implement nationwide popular election of the President—a goal supported by an overwhelming majority of Americans (70% in recent polls). National Popular Vote’s proposal is described in the 620-page book, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. The book was first released at National Popular Vote’s press conference on February 23, 2006 in Washington, DC.

The *New York Times* endorsed National Popular Vote’s plan by calling it an “innovative new proposal” and “an ingenious solution.” The editorial urged that “Legislatures across the country should get behind it.” As the editorial said (March 14, 2006):

“The Electoral College distorts presidential campaigns. Candidates have no incentive to campaign in, or address the concerns of, states that reliably vote for a particular party.... According to estimates by National Popular Vote, the bipartisan coalition making the new proposal, ... only 13 states, with 159 electoral votes, were ... battleground states in 2004. As a result, campaigns and national priorities are stacked in favor of a few strategic states. Ethanol fuel, a pet issue of Iowa farmers, is discussed a lot. But issues of equal concern to states like Alabama, California, New York and Indiana are not.”

The *Chicago Sun-Times* called National Popular Vote’s plan “thinking outside the box” and said “It’s time to make the change with this innovative plan” (March 1, 2006). The *Minneapolis Star-Tribune* said “It’s a lot to ask the Legislature to do the right thing and endorse the new compact. But it really should. So should other states—both red and blue—join, for the sake of a better democracy” (March 27, 2006). The *Los Angeles Times* endorsed the plan on June 5, 2006. The *Sacramento Bee* endorsed the bill saying “The governor and senators can get this process rolling in other states by acting this session” (June 3, 2006). Common Cause and Fair Vote (The Center for Voting and Democracy) have also endorsed the plan.

The National Advisory Board of National Popular Vote includes former congressmen John Anderson (R–Illinois and later independent presidential candidate), John Buchanan (R–Alabama—the first Republican elected to represent Birmingham), Tom Campbell (R–California), and Tom Downey (D–New York), and former Senators Birch Bayh (D–Indiana), David Durenberger (R–Minnesota), and Jake Garn (R–Utah).

### **SHORTCOMINGS OF THE CURRENT SYSTEM**

The current system of electing the President has several shortcomings—all stemming from the winner-take-all rule that awards all of a state’s electoral votes to the presidential candidate who receives the most popular votes in each state.

The major shortcoming of the current system is that voters in two thirds of the states are effectively disenfranchised in presidential elections because they do not live in closely divided “battleground” states. Under the winner-take-all rule, presidential candidates have no reason to poll, visit, advertise, organize, or campaign in states that they cannot possibly win or lose.

Presidential candidates concentrate over two-thirds of their advertising money and campaign visits in just five very close states, and over 99% of their advertising money in just 16 battleground states. The spectator states in presidential elections include 9 of the nation’s 13 most populous states (California, Texas, New York, Illinois, New Jersey, North Carolina, Georgia, Massachusetts, and Virginia), 12 of the 13 least populous states (all but New Hampshire), and a majority of the other states.

As Charlie Cook reported in 2004:

“Senior Bush campaign strategist Matthew Dowd pointed out yesterday that the Bush campaign hadn’t taken a national poll in almost two years; instead, it has been polling 18 battleground states.”

Kerry similarly pursued an 18-state strategy in 2004.

Another shortcoming of the current system is a candidate can win the Presidency without winning the most popular votes nationwide. Under the winner-take-all rule that is currently used by 48 states, all of a state’s electoral votes are awarded to the candidate winning the state. A shift of 60,000 votes in Ohio in 2004 would have given Kerry a majority of the electoral votes, despite President Bush’s 3,500,000-vote lead in the nationwide popular vote. A switch of fewer than 22,000 votes in 2004 in New Mexico, Nevada, and Iowa would have wiped out President Bush’s majority in the Electoral College. A shift of a handful of votes in one or two states would have elected the second-place candidate in five of the last 12 presidential elections. The second-place candidate was elected in 2000, 1888, 1876, and 1824.

Both shortcomings have a single cause—the states’ use of the winner-take-all rule. The winner-take-all rule is not mentioned in the U.S. Constitution. It is not a federal law. It was not the choice of the Founding Fathers. It was used by only three states in the nation’s first presidential election. The winner-take-all rule exists only in state law. States have the power to change these state laws at any time.

## HOW THE NATIONAL POPULAR VOTE BILL WOULD WORK

At the present time, the Electoral College reflects the voters' *state-by-state* choices for President in 48 states. In Maine and Nebraska, the Electoral College reflects the voters' *district-by-district* choices. The United States can have nationwide popular election of the President if the states change the manner of choosing their presidential electors so that the Electoral College reflects the voters' *nationwide* choice. This means changing the state laws that establish the state-level winner-take-all rule (or, in Maine and Nebraska, the district-level winner-take-all rule).

Under the state legislation proposed by National Popular Vote, the popular vote counts from all 50 states and the District of Columbia would be added together to obtain a national grand total for each presidential candidate. Then, state election officials in all states participating in the plan would award their electoral votes to the presidential candidate who receives the largest number of popular votes in all 50 states and the District of Columbia.

Under the proposal, no state would act alone in offering to award its electoral votes to the nationwide winner. Instead, the National Popular Vote plan would take effect only when the plan has been enacted by states collectively possessing a majority of the electoral votes—that is 270 of the 538 electoral votes. This threshold guarantees that the presidential candidate receiving the most popular votes nationwide would win enough electoral votes in the Electoral College to become President. The 270-vote threshold corresponds essentially to states representing a majority of the people of the United States. The result would be that every vote in all 50 states and the District of Columbia is equally important in presidential elections.

The National Popular Vote plan is an interstate compact—a type of state law authorized by the U.S. Constitution that enables states to enter into a legally enforceable contractual obligation to undertake agreed joint actions. There are hundreds of interstate compacts, and each state in the United States belongs to dozens of compacts. Examples of interstate compacts include the Colorado River Compact (allocating water among seven western states), the Port Authority (a two-state compact involving New York and New Jersey), and the Multi-State Tax Compact. Some compacts involve all 50 states and the District of Columbia. Interstate compacts are generally subject to congressional consent.

As an additional benefit, National Popular Vote's plan would eliminate the (unlikely) possibility of faithless presidential electors. The presidential candidate receiving the most popular votes in all 50 states and the District of Columbia would receive a guaranteed majority of at least 270 electoral votes coming from the states enacting the compact, and the nationwide winner candidate would receive additional electoral votes from whatever non-compacting states happened to be carried by the nationwide winner. Thus, in practice, the presidential candidate receiving the most popular votes nationwide would end up with about three-quarters of the electoral votes—more than enough to eliminate the remote possibility that an unfaithful elector could affect the outcome.

Because the presidential candidate receiving the most popular votes nationwide would be guaranteed enough electoral votes in the Electoral College to become President, another benefit of the National Popular Vote plan is that it would eliminate the possibility of a presidential election being decided by the House of Representatives (where each state would have one vote) and the vice-presidential election being decided by the U.S. Senate.

Nationwide election of the President would reduce the possibility of close elections and recounts. The current system regularly manufactures artificial crises even when the nationwide popular vote is not particularly close. Even though President Bush was 3.5 million votes ahead of Kerry in 2004 on election night, the nation had to wait until Wednesday to see if Kerry would dispute Ohio's all-important 20 electoral votes. A shift of 60,000 votes in Ohio in 2004 would have given Kerry a majority of the electoral votes, despite President Bush's 3,500,000-vote lead in the nationwide popular vote. Similarly, the disputed 2000 presidential election was an artificial crisis created by one candidate's 537-vote lead in Florida in an election in which the other candidate had a 537,179-vote lead nationwide (1,000 times greater). In the nation's most controversial presidential election, Tilden's 3.1%-lead in the popular vote in 1876 was greater than Bush's substantial 2.8%-lead in 2004; however, a constitutional crisis was created by very small popular-vote margins in four states (889, 922, 1,050, and 1,075). With a single massive pool of 122,000,000 votes, there is less opportunity for a close outcome or recount (and less incentive for fraud) than with 51 separate smaller pools, where a few hundred popular votes can decide the Presidency.

To prevent partisan mischief between the November voting by the people and the mid-December meeting of the Electoral College, the compact contains a six-month blackout period if any state ever wishes to withdraw from the compact. The blackout period starts on July 20 of each presidential election year and runs through the January 20 inauguration. Interstate compacts are contracts. It is settled compact law and settled constitutional law that withdrawal restrictions—very common in interstate compacts—are enforceable because the U.S. Constitution prohibits a state from impairing any obligation of contract.

Under existing law in 48 of the 50 states, the state's electoral votes are cast by a group of presidential electors who were nominated by the political party whose presidential candidate carried their particular state. People nominated for this position are almost invariably long-time party officials or activists. Under the proposed compact, the 270 or more electoral votes possessed by the states belonging to the compact would be cast by a group of presidential electors nominated by the political party whose candidate won the nationwide vote in all 50 states and the District of Columbia. This group of electors—sufficient to guarantee the election of a President—would reflect the will of the voters nationwide. None of these presidential electors would be voting contrary to his or her political inclinations or conscience. Instead, the 270 (or more) presidential electors associated with the candidate who won the nationwide vote would simply vote for their own party's presidential nominee (i.e., the nationwide choice of the voters from all 50 states and the District of Columbia). This approach implements the desire of an overwhelming majority of Americans (over 70% in recent polls), namely that the candidate who gets the most votes nationwide should become President.

Some may argue that voters would be uncomfortable with the electoral votes of their state being cast for a candidate that won the national popular vote—but not necessarily their state's vote. However, the public is not attached to the current system. Indeed, less than 20% of the public supports it. A nationwide popular vote for President inherently means that the winner would no longer be determined on the basis of which candidate carries individual states but, instead, on the basis of which candidate receives the most citizen votes in all 50 states and the District of Columbia. All of the 270 (or more) presidential electors from the states enacting the compact will be from the political party associated with the nationwide winner. When these electors cast their votes for the candidate who received the most votes nationwide, they will be

implementing the method of electing the President that has long been supported by an overwhelming majority of Americans; the method that the people's elected representatives have enacted into law; and the method under which the campaign will have been conducted.

### **THE EXCLUSIVE POWER OF THE STATES TO AWARD THEIR ELECTORAL VOTES**

The U.S. Constitution gives the states exclusive and plenary control over the manner of awarding of their electoral votes. The manner of conducting presidential elections is covered in Article II, Section 1, Clause 2 of the U.S. Constitution.

“Each State shall appoint, in such Manner **as the Legislature thereof may direct**, a Number of Electors....” (emphasis added).

The constitutional wording “as the Legislature thereof may direct” contains no restrictions. It does not encourage, discourage, require, or prohibit the use of any particular method for awarding the state's electoral votes. In particular, the U.S. Constitution does not mention two of the most prominent present-day features of American presidential elections—the winner-take-all rule (awarding all of a state's electoral votes to the candidate winning the state) and citizen voting for President. These features were not part of the original Constitution, nor were they installed by any subsequent federal constitutional amendment. Instead, these features were established by state laws that were enacted, over a period of decades, on a state-by-state basis.

The winner-take-all rule was used by only three states when the Founding Fathers went back to their states to organize the nation's first presidential election in 1789. Today, it is used by 48 of the 50 states. A federal constitutional amendment was not required, nor used, to enact the winner-take-all rule in these 48 states. The 48 states simply used the power that the Founding Fathers gave them to enact this particular method for awarding their electoral votes on a state-by-state basis. The states may change their decisions concerning the winner-take-all rule, at any time, by enacting a different state law.

Only half the states participating in the nation's first presidential election gave voters a voice in presidential elections, whereas no state legislature has chosen the state's presidential electors since 1876. A federal constitutional amendment was not required, nor used, to confer the presidential vote on the people. States simply enacted state laws implementing this concept.

The fact that Maine enacted a congressional-district system in 1969 (and Nebraska did the same in 1992) is a reminder that the manner of awarding electoral votes is entirely a matter of state law. Maine and Nebraska did not need a federal constitutional amendment to modify the winner-take-all rule because the winner-take-all rule was never part of the U.S. Constitution in the first place. The legislatures of Maine and Nebraska simply used the power that the Founding Fathers gave the states to decide how to award their electoral votes.

The U.S. Supreme Court has repeatedly characterized the authority of the states over the manner of awarding their electoral votes as “plenary” and “exclusive.”

In short, there is nothing in the U.S. Constitution that needs to be changed in order to implement nationwide popular vote of the President. This change can be accomplished in the same manner as the current system was originally adopted—namely the states using their exclusive and plenary power to decide the manner of awarding their electoral votes.

## **NATIONWIDE POPULAR ELECTION WILL GIVE A VOICE TO SMALL STATES**

It is sometimes asserted that the current system helps the nation's least populous states. It is also sometimes asserted that the small states confer a partisan advantage on one political party. In fact, neither statement is true.

Twelve of 13 smallest states are almost totally ignored in presidential elections because they are politically non-competitive. Idaho, Montana, Wyoming, North Dakota, South Dakota, and Alaska regularly vote Republican, and Rhode Island, Delaware, Hawaii, Vermont, Maine, and DC regularly vote Democratic. These 12 states together contain 11 million people. Because of the two electoral-vote bonus that each state receives, the 12 non-competitive small states have 40 electoral votes. However, the two-vote bonus is an entirely illusory advantage to the small states. Ohio has 11 million people and has "only" 20 electoral votes. As we all know, the 11 million people in Ohio are the center of attention in presidential campaigns, while the 11 million people in the 12 non-competitive small states are utterly irrelevant. Nationwide election of the President would make each of the voters in the 12 smallest states as important as an Ohio voter.

The fact that the bonus of two electoral votes is an illusory benefit to the small states has been widely recognized by the small states for some time. In 1966, Delaware led a group of 12 predominantly low-population states (North Dakota, South Dakota, Wyoming, Utah, Arkansas, Kansas, Oklahoma, Iowa, Kentucky, Florida, Pennsylvania) in suing New York in the U.S. Supreme Court. Delaware and the other states argued that New York's use of the winner-take-all rule effectively disenfranchised voters in their states. The Court declined to hear the case (presumably because of the well-established constitutional provision that the manner of awarding electoral votes is exclusively a state decision). Ironically, defendant New York is no longer a closely divided "battleground" state (as it was in the 1950's and 1960's) and today suffers the very same disenfranchisement as the 12 non-competitive small states. A vote in New York is, today, equal to a vote in Wyoming—both are equally worthless and irrelevant in presidential elections.

## **NATIONWIDE POPULAR ELECTION WILL MEAN A 50-STATE CAMPAIGN**

Although no one can accurately predict exactly how a presidential campaign would be run if every vote were equal throughout the United States, it is clear that presidential candidates would have to run 50-state campaigns. It would be politically impossible, under a nationwide vote, for presidential candidates to ignore two-thirds of the states, as they now do.

In round numbers, both major party candidates have time for about 450 campaign visits during a three-month presidential campaign (coincidentally, a number that is roughly equal to the number of congressional districts in the country, namely 435). Presidential candidates now concentrate their 450 visits heavily in battleground states, such as Ohio and Wisconsin, while virtually ignoring the equally-populous near-by states of Illinois and Indiana. In a nationwide vote for President, every vote would be equally important throughout the country. The Republican Party would suddenly care about whether its share of the vote in Indiana was 58% or 62% (as opposed to its 60% share in 2004), and it would therefore campaign in Indiana. Similarly, the Democratic Party would campaign in Indiana because it would care whether its (losing) share was 38%, 40%, or 42%. Therefore, in a nationwide vote for President, both presidential candidates would have to start paying specific attention to issues of concern to Indiana. Failure to campaign in every state, or failure to campaign in the current spectator states, would be punished as surely and severely as a gubernatorial or senatorial candidate is punished if

he or she ever seems to be ignoring areas inside a state. Presidential candidates could not continue to concentrate over two-thirds of their campaign visits in just six states, and over 80% in just nine states. Thus, in a nationwide vote, each presidential campaign would have to reallocate its limited campaigning resources over all the states. On average, candidates would allocate one visit to each congressional district.

A small state such as Idaho with two congressional districts could reasonably expect two visits from both the Democratic candidate and the Republican candidate. Currently, of course, Idaho receives no attention from either party because the Republican candidate has nothing to gain in Idaho, and the Democratic candidate has nothing to lose. Although Idaho would undoubtedly continue to deliver a popular-vote majority to the Republican presidential candidate, every vote in Idaho would suddenly matter to both the Democrat and the Republican candidates. It would be folly for John Kerry to write off Idaho because he would care if he lost Idaho by 227,000 versus a somewhat smaller or larger number. Similarly, it would be folly for George Bush to take Idaho for granted because he would care if he won by 227,000 versus some larger or smaller number. As the *Idaho State Journal* editorialized in 2004,

“As we enter the home stretch of the quadrennial horse race known as the presidential election, it’s time to remember that this is an election for the president of the United States of America—all 50 states, not an election for the president of the Swing States of America.”

The expenditure of money for advertising, organizing, and campaigning is allocated in a manner that parallels campaign visits. In round numbers, both major-party candidates (and their closely allied groups) had about a half billion dollars at their disposal in 2004 (that is, an average of roughly \$1 million for each of the nation’s 435 congressional districts). Under a nationwide vote, each presidential campaign would have to reallocate its campaigning resources over all the nation’s 435 congressional districts. Thus, on average, candidates could be expected to allocate one visit to each congressional district and \$1,000,000.

Although it is sometimes conjectured that a national popular election would focus only on big cities, it is clear that this would not be the case. Evidence as to how a nationwide presidential campaign would be run can be found by examining the way presidential candidates *currently* campaign *inside* battleground states. Inside Ohio or Florida, the big cities do not receive all the attention. And, the cities of Ohio and Florida certainly do not control the outcome in those states. Because every vote is equal inside Ohio or Florida, presidential candidates avidly seek out voters in small, medium, and large towns. The itineraries of presidential candidates in battleground states (and their allocation of other campaign resources in battleground states) reflect the political reality that every gubernatorial or senatorial candidate in Ohio and Florida already knows—namely that when every vote is equal, the campaign must be run in every part of the state.

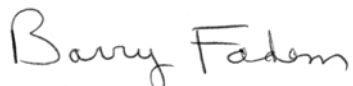
Further evidence of the way a nationwide presidential campaign would be run comes from national advertisers who seek out customers in small, medium, and large towns of every small, medium, and large state. A national advertiser does not write off Indiana or Illinois merely because a competitor makes more sales in those particular states. Moreover, a national advertiser enjoying an edge over its competitors in Indiana or Illinois does not stop trying to make additional sales in those states. National advertisers go after every single possible customer, regardless of where the customer is located.

**ADDITIONAL INFORMATION ABOUT THE NATIONAL POPULAR VOTE BILL**

Additional information is available at [www.NationalPopularVote.com](http://www.NationalPopularVote.com).

The National Popular Vote proposal is described in detail in our 620-page book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. The book is available to be read or downloaded, for free, at [www.every-vote-equal.com](http://www.every-vote-equal.com). Chapter 6 of the book describes the proposed interstate compact in detail.

Yours truly,



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