

National Popular Vote Quick Guide for Rebuttals to Frequently Cited Myths

1. National Popular Vote is Unconstitutional

- Article II, Sec 1. of the U.S. Constitution gives the states the “exclusive” and “plenary” power to choose the method of awarding their electoral votes.
- The current state-by-state winner-take-all method of awarding electoral votes is not in the U.S. Constitution. It was not debated at the Constitutional Convention. It was not discussed in the *Federalist Papers*.
- The National Popular Vote compact would preserve the Electoral College. It would not abolish it. It would not affect the structure of the Electoral College contained in the U.S. Constitution.
- (“*NPV supporters should really be pursuing a constitutional amendment*”) Section 1 of Article II specifically empowers the states to change the method of awarding their electoral votes. One does not show respect for the Founding Fathers and the Constitution by ignoring the procedures that the Constitution provides.

2. National Popular Vote is not what our Founders intended.

- The electoral system that we have today was not designed, anticipated, or favored by the Founding Fathers. Instead, it is the result of decades of evolutionary change driven primarily by the emergence of political parties and the desire of each state’s ruling party not to give any of the state’s electoral votes to the minority party.
- The Electoral College deviated from the Founders’ vision when state winner-take-all statutes became prevalent (long after the Founders were dead).

3. Small states are protected under the current system.

- The small states (the 13 states with only three or four electoral votes) are the most disadvantaged and ignored group of states under the current state-by-state winner-take-all method of awarding electoral votes. The reason is that political power in presidential elections comes from being a closely divided battleground state, and almost all of the small states are noncompetitive states in presidential elections.
- Small states are not ignored because of their low population, but because they are not closely divided battlegrounds. The 12 small non-battleground states have about the same population (12 million) as the closely divided battleground state of Ohio. The 12 small states have 40 electoral votes—more than twice Ohio’s 18 electoral votes. However, Ohio received 73 of 253 post-convention campaign events in 2012, while the 12 small non-battleground states received none.

4. Big cities and population centers will control a nationwide popular vote for President.

- The origins of the myth about big cities may stem from the misconceptions that big cities are bigger than they actually are, and that big cities account for a greater fraction of the nation’s population than they actually do. In fact, 85% of the population of the United States lives in places with a population of fewer than 365,000 (the population of Arlington, Texas—the nation’s 50th biggest city).
- Big cities don’t control the outcome of statewide elections currently. In California, the fact that Democratic-leaning Los Angeles, San Francisco, San Jose, and Sacramento do not control the outcome of statewide elections in their own state is evidenced by the fact that Republicans such as Arnold Schwarzenegger and George Deukmejian were elected Governor in recent years without ever winning those cities.
- Given the historical fact that 95% of the U.S. population in 1790 lived in places with fewer than 2,500 people, it is unlikely that the Founding Fathers were concerned about presidential candidates campaigning only in big cities.

5. National Popular Vote is a partisan reaction to Donald Trump's election.

- The current system cuts both ways. In 2004, President George W. Bush had a nationwide lead of 3,012,171 popular votes. However, if 59,393 Bush voters in Ohio had shifted to Senator John Kerry, Kerry would have carried Ohio and thus become President.

6. Voter fraud would abound under National Popular Vote.

- Under the current state-by-state winner-take-all system, there are huge incentives for fraud and mischief, because a small number of people in a battleground state can affect enough popular votes to swing all of that state's electoral votes.

7. Under National Popular Vote, we'd have recount chaos.

- A recount would be less likely to be needed under the National Popular Vote plan than under the current state-by-state winner-take-all system. There have been five litigated state counts in the nation's 57 presidential elections between 1789 and 2012 under the current state-by-state winner-take-all system. This rate is dramatically higher than the historical 1-in-185 rate for elections in which there is a single statewide pool of votes and in which the winner is the candidate who receives the most popular votes.

8. A politically motivated state could withdraw from the National Popular Vote compact to prevent a candidate from winning that state's electoral votes.

- There are at least six *separate and independent* reasons why there should be no concern about the hypothetical scenario in which a Governor and legislature attempt—for partisan political reasons—to change a state's method of awarding electoral votes after the people vote in November, but before the Electoral College meets in December. Here are two reasons:
- The National Popular Vote compact permits a state to withdraw; however, it delays the effective date of a withdrawal until after the inauguration of the new President if the withdrawal occurs during the six-month period between July 20 of a presidential election year and Inauguration Day.
- Any attempt to appoint presidential electors after the people vote in November would be unconstitutional on its face (and subject to summary judgment) because (1) the Constitution gives Congress the power to establish the day for appointing presidential electors, and (2) existing federal law requires that presidential electors be appointed on a *single* specific day in each four-year election cycle (namely, the Tuesday after the first Monday in November). Therefore, no state may appoint presidential electors after the results of an election become known (under either the current state-by-state winner-take-all system or the National Popular Vote compact).

9. The United States is a republic, not a democracy.

- In a republic (as the term is defined in the *Federalist Papers* and used in the U.S. Constitution), citizens do not rule directly but instead, elect officeholders to represent them and conduct the business of government in the period between elections. Therefore, the United States is currently a republic—not a democracy—and it will remain a republic, with or without the National Popular Vote approach to appointing presidential electors.

10. National Popular Vote requires Congressional consent.

- The U.S. Supreme Court has ruled that congressional consent is only necessary for interstate compacts that “encroach upon or interfere with the just supremacy of the United States.” Because the choice of method of appointing presidential electors is an “exclusive” and “plenary” state power, there is no encroachment on federal authority.
- Congressional consent is not required prior to a state legislature's consideration of an interstate compact. Moreover, advance congressional consent is not the norm.