

**NATIONAL POPULAR VOTE  
OPPOSITION to SB825 & HB 2927 as introduced  
Summarized as Enacts Interstate Compact for Agreement Among the States  
to Elect the President by National Popular Vote.**

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From

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Chair and members of the Senate Committee on Rules

- Under the NPV (National Popular Vote Compact) the amount of time available to address technical and legal problems is very limited. Elections are certified up to thirty days following the election. The NPV requires that Electors not be selected until all fifty States and the District of Columbia have certified their popular vote totals.(December 3, 2020) Electors must be selected by Six days before the first Monday after the second Wednesday in December.(December 8, 2020) In the first election after the NPV goes into effect it will be litigated in Federal Court and in the State Courts of every state that is a party to it. Unless these suits can be decided in two working days we will run a serious risk of throwing the election into the House of Representatives,
- It may require an act of Congress to become operational. "...treaties of confederation, in which the parties are leagued for mutual government, political cooperation, and the exercise of political sovereignty... In such cases, the consent of Congress may be properly required..." U.S. Supreme Court Virginia v. Tennessee, 148 U.S. 503 (1893)
- "The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state's final determination conclusive as to the counting of electoral votes by Congress."<sup>1</sup> If this is absolute it means that if the chief election official of

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<sup>1</sup> NPV paragraph 5

Wyoming were to certify that 300,000,000 votes were cast in Washakie County for the Constitutional Law Party that clearly would commit Oregon's electoral votes. If it is not we don't know how big and how clear a fraud would have to be to let us or others to opt out. It could of course be litigated, but not in the two working days that would be available.

- We could make every Oregonian's vote count and give the state the advantage of 'battleground' status, without waiting for a compact or a constitutional amendment, by adopting fractional proportional electoral voting. The Constitution allows for this as it apportions electoral votes in whole numbers but has them counted in numbers.<sup>2</sup>

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<sup>2</sup> Numbers include fractions whole numbers do not. I had to look it up.

Only four times in our history has the holder of the most popular votes not gotten the most electoral votes,<sup>1</sup> 1876, 1888, 2000 and 2016. Thus eighty-seven years before the first time this happened in 1876, then a twelve year gap to 1888, then a one hundred and twelve year gap to 2000, then a sixteen year gap to 2016. Even counting 1824 this happens on average once every forty-five years. We really should get this fixed before the election of 2060 or maybe before 2128.

The NPV website identifies battleground states by counting post-convention public campaign events attended by the presidential or vice-presidential candidates. Private fund raisers don't count. Non-campaign events don't count, this category is, as far as I can tell, events that would occur even if the candidates did not attend for example the Al Smith dinner in New York or the VFW convention. In 2008 only 14 states had seven or more post-convention general election campaign events.<sup>2</sup> If you don't live in one of these states your state is without influence, the political parties do not reach out to you and you are disenfranchised. Personally I would think that where the money came from would be a better test of influence. In the 2008 more than half of campaign donations (\$427,014,623 out of \$851,122,440) came from just five states: California, New York, Illinois, Texas, and Virginia plus the District of Colombia.<sup>3</sup> Only one of these, Virginia, was a battleground state. The focus on battleground states is largely an effect of a horse race obsessed media and shows a basic misunderstanding of how a national coalition is formed. Nationwide support is not created by the actions of a set of single individuals operating for three months every four years but by political parties operating in all of the states all of the time.

The NPV shifts power from rural to urban areas. Advocates of the NPV deny this on two grounds. First, that in statewide elections the campaign reaches all areas within a state. This is true but only using a much more expansive view of campaigning than is used in their analyses of nationwide campaigns. If a visit to Bend counts as campaigning in Western Oregon then a visit to Vermont should

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<sup>1</sup> Five counting the election of 1824 in which the likely holder of the most popular votes also had the most electoral votes and still did not get elected President in 1824. In 1824 the electors from the states of SC, GA, NY, VT, DE, and LA were appointed by their respective state legislatures (and not elected in a popular vote) so the popular vote totals are less meaningful.

<sup>2</sup> Table 9.1 <http://archive.nationalpopularvote.com/pages/answers.php>

<sup>3</sup> Table 9.2 <http://archive.nationalpopularvote.com/pages/answers.php>

count as campaigning in New England, and suddenly we are left with a lot of battlegrounds. The second is that even big cities are too small to control elections. Republicans have been elected Governor of California without winning in San Francisco. In 2010 the population of the nation's fifty largest cities was only 46,795,097<sup>4</sup>, hardly enough to dominate the nation. It should not be necessary to point this out but what needs to be counted is the population of urban areas. In 2010 the population of the fifty largest Metropolitan Statistical Areas was 167,444,290: more than enough to control an election.

The National Popular Vote Compact is a potentially disastrous attempt to solve a rarely occurring non-problem, and I hope that the Committee will not allow it to move forward.

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<sup>4</sup> Table 9.37 <http://archive.nationalpopularvote.com/pages/answers.php>