

SB 870- National Popular Vote Compact- Updated
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One of America's quintessential values is its commitment to expanding democratic principles and often prides itself on its organic ability to expand participation in the democratic process, however reluctantly. There are serious issues relating to elections and voting in the United States including, but certainly not limited to: gerrymandering, allegations of voter suppression, voter fraud, purging of voter registries, and voter access. Our Founding Fathers created an extraordinary system of government founded on the principles of checks and balances along with separation of powers between the branches of government.

America was not created to be a direct democracy- we're a republic, sometimes referred to as a representative democracy. Having a republican form of government was such a fundamental and vital foundation that in Article IV Section IV the Constitution "shall guarantee to every State in this Union a Republican Form of Government."¹ Understanding that citizens (en masse) are extremely amenable to drastic policy changes in extremely short periods of time. Their contemporary example being the French Revolution and its ensuing chaos solidified their belief in creating institutions that help temper the passions of the people in order to have a government of sound foundations and laws. The Electoral College is an indispensable institution written in the Constitution. And while there are problems that necessitate immediate attention, the conceived abdication or complete abolition of the Electoral College should not be the first step towards electoral reform.

Indeed, Alexander Hamilton, using the pseudonym of Publius, discussed the reasoning behind creating the Electoral College in Federalist No. 68. The Founding Fathers had great levels of skepticism about the ability of the entire citizenry, or at least the eligible voting populous, to choose an individual for President that is qualified for the position. The selection of the Chief Executive was considered of the utmost importance that the founders compromised in creating the Electoral College. The Founders did not trust Congress or the Supreme Court to be able to impartially choose the President. It became imperative to protect an independent branch of government from the undue influence of another, as Hamilton wrote:

"He [the President] might otherwise be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to the duration of his official consequence. This advantage will also be secured, by making his re-election to depend on a special body of representatives, deputed by the society for the single purpose of making the important choice."²

Ensuring the independent protection of the separate branches of government was not the only concern the Founders struggled in resolving. Also important to note, the Founding Fathers were incredibly skeptical of the effect direct democracy on developing thoughtful and comprehensive public policy. As Hamilton asserted:

¹ Article IV Section IV of the United States Constitution. <https://www.archives.gov/founding-docs/constitution-transcript>

² Federalist No. 68; Hamilton; From the New York Packet; March 14, 1788
<https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-68>. Paragraph 6

“It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations.”³

Even in the latter part of the 18th Century, after decades of government abuse, the Revolution, and almost a decade of inept central government, the Founding Fathers realized how difficult the investment and toll of being an active participant in the Republic is. In 2019, there are exponentially more distractions to occupy the daily lives of Americans than in 1789, yet the Founders understood human nature and how difficult it is to be an active participant in a republic. This is not to say that the American electorate is unintelligent or unworthy of making decisions. In fact, claiming the unintelligence of the American electorate does nothing but further frustrate citizens about the elitism of our government. Furthermore, Hamilton argued that by having electors “detached and divided” from the people “will expose them [the electors] much less to heats and ferments... than if they were all [the people] to be convened at one time, in one place.”⁴

Hamilton established that the Electoral College, as a temporary legal and representative body, actually helps protect the Presidency. The Founders were exceptionally wary of the ability a foreign influence could have on the “preexisting bodies of men, who might be tampered with beforehand to prostitute their vote,” going on to discuss that “holding a place of trust or profit under the United States” may be chosen as an elector for their state.⁵ In short, the legitimacy of the Presidential election is protected from corruption because of the Electoral College’s transient existence. Of course, we know this not to be the case today, but there are an astonishing of reasons behind this through America’s growth as a nation.

Moreover, the U.S. Constitution directly delegates the powers for designating how electors are chosen, along with the powers to set voting requirements and procedures, to the states in Article II Section I. Congress has no explicit or implicit power to dictate how electors are chosen by states for presidential candidates. Unfortunately, a result of the political ideological difference between states is evidenced by the “winner-take-all” system that gives all a state’s electors to the candidate that wins the state popular vote, rather than proportionally allocating electors based on the percentage of the vote a candidate won. State legislative majorities have also engaged in tactics that will help reinforce the ability to ensure their party’s success at the polls via voter suppression tactics, gerrymandering, intimidation, or the purging of voter rolls.

Nothing in the National Popular Vote Compact (NPVC) addresses the real issues plaguing our electoral system. Of the 58 presidential elections held in American history, only five have resulted in an upset in the Electoral College, swearing in a President who had not won the popular vote. That is only 8%. Three of these should be considered even more extraordinary among the five outliers. In 1824, President Adams secured the presidency with support from Speaker of the House Henry Clay, who finished fourth in the Presidential election and was confirmed as Secretary of State in what Andrew Jackson charged was a “corrupt bargain.” Again, in 1876, the Presidential election was undecided and was sent to the House of Representatives in conjunction with the 12th Amendment. Here it is important to note that the Southern states disputed the electoral results, and sent multiple delegations to Washington D.C., one for the Republicans and one for the Democrats. Eventually, the Republicans conceded the Southern demands for the removal of Republicans in the South in exchange for Rutherford B. Hayes to become President. Lastly, the 2000 election should be considered extraordinary in that it is the only Presidential election with a dispute reaching the Supreme Court, which essentially decided the election in favor of George W. Bush.

³ Federalist No. 68 Paragraph 3

⁴ Federalist No. 68 Paragraph 4

⁵ Federalist No. 68 Paragraph 5

The NPVC requires electoral votes from member states to go to the candidate who wins the national popular vote. This is problematic if Oregon joins because it would not matter how Oregonians voted, the seven electoral votes would only go to the national winner, who may not necessarily whom the voters of Oregon selected via Oregon's popular vote total. Voters outside of the NPVC, or the other 265 electoral votes, and the electorate of those states will see their vote diminished by the NPVC, as it would not matter who their state voted for.

The NPVC creates a false equivalency as it is not an "one person, one vote" policy. It is an attempt to circumvent a constitutional process we have the ability to address. Additionally, members of the compact have the individual capabilities to change how they allocate their electors independently of the NPVC but have chosen to keep their current system until enough states have joined the NPVC. Joining the NPVC would extremely stagnates Oregon's constitutional responsibility to organize and implement voting laws, which would further dilute the voice of Oregonians in the election process. Because of the turbulence of the Trump Administration which is constantly testing the strength of our democratic institutions- it becomes imperative to stand strong by the constitutional institutions that were created by our Founding Fathers and agreed upon when Oregon joined the United States as a state.

In addition, the vocabulary and vernacular used needs to be clarified. The Founding Fathers were clear about the requirement needed to be elected president: "The person having the greatest number of votes for President, shall be the President, if such number be a *majority* of the whole number of Electors appointed," (emphasis mine).⁶ The NPVC rationalizes it's outcome will produce a *majority* of Americans, but fails to account for the fact that all eligible voters do not vote, and that those who do vote are not necessarily well-informed voters. According to the 2010 Census- the United States had about 308 million residents⁷; in 2016, around 128.7 million citizens cast a vote for President of the United States.⁸ A *majority* of the population would be around 154 million people, with the Census estimateing the eligible voting population to be around 230 million citizens, meaning the *majority* of eligible voters would be around 115 million.⁹

Upon further examination of the votes for President Trump and Secretary Clinton in 2016 shows that a *majority* of the 2016 electorate that cast a vote (128.7 million) is about 64.3 million citizens. Accordingly, President Trump's popular vote total of 62,955,202 equates to: 48.9% of ballots cast (128.7 million ballots), which is only about 27.4% the eligible 2016 electorate (roughly 230 million citizens), and about 20.4% of the total 2010 estimated American population (308 million residents) to Secretary Clinton's 65,794,399: 51.1% of ballots cast, which is only about 28.6% of the eligible electorate, and 21.4% of the total 2010 estimated American population.¹⁰

It is abundantly clear that neither candidate from 2016 held a *majority* of the eligible electorate (115 million ballots of the 230 million eligible voters). Indeed, Secretary Clinton received a *majority* of the ballots cast (128.7 million), but that does not equate to a *majority* of eligible voters. This means that, under the NPVC, the candidate will have won with only a *plurality* of voters, rather than a *majority*. The Electoral College does require a *majority* of electors, who represent the people of their state, creating a higher standard to meet than that of a *plurality*. In short, it is exceptionally improbable that eligible Americans exercising their right to vote to establish that a *majority* of Americans vote for a candidate.

⁶ Amendment XII to the United States Constitution. Ratified June 15, 1804. <https://www.archives.gov/founding-docs/amendments-11-27#12>

⁷ <https://www.census.gov/programs-surveys/decennial-census/decade.html>

⁸ <https://www.archives.gov/federal-register/electoral-college/2016/election-results.html>

⁹ U.S. Census Bureau, Statistical Abstract of the United States: 2012- Page 246. <https://www.census.gov/prod/2011pubs/12statab/election.pdf>

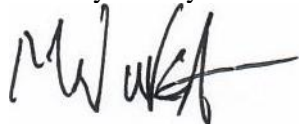
¹⁰ 2016 Election Results from the National Archives

ORS 248.355 – ORS 248.380 outlines the process of choosing electors, and explicitly states that electors vote “for the candidates of the party” and that it is the responsibility of the political party to “certify the names of the select candidates for elector[s].” Language like this is what has cemented the “winner-take-all” scenarios that give a political party the complete power to choose their candidate for President and Vice President. I disagree with Senator Fagan who stated that “[a]ll Oregon voters matter as much as any voter in Pennsylvania or Florida,” when SB 870 was heard on the Senate Floor; Oregon voters matter when their electoral system works for them- not against.

It is completely possible to change the way Oregon votes in the Electoral College that are more equitable than the current system. Minimally, the Electoral College needs desperate reform. There might come a time when the abolishment of the Electoral College is the necessary electoral reform. However, the process to amend the Constitution is the legal and legitimate process to amend the Electoral College. Rather than circumvent the Constitution with an unequitable compact between states, what is required of us, as Americans, is active engagement with our state legislatures and members of Congress to push for the electoral reform that is desperately needed.

To be abundantly clear, I believe election reform is an important issue, and one that needs to be addressed immediately. I believe there are plenty of other avenues by which to pursue this goal, and that the NPVC is a weak solution that is a result to assuage the hostility of the 2016 election's aftermath.

Thank you for your time.

A handwritten signature in black ink, appearing to read 'Matthew Wurst', with a long horizontal stroke extending to the right.

Matthew Wurst