

April 24, 2025

House State Government Committee Informational Meeting - National Popular Vote

Chair Hill-Evans, Chair Roae, and members of the Committee:

Thank you for the opportunity to share some remarks today on the importance of the National Popular Vote. My name is Philip Hensley-Robin, and I am the Executive Director of Common Cause Pennsylvania. We are a nonpartisan voting rights and democracy reform organization. We have been dedicated to making government more accountable to We the People since 1970, and we have over 35,000 members and supporters across every county in our Commonwealth.

Common Cause has long advocated for reforming the way we elect the President, because the current system is fundamentally unrepresentative. The legitimacy of our elections, and public confidence in our system of government, flow from a few simple principles: Every vote is equal, and the candidate with the most votes wins. Every other election conducted in this country operates on this one person, one vote principle. This is how we elect our Senators, our Members of Congress, our Governors, our state legislators, and our local officials.

But the Presidency is the exception. Because each state allocates their electoral votes to the winner of their own states, most voters are sidelined. As a result of this system, the winner of the popular vote has not been elected as President five times in our history. 1 in 14 presidential elections, and 2 in just this century, have ended in the popular-vote winner losing the election, subverting the will of the electorate. When the candidate earning a majority of votes does not win an election, it undermines people's faith and representation in our system of government.

Why a National Popular Vote for President Is Needed

The shortcomings of the current system stem from "winner-take-all" laws that award all of a state's electoral votes to the candidate receiving the most popular votes in each separate state.

Because of these state winner-take-all laws, five of our 46 Presidents have come into office without winning the most popular votes nationwide. In 2004, if 59,393 voters in Ohio had changed their minds, President Bush would have lost, despite leading nationally by over 3 million votes.

Under the current system, a small number of votes in a small number of states regularly decide the Presidency. All-or-nothing payoffs fuel doubt, controversy over real or imagined irregularities, hairsplitting post-election litigation, and unrest. In 2020, if 21,461 voters had changed their minds, Joe Biden would have been defeated, despite leading by over 7 million votes nationally. Each of these 21,461 voters (5,229 in Arizona, 5,890 in Georgia, and 10,342 in Wisconsin) was 329 times more important than the 7 million voters elsewhere. That is, every vote is not equal under the current system.

While some might argue that Pennsylvania, as a current “battleground” state, has received disproportionate attention as a result of this winner-take-all system, that would be enormously short-sighted. Pennsylvania is currently a battleground, because recent elections for President here have been close and competitive. But political coalitions and electoral outcomes will shift, and Pennsylvania will not forever be as politically competitive as it is today. Under the current system, it is a guarantee that Pennsylvania will join the ranks of the spectator states that are routinely ignored in Presidential elections. The only way to ensure that Pennsylvania voters will be heard, in *every* election, is to enact the National Popular Vote.

How National Popular Vote Works

Winner-take-all is **not** in the U.S. Constitution and was not mentioned at the Constitutional Convention. Electors have been elected directly without relation to a presidential candidate, selected by state legislators, elected by district, and as is currently the case in all but two states (Maine and Nebraska), elected statewide in winner-take-all states. The U.S. Supreme Court has ruled in multiple cases that the state’s power to choose the manner of selecting electors is “supreme,” “plenary,” and “exclusive.”

The National Popular Vote law will take effect when enacted by states with a majority of the electoral votes (270 of 538). Then, the presidential candidate receiving the most popular votes in all 50 states and DC will receive all the electoral votes from all the enacting states. The candidate receiving the most popular votes nationwide will be guaranteed enough electoral votes to become President.

Under the National Popular Vote law, no voter will have their vote cancelled out at the state-level because their choice differed from majority sentiment in their state. Instead, every voter’s vote will be added directly into the national count for the candidate of their choice. This will ensure that **every** voter, in **every** state, will be politically relevant in **every** presidential election—regardless of where they live. The National Popular Vote law is a constitutionally conservative, state-based approach that retains the power of the states to control how the President is elected and retains the Electoral College. It represents the best of our system of federalism: our States, using their powers under the Constitution to act together, to the benefit of their citizens.

National Popular Vote has been enacted into law by 18 jurisdictions, including 6 small states (DC, DE, HI, ME, RI, VT), 9 medium-sized states (CO, CT, MD, MA, MN, NJ, NM, OR, WA), and 3 big states (CA, IL, NY). These jurisdictions have 209 of the 270 electoral votes needed to activate the law.

The bill has also passed one legislative chamber in 7 states with 74 electoral votes (AR, AZ, MI, NC, NV, OK, VA), including the Republican-controlled Arizona House and Oklahoma Senate. It has passed both houses of the Nevada legislature at various times and is endorsed by 3,800 state legislators.

PROBLEMS WITH THE CURRENT SYSTEM OF PRESIDENTIAL ELECTIONS

- The candidate who placed second in the popular vote was elected in 2016, 2000, 1888, 1876, and 1824.
- Effectively disenfranchises voters in more than two thirds of the states who do not live in closely divided "battleground" states.
- Presidential candidates have no reason to poll, visit, advertise, organize, or campaign in states that they cannot possibly win or lose.

WHY NATIONAL POPULAR VOTE IS BETTER

- The National Popular Vote would make all votes equal.
- It would ensure that the candidate with the most votes wins the election, just as any other election in this country.
- It would bring candidates to every state and make them listen to everyone's concerns, in every election.
- It would give voters in all states, regardless of party affiliation, an incentive to vote in presidential elections and would help increase civic participation in all states.
- It would rid the nation of falsely polarized red and blue election night maps.

NATIONAL POPULAR ELECTION MEANS A RURAL AND URBAN CAMPAIGN IN ALL 50 STATES

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, and the way all non-Presidential candidates currently campaign in their elections.

For example, in campaigns for statewide office in Pennsylvania, the big cities do not receive all the attention, and they certainly do not control the outcome. Because every vote is equal in our elections, candidates avidly seek out voters in small, medium, and large towns. Candidates campaign in rural and suburban areas, they visit the Lehigh Valley and the Mon Valley, they hold rallies in Erie, Reading and Scranton. The itineraries of presidential candidates in battleground states (and their allocation of other campaign resources) demonstrate what every gubernatorial or senatorial candidate in every state already knows—namely that when every vote matters, the campaign must be run in every part of the state. With a National Popular Vote, this would be reflected in every state, in every region of the country.

THE NATIONAL POPULAR VOTE PLAN IS CONSTITUTIONAL

The selection of presidential electors is specifically and virtually exclusively entrusted to the states by the Constitution. As with other powers entrusted to the states, it is an application, not a circumvention, of the Constitution when the states utilize those powers as they see fit. The framers specifically enacted the provisions relating to the Electoral College to allow for state innovation. In contrast, other issues related to the federal government are not exclusively entrusted to the states, and therefore the states lack the power to alter them.

The question has been raised as to whether congressional consent is needed for the National Popular Vote Compact to take effect. The United States Supreme Court ruled in *U.S. Steel v. Multistate Tax Commission* and other cases that congressional consent is only necessary for interstate compacts that “encroach upon or interfere with the just supremacy of the United States.” The Supreme Court has also ruled in *McPherson vs. Blacker* that states have “exclusive” and “plenary” power to choose the method of appointing their presidential electors. Because the choice of manner of appointing presidential electors is exclusively a state decision, there is no federal power—much less federal supremacy—for the states to encroach upon. Therefore, under established compact jurisprudence, congressional consent would not be necessary for the National Popular Vote Compact to become effective.