



Major Flaws of the Voter Choice Ballot Proposal

September 7, 2020

A group called “Making Every Vote Count” (MEVC) is advocating that individual states **unilaterally** enact laws that award their electoral votes to the national popular vote winner—without the requirement (contained in the National Popular Vote compact) that a group of states possessing a majority of the electoral votes have all agreed to award their electoral votes to the nationwide winner.

Under MEVC’s proposed “Voter Choice Ballot” (VCB), voters would first cast their vote for President in the usual way, and then vote on the following yes-no question:

“Do you want the candidate who receives the most votes in the nation to become the President? If you do, fill in the oval next to YES.”

After the voter answers this appealingly worded yes-no question, the voter is told:

“The state will count the votes for all those who filled in the YES oval as cast for the winner of the national popular vote for the purpose of appointing electors as otherwise provided by this state’s law.”

The opaque phrase “as otherwise provided by this state’s law” means that the vote that the voter just cast for President will be subtracted from the voter’s preferred candidate and added to the opposing candidate that the voter just voted against—if (1) the voter’s preferred choice for President is ahead in the voter’s own state, and (2) the opposing candidate is ahead in the national popular vote.

National Popular Vote (NPV) only learned about the “Voter Choice Ballot” proposal after MEVC announced it publicly—not as a result of any collaboration. NPV does not endorse VCB.

The “Voter Choice Ballot” (VCB) has the following major flaws:

- (1) The appealingly-worded yes-no question on the VCB ballot is superfluous window-dressing. Enacting VCB is, for all practical purposes, equivalent to the state **unilaterally** giving its electoral votes to the national winner.
- (2) Enactment of VCB by a state such as Minnesota (and many other states) would give the Republican presidential nominee a one-sided partisan advantage, while not giving a like benefit to the Democratic nominee.
- (3) VCB would not motivate presidential candidates to campaign outside of the dozen or so closely divided battleground states—and would actually increase their clout.
- (4) No battleground state will enact VCB because it would be exchanging more attention than its population warrants for considerably less attention than its population warrants.
- (5) Enactment of VCB would not come close to making every vote equal.
- (6) No reliably red state or reliably blue state will enact VCB because it would be unilaterally turning its electoral votes over to the opposing party.
- (7) Enactment of VCB by one state, or a few states, would not come close to guaranteeing the Presidency to the national popular vote winner.
- (8) The opaque wording and arrangement of the VCB ballot obscures the fact that a voter’s vote may be transferred to the presidential candidate the voter just voted against.
- (9) The reality of real-world lobbying is that there is no pool of incremental, gettable state legislative votes that would support the enactment of VCB.
- (10) VCB would hinder enactment of the National Popular Vote compact because it is confusingly similar to NPV. Because VCB cannot withstand scrutiny, its flaws would inevitably be incorrectly attributed to NPV, thus creating doubt about NPV.

VCB’s flaws are discussed in detail on the following pages.

1. The appealingly-worded yes-no question on the VCB ballot is superfluous window-dressing. Enacting VCB is, for all practical purposes, equivalent to the state unilaterally giving its electoral votes to the national winner.

As will be seen, if an insignificant percentage of a state's voters (say, 3.8% in Minnesota and 1.5% in Ohio) vote "yes" on the appealingly worded yes-no question on the VCB ballot, then the state's electoral votes will be **unilaterally** awarded to the national popular vote winner.

That is, the VCB proposal must be evaluated as if were simply a proposal to **unilaterally** award the state's electoral votes to the nationwide winner. The yes-no question is a superfluous window-dressing that confuses evaluation of the VCB proposal.

Let's use Minnesota first (and then Ohio) to demonstrate why this is the case.

First, suppose, as was the case in 2012 in Minnesota, that the Democratic presidential nominee got 1,546,167 (53%) of Minnesota's popular votes and the Republican nominee got 1,320,225 (45%).

Second, suppose that a **mere 3.8%** of Minnesota's Democratic voters (112,972) voted "yes" on the appealingly worded yes-no VCB question, namely

"Do you want the candidate who receives the most votes in the nation to become the President? If you do, fill in the oval next to YES."

Third, suppose that the Republican won the national popular vote.

After the voter finishes voting for President and answers the yes-no question, the voter is told:

"The state will count the votes for all those who filled in the YES oval as cast for the winner of the national popular vote for the purpose of appointing electors as otherwise provided by this state's law."¹

The opaque phrase "as otherwise provided by this state's law" means that the vote that the voter just cast for President will be subtracted from the voter's preferred candidate and added to the opposing candidate that the voter just voted against—if (1) the voter's preferred choice for President is ahead in the voter's own state, and (2) the opposing candidate is ahead in the national popular vote.

Thus, if Minnesota enacts VCB, those 112,972 Democratic votes would be subtracted from the Democratic nominee (leaving him with only 1,433,195) and added to the Republican nominee—putting the Republican nominee in the lead in Minnesota with 1,433,197 votes.

Numerous polls, including MEVC's own poll, have shown significant **majorities** of the public support the idea of electing the President on the basis of the national popular vote. Thus, it is a virtual certainty that far more than 3.8% of Minnesota voters will vote "yes" on the yes-no question.

In other words, if Minnesota enacts VCB, Minnesota's electoral votes will be **unilaterally** awarded to the national popular vote winner. Therefore, the VCB proposal must be evaluated as if were simply a proposal to **unilaterally** award the state's electoral votes to the nationwide winner.

In Ohio, the conclusion is the same. In 2012, the Democratic presidential nominee got 2,827,621 votes, and the Republican nominee got 2,661,407. If a mere 1.5% of Ohio's Democratic voters (83,108) voted "yes" on the appealingly worded yes-no VCB question, then these 83,108 Democratic votes would be subtracted from the Democratic nominee (leaving him with only 2,744,513) and added to the Republican nominee—putting the Republican nominee in the lead in Ohio with 2,744,515 votes. That is, if Ohio enacts VCB, Ohio's electoral votes will be **unilaterally** awarded to the national popular vote winner. Therefore, the VCB proposal should be evaluated as if were simply a proposal to **unilaterally** award the state's electoral votes to the nationwide winner.

At a virtual conference hosted by MEVC on August 13, 2020, Mark Bohnhorst acknowledged this fact and said:

¹ A picture of the Voter Choice Ballot appears later in this document. It is also available on Making Every Vote Count's web site. See *Voter Choice Ballot: Summary And Coordinated Strategy To Achieve National Popular Vote For President Reform*. July 1, 2020. Accessed July 21, 2020. <https://www.makingeveryvotecount.com/mevc/2020/7/1/voter-choice-ballot-summary-and-coordinated-strategy-to-achieve-national-popular-vote-for-president-reform>

“The percentage of the yes votes that you would need in order to assure that one of the major-party candidates that won the national popular vote will win the state’s electors, and, as you can see, **the numbers are not particularly high and, in some cases, they are vanishingly small.**”²

Moreover, in connection with three states in 2016 (Florida, Arizona, and Michigan), Bohnhorst pointed out that even a small fraction of a **third-party** candidate’s voters would be sufficient to cause the state’s electoral votes to be cast in favor of the national popular vote winner.

“If only a fraction of third-party voters voted “yes,” the state’s electoral votes would have been awarded to the winner of the national vote, regardless which major party won the state’s plurality of first choice votes.”³

Therefore, the discussion of the merits of VCB becomes a discussion about the merits of a state **unilaterally** awarding its electoral votes to the nationwide winner. As we will show in the subsequent sections, unilateral awarding of electoral votes is a bad idea.

2. Enactment of VCB by a state such as Minnesota (and many other states) would give the Republican presidential nominee a one-sided partisan advantage, while not giving a like benefit to the Democratic nominee.

In the previous section, we showed that enacting VCB is functionally equivalent to the state unilaterally giving away its electoral votes to the national popular vote winner.

So what would happen if a state, such as Minnesota, enacted VCB?

If Minnesota enacted VCB and the Republican presidential nominee won the national popular vote while losing the Electoral College by 10 or fewer electoral votes, Minnesota’s 10 electoral votes would go to the Republican nominee and put him into the White House.

However, VCB is not an even-handed proposal that protects both parties from losing the Electoral College, while winning the national popular vote. It would not treat the Democratic nominee equally.

If the Democratic presidential nominee won the national popular vote while losing the Electoral College by 10 or fewer electoral votes, the Democratic nominee would not get the same 10 electoral votes worth of protection against losing the Presidency. If the Democratic nominee wins the national popular vote while losing the Electoral College by 10 or fewer electoral votes, the Democrat would lose the Presidency, because the Democrat was already going to win Minnesota’s 10 electoral votes anyway. The reason is that Minnesota has voted Democratic in the last 11 presidential elections, and that Minnesota can reasonably be expected to vote Democratic for President in the immediate future. The Democratic nominee would only get what he or she was going to get anyway—Minnesota’s 10 electoral votes. That is, VCB would not help the Democratic nominee.

In short, VCB is not an even-handed proposal that protects both parties from losing the Electoral College, while winning the national popular vote. It would not treat the Democratic nominee equally. The real-world political effect of VCB in Minnesota would be that a Republican nominee winning the national popular vote would get 10 electoral votes worth of (desirable and virtuous) protection against losing the Presidency in the Electoral College, but the Democratic nominee would not get similar protection.

It would be politically preposterous for Minnesota Democrats to enact a law that so one-sidedly benefits the party that was not the choice of Minnesota voters in any of the past 11 presidential elections, while failing to confer the equivalent benefit on their own party.

² Bohnhorst, Mark. Slide 2 at timestamp 2:07 of video of Presidential Election Reform 2020 & Beyond Conference on August 13, 2020. <https://www.crowdcast.io/e/electoralcollegereform2020>

³ Bohnhorst, Mark. Slide 3 at timestamp 2:09 at Presidential Election Reform 2020 & Beyond Conference on August 13, 2020. <https://www.crowdcast.io/e/electoralcollegereform2020>

The reason VCB would produce this perverse and partisan outcome is that VCB is stand-alone state legislation that is enacted **unilaterally** on a state-by-state basis—without reference to what other states do.

It is important to note the contrast between VCB and the National Popular Vote interstate compact. The National Popular Vote Compact gives both parties **equal** protection against the possibility of losing the Presidency after winning the national popular vote. The reason that the National Popular Vote Compact is able to do this is that the compact contains the vital condition that it does not take effect until it is enacted by states possessing the critical mass consisting of a majority of the electoral votes—that is, 270 out of 538. When the compact comes into effect, the compact results in the appointment of at least 270 presidential electors nominated by the party whose presidential candidate won the most popular votes in all 50 states and the District of Columbia. Thus, the compact guarantees the national popular vote winner enough electoral votes in the Electoral College to become President. The National Popular Vote compact treats both parties equally. Both parties are treated the same. Both parties receive protection against losing the Electoral College, while winning the national popular vote.

As of mid-2020, the National Popular Vote compact has been enacted by 15 states and the District of Columbia (together possessing 196 electoral votes), including 4 small states (DE, HI, RI, VT), 8 medium-sized states (CO, CT, MD, MA, NJ, NM, OR, WA), and 3 big states (CA, IL, NY).

Thus, the National Popular Vote compact is poised to take effect when enacted by states with 74 more electoral votes (for a total of 270).

The National Popular Vote compact has passed at least one legislative chamber in 9 additional states with 88 electoral votes (AR, AZ, ME, MI, MN, NC, NV, OK, VA), including the Republican-controlled Arizona House and Oklahoma Senate. 3,471 state legislators have endorsed it.

There is simply no way for Minnesota—acting unilaterally—to confer bi-partisan protection against a candidate losing the Presidency while winning the national popular vote.

3. VCB would not motivate presidential candidates to campaign outside of the dozen or so closely divided battleground states—and would actually increase their clout.

MEVC's claim that VCB would cause candidates to conduct a nationwide campaign sounds too good to be true—because it is.

A major shortcoming of the current state-by-state winner-take-all method of awarding electoral votes is that presidential campaigns are concentrated in a handful of closely divided “battleground” states. Candidates ignore states where they are safely ahead or hopelessly behind.

In 2016, the 12 closely divided battleground states (with 95,000,000 people) received virtually all (94%) of the nation's 399 general-election campaign events. In 2012, the 12 battleground states received 100% of the events. Campaign expenditures and other activities generally parallel campaign events. The battleground states and spectator states and the number of general-election campaign events that each received in 2016 are listed at the end of this document.

The reason why VCB would not motivate presidential candidates to campaign outside of the dozen or so closely divided battleground states is that presidential candidates would not need to campaign in the 39 spectator states in order to add to their national popular vote total under VCB. Instead of campaigning across the entire country, candidates could (and almost certainly would) simply double-down on their efforts to win the dozen or so existing battleground states.

Spending money and campaigning time trying to win additional popular votes in the battleground states (which have 95,000,000 people) would give a candidate **a bite at two apples**. Winning popular votes in a battleground state would count towards winning both the battleground state's electoral votes **and simultaneously count** towards winning the electoral votes tethered to the national popular vote by VCB.

In contrast, campaigning among the 215,000,000 people in the 39 spectator states would give a candidate **a bite at only one apple**, namely the possibility of winning the modest number of electoral votes tethered to the national popular vote by VCB.

Note that campaigning in the 39 spectator states cannot help a candidate win any additional electoral votes from those states. The spectator states are, by definition, states whose electoral votes are predictably red or blue by large margins.

Another way to look at this is to consider the special case of a sitting President seeking re-election (or a second-term President desiring to aid the election of his preferred successor). Sitting Presidents have a unique additional campaigning tool at their disposal, namely the ability to award vote-getting government contracts, highway improvements, waivers, exemptions, or distribution of medical supplies to particular states. Under VCB, a sitting president would continue to focus on battleground states because every vote gained in those states would help him win the battleground state's electoral votes **and simultaneously help** him win the electoral votes tethered to the national popular vote by VCB. Given a choice between awarding a job-creating and vote-getting tank contract to a factory in Lima, Ohio versus a factory in a spectator state such as Illinois or Indiana, a sitting President would (as President Trump recently did) award the contract to the battleground state of Ohio. He would have no reason to give that contract to Illinois because a few more popular votes in Illinois won't get him the electoral votes of Illinois (which are safely Democratic), and not getting a few more popular votes in Indiana won't cause him to lose the electoral votes of Indiana (which are safely Republican).

Another flaw of VCB is that it would actually increase the already excessive importance of the battleground states. Each battleground state would retain 100% control over its own electoral votes—while **acquiring** partial control over the electoral votes of state(s) enacting VCB. This transfer of political power is a one-way street, because voters in the VCB state(s) would not acquire any compensating influence over the electoral votes of battleground states.

Note the difference between VCB and the National Popular Vote compact. The National Popular Vote compact contains the vital condition that it only goes into effect when enacted by states with a majority of the electoral votes (270 of 538). As a result, the compact does not have VCB's undesirable asymmetric transfer of power in favor of the battleground states. Instead, voters in every compacting state are compensated by **acquiring** a direct voice in the disposition of the electoral votes of **every other** compacting state. In fact, voters in every state acquire a direct voice in the disposition of a bloc of 270 or more electoral votes—and hence acquire a direct voice in electing the President. Under the compact, no state is asked to unilaterally become a selfless donor, while getting nothing in return.

Common sense suggests that the enactment of VCB by state(s) with a modest number of electoral votes cannot motivate presidential candidates to campaign outside the battleground states—and common sense is correct.

The bottom line is that there is no quick shortcut, involving one state (or a few states) with a modest number of electoral votes, to achieving a presidential campaign in which **every** voter in **every** state is politically relevant in **every** presidential election.

4. No battleground state will enact VCB because it would be exchanging more attention than its population warrants for considerably less attention than its population warrants.

MEVC strenuously claims that closely divided battleground states, including Ohio and Florida, are likely to find VCB attractive.

However, consider what would happen if VCB were enacted by a closely divided battleground state such as Ohio.

As explained in the previous section, VCB almost certainly would not create any motivation for presidential candidates to expand their campaign into the 39 spectator states.

However, purely for sake of argument, suppose that VCB has the behavioral effect that MEVC claims and that presidential candidates made the illogical decision to expand their campaign into the

39 spectator states—as opposed to the rational decision to simply double-down on the remaining battleground states.

If candidates decided to expand their campaign into the 39 spectator states, the obvious question becomes what would be the **maximum effort** that candidates would spend in order to win the 18 electoral votes that Ohio tethered to the national popular vote as a result of enacting VCB?

The political effect of Ohio enacting VCB would be to create a virtual nationwide electoral district with 18 electoral votes.

Since the country as a whole is pretty much equally divided, this virtual nationwide electoral district with 18 electoral votes would also be, more or less, equally divided—that is, it would be a battleground district.

This virtual nationwide electoral district would have 310,000,000 people. It would contain 50 states and the District of Columbia. It would contain the 39 spectator states as well as the other 11 closely divided battleground states, and Ohio (the donor state).

However, winning the most popular votes in this virtual nationwide electoral district under VCB would not guarantee the candidate the Presidency (as would be the case under the National Popular Vote compact).

Instead, winning the 18 electoral votes belonging to this virtual nationwide electoral district would not be any more (or less) valuable to a candidate than simply winning Ohio's 18 electoral votes under the current system. 18 electoral votes are 18 electoral votes, and nothing more or less.

We don't have to speculate as to how valuable that might be, because there is factual evidence from the real-world of the political value of 18 electoral votes.

Ohio received 40 general-election campaign events in 2016 (out of 399 nationally).

Therefore, 40 campaign events (and the usual millions of dollars of accompanying advertising, and the usual extensive supporting activity) is what it is worth to win this virtual electoral district with 310,000,000 people and 18 electoral votes.

These 40 general-election campaign events amount to one event for every 7,750,000 people.

But, what, specifically would happen to Ohio—the state that donated the 18 electoral votes to create this virtual nationwide electoral district?

Ohio has 11.5 million people. At one event per 7,750,000 people, Ohio could expect about 1.5 of the 40 general-election events.

In other words, Ohio's population has 3.7% of the nation's population, and because it has unilaterally ceded control of its 18 electoral votes to the virtual nationwide electoral district, Ohio can expect about 1.5 general-election campaign events (3.7% times 40).

That is, if the battleground state of Ohio enacted VCB, it would be exchanging its current excessive amount of attention (40 events) for distinctly less attention.

But, Ohio's population would warrant considerably more than 2 general-election campaign events in a nationwide election in which every vote is equal. For example, under the National Popular Vote compact, 399 campaign events would amount to one event for every 777,000 people. This 777,000 number is roughly equivalent to one event per congressional district.

That means that Ohio would expect to get about 15 campaign events under the National Popular Vote compact—that is, approximately one for each of its 16 congressional districts.

Thus, if a battleground state such as Ohio enacted VCB, the effect would be to exchange more attention than Ohio's population warrants (40 events) for considerably less attention than Ohio's population warrants (2 events), when Ohio's population, in fact, warrants 15 events.

You can do the same calculation for other battleground states, such as Florida.

Florida has 18,900,000 people, 6% of the nation's population, and 29 electoral votes. It received 71 of the nation's general-election campaign events in 2016—three times more than its population warrants. If Florida enacted VCB, it would represent 6% of the population of a virtual nationwide electoral district with 29 electoral votes. A 6% share of 71 events would be about 4 campaign events for Florida under VCB. Under National Popular Vote, Florida would expect 24 events.

Overall, if a battleground state such as Florida enacted VCB, the effect would be to exchange more attention than Florida's population warrants (71 events) for considerably less attention than Florida's population warrants (4 events), when Florida's population, in fact, warrants 24 events.

Another way to put the 7,750,000 number into perspective is to look at some spectator states. The maximum effort that candidates would spend in a spectator state such as Indiana (population 6.4 million), Massachusetts (population 6.5 million), Washington state (population 6.7 million), and New Jersey (population 8.8 million) would be a paltry one general-election campaign event per state. States bigger than 7,750,000 people would, of course, receive more than one event. For example, California (population 37,000,000) might receive 5 events.

However, all of the above calculations were based on the **maximum** amount of attention might received under VCB.

As explained in the previous section, candidates would probably just double-down on their efforts to win the non-VCB battleground states. Winning popular votes in non-VCB battleground states would count towards winning both that state's electoral votes **and simultaneously count** towards winning the electoral votes tethered to the national popular vote by VCB. Thus, spending money and campaigning time trying to win additional popular votes in the non-VCB battleground states would give a candidate **a bite at two apples**.

In contrast, campaigning amongst the 215,000,000 people in the 39 spectator states would give a candidate **a bite at only one apple**, namely the possibility of winning the modest number of electoral votes tethered to the national popular vote by VCB.

Thus, there really wouldn't be any campaigning in Indiana, Massachusetts, Washington state, and New Jersey even though they each have about 7,750,000 people. In fact, there almost certainly wouldn't be any campaigning at all in any of the 39 spectator states.

Moreover, because Ohio unilaterally donated its 18 electoral votes by enacting VCB, it would be virtually pointless for a presidential candidate to spend any time, money, or effort in winning Ohio, because a vote cast in Ohio only counts in the national pool under VCB (and no longer directly controls the disposition of Ohio's electoral votes). Thus, Ohio would almost certainly not even get the paltry 2 campaign events mentioned above.

The above analysis shows that no battleground state is going to enact VCB.

Battleground states are admittedly not the most fertile ground for changing the state-by-state winner-take-all method of awarding electoral votes. However, experience shows that battleground states can be receptive to the idea of National Popular Vote based on the fairness principle and (to be a little more political) because battleground status is fleeting and fickle. The fleeting nature of battleground status is demonstrated by Michigan and Pennsylvania, which were almost totally ignored in 2012. Michigan and Pennsylvania got a mere 1 and 5 campaign events, respectively, in 2012. In fact, Obama and Biden didn't bother with either state (and still won both).

Battleground status is fleeting even for Ohio. It was not a battleground state in 2000. And, as of early September 2020, there is a good possibility that it will not be a battleground state (or at least not much of a battleground state) in 2020.

In contrast, under the National Popular Vote compact, each state can always rely on always getting the attention that its population warrants—regardless of whether public opinion in the state drifts in or out of the narrow 47%–53% range that makes a state a battleground.

The National Popular Vote compact guarantees that **every** voter in **every** state will be politically relevant in **every** presidential election.

5. Enactment of VCB would not come close to making every vote equal.

In the previous section, we did a hypothetical calculation of the maximum amount of effort that presidential candidates might make to win Ohio's electoral votes if Ohio enacted VCB and candidates made the illogical decision to expand their campaign into the 39 spectator states—as opposed to the rational decision to double-down on the battleground states.

That maximum effort was one general-election campaign event (and the usual millions of dollars of accompanying advertising and the usual supporting in-state activity) for every 7,750,000 people in the country.

We also noted that, under the National Popular Vote Compact, there would be one general-election campaign event for every 777,000 people.

That is, at best, if VCB were in operation as a result of Ohio’s participation, there would be a 10-to-1 disparity in the value of a vote compared with National Popular Vote.

In other words, enactment of VCB would not even come close to achieving one of the most important benefits guaranteed by the National Popular Vote compact, namely that every vote throughout the United States would be equally important in presidential elections.

The reason why the National Popular Vote compact can deliver this benefit is that it contains the vital condition that it only goes into effect when enacted by states with a majority of the electoral votes (270 of 538). Once candidates know that the national popular vote is going to determine which candidate is going to receive a bloc of 270 or more electoral votes (enough to elect a President in the Electoral College), then every voter throughout the United States becomes equally valuable. The compact would make **every** voter in **every** state equally valuable in **every** presidential election.

In a national popular vote for President, a state like Minnesota (with about 2% of the nation’s population) could reasonably expect to receive 2% of the entire nation’s 399 campaign events—that is, about 8 events—that is, one event per congressional district.⁴

Of course, in an environment with coronavirus, the number of campaign events will probably be much smaller than usual. Nonetheless, campaign expenditures for advertising and other activity closely parallel campaign events.

6. No reliably red state or reliably blue state will enact VCB because it would be unilaterally turning its electoral votes over to the opposing party.

Thirty-two states have voted for the same party in the five presidential elections between 2000 and 2016. They are shown in the far left and far right columns of the table below.⁵

38 States Voted for Same Party in 5 Presidential Elections 2000–2016

Dem 5 times -- 16 states	Dem 4 times - 5 states	Dem 3 times - 4 states	Dem 2 times - 2 states	Dem 1 time - 2 states	Dem 0 times - 22 states
CA (55)	MI (16)	VA (13)	FL (29)	IN (11)	AL (9)
CT (7)	NH (4)	CO (9)	OH (18)	NC (15)	AK (3)
DE (3)	NM (5)	NV (6)			AR (6)
DC (3)	PA (20)	IA (6)			AZ (11)
HI (4)	WI (10)				GA (16)
IL (20)					ID (4)
MA (11)					KS (6)
ME (4)					KY (8)
MD (10)					LA (8)
MN (10)					MO (10)
NJ (14)					MS (6)
NY (29)					MT (3)
OR (7)					NE (5)
RI (4)					ND (3)
VT (3)					OK (7)
WA (12)					SC (9)
					SD (3)
					TN (11)
					TX (38)
					UT (6)
					WY (3)

⁴ See “How Nationwide Presidential Campaigns Would Be Run” document at <https://www.nationalpopularvote.com/how-nationwide-campaign-president-would-be-conducted>

⁵ The number of electoral votes shown in the table are for 2012, 2016, and 2020 elections. DC is counted as a state for purposes of this table.

					WV (5)
196 EV	55 EV	34 EV	47 EV	26 EV	180 EV

The appealingly worded yes-no question on the VCB ballot is

“Do you want the candidate who receives the most votes in the nation to become the President? If you do, fill in the oval next to YES.”

Numerous polls, including MEVC’s own poll, have shown significant majorities support the idea of electing the President on the basis of the national popular vote. Thus, this appealingly worded yes-no question is likely to get a significant number of “yes” votes.

Consider the effect if even a tiny percentage of voters vote “yes” on this question in a reliably red state or reliably blue state.

Suppose the Democratic presidential nominee gets 60% of the popular vote in a reliably blue state (e.g., Illinois) that has enacted VCB and the Republican nominee gets 40% (which is approximately what happened in 2016). Also suppose that more than a mere one-sixth of the 60% who voted Democratic for President voted “yes” on the yes-no ballot question—that is, 10%+ of all voters are Democratic voters who voted “yes.” Indeed, almost any ballot question, on almost any subject, will get at least this small percentage of “yes” votes. If the Republican nominee wins the national popular vote, the Republican would get all of Illinois’s 20 electoral votes, because 40% plus the 10%+ would be greater than 50%. That is, the Republican nominee winning the national popular vote would get 20 electoral votes worth of protection from Illinois against losing the Presidency. However, a Democratic nominee who wins the national popular vote would get 0 electoral votes of such protection, because the Democratic nominee was going to win Illinois’s electoral votes anyway. Thus, it would be politically preposterous for a Democratically controlled legislature and Democratic governor in a Democratic state to enact VCB.

Similarly, it would be politically preposterous for a Republican controlled legislature and Republican governor in a Republican state to enact VCB. Suppose the Republican presidential nominee gets 60% of the popular vote in a reliably red state (e.g., Mississippi) that has enacted VCB and the Democratic nominee gets 40% (which is approximately what happened in 2016). Also suppose that more than a mere one-sixth of the 60% who voted Republican for President voted “yes” on the yes-no question—that is, 10%+ of all voters are Republicans who voted “yes.” Indeed, almost any ballot question, on almost any subject, will get this small percentage of “yes” votes. If the Democratic nominee wins the national popular vote, the Democrat would get all of Mississippi’s 6 electoral votes, because 40% plus the 10%+ would be greater than 50%. That is, the Democratic nominee winning the national popular vote would get 6 electoral votes worth of protection from Mississippi against losing the Presidency. However, a Republican nominee who wins the national popular vote would get 0 electoral votes of protection, because the Republican nominee was going to win Mississippi’s electoral votes anyway.

In summary, no reliably red state and no reliably blue state would enact VCB.

The reason is that it makes no sense for a single state to unilaterally award its state’s electoral votes based on the national popular vote, unless corresponding legislation is also enacted, in exact tandem, by a politically opposite state with the same number of electoral votes. VCB does not have any such “pairing.” VCB’s defect is that it is legislation that would be enacted unilaterally by single states.

Even with “pairing,” the VCB approach is problematic. The academic originators of the idea of unilateral state legislation recognized that it could only work if there was a carefully orchestrated “pairing” of states. In 2006, Northwestern University Law School Dean Robert Bennett noted that states would have to be carefully “paired” in order for unilateral state legislation to make sense:

“If states with 100 to 125 electoral votes—**more or less evenly balanced in partisan terms**—were to bind themselves initially, the dynamics of campaigning would shift dramatically toward concern with the nationwide vote.”⁶

In 1971, Dale Read (the person who originated the idea of states unilaterally passing legislation tying their electoral votes to the national popular vote in his Duke University paper⁷ and in his 1976 *Washington Law Review* article⁸) thought that between 108 to 135 electoral votes would be needed to make this idea work.

There is no way to know what sub-majority number of electoral votes (100, 108, 126, or 135) would—if carefully paired—be sufficient to change the behavior of future presidential candidates. However, it takes magical thinking to believe that some small number of electoral votes—particularly if there is no pairing (as is the case with VCB)—could possibly do so.

⁶ Bennett, Robert W. 2006. Electoral College Reform is Heating Up And Posing Some Tough Choices. *Northwestern University School of Law Public Law and Legal Theory Papers*. Paper No. 45. <http://law.bepress.com/nwwps/plltp/art45> Page 15.

⁷ Read, Dale Jr. 1971. Electoral College Reform: Direct Popular Vote Without a Constitutional Amendment. Independent Research Paper. Duke Law School. 105 pages.

⁸ Read, Dale Jr. 1976. Direct election of the president without a constitutional amendment: A call for state action. *Washington Law Review*. Volume 51. Pages 321–349.

7. Enactment of VCB by one state, or a few states, would not come close to guaranteeing the Presidency to the national popular vote winner.

Trump's margin of victory in the Electoral College in 2016 was **74 electoral votes**.

Obama's margin of victory in 2012 was **126 electoral votes**.

The average margin of victory in the Electoral College in the eight elections from 1988 to 2016 was **146 electoral votes**.

Manifestly, Minnesota's 10 electoral votes (even if accompanied by a couple of other states) would not come close to accomplishing the goal of protecting against the possibility of electing a President who did not win the national popular vote.

There is no quick shortcut, involving a modest number of electoral votes, that can achieve the goal of guaranteeing the Presidency to the candidate who receives the most popular votes in all 50 states and DC.

This goal can be achieved by the National Popular Vote interstate compact because it contains the vital condition that it does not take effect until it is enacted by states possessing a majority of the electoral votes—that is, 270 out of 538.


8. The opaque wording and arrangement of the VCB ballot obscures the fact that a voter’s vote may be transferred to the presidential candidate the voter just voted against.

The proposed “Voter Choice Ballot” is shown below.⁹


State Sample Ballot
General Election
 November 3, 2020

Instructions

Making selections




Fill in the oval to the left of the name of your choice. You must blacken the oval completely, and you must not make any marks outside the oval. You do not have to vote in every race.



1 Do not cross out or erase, or your vote may not count. If you make a mistake or a stray mark, ask for a new ballot from the poll workers.

Optional write-in



To add a candidate, fill in the oval to the left of “or write-in” and print the name clearly on the dotted line.

A write in vote for only a vice president **will not be counted.**

President of the United States

Vote for 1

Donald Trump
Republican

Democratic Candidate
Democratic

or write-in:
.....
For President

National Choice Voting

Vote yes or no

The STATE will count your vote for president and vice president along with all other votes in this STATE, and add them to all votes cast in all other states and the District of Columbia in order to determine who has won the national popular vote.

Do you want the candidate who receives the most votes in the nation to become the President? If you do, fill in the oval next to YES.

Yes

No

The STATE will count the votes of all those who filled in the YES oval as cast for the winner of the national popular vote for the purpose of appointing electors as otherwise provided by this state law.

⁹ Making Every Vote Count. *Voter Choice Ballot: Summary And Coordinated Strategy To Achieve National Popular Vote For President Reform.* July 1, 2020. Accessed July 21, 2020. <https://www.makeeveryvotecount.com/mevc/2020/7/1/voter-choice-ballot-summary-and-coordinated-strategy-to-achieve-national-popular-vote-for-president-reform>

The central feature of the VCB proposal is that the vote that the voter just cast for President will not necessarily be counted for the voter's choice for President.

However, this central feature is presented to the voter only in the form of an appealingly worded, almost philosophical yes-no question about the national popular vote.

“Do you want the candidate who receives the most votes in the nation to become the President? If you do, fill in the oval next to YES.

This appealingly worded ballot question is silent about the consequence of voting “yes”—namely that the vote that the voter just cast for President will not necessarily be counted for the candidate for whom the voter just voted.

After the voter finishes voting for President and on the yes-no question, the voter is belatedly told at the bottom of the ballot:

“The state will count the votes for all those who filled in the YES oval as cast for the winner of the national popular vote **for the purpose of appointing electors as otherwise provided by this state's law.**”¹⁰ [Emphasis added]

This opaque wording obscures the fact that, if the voter voted “yes,” the vote that the voter just cast for President will be subtracted from the voter's preferred presidential candidate and added to the opposing candidate that the voter just voted against—if (1) the voter's preferred choice for President is ahead in the voter's own state, and (2) the opposing candidate is ahead in the national popular vote.

9. The reality of real-world lobbying is that there is no pool of incremental, gettable state legislative votes that would support the enactment of VCB.

Right or wrong, state legislators who are philosophically and politically opposed to the concept of a national popular vote for President know their own minds.

Opponents of the concept of a national popular vote for President are not going to support something that is aimed at making their state's voters accustomed to the idea of a national popular vote for President. They are not going to support something that would predictably bring pressure onto themselves to pass something that they oppose.

Thus, there is no pool of incremental, gettable state legislators who would support VCB beyond those who support National Popular Vote.

On the other hand, if a state legislator supports a national popular vote, the simplest and most direct way to achieve that objective is to vote for the National Popular Vote compact, because the compact only needs states with 74 more electoral votes in order to become effective.

10.VCB would hinder enactment of the National Popular Vote compact because it is confusingly similar to NPV. Because VCB cannot withstand scrutiny, its flaws would inevitably be incorrectly attributed to NPV, thus creating doubt about NPV.

In the real world of lobbying, the practical effect of advocating a proposal that is confusingly similar to the National Popular Vote compact would be to create doubt, division, and delay in the enactment of National Popular Vote.

The valid arguments against the flawed VCB proposal will be remembered and inappropriately attributed to National Popular Vote.

Advocacy of a confusingly similar flawed proposal would thus inevitably delay enacting NATIONAL POPULAR VOTE.

¹⁰ Making Every Vote Count's web site. See *Voter Choice Ballot: Summary And Coordinated Strategy To Achieve National Popular Vote For President Reform*. July 1, 2020. Accessed July 21, 2020. <https://www.makeeveryvotecount.com/mevc/2020/7/1/voter-choice-ballot-summary-and-coordinated-strategy-to-achieve-national-popular-vote-for-president-reform>

Background Information

The tables show the number of general-election campaign events for the 2016 presidential election.

12 battleground states accounted for 94% of general-election campaign events (375 of 399)

Trump %	Events	State	Trump	Clinton	R-Margin	D-Margin	R-EV	D-EV	Population
55%	21	Iowa	800,983	653,669	147,314		6		3,053,787
54%	48	Ohio	2,841,006	2,394,169	446,837		18		11,568,495
52%	55	North Carolina	2,362,631	2,189,316	173,315		15		9,565,781
52%	10	Arizona	1,252,401	1,161,167	91,234		11		6,412,700
51%	71	Florida	4,617,886	4,504,975	112,911		29		18,900,773
50%	14	Wisconsin	1,405,284	1,382,536	22,748		10		5,698,230
50%	54	Pennsylvania	2,970,733	2,926,441	44,292		20		12,734,905
50%	22	Michigan	2,279,543	2,268,839	10,704		16		9,911,626
49.8%	21	New Hampshire	345,790	348,526		2,736		4	1,321,445
49%	17	Nevada	512,058	539,260		27,202		6	2,709,432
47%	19	Colorado	1,202,484	1,338,870		136,386		9	5,044,930
47%	23	Virginia	1,769,443	1,981,473		212,030		13	8,037,736
51%	375		22,360,242	21,689,241			125	32	94,959,840

NOTE: Trump percentage is of the two-party vote.

39 spectator states accounted for 6% of general-election campaign events (24 of 399)

Trump %	Events	State	Trump	Clinton	R-Margin	D-Margin	R-EV	D-EV	Population
76%	0	Wyoming	174,419	55,973	118,446		3		568,300
72%	0	West Virginia	489,371	188,794	300,577		5		1,859,815
70%	0	North Dakota	216,794	93,758	123,036		3		675,905
69%	0	Oklahoma	949,136	420,375	528,761		7		3,764,882
68%	0	Idaho	409,055	189,765	219,290		4		1,573,499
66%	0	South Dakota	227,721	117,458	110,263		3		819,761
66%	0	Kentucky	1,202,971	628,854	574,117		8		4,350,606
64%	0	Alabama	1,318,255	729,547	588,708		9		4,802,982
64%	0	Arkansas	684,872	380,494	304,378		6		2,926,229
64%	0	Tennessee	1,522,925	870,695	652,230		11		6,375,431
64%	2	Nebraska	495,961	284,494	211,467		5		1,831,825
62%	1	Utah	515,231	310,676	204,555		6		2,770,765
61%	0	Kansas	671,018	427,005	244,013		6		2,863,813
61%	0	Montana	279,240	177,709	101,531		3		994,416
60%	0	Louisiana	1,178,638	780,154	398,484		8		4,553,962
60%	2	Indiana	1,557,286	1,033,126	524,160		11		6,501,582
60%	2	Missouri	1,594,511	1,071,068	523,443		10		6,011,478
59%	1	Mississippi	700,714	485,131	215,583		6		2,978,240
58%	0	Alaska	163,387	116,454	46,933		3		721,523
57%	0	South Carolina	1,155,389	855,373	300,016		9		4,645,975
55%	1	Texas	4,685,047	3,877,868	807,179		38		25,268,418
53%	3	Georgia	2,089,104	1,877,963	211,141		16		9,727,566
49%	2	Minnesota	1,323,232	1,367,825		44,593		10	5,314,879
48%	3	Maine	335,593	357,735		22,142	1	3	1,333,074
45%	3	New Mexico	319,667	385,234		65,567		5	2,067,273
44%	0	Delaware	185,127	235,603		50,476		3	900,877
44%	0	Oregon	782,403	1,002,106		219,703		7	3,848,606
43%	1	Connecticut	673,215	897,572		224,357		7	3,581,628
43%	0	New Jersey	1,601,933	2,148,278		546,345		14	8,807,501
42%	0	Rhode Island	180,543	252,525		71,982		4	1,055,247
41%	1	Washington	1,221,747	1,742,718		520,971		12	6,753,369
41%	1	Illinois	2,146,015	3,090,729		944,714		20	12,864,380
38%	0	New York	2,819,557	4,556,142		1,736,585		29	19,421,055
36%	0	Maryland	943,169	1,677,928		734,759		10	5,789,929
35%	0	Massachusetts	1,090,893	1,995,196		904,303		11	6,559,644
35%	0	Vermont	95,369	178,573		83,204		3	630,337
34%	1	California	4,483,814	8,753,792		4,269,978		55	37,341,989
33%	0	Hawaii	128,847	266,891		138,044		4	1,366,862
4%	0	D.C.	12,723	282,830		270,107		3	601,723
48%	24		40,624,892	44,164,411			181	200	214,825,346