

The American Presidency and the Electoral College

It Ain't Broke, So Don't Fix It!

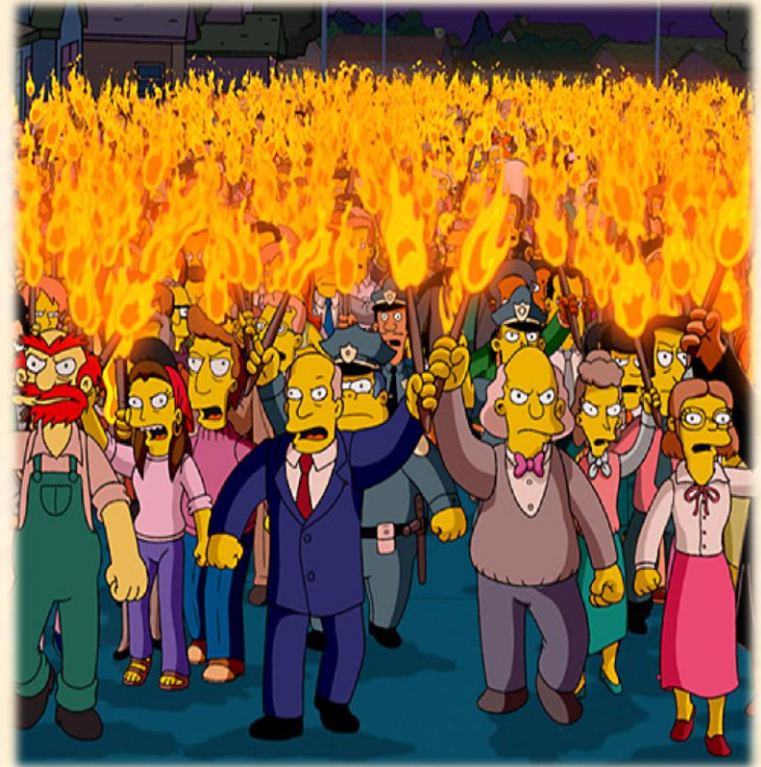
Overview

- Republicanism, Democracy, and the Electoral College.
- National Popular Vote Interstate Compact aims and goals.
- Is National Popular Vote (NPV) consistent with America's founding principles?
- NPV shortfalls and why the Electoral College best protects individual liberty and states rights.



Republicanism: Guardian Against Tyranny of Democracy

- The United States is a republic, not a democracy: It derives its power from the body of the people, yet protects against unconstrained majorities.
- Large population states would run roughshod over small states.



- Alexander Hamilton:

“...a pure democracy, if it were practicable, would be the most perfect government. Experience has proved that no position in politics is more false than this...Their very character was tyranny;...When they assembled, the field of debate presented an ungovernable mob, not only incapable of deliberation, but prepared for every enormity.”

The Virtues of Republicanism

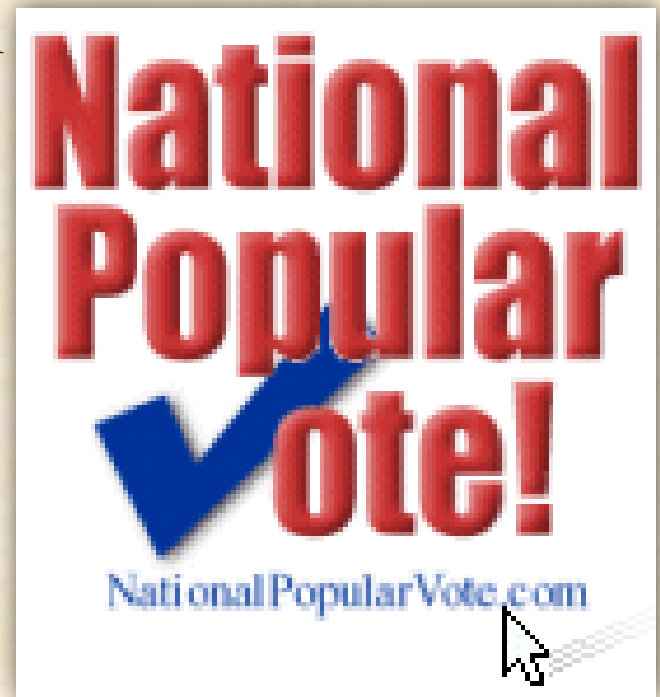
- Ben Franklin: “A Republic, if you can keep it.”
- Individual voting rights is not the only requisite towards protecting freedom. Consent of governed important as well.
- Republicanism ensures minorities have many opportunities to be heard and influence the political process.
- Discourages local needs from being ignored, constrains dangerous factions, requires political moderation and compromise.
- Mitigates rather than eliminates the perpetual tension between the people and the states.

Electoral College Protects and Promotes Republican Governance

- An imperfect solution to an unsolvable problem.
 - Hamilton Federalist 68: “The mode of appointment of the Chief Magistrate of the United States...that if the manner of it be not perfect, it is at least excellent.”
- Compels candidates to seek broad voter coalitions, thereby thwarting partisan regionalism from deciding the electoral outcome.
- Reflects voters’ separate statewide wills and rejects the illiberal “one person, one vote” concept.
- Electing the President via the EC process helps ensure minority interests influence the national debate.
 - Farmers in Iowa, Hispanics in the Southwest, Jews in New York, Muslims in Michigan.
 - 1970 Senate Committee on the Judiciary report : “...One method might be better at obtaining a strictly numerical majority, but only at the price of failing to protect minorities.”

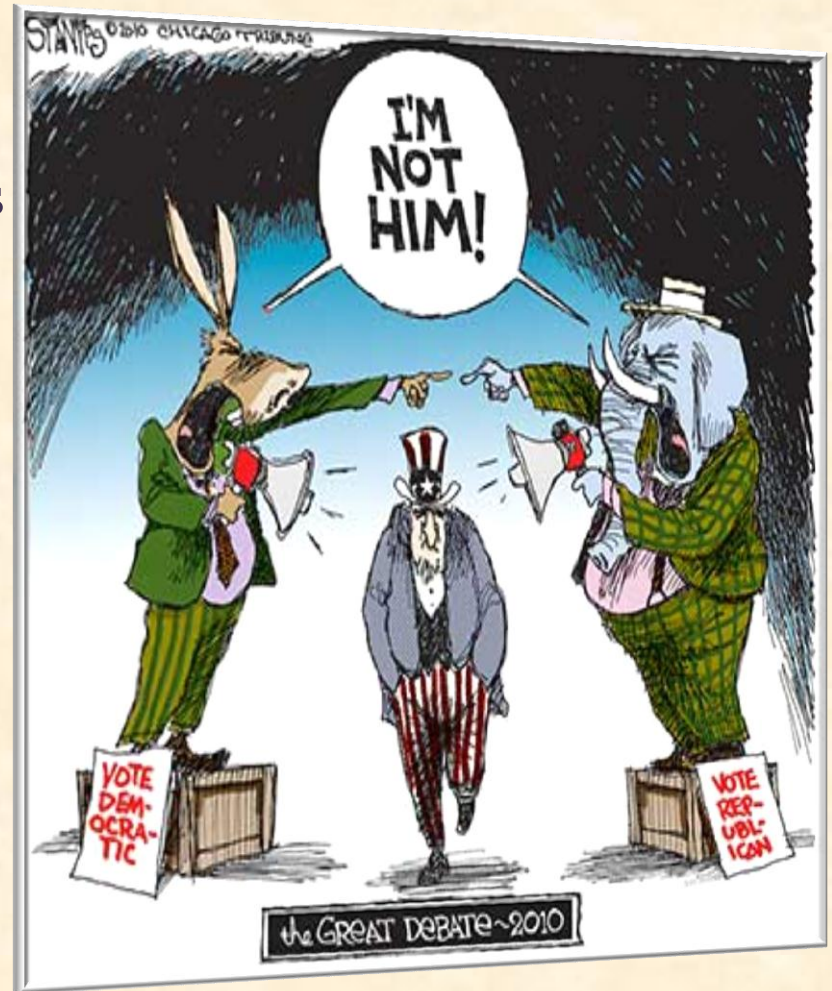
National Popular Vote Interstate Compact

- Elect the President on a national popular vote platform.
- States agree to award all their electoral votes to the candidate who wins the popular vote.
- Compact takes effect when passed by states with a total of 270 or more electoral votes.
- Adopted by Hawaii, Illinois, Maryland, New Jersey, Washington, California, Vermont, and Massachusetts.



National Popular Vote: Weakens the United States' Republican Foundations

- NPV nationalizes political power and effectively removes states from the political process.
- NPV incorrectly assumes America is a politically unified nation and therefore we should speak with a unified voice when electing the President.
- America is not “one person, one vote.” If this is what Americans want, why do we need the Senate, the Bill of Rights, Supreme Court?
 - Without the Senate, Alaska would have little influence in Congress.



Would Alaska Benefit Under NPV?

- Before adopting, determine whether NPV makes Alaska more or less relevant than under the Electoral College.
- Small states like Alaska have the most to lose if the wrong choice is made.

Alaska Would Lose Under NPV

Winners and Losers under National Popular Vote Plan

- 31 states would lose power under the National Popular Vote plan.
- 19 states would lose more than 20% of their power.
- 10 states would lose more than 40% of their power.

	2008 Electoral Votes	% of 538 National Electoral Votes	2008 Popular Votes Cast	% of 2008 National Popular Votes Cast	% Difference in Power Under National Popular Vote Plan	Increase or Decrease in Power Under National Popular Vote Plan
Alabama	9	1.67%	2,105,622	1.59%	-0.08%	-4.97%
Alaska	3	0.56%	327,341	0.25%	-0.31%	-55.68%
Arizona	10	1.86%	2,320,851	1.75%	-0.11%	-5.73%
Arkansas	6	1.12%	1,095,958	0.83%	-0.29%	-25.81%
California	55	10.22%	13,743,177	10.38%	0.15%	1.49%

Source: http://www.redstate.com/morton_c_blackwell/2011/06/24/national-popular-vote-plan-would-hurt-most-states/

Is National Popular Vote Constitutional?

- Uncertain. Likely to be litigated.
- NPV advocates: Constitutional because Article 2 sec. 1 gives states the power to appoint electors and states are allowed to form compacts.
- However! NPV fundamentally changes how the President is elected and thereby violates the spirit and intent of the Founders and their rejection of a directly elected President.

Compact Clause

- Created to prevent states from overturning the Constitution's federalist structure.
- Courts have okayed state compacts so long as they are narrow in scope and do not fundamentally change the balance of power between states and the federal government.
- The Supreme Court will look to determine if NPV compact exceeds this scope.

Compact Clause Test Case

U.S. Steel Corp. v. Multistate Tax Commission

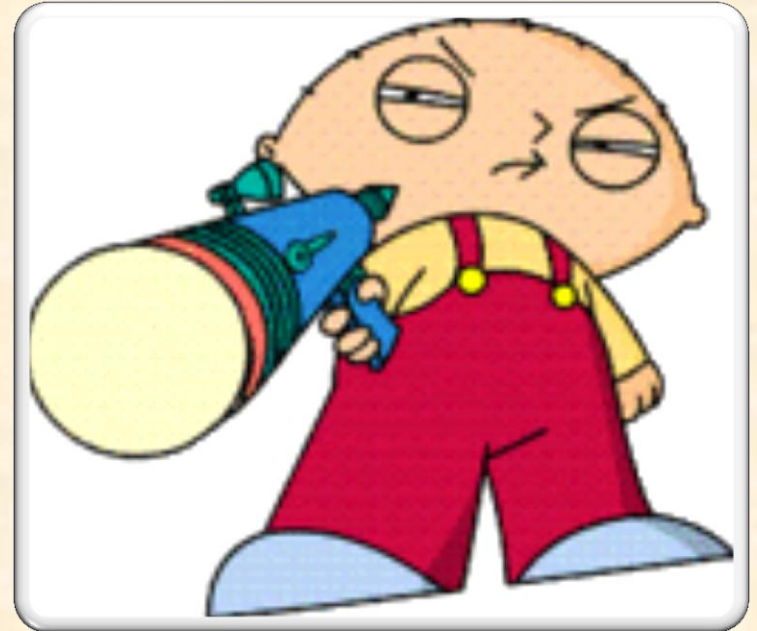
- Three tests to determine whether an interstate compact encroaches upon the supremacy of the United States
 - Does the compact grant states powers they could not exercise in its absence?
 - Does the compact delegate sovereign power to the commission it created?
 - Are members states forbidden from withdrawing at any time?
- NPV challenges tests one and three.

NPV Grants States Powers They Otherwise Could Not Exercise

- Amendments to Constitution should be proposed under the Article V process.
 - NPV proposes a virtual constitutional amendment and seeks to bypass both the mandated Congressional and state approval.
 - This enhances the power of compact states at the expense of the federal government.
- If NPV takes effect, non-compacting states and their constitutionally protected role in the Electoral College is bypassed.
 - Washington Post Columnist E.J. Dionne Jr.: “this is an effort to circumvent the cumbersome process of electing the President.”
- Enables states to influence other states electoral votes.
 - Awarding electoral votes to popular vote winner means states have no control over which candidate they individually support.
 - State voting requirements are not uniform.

NPV Would Not Allow Compacting States to Withdraw at Any Time.

- NPV: “a withdrawal occurring six months or less before the end of a President’s term shall not become effective until a President or Vice President shall have been qualified to serve the next term.”



NPV is a De Facto Rejection of the U.S. Constitution

- National Popular Vote:
 - Ignores the Founders' philosophical and moral rejection of a democratically elect president.
 - Challenges the Constitution's and Bill of Rights' protections against majoritarian rule.
 - Fundamentally changes the election process without going through the proper amendment procedure.
 - Diminishes Congress' role in electing the President.

NPV Will Open the Ligation Floodgates

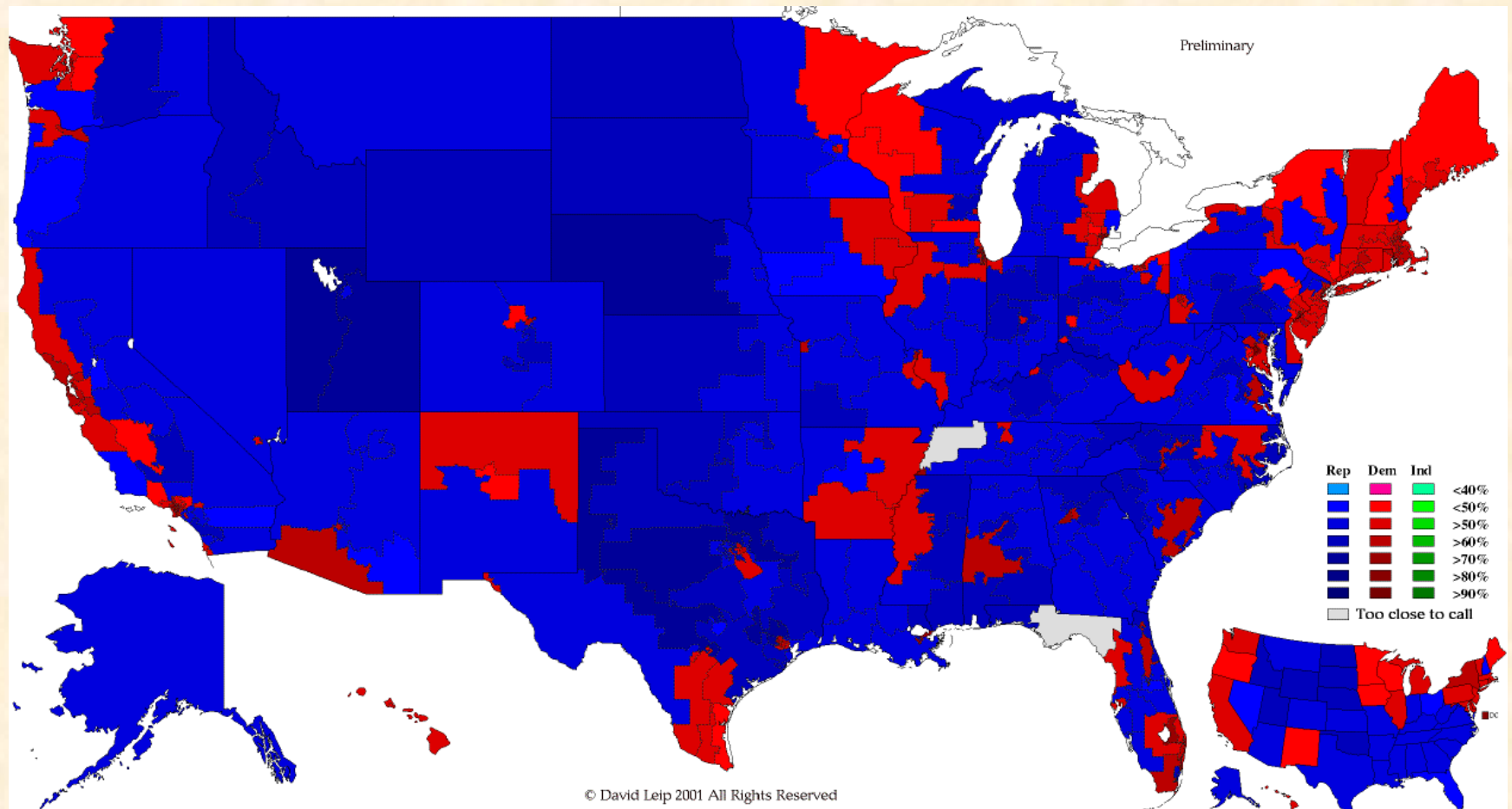
- The Electoral College victory margins add certainty even if the popular vote is close.
 - Shows the candidate has broad geographic support and an actual winning majority.
- The EC reduces and isolates voter fraud to individual states, not the nation as a whole.
- NPV incentivizes litigation of disputed votes.
 - Under NPV, the 2000 Florida recount would occur nationwide wide.
- NPV may overestimate the ability of 51 separate state voting mechanisms to resolve recount challenges timely and legitimately.
- The most important question: Should the courts be deciding who is elected President?



Does NPV Resolve the “Problem” of “Battleground States?”

- Unlikely. Instead of the EC’s incentive to get 50.1% of a state’s popular vote, NPV motivates attainment of 100%.
 - Instead of diversifying electoral support, NPV shifts the focus to large population cities and states: Regionalism
- Are battleground states a bad thing? Why expend limited campaign resources in “safe” electoral states?

2000 Bush V. Gore



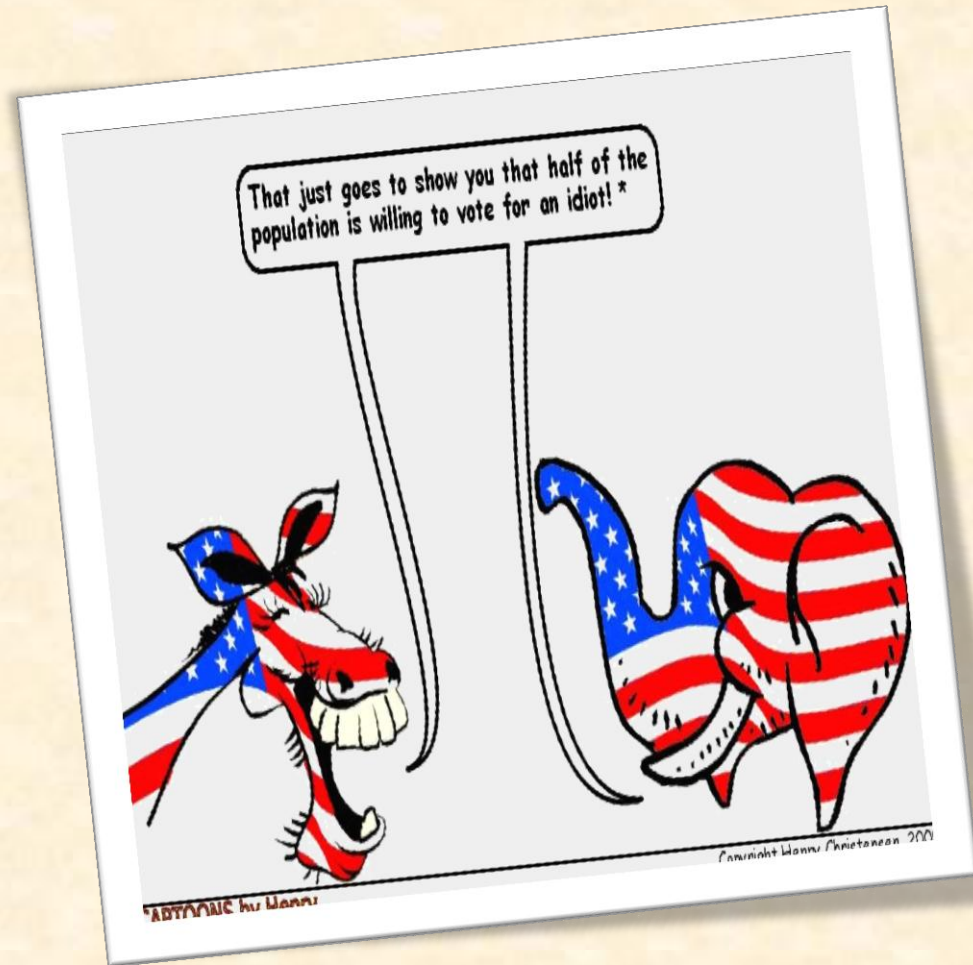
Will NPV Increase Voter Turnout?

- Unlikely: Focus will be in large population centers, particularly in safe states.
- Through a popular vote, the President will represent a narrow rather than a broad representation of America.
 - Ronald Reagan 1977 radio address: “Presidential candidates would be tempted to aim their campaigns and their promises at a cluster of metropolitan areas in a few states and the smaller states would be without a voice.”
- The EC, not NPV, encourages people to vote because their votes count for more at the state level than nation wide.



Does the Electoral College Waste Votes? Would NPV Fix This?

- NPV proponents argue that the EC's “winner take all” means the losing votes do not count for anything.
 - Not true, they simply lost.
 - This would not change under NPV anyway.



Could a Candidate Be Elected With a Plurality Rather Than a Majority?

- Under NPV, a multicandidate runoff could occur due to the increased political power third parties would have.
- Due to the different campaign incentives NPV creates, splinter third parties are motivated to form and run for office.
- Threshold for a runoff is lowered and it could become more difficult to build a coalition of support.
- Runoff election could be decided by a mere plurality rather than a distinct majority.
 - A majority that the Electoral College guarantees.

Has Congress Tried to Amend the Electoral College?

- Approximately 700 constitutional amendments considered and rejected: some of which called for a popular vote system.
- If, despite all the hearings and legislation, Congress has upheld the Electoral College, would the NPV compact be a prudent course of action?



Looks Good, Feels Good, Sounds Good Doesn't Mean It is Good

- The Electoral College has functioned as the Founders intended: preserves republicanism, compels presidents to form inclusive and diverse coalitions of voter support, and offers stability and certainty when elections results are disputed.
- NPV introduces what the Federalists and anti-Federalists feared most: factionalism, marginalization of minorities, and centralized power.
- NPV's serious legal concerns threaten its legitimacy as a viable means of electing the President of the United States.

Final Thoughts

- One cannot alter the Electoral College without affecting the rest of the Constitution.
 - Senator John F. Kennedy opposing popular vote:
“It is not only the unit vote for the Presidency we are talking about, but a whole solar system of governmental power. If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to consider all the others.”