

**Testimony of Sean Parnell  
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**to the**

**State Affairs Committee of the  
Alaska Senate**

**Re: SB 61  
The National Popular Vote interstate compact**

**April 25, 2023**

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Chairman Kawasaki, members of the committee, thank you for allowing me to testify today on behalf of Save Our States Action, an organization that defends the Electoral College and opposes the National Popular Vote interstate compact.

I'd like to focus my testimony on the most critical technical defect in the compact, but first I'd like to point out the obvious problem with the entire concept underlying National Popular Vote – if it passes and ever goes into effect, Alaska's voters would no longer have the right to decide which presidential candidate deserves the state's support and electoral votes. Instead, that power will be given away to voters in other states who will make that choice for Alaska, even overruling the choice of voters in your state. In my view eliminating Alaska's voice in the presidential election process would be unfortunate, as I believe the Electoral College preserves and protects the vital role that states play in our federal nation.

The critical technical defect of the compact is that there is no official national vote count that can be used for this compact. No national agency, commission, or official will produce a certified vote total for every presidential candidate, and the compact does not create an agency, commission, or official that will do so. Instead the compact leaves it to the chief election official of each member state, acting independently, to obtain vote totals from other states and tabulate them to determine which candidate received the most votes nationally.

It sounds like an easy task, and I know the other side will claim it is. As one of the lobbyists for the compact stated in a hearing in Minnesota earlier this year, "We can all do the math."

This simplistic hand-waving tries to hide the fact that votes in every state are cast, counted, recounted, and reported in different ways according to fifty-one different sets of election codes. The election processes of some states will cause serious problems for National Popular Vote and will lead to confusion, controversy, chaos, crisis, and a lack of a conclusive determination of the winner if the national vote is close, as four of the last sixteen presidential elections have been.

A few examples of the ways in which just saying “we can all do the math” doesn’t address the problem of there not being an official national vote count:

- NPV requires member states to accept vote totals from other states if they are on an “official statement,” which would include either a Certificate of Ascertainment or a statewide canvas. But these documents can contain significant errors. New York’s last four Certificates of Ascertainment have been missing tens or hundreds of thousands of votes, including 425,000 missing votes in 2012 and 102,000 missing votes in 2016.
- Ranked choice voting, which Alaska and Maine will use for president in 2024, poses a challenge because “official statements” from those two states will include both the initial and final vote totals, with no guidance in the compact on which vote totals are to be used in tabulating the national vote. Because initial and final vote totals can differ by tens or even hundreds of thousands of votes, the choice of which totals to use could determine the outcome under NPV in a close election.
- Another problem is what happens when a third-party or independent candidate finishes ahead of the Democratic or Republican candidate in a state using ranked choice voting. In this instance, the final vote total from that state for that third-place candidate will be zero votes, meaning hundreds of thousands or even millions of votes erased from the national vote count for the third-place Democrat or Republican. I’ll note that NPV’s leadership acknowledges this issue and that they accept and are OK with the erasure of hundreds of thousands or millions of votes for the Democratic or Republican candidate in the national vote count.
- If for some reason there is not an “official statement” available to obtain vote totals by the time the compact needs them – for example, if there is a recount still underway or court challenges to results, or if a state is simply refusing to cooperate with the compact, then the chief election official in NPV member states has the power to estimate vote totals for that state using any methodology they think appropriate. Several of the methods that could be used to estimate vote totals that NPV’s own

lobbyists described in a 2021 North Dakota hearing would have been off by tens or hundreds of thousands of votes.

- States can sometimes just do strange things that would pose a serious problem for the compact. Because of an odd ballot design in 2016, California wound up doubling the vote total for Donald Trump on its Certificate of Ascertainment, crediting him with an extra 4,483,810 votes. Had the compact been in effect in that election, it seems Donald Trump would still have won because the extra votes from California would have been included in the national vote total.
- The compact stipulates that votes will only be included from states that hold a “statewide popular election.” As explained in the book *Every Vote Equal*, published by National Popular Vote, this doesn’t actually mean every state where people vote for presidential electors, it means every state where people vote for presidential electors *according to National Popular Vote’s definition of a “statewide popular vote.”* For example, if any state allows voters to vote for individual electors, all of the votes in that state will be excluded from the national vote count. In 1960 seven states allowed people to vote for individual electors and as a result roughly eleven million votes would have been excluded from the national vote count in that election under the compact’s vote-counting process. According to National Popular Vote’s definition, Richard Nixon won the popular vote by more than 600,000 votes in 1960.

It's also worth noting that, even without national popular vote’s defective vote counting process, historians still argue whether Richard Nixon or John Kennedy won the popular vote in 1960, owing largely to uncertainty over how to count votes from Alabama that year. It’s an interesting bit of historical trivia because of course Kennedy won the Electoral College vote regardless of the Alabama issues, but under National Popular Vote not being able to conclusively determine a winner would be a national crisis.

These examples all illustrate the problem with attempting to cobble together vote totals from fifty-one separate elections and then pretend that twenty or so officials in compact member states can produce an accurate, uniform, and conclusive national vote count when they are all acting independently using their own judgment to determine how to deal with problematic, ambiguous and unclear situations.

Lobbyists for National Popular Vote have attempted to dismiss as “myths” these and other problems when they have been raised in other hearings, but their responses are riddled with errors, false statements, and outright deception. They have claimed, for example:

- That California's 2016 Certificate of Ascertainment does not include an extra 4,483,810 votes for Trump, and the whole issue is a misunderstanding related to California's use of fusion voting. But California does not have fusion voting, and there are two separate slates of electors pledged to Trump on California's 2016, each reported as having 4,483,810 votes. You can view the document [here](#) – the vote total for the Republican slate of electors is reported at the bottom of page 2, the vote total for the American Independent Party's electors are at the top of page 3. Under NPV's vote aggregation process, both totals would have to be included in the national vote count.
- That nothing in the compact allows the use of estimated vote totals from any state if an "official statement" isn't available from that state. But that is not what NPV's lobbyists testified to in that 2021 North Dakota hearing. The written testimony by Saul Anuzis of NPV explaining that if an "official statement" is not available, "the chief election official of each compacting state would still be required by their state's law to 'determine the number' and to determine which presidential candidate received the most popular votes in all 50 states and the District of Columbia" is available [here](#), and the video of the full hearing is available [here](#).
- That ranked choice voting will not be an issue because in Alaska the Republican is certain to win a majority in the first round, and in Maine the law stipulates that only the final vote totals are supposed to be on the state's Certificate of Ascertainment. But as you Alaskans may remember, in four of the last eight presidential elections the Republican candidate received only a plurality (1992) or a slender majority (1996, 2016, and 2020), and other "official statements" that are part of Maine's election process will include both the initial and final vote counts and can be used to obtain vote totals under the compact.

There are numerous other errors, misstatements, and deceptions in many of NPV's responses to criticisms of the bill, and I am happy to address any of them that the committee would like additional information on. I will note that in addition to critiques by opponents of the compact such as myself, there are a number of very knowledgeable people sympathetic to NPV that also understand some of the significant problems with the compact. Just a few examples include:

- Professor Vikram Amar of the University of Illinois College of Law and one of three law professors who initially developed the NPV concept. He has described NPV as having "dangerous gaps" that could lead to "electoral crisis."

- Former Rhode Island Secretary of State Nellie Gorbea told a conference of fellow NPV supporters that she and her colleagues still “need to figure out how we’re going to count the votes,” if the compact ever goes into effect, and noted that she didn’t have the answers to that question yet and that there were “different proposals on how the mechanics would work.”
- Rob Richie, head of FairVote and probably the nation’s leading expert on ranked choice voting, was lead author on a 2021 paper that stated “...using RCV for Presidential elections in states might seem incompatible with [NPV]. Most fundamentally, which votes should be reported out for the purpose of [NPV]? Would it be the first choices among all the candidates? Or would it be the final “instant runoff” totals after the RCV tallies are completed? If that latter choice were made, what if one of the two strongest national candidates was eliminated during the RCV tally in a given state?”

I don’t want to misrepresent any of these three people’s position. All of them continue to support the compact, at least to the best of my knowledge. Professor Amar encourages states passing the compact to include a 10-year delay, which he hopes will give Congress enough time to fix its defects. Former Secretary Gorbea encourages her counterparts to continue discussing the issue so they can be prepared if the compact goes into effect and they have to figure out how to count the votes. And Mr. Richie proposes to resolve the problem that ranked choice voting creates for the compact by either having Congress mandate every state provide voters with a ranked-choice ballot or that states using ranked choice voting create another compact to report results that would be compatible with NPV.

I’ll wrap up by saying that those of you who have worked on election policy understand that disputes over who won are not generally a matter of an inability to “do the math.” They’re typically about which votes to count or recount, which votes to include or exclude, and whether the returns from some jurisdictions are accurate or not. Given the problems laid out here, there is a very high likelihood that, if there is ever another presidential election with a close national margin – and again, by my count four of the last sixteen have been close – the National Popular Vote compact will produce confusion, controversy, chaos, and crisis, but it will not produce a conclusive outcome and clear winner. I urge you to reject this bill.

Thank you, and I’m happy to answer any questions the committee may have.

