



Answering 15 False Statements about the National Popular Vote Bill in Alaska ([SB61](#))

May 1, 2023

Sean Parnell, senior legislative director of Save Our States (a group lobbying against adoption of the National Popular Vote Compact) has made 15 false statements about the Compact (SB61 in Alaska) during recent testimony to state legislative committees in Minnesota, Michigan, and Alaska.

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Myth #1: There is no such thing as an official national popular vote count.

In written testimony to the Alaska Senate State Affairs Committee on April 25, 2023, Sean Parnell, senior legislative director of Save Our States, said:

“The critical technical defect of the compact is that there is **no official national vote count** that can be used for this compact.”¹

THE FACTS:

There is, in fact, a legally defined “national popular vote total” for President based on official “Certificates of Ascertainment” that federal law requires each state to issue six days before the Electoral College meets in mid-December.

Current federal law states:

“Not later than the date that is 6 days before the time fixed for the meeting of the electors, the executive of **each State shall issue a certificate of ascertainment. ... Each certificate of ascertainment of appointment of electors shall set forth** the names of the electors appointed and **the canvass** or other determination under the laws of such State **of the number of votes** given or cast for each person for whose appointment any and all votes have been given or cast.”² [Emphasis added]

The 51 Certificates of Ascertainment showing each state’s popular-vote count for President in 2020 may be viewed at <https://www.archives.gov/electoral-college/2020>.

Federal law also requires that each state transmit its Certificate of Ascertainment to the National Archives

“immediately after the issuance ... by the most expeditious method available.”³

The National Archives, in turn, is required to make the Certificates “public” and “open to public inspection.”

To guarantee rapid enforcement of the federal requirement that each state provide its presidential vote count, the Electoral Count Reform Act of 2022 created a special three-judge federal court (open only to presidential candidates, and operating on an expedited basis) to enforce both the timely “issuance” of each state’s Certificate and its timely “transmission” to the National Archives.

The legal definition of the “national popular vote total” is contained in the National Popular Vote Compact that 15 states and the District of Columbia have already enacted. The Compact arrives at the national total by adding up the official numbers certified by the states.

“The chief election official of each member state shall determine the number of votes for each presidential slate in each state ... and **shall add such votes together to**

¹ *Testimony of Sean Parnell, Senior Director, Save Our States Action, to the State Affairs Committee of the Alaska Senate Re: SB 61 (The National Popular Vote interstate compact) April 25, 2023.* Page 1. <https://www.akleg.gov/basis/Bill/Detail/33?Root=SB%2061> (and click on “Documents”). Parnell made a similar statement before the Michigan House Elections Committee on March 7, 2023. See Page 2 of https://house.mi.gov/Document/?Path=2023_2024_session/committee/house/standing/elections/meetings/2023-03-07-1/documents/testimony/Sean%20Parnell.pdf

² Section 5 of the Electoral Count Reform Act of 2022 starts on page 1892 of <https://www.congress.gov/bill/117th-congress/senate-bill/4573>. This section is similar to the wording of the earlier Electoral Count Act which was in effect between 1887 and 2022.

³ Section 5 of the Electoral Count Reform Act of 2022 starts on page 1892 of <https://www.congress.gov/bill/117th-congress/senate-bill/4573>.

produce a **“national popular vote total”** for each presidential slate.”⁴ [Emphasis added]

Parnell tries to characterize the process of adding up 51 sets of numbers as some kind of unsolvable mystery by saying:

“national popular vote **attempts to cobble together** ... an national popular vote count.”⁵ [Emphasis added]

It is noteworthy that the National Popular Vote Compact arrives at the national popular vote total in the same way as the constitutional amendment passed by a bipartisan 338–70 vote in the U.S. House of Representatives in 1969. That amendment called for adding up the official numbers certified by the states. Its only operative words on the subject were:

“The pair of persons having **the greatest number of votes** for President and Vice President shall be elected...”⁶ [Emphasis added]

There is no mystery about adding up 51 sets of numbers—and certainly no “cobbling.”

Parnell also told the Alaska Senate State Affairs Committee that the National Popular Vote Compact could be frustrated if

“a state is simply refusing to cooperate with the compact.”⁷

The National Popular Vote Compact does not rely on the gracious willingness of state officials to “cooperate” with the Compact. Instead, it relies on their compliance with federal law, as required by the Supremacy Clause of the U.S. Constitution.

Myth #2: The NPV Compact allows one state to judge another state’s election returns

In written testimony submitted to the Minnesota Senate Elections Committee on January 31, 2023, Parnell said:

“NPV provides no guidance on which vote totals to use in calculating the national vote total. The choice is left to the chief election official within each compact state. ... In a close election, this could **give a group of often obscure state officials the power to manipulate the national vote count based on which vote totals they use from other states.** ... This is too much power to vest in any official, and will lead to confusion, controversy, and chaos.”⁸ [Emphasis added]

⁴ National Popular Vote Compact. Article III, Clause 1. The full text of the Compact is at <https://www.nationalpopularvote.com/bill-text> The Compact may also be found starting on page 4 of Alaska Senate Bill 61 at <https://www.akleg.gov/PDF/33/Bills/SB0061A.PDF>

⁵ Parnell, Sean. 2023. Testimony at Minnesota House Elections Finance and Policy Committee on HB642. February 1, 2023. Timestamp 1:11. <https://www.house.leg.state.mn.us/hjvid/93/896232>

⁶ House Joint Resolution 681. 91st Congress. 1969.

⁷ *Testimony of Sean Parnell, Senior Director, Save Our States Action, to the State Affairs Committee of the Alaska Senate Re: SB 61 (The National Popular Vote interstate compact) April 25, 2023.* Page 2. <https://www.akleg.gov/basis/Bill/Detail/33?Root=SB%2061> (and click on “Documents”).

⁸ Parnell, Sean. 2023. *Save Our States Policy Memo: Ranked-Choice Voting vs. National Popular Vote.* January 27, 2023. https://www.senate.mn/committees/2023-2024/3121_Committee_on_Elections/SF%20538%20-%20Save%20Our%20States%20handout%20RCV%20vs%20NPV.pdf

THE FACTS:

In fact, the Compact does **not** give administrative officials in its member states any power to judge the election returns of other states—much less the power to “manipulate” them.

The Compact explicitly says the opposite:

“The chief election official of each member state **shall treat as conclusive** an official statement containing the number of popular votes in a state for each presidential slate.”⁹ [Emphasis added]

The reader is invited to search [the 888 words of the National Popular Vote Compact](#) for anything that even suggests that administrative officials of the Compact’s member states have the discretion or the power of manipulation that Parnell claims.

Myth #3: There is no mechanism for resolving disputes under NPV

Parnell’s written testimony to the Minnesota Senate Elections Committee on January 31, 2023 said:

“NPV provides no mechanism for resolving differences or disputes.... NPV’s failure to anticipate the conflict between the compact and RCV, and its additional failure to provide any guidance or process for resolving this and similar issues, makes it **fatally flawed and dangerous to democracy.**”¹⁰ [Emphasis added]

THE FACTS:

The reason that the NPV Compact contains no separate “mechanism” for resolving disputes is that the United States already has a fully operational judicial system throughout the country.

A state’s final determination of its presidential vote count may be challenged under the National Popular Vote Compact in the **same** five ways as under the current system, namely

- state administrative proceedings (e.g., recounts, audits),
- lower state court proceedings,
- state supreme court proceedings,
- lower federal court proceedings, and
- U.S. Supreme Court proceedings.

Aggrieved presidential candidates used all five ways in both 2000 and 2020.¹¹

Under our federal system, once litigation over the presidential vote count is decided in the state-of-origin, the Full Faith and Credit Clause of the U.S. Constitution prevents another state’s officials (administrative or judicial) from second-guessing that decision. The Constitution states:

“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”¹²

⁹ National Popular Vote Compact. Article III, Clause 5. The full text of the Compact may be at <https://www.nationalpopularvote.com/bill-text> The Compact may also be found starting on page 4 of Alaska Senate Bill 61 at <https://www.akleg.gov/PDF/33/Bills/SB0061A.PDF>

¹⁰ Parnell, Sean. 2023. *Save Our States Policy Memo: Ranked-Choice Voting vs. National Popular Vote*. January 27, 2023. https://www.senate.mn/committees/2023-2024/3121_Committee_on_Elections/SF%20538%20-%20Save%20Our%20States%20handout%20RCV%20vs%20NPV.pdf

¹¹ See The Ohio State University’s Case Tracker for the 2020 presidential election at https://electioncases.osu.edu/case-tracker/?sortBy=filing_date_desc&keywords=&status=all&state=all&topic=25

¹² U.S. Constitution. Article IV. Section 1.

Myth #4: States, like New York, can't be trusted to produce an accurate vote total

Parnell told the Michigan House Elections Committee on March 7, 2023:

“New York cannot accurately count its votes to save its life.”¹³

Parnell told the Minnesota Senate Elections Committee on January 31, 2023:

“You also have the problem that other states, New York in particular, are **not necessarily going to produce an accurate vote total**. ... There's about 425,000 votes that New York was missing off of its 2012 Certificate of Ascertainment.”¹⁴
[Emphasis added]

He repeated this claim in written testimony to the Alaska Senate State Affairs Committee on April 25, 2023.

THE FACTS:

Hurricane Sandy resulted in the temporary relocation of hundreds of thousands of New Yorkers just before Election Day in 2012, and some 425,000 displaced New Yorkers cast provisional ballots away from their home precinct. This was four times more provisional ballots than usual. Because displaced voters were allowed to vote *anywhere* in the state, each provisional ballot had to be individually analyzed to determine for which district and local offices that particular out-of-precinct voter was entitled to vote.

After Election Day, it was apparent to everyone that the result of processing the 425,000 provisional ballots could not possibly have reversed Obama's statewide win in New York (about 2 million votes)—or, for that matter, Obama's nationwide lead.

In this “no harm—no foul” situation, the bipartisan New York State Board of Elections unanimously decided against diverting personnel engaged in hurricane relief to the task of analyzing these provisional ballots prior to the Electoral College meeting.

Instead, the Board issued a temporary count of all the regular ballots prior to the Electoral College meeting (which showed that Obama carried the state by 1,986,439 votes) and, shortly thereafter, issued a final count that included all of the valid provisional ballots.

If these provisional ballots had had any chance of changing the winner of the presidential election, Douglas Kellner, Co-Chair of the New York State Board of Elections, has stated that the Board would, of course, have deployed whatever personnel were needed to validate and count all of the provisional ballots prior to the Electoral College meeting.

Moreover, any presidential campaign who felt that this delay affected their interests in any way could have sought (and undoubtedly would immediately have received) a court order requiring a timely completion of the counting of the provisional ballots.

In any case, the Electoral Count Reform Act of 2022 guarantees that states are going to produce timely vote counts before the Electoral College meets—whether they are operating under either the current system or National Popular Vote.

¹³ Hearing of Michigan House Election Committee on HB4156. March 7, 2023. Timestamp 1:02:20. <https://house.mi.gov/VideoArchivePlayer?video=HELEEC-030723.mp4>

¹⁴ Parnell, Sean. 2023. Testimony before Minnesota Senate Elections Committee. January 31, 2021. Timestamp 24:00. https://www.youtube.com/watch?v=ZioPI_L-BM

Myth #5: California accidentally gave Trump an extra 4.5 million votes in 2016

Parnell repeated his claim that states “are not necessarily going to produce an accurate vote total” by telling the Minnesota Senate Elections Committee on January 31, 2023:

“You also have the problem that frankly states can sometimes do some kind of strange things that don’t really affect it under the current system, but under national popular vote would be a disaster. Donald Trump, because **California accidentally** gave every Trump voter 2 votes in 2016 **through a bad ballot design**, Donald Trump under the counting mechanism of the compact would have won, because they **gave him an extra 4.5 million votes**. That seems kind of outrageous to me.”¹⁵ [Emphasis added]

He made a similar statement to the Michigan House Elections Committee on March 7, 2023,¹⁶ and in written testimony to the Alaska Senate State Affairs Committee on April 25, 2023:

“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.**”¹⁷ [Emphasis added]

THE FACTS:

Despite what Parnell says, California’s 2016 Certificate of Ascertainment was not inaccurate, and California did not give Trump an extra 4.5 million votes—accidentally or otherwise.

If the National Popular Vote Compact had been in effect in 2016 and California had issued the same Certificate of Ascertainment that it issued in 2016, the states belonging to the National Popular Vote Compact would have **uneventfully** credited the Trump-Pence ticket with its correct total number of votes from California—namely 4,483,810.

Here are the facts.

California’s 2016 Certificate of Ascertainment explicitly states that the Clinton-Kaine ticket’s 8,753,788 vote total was “higher” than the vote total of any other ticket—including the 4,483,810 votes cast for the Trump-Pence ticket. The Certificate says:

“I, Edmond G. Brown, Governor of the State of California, hereby certify ... the following persons **received the highest number of votes** for Electors of the President and Vice President of the United States for the State of California ... **California Democratic Party Electors Pledged to Hillary Clinton for President**

¹⁵ Parnell, Sean. 2023. Testimony before Minnesota Senate Elections Committee. January 31, 2021. Timestamp 24:33. https://www.youtube.com/watch?v=ZioPI_L-BM

¹⁶ Testimony of Sean Parnell, Senior Director, Save Our States Action, to the Committee on Elections, Michigan House of Representatives on HB4156 (The National Popular Vote Interstate Compact). March 7, 2023. Page 2. https://house.mi.gov/Document/?Path=2023_2024_session/committee/house/standing/elections/meetings/2023-03-07-1/documents/testimony/Sean%20Parnell.pdf

¹⁷ *Testimony of Sean Parnell, Senior Director, Save Our States Action, to the State Affairs Committee of the Alaska Senate Re: SB 61 (The National Popular Vote interstate compact) April 25, 2023.* Page 3. <https://www.akleg.gov/basis/Bill/Detail/33?Root=SB%2061> (and click on “Documents”)

of the United States and Tim Kaine for Vice President of the United States ...
Number of Votes—8,753,788.¹⁸ [Emphasis added]

If there were any truth to Parnell’s claim that California accidentally gave Trump an extra 4.5 million votes, the state’s Certificate of Ascertainment would have (1) identified the Trump-Pence ticket as having “received the highest number of votes” and (2) certified the appointment of 55 Trump-Pence presidential electors.

However, the Certificate certified the appointment of the 55 Clinton-Keane presidential electors.

In advancing his claim that California “accidentally” gave Trump an extra 4.5 million votes, Parnell neglected to mention that a presidential-vice-presidential ticket in California can be nominated by more than one political party. That is, California allows so-called “fusion” voting for President. In 2016, the Republican Party and American Independent Party both nominated the Trump-Pence ticket. When the votes cast by Republican and American Independent voters were added together (that is, “fused”), the grand total for the Trump-Pence ticket was 4,483,810.

The reader is invited to verify that 4,483,810 is **the one and only number** appearing in [California’s 2016 Certificate of Ascertainment](#) in connection with the Trump-Pence ticket.

After National Popular Vote pointed out the egregious inaccuracy of Parnell’s testimony to Michigan and Minnesota state legislators in February and March 2023, Parnell doubled down on his false claim in his written testimony to the Alaska Senate State Affairs Committee on April 25, 2023.

“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.**”¹⁹
[Emphasis added]

However, despite Parnell’s April 25 assertion to the Alaska Committee, the truth is that California **does** have fusion voting for President.

As *Ballot Access News* reported in 2016:

“On August 13, the American Independent Party held its state convention in Sacramento, and nominated Donald Trump for President and Michael Pence for Vice-President. **The California election code, section 13105(c), permits two qualified parties to jointly nominate the same presidential and vice-presidential candidates.** The November ballot will list Trump and Pence, followed by

¹⁸ California’s 2016 Certificate of Ascertainment is at <https://www.archives.gov/files/electoral-college/2016/ascertainment-california.pdf>

¹⁹ *Testimony of Sean Parnell, Senior Director, Save Our States Action, to the State Affairs Committee of the Alaska Senate Re: SB 61 (The National Popular Vote interstate compact) April 25, 2023.* Page 4. <https://www.akleg.gov/basis/Bill/Detail/33?Root=SB%2061> (and click on “Documents”). Parnell made a similar statement before the Michigan House Elections Committee on March 7, 2023. See Page 2 of https://house.mi.gov/Document/?Path=2023_2024_session/committee/house/standing/elections/meetings/2023-03-07-1/documents/testimony/Sean%20Parnell.pdf

‘Republican, American Independent.’ ... This will be the first time since 1940 that two parties in California jointly nominated the same presidential candidate.”^{20,21}

The reader is invited to check out [California election code, section 13105\(c\)](#) to verify that California does indeed have fusion voting.

Finally, if any presidential campaign thought that California officials were “accidentally” giving the opposition 4.5 million extra votes in 2016, that campaign (specifically the Clinton-Kaine campaign) would certainly have contested the attempt in California courts.

Myth #6: NPV assumes every state will always use simple plurality voting

Parnell told the Minnesota Senate Elections Committee on January 31, 2023:

“The NPV compact was drafted at a time when RCV was not used in any states in presidential elections. Since then, Alaska and Maine have adopted RCV and other states are considering it. **NPV assumes every state will use simple plurality voting** that produces a single vote count for each presidential candidate.”²² [Emphasis added]

THE FACTS:

The National Popular Vote Compact was specifically written to accommodate the future adoption of different voting procedures, such as Ranked Choice Voting (RCV). In fact, the president of FairVote (the leading national organization advocating in favor of RCV) was a co-author of the Compact, and FairVote was the first organization to endorse the Compact.

Myth #7: NPV is incompatible with RCV

Parnell told the Minnesota Senate Elections Committee on January 31, 2023:

“There is a fundamental incompatibility between the National Popular Vote interstate compact (NPV) and an election process used by some states called Ranked Choice Voting (RCV). NPV anticipates that every state will produce a single vote total for each candidate, but **RCV produces at least two: an initial vote count, before the RCV process of transferring votes, and the final vote count** at the conclusion of the RCV process. **This would produce uncertainty**, litigation, and opportunities for manipulation if NPV took effect.”²³ [Emphasis added]

THE FACTS:

Note that Parnell says that RCV “produces” a first-round vote count and a final vote count.

²⁰ Winger, Richard. 2016. American Independent Party Formally Nominates Donald Trump and Michael Pence. Ballot Access News. August 13, 2016. <https://ballot-access.org/2016/08/13/american-independent-party-formally-nominates-donald-trump-and-michael-pence/>

²¹ A listing of all the states currently using fusion voting can be found in Loepp, Eric and Melusky, Benjamin. 2022. Why Is This Candidate Listed Twice? The Behavioral and Electoral Consequences of Fusion Voting. *Election Law Journal*. June 6, 2022. <https://www.liebertpub.com/doi/10.1089/elj.2021.0037>

²² Parnell, Sean. 2023. *Save Our States Policy Memo: Ranked-Choice Voting vs. National Popular Vote*. January 27, 2023. https://www.senate.mn/committees/2023-2024/3121_Committee_on_Elections/SF%20538%20-%20Save%20Our%20States%20handout%20RCV%20vs%20NPV.pdf

²³ Parnell, Sean. 2023. *Save Our States Policy Memo: Ranked-Choice Voting vs. National Popular Vote*. January 27, 2023. https://www.senate.mn/committees/2023-2024/3121_Committee_on_Elections/SF%20538%20-%20Save%20Our%20States%20handout%20RCV%20vs%20NPV.pdf

However, there is no legitimate uncertainty as to whether to use the first-round count or the final-round count in computing the national popular vote.

Indeed, it would be preposterous to interpret RCV to mean that a state is going to hand voters a ballot allowing them to rank presidential candidates according to their first, second, etc. preferences—but that the state is then going to ignore every ranking on the ballot except the voter’s first choice.

Using only the first-choice count would negate the main purpose of adopting an RCV law, namely to give voters the opportunity to rank candidates.

A state that enacts an RCV-for-President law has made an explicit policy choice with only one plausible interpretation—to use RCV to determine the results of the that election.

Maine law eliminated any room for doubt by explicitly requiring that the state’s Certificate of Ascertainment report the final-round RCV count.²⁴

Jeanne Massey, Executive Director of FairVote Minnesota, submitted written testimony to the Minnesota House Elections Finance and Policy Committee on February 1, 2023, affirming this point:

“I have read the opposing testimony related to RCV and National Popular Vote compatibility, and it is misleading and incorrect. **The testimony comes from an organization opposed to both RCV and NPV [that is, Save Our States] and has a clear motive—to hurt both reforms.** Like Maine, which uses RCV for presidential elections and has clarified its state laws to ensure compatibility with electing presidential electors under NPV, Minnesota will do the same. I urge you to disregard the unproven, misleading argument that RCV and NPV are incompatible and support the NPV legislation before you.”²⁵ [Emphasis added]

Alaska’s current RCV law is not as explicit as Maine’s, but that is of no concern.

First, a good-faith observer is going to conclude the only plausible statutory interpretation of an RCV law is that final-round count must be used. Indeed, when Maine and Alaska have conducted their elections for U.S. Representative and Senator under the same RCV law, it has been the final-round count that determined the winner. The abundance of caution exhibited in Maine is useful, but certainly not necessary.

Second, it is helpful to understand what would happen in the unlikely event that this question of statutory interpretation were not clear by the time when the National Popular Vote Compact comes into effect. Alaska voters would undoubtedly demand, before Election Day, a definitive statutory interpretation clarifying how their votes for President will be counted. If state election officials did not provide a satisfactory answer prior to Election Day, those voters would undoubtedly seek a declaratory judgement from Alaska courts as to the interpretation of Alaska law. Even if this question of statutory interpretation of Alaska law remained unsettled before Election Day, the question would (assuming it mattered) be litigated in Alaska immediately after Election Day. In the end, Alaska’s Certificate of Ascertainment will reflect the statutory interpretation of Alaska law made by Alaska courts. Whatever Alaska’s decision, the National Popular Vote Compact then requires that Alaska’s “final determination” be treated as “conclusive” by all of the Compact’s member states. In short, no state official outside Alaska will have any role

²⁴ Maine Rev. Stat. tit. 21-A, § 803. <https://www.mainelegislature.org/legis/statutes/21-a/title21-Asec803.html>

²⁵ Massey, Jeanne. 2023. Testimony before Minnesota House Elections Finance and Policy Committee. February 1, 2023. <https://www.house.mn.gov/comm/docs/TYRWZhR-kCyJCxmXC5Z1Q.pdf>

interpreting Alaska law—much less any “opportunities for manipulation.” Moreover, because all of the Compact’s member states will be adding up the same numbers, they will all get the same national popular vote total.

Third, Alaska’s RCV law provides the RCV counting process stops at the first round whenever one presidential candidate wins a majority of the first-choice rankings—that is, the first-round RCV count equals the final-round RCV count. Thus, this hypothetical question can only arise in the real-world if no candidate wins a first-round majority in Alaska.

Myth #8: The NPV Compact allows vote totals to be estimated

There are three inaccuracies in the sentence below from Parnell’s testimony to the Michigan House Elections Committee on March 7, 2023. We examine them one at a time.

“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.**”²⁶ [Emphasis added]

THE FACTS:

There is nothing in the National Popular Vote Compact that authorizes anyone to estimate vote counts.

The reader is invited to search [the 888 words of the National Popular Vote Compact](#) for anything about estimating.

As previously mentioned, the Compact requires:

“The chief election official of each member state **shall treat as conclusive** an official statement containing the number of popular votes in a state for each presidential slate.”²⁷ [Emphasis added]

Myth #9: Unfinished recounts and litigation could thwart the Compact

A second inaccuracy in this same sentence from Parnell’s testimony to the Michigan House Elections Committee on March 7, 2023 relates to recounts and litigation.

“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.”²⁸ [Emphasis added]

²⁶ Testimony of Sean Parnell, Senior Director, Save Our States Action, to the Committee on Elections, Michigan House of Representatives on HB4156 (The National Popular Vote Interstate Compact). March 7, 2023. Page 3. https://house.mi.gov/Document/?Path=2023_2024_session/committee/house/standing/elections/meetings/2023-03-07-1/documents/testimony/Sean%20Parnell.pdf

²⁷ National Popular Vote Compact. Article III, Clause 5. The full text of the Compact is at <https://www.nationalpopularvote.com/bill-text> The Compact may also be found starting on page 4 of Alaska Senate Bill 61 at <https://www.akleg.gov/PDF/33/Bills/SB0061A.PDF>

²⁸ Testimony of Sean Parnell, Senior Director, Save Our States Action, to the Committee on Elections, Michigan House of Representatives on HB4156 (The National Popular Vote Interstate Compact). March 7, 2023. Page

THE FACTS:

The U.S. Constitution explicitly requires that the Electoral College meets on the same day throughout the United States.²⁹

In the *Bush v. Gore* case in 2000 and the disputes involving recounts and post-election litigation in the in 2016 and 2020 presidential elections, the U.S. Supreme Court and all lower courts have uniformly followed the principle that all counting, recounting, administrative proceedings, and judicial proceedings involving presidential vote counts must be conducted so as to reach a final determination within six days before the Electoral College meeting (the so-called “safe harbor” day under the Electoral Count Act of 1887).

The Electoral Count Reform Act of 2022 reiterated this deadline and tightened this requirement.

In short, the premise on which Parnell’s scary scenario is based (namely that recounts and court proceedings could be “still underway” after the Electoral College meets) is false.

Myth #10: A rogue governor can refuse to issue the Certificate of Ascertainment

There is a third inaccuracy in the sentence from Parnell’s testimony to the Michigan House Elections Committee on March 7, 2023.

“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.”³⁰
[Emphasis added]

Parnell has advanced the theory for many years that a rogue state governor has the power—at this one person’s sole discretion—to cancel the votes of all of the state’s voters by simply refusing (or even forgetting) to issue the Certificate of Ascertainment required by federal law. In his testimony to the Connecticut Government Administration and Elections Committee on February 24, 2014, Sean Parnell said:

“**A very simple way for any non-member state to thwart the Compact, either intentionally or unintentionally**, would simply be to not submit their Certificate or release it to the public until after the electoral college has met. This simple act would leave states that are members of the compact without vote totals from every state, **throwing the system into chaos.**” [Emphasis added]

3. https://house.mi.gov/Document/?Path=2023_2024_session/committee/house/standing/elections/meetings/2023-03-07-1/documents/testimony/Sean%20Parnell.pdf

²⁹ U.S. Constitution. Article II. Section 1. Clause 4.

³⁰ Testimony of Sean Parnell, Senior Director, Save Our States Action, to the Committee on Elections, Michigan House of Representatives on HB4156 (The National Popular Vote Interstate Compact). March 7, 2023. Page 3.

3. https://house.mi.gov/Document/?Path=2023_2024_session/committee/house/standing/elections/meetings/2023-03-07-1/documents/testimony/Sean%20Parnell.pdf

“There is nothing in federal law that requires the governor to submit it prior to the meeting of the Electoral College.”³¹ [Emphasis added]

THE FACTS:

The U.S. Constitution states that:

“Each State shall appoint, **in such Manner as the Legislature thereof may direct**, a Number of Electors....”³² [Emphasis added]

No state legislature has given its governor the unilateral power to keep the votes of the state’s voters from being counted or reported or any other discretionary power concerning the presidential vote count. A state governor’s role in signing the state’s Certificate of Ascertainment is an entirely ministerial and non-discretionary function governed by federal law.

Furthermore, in 2022, Congress passed legislation double-locking the already-closed door on Parnell’s rogue governor scenario. Specifically, section 5 of the Electoral Count Reform Act of 2022 requires each state to issue a Certificate of Ascertainment no later than six days before the Electoral College meeting. (The 1887 Electoral Count Act merely required the Certificate to be submitted prior to the Electoral College meeting, and conferred “safe harbor” status on a Certificate issued six or more days before the Electoral College meeting).

The 2022 federal law requires that each state transmit its Certificate of Ascertainment “immediately after the issuance ... by the most expeditious method available” to the National Archives which, in turn, is required to make them “public” and “open to public inspection.”

The 2022 Act also established a special three-judge federal court—open only to presidential candidates and operating on a highly expedited schedule—to enforce the “issuance” of each state’s Certificate of Ascertainment and its “transmission” to the National Archives.

The National Popular Vote Compact does not rely on the gracious willingness of state officials to certify the choices made by their state’s voters before the Electoral College meets. It does, however, rely on their compliance with federal law, as required by the Supremacy Clause of the U.S. Constitution.

Note that if it were true that state governors have the personal unilateral power to deny the state’s electoral votes to any presidential candidate they personally dislike, then that same governor could also unilaterally do the same thing under the current system.

Myth #11: Differences in state laws prevent obtaining vote counts

Parnell told the Michigan House Elections Committee on March 7, 2023:

“It simply will not be possible to conclusively determine which candidate has received the most votes because **every state runs its own election**, and will continue to do so under the compact. They run their own election according to their own codes, standards, policies, practices, and procedures. And **those don’t always line up well with what the compact requires.**”³³ [Emphasis added]

³¹ Parnell, Sean. 2014. Testimony before Connecticut Government Administration and Elections Committee. February 24, 2014.

³² U.S. Constitution. Article II, section 1, clause 2.

³³ Hearing of Michigan House Election Committee on HB4156. March 7, 2023. Timestamp 1:01:52. <https://house.mi.gov/VideoArchivePlayer?video=HELEC-030723.mp4>

THE FACTS:

Although there are various differences in election procedures from state to state, one thing that all states have in common is that they all produce a vote count for each presidential-vice-presidential ticket.

And, federal law requires that each state issue a Certificate of Ascertainment certifying those vote counts.

Those are the two things that the National Popular Vote Compact needs.

Myth #12: A major-party candidate might come in third in a state under RCV

In his written testimony to the Alaska Senate State Affairs Committee on April 25, 2023, Parnell said:

“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.”³⁴

Parnell told the Maine Committee on Veterans and Legal Affairs in 2021:

“Under Ranked Choice Voting, if a third party or an independent candidate were to finish ahead of either the Democratic or Republican candidate, ... **the votes for that Democratic or Republican candidate gets completely erased** and will not be reported.”³⁵ [Emphasis added]

THE FACTS:

Parnell’s concern over a major-party candidate failing to receive votes from a state if a third-party candidate wins the state is misplaced. Indeed, the same thing would happen today under the current state-by-state winner-take-all system defended by Parnell and Save Our States.

This fact is made clear by considering what would have happened in Alaska in 2000 if a third-party candidate had finished ahead of both the Democratic and Republican candidate.

George W. Bush received 271 electoral votes in 2000.

However, if a third-party candidate had finished ahead of both major parties in Alaska, the third-party candidate would have received Alaska’s three electoral votes.

That, in turn, would have meant that Bush would have failed to receive the 270 electoral votes required for election, and, as a result, the election for President would have been thrown into the U.S. House of Representatives.

In fact, whenever a third-party candidate finishes ahead of both the Democratic and Republican candidate in a particular state, that inherently means that the electoral votes of that state become unavailable to the Republican and Democratic nominees in their nationwide quest for 270 electoral votes. Although Parnell tries to characterize these votes as being “erased,” they are simply votes that did not go to one of the major parties because the voters chose to support a third party.

In complaining that these votes are “erased,” Parnell is really saying that the major parties are inherently entitled to receive Alaska’s three votes simply because they might need them to reach the 270 votes required to be elected President. To put it another way, Parnell is arguing that it is somehow the obligation of each state’s voting system (and presumably each state’s voters) to

³⁴ *Testimony of Sean Parnell, Senior Director, Save Our States Action, to the State Affairs Committee of the Alaska Senate Re: SB 61 (The National Popular Vote interstate compact) April 25, 2023. Page 2. <https://www.akleg.gov/basis/Bill/Detail/33?Root=SB%2061> (and click on “Documents”).*

³⁵ Testimony of Sean Parnell. Maine Committee on Veterans and Legal Affairs. May 11, 2021

protect the two major parties from the consequences of their own failure to earn the support of the voters.

In reality, what Parnell disparagingly calls “erasing” is nothing more or less than the normal and intended operation of the current system defended by Parnell and Save Our States.

Similarly, Parnell’s concern is misplaced in connection with Ranked Choice Voting (RCV). This becomes clear when we consider what would have happened if RCV had been in effect in Alaska in 2000—but National Popular Vote was not. If the third-party candidate had won in Alaska with RCV in 2000, that candidate would have received Alaska’s three votes. That, in turn, would have meant that these three votes were unavailable to the Republican and Democratic nominees in their nationwide quest for 270 electoral votes. As a result, the election for President in 2000 would have been thrown into the U.S. House of Representatives. Again, what Parnell disparagingly calls “erasing” is nothing more or less than the normal and intended operation of RCV.

The above two cases also make clear that what Parnell disparagingly calls “erasing” arise independent of the National Popular Vote Compact.

Now let’s consider what happens if a state (such as Alaska or Maine) were to use RCV in combination with National Popular Vote (NPV).

First, the frequency of what Parnell calls “erasing” is far more frequent under the current state-by-state winner-take-all system than it would be under the RCV-NPV combination. The current system routinely “erases” the popular votes cast for **every** second-place and every third-place candidate, in **every** state, in **every** election. In contrast, the last time a third-party presidential candidate came in ahead of the two major-party presidential candidates in a state was 1968 when segregationist Governor George Wallace of Alabama won five states. There have been 612 separate state-level races for presidential elector in the 12 presidential elections since 1968 (i.e., 12 times 51). The only time since 1968 when a third-party candidate came in second place was when Ross Perot came in second place in Maine and Utah in 1992. That is, a major-party candidate came in first place in 612 of these 612 state-level races, and a major-party candidate came in first or second place in 610 of these 612 elections. In other words, in only 2 elections out of 612 did a third-party candidate finish ahead of both the Democratic and Republican candidates.

Second, the nature of what Parnell calls “erasing” is far more pernicious under the current system defended by him and Save Our States than under the RCV-NPV combination. If RCV and NPV had been in effect in 1992 when Bush came in third in Maine and Clinton came in third in Utah, every voter in Maine and Utah would have had their vote counted for a candidate **for whom that voter actually voted**. In contrast, the current system routinely treats the voter’s vote as if they supported a candidate **for whom the voter did not vote**.

Finally, Parnell fails to acknowledge the simple fact that voters cast their votes with an awareness of the existing voting system. The voters who voted for Ross Perot in 1992 in Maine and Utah were aware that doing so could either (1) swing the state’s popular-lead from one major-party candidate to the other, or (2) result in their state’s electoral votes going to Perot—thereby potentially denying both major-party candidates of the 270 electoral votes required for election. Knowing this, these voters cast their ballots for Perot, notwithstanding the risk of what Parnell calls “erasure.” This choice by these voters ought to be respected.

Myth #13: The NPV Compact is flawed because it does not accommodate a legislature seeking to authorize itself to appoint presidential electors

Parnell told the Michigan House Elections Committee on March 7, 2023:

“A couple of years ago **there was a bill in Arizona³⁶ proposing that ... [some of] electoral votes would be chosen by the legislature.** I don’t really have an opinion one way or the other on whether this is a good idea or not. But **it’s an interesting idea** that’s out there. If Arizona were to do that, National Popular Vote would look at that and say ‘there is no statewide popular election for electors.’ ... That **seems like it’s going to be a problem.**”³⁷ [Emphasis added]

THE FACTS:

Every state today has laws saying that all of a state’s presidential electors are to be chosen by the voters—not the state legislature.

In fact, no state legislature has chosen any presidential electors since 1876.

The National Popular Vote Compact is based on the principle that the voters—not state legislature—should choose the state’s presidential electors.

In fact, when a state adopts the National Popular Vote Compact, it obligates itself to continue to conduct a “statewide popular election.” Article II of the Compact states:

“Each member state shall conduct a statewide popular election for President and Vice President of the United States.”

The Compact defines a “statewide popular election” as follows:

“‘statewide popular election’ shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.”³⁸

The National Popular Vote Compact adds up popular votes cast by *individual voters* cast in a “statewide popular election.”

The Arizona bill that Parnell refers to (HB2426 of 2021) died a richly deserved death in committee.³⁹

It is unequivocally true that the Compact would not accommodate the Arizona legislature if it were to decide, at some future time, to designate itself as the authority to choose some or all of the state’s presidential electors.

We regard this as a feature—not a bug of the National Popular Vote Compact.

Myth #14: The 1960 Alabama election reveals a flaw in the NPV Compact

Parnell told the Michigan House Elections Committee on March 7, 2023:

“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

³⁶ Arizona House Bill HB2426 of 2021 specified that two of the state’s electoral votes were to be cast for the presidential-vice-presidential ticket which “received the highest number of votes from the aggregate vote of all the member of the legislature voting as a single body” and the remaining electoral votes would be allocated according to the popular vote in each of the state’s congressional districts. The bill died without receiving a committee hearing. <https://apps.azleg.gov/BillStatus/BillOverview/74978>

³⁷ Hearing of Michigan House Election Committee on HB4156. March 7, 2023. Timestamp 1:08:28. <https://house.mi.gov/VideoArchivePlayer?video=HELEC-030723.mp4>

³⁸ National Popular Vote Compact. Article V, Clause 8. The full text of the Compact is at <https://www.nationalpopularvote.com/bill-text> The Compact may also be found starting on page 4 of Alaska Senate Bill 61 at <https://www.akleg.gov/PDF/33/Bills/SB0061A.PDF>

³⁹ Arizona House Bill HB2426 of 2021 may be found at <https://apps.azleg.gov/BillStatus/BillOverview/74978>

Electoral College regardless of the Alabama issues, but **under National Popular Vote, not being able to conclusively determine a winner would be a national crisis.**”⁴⁰ [Emphasis added]

THE FACTS:

The reason it is uncertain whether Kennedy or Nixon won the national popular vote in 1960 is that neither Kennedy nor Nixon’s name appeared on the ballot in Alabama that year.

That is, there simply were no votes to count for Kennedy and Nixon from Alabama in 1960.

The various unofficial national popular vote totals for 1960 that are bandied about reflect the slightly different speculative calculations made by the editors of political almanacs.

In the early days of the Republic, voters’ ballots did not contain the names of the presidential and vice-presidential candidates. Thus, a voter in a state with, say, 11 electoral votes (as Alabama had in 1960) would have to vote for 11 separate candidates for the position of presidential elector.

A majority of the states abandoned this cumbersome approach by the middle of the 20th century and adopted the so-called “short presidential ballot” that lists the names of only the presidential and vice-presidential candidates and that allows voters to cast a single vote for their chosen presidential-vice-presidential ticket. The voter’s vote for a presidential-vice-presidential ticket is then deemed to be a vote for all of the individual presidential electors nominated in association with that ticket.

Three-quarters of the states adopted the short presidential ballot by the mid-1960s. Since 1980, all states have used it.

Back in 1960, segregationists in Alabama (whose ballot did not contain either Kennedy’s name or Nixon’s name) seized on this dying system as a way to elect Democratic presidential electors who would not vote in the Electoral College for the Democratic Party’s national nominee (that is, Kennedy). The segregationists succeeded in electing 6 of Alabama’s 11 presidential electors in 1960, and those electors did not vote for Kennedy in the Electoral College. Meanwhile, no popular votes were recorded for either Kennedy or Nixon in 1960 from Alabama, since their names were not on the ballot.

The National Popular Vote Compact is based on the fact that, since 1980, every state has (very sensibly) used the short presidential ballot.

If, after the National Popular Vote Compact comes into effect, any state decided to exclude the names of the actual presidential and vice-presidential candidates from the ballot (as Alabama did in 1960), that state would be voluntarily opting out of the national popular vote count (because there obviously would be no vote count for any presidential and vice-presidential candidate from that state). Such a maneuver would be a very poor policy decision. Moreover, such a maneuver would be vigorously opposed by the political party that normally wins the state involved. However, if a state legislature decided to opt-out of the national popular vote count in this manner, their departure would present no operational difficulties in terms of the Compact’s ability to compute the national popular vote total from the states that did conduct a “statewide popular election.” There would be no “national crisis”—simply a lot of voters angry with their state legislature.

⁴⁰ Testimony of Sean Parnell, Senior Director, Save Our States Action, to the Committee on Elections, Michigan House of Representatives on HB4156 (The National Popular Vote Interstate Compact). March 7, 2023. Page 4. https://house.mi.gov/Document/?Path=2023_2024_session/committee/house/standing/elections/meetings/2023-03-07-1/documents/testimony/Sean%20Parnell.pdf

Myth #15: While (falsely) saying that the Compact authorizes one state to judge another state’s election returns, Parnell simultaneously claims the opposite

As we saw earlier in myth #2, Parnell inaccurately claimed that the National Popular Vote Compact allows administrative officials in states belonging to the Compact to judge the election returns of other states.

Meanwhile, Parnell has also repeatedly complained that states belonging to the Compact cannot judge the election returns of other states. For example, in a newspaper op-ed, Parnell wrote:

“The NPV compact also risks causing an electoral crisis due to its poor design. ... **States that join the compact are supposed to accept vote totals from every other state even if they are disputed, inaccurate, incomplete, or the result of fraud or vote suppression.**”⁴¹ [Emphasis added]

Moreover, Trent England, Executive Director of the organization that employs Parnell (Save Our States), testified before a Missouri Senate committee in 2016 saying:

“In a National Popular Vote world, the state of **Missouri would, essentially, have to accept—without the ability to investigate or verify**—the results of ... the 49 [other] states and the District of Columbia.”⁴² [Emphasis added]

THE FACTS:

As explained in discussing myth #2 above, the truth is that the National Popular Vote Compact does not allow its member states to judge the vote counts certified by other states.

This does not, of course, mean that there is no way to challenge a presidential vote count that is inaccurate, incomplete, or fraudulent.

A state’s final determination of its presidential vote count may be challenged under the National Popular Vote Compact in the same five ways that they can be under the current system, namely

- state administrative proceedings (e.g., recounts, audits),
- lower state court proceedings,
- state supreme court proceedings,
- lower federal court proceedings, and
- U.S. Supreme Court proceedings.

Aggrieved presidential candidates used all five ways in both 2000 and 2020.⁴³

Under our federal system, election disputes must be litigated using the administrative processes and the state or federal courts starting in the state-of-origin.

In 2020, when the state of Texas attempted to challenge Pennsylvania’s presidential vote count, the U.S. Supreme Court refused to let Texas even file a bill of complaint, succinctly saying:

⁴¹ Parnell, Sean. Opinion: Voting compact would serve Virginians badly. Charlottesville Virginia *Daily Progress*. August 9, 2020. https://dailyprogress.com/opinion/columnists/opinion-commentary-voting-compact-would-serve-virginians-badly/article_10a1c1bd-2ca3-5c97-b46d-a4b15289062d.html

⁴² Watson, Bob. 2016. Missouri Senate panel weighs popular vote for president. *Fulton Sun*. March 31, 2016. <https://www.fultonsun.com/news/2016/mar/31/senate-panel-weighs-popular-vote-president/>

⁴³ See The Ohio State University’s Case Tracker for the 2020 presidential election at https://electioncases.osu.edu/case-tracker/?sortby=filing_date_desc&keywords=&status=all&state=all&topic=25

“Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections.”⁴⁴

Conclusion

None of the above myths about vote counting under the National Popular Vote Compact are true.

These myths are part of an effort to distract attention from the fact that the defenders of the current state-by-state winner-take-all method of electing the President never address—and cannot address—the shortcomings of the current system of electing the President, namely that it does not

- guarantee the Presidency to the candidate who gets the most votes nationwide,
- make every vote equal throughout the country, and
- give candidates a reason to campaign in all 50 states.

The National Popular Vote Compact would.

⁴⁴ *Texas v. Pennsylvania*. December 11, 2020. Order 155-ORIG. 592 U.S.