

BACKGROUND For CONSENSUS

The National Popular Vote Compact— A new look at electing the President

The League of Women Voters of the United States is conducting a study on “The Advisability of Using the National Popular Vote Compact among the states as the method for electing the President.” Since 1970, the League of Women Voters position has been that the direct popular vote to elect the President and Vice-President of the United States is essential to representative government (and) that the Electoral College should be abolished.

The National Popular Vote Compact (NPVC) proposal would guarantee the Presidency to the candidate who receives the most popular votes without amending the Constitution to eliminate the Electoral College. Under the NPVC, all electoral votes from the states that enact the bill will be awarded, as a bloc, to the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia. It would take effect only when states cumulatively possessing a majority of the electoral votes (270) have enacted this agreement in substantially the same form and the enactments by such states have taken effect in each state. [The (short) complete text of the *Agreement among the States to Elect the President by Nationwide Popular Vote (the NPV Compact)* can be found at www.lwv.org/npv]

Every Vote Equal: A State Based Plan for Electing the President, the reference work published by National Popular Vote, goes into considerable detail about the Electoral College, history of challenges, constitutional issues, interstate compacts, legal issues, and the Compact language itself. The struggles of the Founding Fathers regarding election of the President are touched upon below and detailed in Chapter 2. The book can be read online. www.nationalpopularvote.com .

The history of methods of electing the President has been marked by a lack of conviction on how to best accomplish this important piece of representative government.

“In 1787, the Constitutional Convention considered a variety of methods for electing the President and Vice President, including election by: state governors, Congress, State legislatures, popular vote, and electors. The delegates debated the method of electing the President on 22 separate days and held 30 votes on the topic. As described in George Edwards’s recent book: “The delegates were obviously perplexed about how to select the president, and their confusion is reflected in their voting.” Ultimately, the delegates never made a decision and “turned the question over to a committee ... [which] recommended selection of the president by electors....” The method of choosing electors was turned over to the states. Article II of the Constitution says: “Each State shall appoint, **in such Manner as the Legislature thereof may direct**, a Number of Electors...” In a challenge to the constitutionality of electors chosen by the states, the Supreme Court ruled in the 1893 case of *McPherson v. Blacker*: “In short, the appointment and mode of appointment of electors belong **exclusively** to the states under the constitution of the United States.” This basically attests to the constitutionality of the electors acting as outlined in the compact.

[The following section is from a LWV background paper.]

An additional constitutional underpinning of the NPV is the Compact Clause (*Article I, Section 10, Clause 3*), which permits states to enter into legally enforceable contractual obligations to undertake agreed joint action with other states. Interstate compacts are typically used to address problems that concern more than one state—the states which are affected enter into a compact

(contract) which regulates their actions, ensuring uniform response by the states to address their mutual concerns. These contracts are typically enacted through the passage of identical legislation by the compacting states.

Under the state legislation proposed to establish the NPV, the popular vote counts from all 50 states and the District of Columbia would be added together to obtain a national grand total for each presidential candidate. Then, state elections officials in all states participating in the plan would award their electoral votes to the presidential candidate who receives the largest number of popular votes in all 50 states and the District of Columbia. As a result, every vote in all 50 states and the District of Columbia would be equally important in presidential elections. The NPV Compact plan would take effect only when it has been enacted by states collectively possessing a majority of the electoral votes. The 270-vote threshold also corresponds essentially to states representing a majority of the people of the United States.

The compact contains a six-month blackout period during which no state can withdraw from the compact. The blackout period starts on July 20 of each presidential election year and runs through the January 20 inauguration. Interstate compacts are contracts. It is settled compact law and settled constitutional law that withdrawal restrictions—very common in interstate compacts—are enforceable because the U.S. Constitution prohibits a state from impairing any obligation of contract. The legislation contains other procedural provisions that would ensure the smooth functioning of the agreement. For example, one clause addresses the possibility of a tie in the national popular vote. If there is no national popular vote winner, each state chooses the electors for the candidate who has won that state. The full text of the compact, supporting and opposing arguments, and the Consensus questions are available at www.lwv.org/NPV.

The League of Women Voters has developed a chart which summarizes the pros and cons in four pages. Request a copy by contacting Carole Mulready at cgm1@mulready.biz

Copies of the questions will be presented at the Consensus on April 28. Basically, they ask members to determine if the compact is achievable. Can the compact succeed constitutionally? Will it require Congressional consent? Are the enforcement provisions sufficient to assure smooth running of the compact? Is uniformity of voting systems of prime importance? Is it more important to achieve the goal of national popular election of the President or amend the Constitution to abolish the Electoral College? Is the Compact achievable?

The Consensus Committee