

Two Myths about Recounts [\[more details at www.NationalPopularVote.com\]](http://www.NationalPopularVote.com)

10.3.1 MYTH: A national popular vote would result in recount chaos.

If the President were elected from a single nationwide pool of votes, one would expect a recount once in 332 elections, or once in 1,328 years. The fact is that recounts would be far less likely to occur under a national popular vote system than under the current state-by-state winner-take-all system (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each separate state). Based on a recent study of 7,645 statewide elections in the 26-year period from 1980 through 2006 by Fair Vote,⁽³⁰⁾ the probability of a recount is 1 in 332 elections (23 recounts in 7,645 elections). The average change in the margin of victory as a result of a recount was a mere 274 votes. The original outcome remained unchanged in over 90% of the recounts. Under the current winner-take-all system, there are 51 separate opportunities for recounts in every presidential election. Thus, our nation's 55 presidential elections have really been 2,084 separate state level elections. There have been five seriously disputed counts in the nation's 55 presidential elections. The current system has repeatedly created artificial crises in which the vote has been extremely close in particular states, while not close on a nationwide basis. Note that five seriously disputed counts out of 2,084 is closely in line with the historically observed probability of 1 in 332. A national popular vote would reduce the probability of a recount from five instances in 55 presidential elections to one instance in 332 elections (that is, once in 1,328 years). In fact, the reduction would be even greater because a close result is less likely to occur as the size of the jurisdiction increases. Indeed, only two of the 23 recounts among the 7,645 statewide elections in the 26-year period from 1980 through 2006 were in big states.

(30)Fair Vote. 2007. *Survey and Analysis of Statewide Election Recounts 1980-2006* available at <http://www.fairvote.org/reports/?page=1786&articlemode=showspecific&showarticle=2736>.

10.3.3 MYTH: Resolution of a presidential election could be prolonged beyond the inauguration date because of recounts.

Brendan Loy warns that if we had a national popular vote:

“Post-election uncertainty could stretch well into January, raising doubt about whether we would have a clear winner by inauguration day.” ...“With two centuries of legal precedent tossed aside, courts would have a very difficult time managing it all.”⁽⁴²⁾

Loy's scenario for a prolonged and unsettled election is based on the incorrect assumption that the existing U.S. Constitution, existing federal statutes, and existing state statutes would somehow be “tossed aside” after the National Popular Vote compact comes into effect. In fact, the National Popular Vote compact was drafted so as to rely on existing constitutional and statutory provisions in the same way that the current system does. The U.S. Constitution establishes a strict overall national schedule for finalizing the results of a presidential election. These existing provisions would apply to elections conducted under the proposed National Popular Vote legislation in the same way that they apply to elections conducted under the current system. No prolongation of a U.S. presidential election until January is possible thanks to these existing constitutional

provisions and existing federal and state statutory provisions. The U.S. Constitution provides:

“The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”

[Spelling as per original]

Congress has exercised this constitutional power to set the uniform nationwide date for meeting of the Electoral College. “The electors of President and Vice President of each State shall meet and give their votes on the **first Monday after the second Wednesday in December** next following their appointment at such place in each State as the legislature of such State shall direct.”

Under both the current system and the National Popular Vote approach, all counting, recounting, and judicial proceedings must be conducted so as to reach a “final determination” prior to the uniform nationwide date for the meeting of the Electoral College in mid-December. The U.S. Supreme Court has made it clear that the states are expected to make their “final determination” six days before the Electoral College meets (the so-called “safe harbor” date established by section 5 of title 3 of the United States Code).

In any event, in almost all states, state statutes already impose independent earlier deadlines for finalizing the count for the presidential election.

The U.S. Supreme Court has also ruled that state election officials and the state judiciary must conduct counts and recounts in presidential elections within the confines of existing state election laws.

(42) Loy, Brendan Loomer, “Count Every Vote – All 538 of them; Social Science Research Network. September 12, 2007. Available at <http://ssrn.com/abstract=1014431>.

For more information in this area, you can download or read the book published by National Popular Vote, *Every vote equal: A state-based plan for electing the president*.

Steps to find the book online:

1. Go to www.nationalpopularvote.com
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