

## NPV ARGUMENTS BINDER JUNE 15<sup>TH</sup> 2017

The motivation behind the binder's creation comes from watching at least a half a dozen live streaming debates of NPV in committee hearings and floor debates of state legislatures around the country. I noticed, that especially in committee hearings, an opponent would give a blatantly incorrect argument for the Electoral College or against NPV and it was just left there hanging because the following NPV supporting witness didn't have an appropriate counter argument on the tip of their tongue, so was stuck with a prepared response that however strong it may have been, it had no effect in wiping away the damage done by the previous misstatement.

The arguments binder is a means by which a prepared NPV supporter may quickly look up a response to a previous witness' anti-NPV remark, give it a one-two punch, and then if appropriate, continue with their prepared statement.

Bunnie Keen

[www.nationalpopularvoteUTAH.org](http://www.nationalpopularvoteUTAH.org)

**The arguments binder is a work in progress and your feedback would be GREATLY appreciated. Please email any comments, suggestions, corrections, or questions to: [info@nationalpopularvoteUTAH.org](mailto:info@nationalpopularvoteUTAH.org)**

For more detailed information about these and other arguments concerning the National Popular Vote, go to [www.nationalpopularvote.com](http://www.nationalpopularvote.com) and click on: Read "Every Vote Equal" Book for Free.

### How to assemble and use these pages:

- Using the this page and the Table of Contents as the first pages, assemble the remaining pages into a paper office binder with 3-hole fasteners using the Table of Contents headings as tab dividers.
- Each tab will allow easy access to several common "myths" and responses about NPV, the Electoral College and winner-take-all.
- The responses are designed to be used to immediately follow-up "incorrect" oral arguments against NPV in state legislative committee hearings and floor debates. Red text is to highlight common key phrases often used by opponents and make finding the correct response more easily.
- Each page is 2-3 minutes in length if read out loud, but most responses and even individual bullet points lend themselves to use as smaller arguments, so that after presenting a counter response, the presenter may go on to their prepared statement.

## TABLE OF CONTENTS

### NPVIC

- **EXPLANATIONS:** [How the NPVIC works and affects non-member states.](#)

### CONSTITUTIONALITY page 1

**MYTH:** NPV tries to change the Constitution [without an amendment.](#)

- **MYTH:** The NPV would [abolish the Electoral College.](#)
- **MYTH:** The NPV violates the Compact Clause (Article 1 Section 10 Clause 3) of the Constitution because it doesn't seek [approval of Congress.](#)

### CONSTITUTIONALITY page 2

- **MYTH:** The [Founding Fathers](#) designed and favored the current system.
- **MYTH:** The NPV is an ["end-run"](#) around the Constitution or the Electoral College.
- **MYTH:** An [amendment is the proper way](#) to reform the Electoral College.

### STATES' RIGHTS/IDENTITY

- **MYTH:** The Electoral College preserves the [identity & interests of smaller states.](#)
- **MYTH:** [Big cities](#) would dominate a national popular vote and [ignore rural areas.](#)
- **MYTH:** Only 10-12 [big states would dominate](#) a national popular vote.

### SORE LOSER/NONPARTISAN

- **MYTH:** A popular vote [favors Democrats.](#)
- **MYTH:** Democrats are pushing NPV because [Hillary would have won](#) in 2016.
- **MYTH:** [Only Democrats and Liberals](#) support The National Popular Vote.

### PROCEDURES

- **MYTH:** A NPV would cause an election night [logistical nightmare.](#)
- **MYTH:** [If states didn't like election results](#) they could withdraw from NPV Compact.
- **MYTH:** [The current system is the best](#) system for electing the President

### RECOUNTS/FRAUD

- **MYTH:** The current system creates [a "firewall" that isolates recounts](#) to particular states.
- **MYTH:** [Fraud is minimized under the current system](#) because it is hard to predict where stolen votes will matter.

### DISENFRANCHISEMENT page 1

- **MYTH:** The current system allows the [voice of minorities](#) to be heard.
- **MYTH:** Under a NPV, a candidate could be elected with [only 15% of the vote.](#)
- **MYTH:** A national popular vote would [disenfranchise some NPV member states](#) whose electorate didn't vote for the nationwide popular vote winner.

### DISENFRANCHISEMENT page 2

- **MYTH:** A national popular vote would [make voter participation go down.](#)
- **MYTH:** [Voters would be treated unfairly](#) in a national popular vote
- **MYTH:** Winner-take-all minimizes the effects of [bad weather and hurricanes](#)

## National Popular Interstate Compact

### **EXPLANATIONS:** [How the NPVIC works and effects non-member states.](#)

- When the minimum number of electoral votes required to win the presidency (270) are locked up by the member states of the National Popular Vote Interstate Compact, the Compact will trigger in the following election. All member states will appoint electors who are supporters of the popular vote winner and who will cast their votes for that candidate. Non-member states will continue to appoint electors in the way they always have, but because their voters are and have always been counted in the national popular vote tally, their votes will be counted for president.
- The National Popular Vote Interstate Compact is a state law that contractually requires member states to cast their electoral votes NOT for the popular vote winner in the state, but in the nation. It does not change the Constitution, but simply replaces the winner-take-all state laws that replaced other laws before them. It does not require non-member states to do anything different than what they have always done, including certifying the results of the popular vote count within their states so that it may be counted in the national popular vote tally.
- A National Popular Vote Interstate Compact will be the cause of collateral enfranchisement in non-member states because every person who votes for president is part of the popular vote whether or not they live in a state that is a member of the Compact. When NPV is enacted, everyone who voted for president will wake up the morning after the election and know that for the first time in their lifetime, their vote has truly mattered. In a formally blue state or red state, there will be no overkill as a majority voter, no waist of time as a minority voter.
- The National Popular Vote Interstate Compact converts the number of presidential voting districts from 50 (one for each state) to one (the entire nation.) When enough states equaling 270 electoral votes have joined the Compact, it won't matter if you live in a state that is a member of the Compact or not, because your vote will no longer be sequestered within your state on election night, but free to join with votes of its political affiliation nationwide. If you vote for president, you are part of the national popular vote tally, so your vote will be counted and be of equal value to any other vote cast in any other state in the election for president.
- The National Popular Vote Interstate Compact is a bill that leaves no voter in any state behind, because in national popular vote election there will be no election night map of massive blocks of red or blue states, but a nationwide, pixelated swirl of red, blue, green and other colors surrounded by wide swaths of open space. It will be stunningly clear that the country is just as much sagebrush, prairie, forest and farmland, as Republicans, Democrats, Greens, Libertarians or independents. Every voter in every state, will cast a vote of equal value that knows no borders but those of the United States.

## CONSTITUTIONALITY page 1

**MYTH:** The National Popular Vote Interstate Compact (NPV) tries to change the Constitution without an amendment.

**RESPONSE:**

- NPV doesn't change the Constitution. It is a state law seeking to replace other state laws known as Winner-take-all (WTA) that say the candidate with the most popular votes within a state takes all its electoral votes. The Electoral College (EC) and WTA laws are not the same thing. The former is part of the Constitution; the latter is not.
- In fact, from the 1790's thru the 1880's, WTA replaced earlier state laws governing how to appoint electors. About the only thing the EC says about the appointment of electors is that it is the exclusive right of the states to decide, just as they did when they passed WTA, and just as they would do if they passed NPV.

**MYTH:** The NPV would abolish the Electoral College.

**RESPONSE:**

- The NPV would preserve the Electoral College but replace the WTA state statutes that dominate it. Those laws require that all of a state's electoral votes be awarded to the candidate with the most popular vote within that state. Once NPV is passed by states totaling 270, it will trigger and those states will cast their electoral votes, not for the popular vote winner in their state, but for the winner nationwide. By locking up the minimum electoral votes required, this will make even the voters who don't live in a NPV member state count, because they participate in the vote for president.

**MYTH:** The NPV violates the Compact Clause (Article 1 Section 10 Clause 3) of the Constitution because it doesn't seek approval of Congress.

**RESPONSE:**

- The NPV Compact doesn't need approval of Congress because it doesn't encroach on federal sovereignty. This is an interpretation of the Compact Clause supported by the U.S. Supreme Court in 1893, 1976, and finally in 1978 with the case of U.S. Steel Corporation v. Multistate Tax Commission:
  - "Absent a threat of encroachment or interference through enhanced state power, the existence of a federal interest is irrelevant. Indeed, every state cooperative action touching interstate or foreign commerce implicates some federal interest. Were that the test under the Compact Clause, virtually all interstate agreements and reciprocal legislation would require congressional approval."

Working on another here.

**MYTH:** The Founding Fathers designed and favored the current system.

**RESPONSE:**

- The Founding Fathers never decided how presidential electors should be chosen. Instead, they left the matter to the states. They expected that the Electoral College would be a deliberative body, not the rubberstamp for the candidates nominated by their parties that we know today. The winner-take-all method of awarding electoral votes was not debated at the 1787 Constitutional Convention nor was it mentioned in the Federalist Papers. Winner-take all became prevalent long after the Founders were all dead.
- WTA laws began the long road to dominating the EC in 1796 when Thomas Jefferson lost the presidency in an election he would have won had WTA been in place in his two strongholds of Virginia and North Carolina. Realizing WTA could maximize the power of a state's dominant political party by making it extremely difficult for rival parties to compete, he encouraged states to enact WTA and by 1880, it had been universally adopted.

**MYTH:** The NPV is an "end-run" around the Constitution or the Electoral College.

**RESPONSE:**

- If it is, then so are the winner-take-all laws that currently dominate the Electoral College, because they did those so-called end-runs around earlier state laws that appointed electors either by popular statewide vote, by congressional districts elections and by state legislature.
- There's nothing clever or sneaky about enacting one state law to replace another. The enactment of the National Popular Vote bill by a state legislature is a precise exercise of existing state powers under the U.S. Constitution, just as the adoption of winner-take-all was before it.
- If the weighting of votes in favor of smaller states is the mechanism that the NPV is accused of performing the end-run around, then winner-take-all gets the credit for that too. Battleground states wouldn't even exist if it weren't for winner-take-all laws. It's those 10-12 battleground states that steal the relevancy away from the other 38-40 safely ignored, aptly named spectator states, no matter how much their electoral votes are weighted in their favor.

**MYTH:** An amendment is the proper way to reform the Electoral College.

**RESPONSE:**

- Nearly all the major reforms concerning U.S. presidential elections have been initiated at the state level— not by way of an amendment. These include:
  - Permitting the people to vote for President
  - Abolition of property qualifications for voting
  - Women's suffrage
  - Direct election of U.S. Senators
  - The 18-year-old vote
  - Black suffrage
  - The winner-take-all rule, which is the focus of the National Popular Vote compact.

## STATES' RIGHTS/IDENTITY

**MYTH:** The Electoral College preserves the identity & interests of smaller states.

**RESPONSE:**

- The Electoral College doesn't protect the interests of smaller states because even if a vote in Wyoming is worth almost 4 times one in California, it doesn't matter if a candidate never goes to either state. The only states whose interests are protected are those of battleground states, either big like Florida or small like New Hampshire, where the votes are up for grabs.
- No state has a single identity to lose because voters in no state march in lock step to vote 100% for one candidate. What is true however is that in any state, flyover or battleground, a significant number of voters are disregarded simply because they were in the minority and their votes left behind within state lines.
- For NPV opponents to continue to recite the blatantly inaccurate mantra that the current system requires candidates to pay attention to small states is completely befuddling. Everyone who has eyes and ears knows that in presidential elections only the 10-12 battleground states get any attention at all during the critical period between the nominating conventions and election night.

**MYTH:** Big cities would dominate a national popular vote and ignore rural areas.

**RESPONSE:**

- A national popular vote couldn't be dominated by big cities because U.S. Census data shows that big cities aren't as big as people think. Only 15% of the country lives in metro centers and although these centers vote mainly Democratic, they are balanced out by the 15% of the country that lives in rural areas that votes mostly Republican. The remaining 70% percent lives in between rural areas and cities, and their political affiliation is evenly split between both major parties.
- No candidate will be able to ignore the 85% of the population that lives outside of big cities and expect to win a NPV presidential election. Big cities can't even dominate elections in their own counties or states, how could they control an election across the entire country?

**MYTH:** Only 10-12 big states would dominate a national popular vote.

**RESPONSE:**

- 10-12 states already dominate the election right now under the current winner-take-all system. Those are the battleground states, big and small, whose votes are up for grabs, and who leave the 38-40 other states ignored during presidential elections and out in the cold when it comes to presidential pork.
- Slightly more than half of the country lives in the 12 biggest states, but those states could never dominate an election unless you make the completely unrealistic assumption that ALL of those states would vote 100% in favor of one candidate. In the 2016 election, of the two biggest states in the nation: California, voted more or less 40% Republican and Texas, more or less 40% Democrat.

## SORE LOSER/NONPARTISAN

**MYTH:** A popular vote [favors Democrats](#).

**RESPONSE:**

- A popular vote would not favor either party, let alone Democrats. The United States is politically, an evenly divided country. The nationwide vote for the two parties, while swinging back and forth over the decades, cumulatively since 1932, has been virtually tied. Currently, Democrats are slightly in the lead, but over this same period, Republicans have won slightly more than 50% of the national popular vote. When looked at over the long term, it's always been a neck and neck race.
- Electoral College or National Popular Vote, neither system favors either party:
  - A county-by-county study performed by the Oklahoma Weather Lab at the University of Oklahoma, indicated sunnier weather in 2000 would have flipped electoral votes for Al Gore in Florida.
  - In 2004, a shift of 59,393 votes in Ohio would have elected John Kerry despite President Bush's nationwide lead of over 3,000,000 votes.
  - In 2012 a shift of 214,393 votes would have elected Mitt Romney despite President Obama's nationwide lead of almost 5,000,000 votes.

**MYTH:** Democrats are pushing NPV because [Hillary would have won](#) in 2016.

**RESPONSE:**

- The 2016 election would not have been the same election under a National Popular Vote. Candidates would have campaigned differently and both have said as much. Perhaps for the first time in history, a third party candidate may have won the White House, we'll never know. Hindsight is not 20/20 in this case, and not realizing this is due either to a lack of information, lack of understanding or an unwillingness to let go of tradition for its own sake.
- NPV is not a reaction to the last election, but its profile has certainly been raised by it. It has been working its way across the country since 2006. The movement was begun by a group of three Republicans and three Democrats that synthesized U.S. Census and election data to show that a national popular vote would advantage the entire country by giving previously ignored flyover states their fair share of campaign activities and hence the influence and financial benefits that come from it.

**MYTH:** [Only Democrats and Liberals](#) support The National Popular Vote.

**RESPONSE:**

- People on the political spectrum as far to the right as former Republican Leader of the house, Newt Gingrich, and as far on the left as former Democratic National Committee, Howard Dean, have endorsed NPV.
- Well-known conservative politicians that have endorsed NPV include former U.S. Senator from Kansas and 1996 presidential candidate Bob Dole, former U.S. Representative from Kansas Bob Barr and former Senators from Utah, Bob Bennett and Jake Garn.
- President Trump endorsed the National Popular Vote in 2012 and again, directly after his Electoral College in 2016.

## PROCEDURES

**MYTH:** A NPV would cause an election night [logistical nightmare](#).

**RESPONSE:**

- A NPV wouldn't cause an election night logistical nightmare because the systems required to accurately count a national popular vote are already in place in each state. A state-by-state tally is already part of the procedure and should involve no difficulty barring that simple addition is beyond the skill set of state election officials.
- Results of popular vote totals are the first totals known, that's how states are called on election night in the first place. It's only extremely close races in battleground states that cause delays to verify small numbers of disputed votes. In a nationwide total of over 130 million votes a like number of disputed votes would have no effect at all on the final outcome.

**MYTH:** [If states didn't like election results](#) they could withdraw from NPV Compact.

**RESPONSE:**

- States couldn't withdraw from NPV Compact if they didn't like election results because a compact is a contract and withdrawal may be made only in accordance with the contract's terms. This is stipulated in the Constitution's Impairments Clause (sometimes called the "Contracts Clause") Article 1, section 10, clause 1.
- In the NPV Compact, states are prohibited from withdrawing during a 6-month "blackout" period ranging from the national nominating conventions to inauguration day, preventing withdrawal in the midst of the presidential election process and, in particular, during the especially sensitive period (approximately 35 days) between Election Day in early November and the meeting of the Electoral College in mid-December. The occasional attempts by states to evade their obligations under interstate compacts have consistently been rejected by both state and federal courts.

**MYTH:** [The current system is the best](#) system for electing the President

**RESPONSE:**

- The 2016 election made it crystal clear that the current system is forever broken, because even within state borders, it is no longer necessary to reach out to voters in every part of that state. 2016 was won by intentionally targeting critical counties within the battleground states of Michigan, Pennsylvania, Wisconsin and Florida. In doing so, a relatively small number of votes (less than 76,000 or just under .06% of all ballots nationwide) flipped the electoral votes of these states and the presidency was won by the "legal" gaming of the winner-take-all system.
- Now that this type of surgically targeted campaign strategy has proven effective, and impressively less expensive, it will likely be the way all future presidential campaigns will be run under the Electoral College winner-take-all system. And why not? **It saves time, money and all that hassle of listening to as many voters as possible.**

## RECOUNTS/FRAUD

**MYTH:** The current system creates a “firewall” that isolates recounts to particular states.

**RESPONSE:**

- The current state-by-state winner-take-all system doesn't create firewalls, it creates fires. The relatively small number of votes in one battleground state that it takes to flip that state's entire electoral strength and change the outcome of an election, are dry tinder ready to combust as soon as a dispute arises. The 537 popular votes in Florida in 2000 is the epitome of just such an example. Because this dispute arose in a battleground state, just .001% of the entire 101 million nationwide popular vote held the country in suspended animation for 10 weeks.
- The first election results known on are those of the popular vote, that's how states are called one way or the other on election night. It's only extremely close races in battleground states that cause delays in order to check the small number of votes. In a nationwide total of over 130 million votes a like number of disputed votes would have no effect at all on the final outcome.
- There have been five litigated state counts in the nation's 58 presidential elections under the current state-by-state WTA system. That's about 1 in every 12 presidential elections. Yet every other election in the country is a popular vote election and the dispute rate is only 1-in-185. One in 12, or one in 185, which odds would you prefer in a game of election night Russian roulette?

**MYTH:** Fraud is minimized under the current system because it is hard to predict where stolen votes will matter.

**RESPONSE:**

- It's not hard at all to predict where stolen votes will matter - they will matter where a small number of votes can have the greatest impact: closely divided battleground states. So under the current state-by-state winner-take-all system, those who wish to cheat know exactly where they need to go in order to potentially sway the national outcome.
- Although evidence for voter fraud has yet to be proven significant domestically, the fact that deliberate interference with our elections is no longer just of domestic but of foreign interest as well, presents an even stronger case for replacing the system that created and maintains battleground states: winner-take-all state legislation.
- Under the current system, landslide elections have become a thing of the past. In two out of the last eight presidential elections, (4 won by Republicans, 4 by Democrats and none considered landslides) the Electoral College and the popular vote diverged. A one-out-of-four failure rate is statistically significant and the more it happens, as non-landslide elections become the norm, the more divided the country becomes.
- Under the current winner-take-all system, a very small number of fraudulent votes can swing the entire electoral strength of a state. In a national popular vote, where the pool of votes could be as much 136 million like the 2016 election, a like number of fraudulent votes would have no effect on a national outcome.

## DISENFRANCHIZEMENT page 1

**MYTH:** The current system allows the [voice of minorities](#) to be heard.

- If the intent of the current system of winner-take-all is to allow the minority voices to be heard, it does so by throwing a chokehold around that of the majority. In every election cycle across the country, votes are cast and counted in every state, but when the race is called, millions of votes are legally cut off before the finish line:
  - Just 30% of those who voted in 2016 - the 41 million voters out of 137 million total that cast Republican votes in states that went red on election night - awarded 306 electoral votes to the winner.
  - 26% of those who voted - 35 million voters out of 137 million total that cast Democrat votes in states that went blue on election night - awarded 232 votes to the loser. Looking at just these votes, a fair horse race, but what about...
  - ...The ballots of the other 44% of Americans who voted – 60 million Republicans in blue states, Democrats in red states, independents, Greens and Libertarians everywhere – were reined in, stopped in their tracks never allowed to see the finish line.
  - **Those 41 million voters, a majority only within their individual states, representing just 30% of those who voted nationwide, determined who would be president for the other 70%.**

**MYTH:** Under a NPV, a candidate could be elected with [only 15% of the vote](#).

### **RESPONSE:**

- U.S. election history reveals there is no evidence that a candidate could win a National Popular Vote with only the 15% of the population that lives in the country's 50 largest cities.
- The candidate who won the presidency with the **smallest plurality in a presidential election history** was arguably the most beloved of all: Abraham Lincoln. He won with 39% of the popular vote.
- In the over 900 popular vote gubernatorial races since World War II, 90% of the candidates received over 50% of the popular vote, 99% received more than 40% and a 100% got over 35% of the popular vote.
- For a candidate to win with only 15% of the vote, there would have to exist the unrealistic scenario of multiple AND viable presidential candidates.

**MYTH:** A national popular vote would [disenfranchise some NPV member states](#) whose electorate didn't vote for the nationwide popular vote winner.

### **RESPONSE:**

- Never has the entire electorate of any state, voted 100% for one candidate. What is true however is that in any state, flyover or battleground, a significant number of voters are disregarded simply because they were in the minority and therefore their votes were confined within state lines.
- Although opponents of National Popular Vote in non-battleground states may not understand it now, when NPV is enacted (after enough states equaling 270 electoral votes join the Interstate Compact) they will wake up the morning of the following presidential election and comprehend that for the first time in their lifetime, their vote will matter. In a blue state or red, no overkill as a majority voter, no waist of time as a minority voter.

**MYTH:** A national popular vote would make voter participation go down.

**RESPONSE:**

- It is a fact, studies show that voter registration and voter turnout go up in battleground states because people know their votes will matter. In 2012 and 2016 battleground states had turnout rates 11-12% above the national rate. No surprise, when their votes matter, people are invested in an election, they are more likely to self-educate, pay attention to and discuss election issues in meaningful way.
- Is it a good thing or a bad thing that more people vote in presidential elections? If it's a good thing, support a NPV. If it's a bad thing, then support the Electoral College winner-take-all.
- Voters in the minority of non-battleground states, red or blue, feel cheated after every presidential election. There are likely significant numbers that have given up voting in these races. If you, as a legislator had to make a choice, which would you choose? To win in an unfair election, or lose in a fair one?

**MYTH:** Voters would be treated unfairly in a national popular vote.

**RESPONSE:**

- It's the current system of winner-take-all where voters are treated unfairly and by their own leadership. Under a national popular vote, every vote is treated fairly and equally, no matter of what party affiliation or in what state.
- Whether Democrat or Republican, to continue to support the current system is to put party loyalties over duty to the constituents in your state who are not of your political affiliation. Supporting the current system is to also turn your back on *voters within your own party*, simply because they are the minority voters in other states. Republicans in blue states, and Democrats in red states have been abandoned by their party's leaders simply because they don't live in battleground states.

**MYTH:** Winner-take-all minimizes the effects of bad weather and hurricanes

**RESPONSE:**

- The weather favors neither winner-take-all nor a national popular vote:
  - A county-by-county study performed by the Oklahoma Weather Lab at the University of Oklahoma, indicated sunnier weather in 2000 would have flipped electoral votes for Al Gore in Florida, and Bill Clinton, in North Carolina, in 1992.
  - The potential effects of bad weather on elections are decreasing from year to year because of the increasing use of mail-in voting, absentee voting, provisional ballots and early voting. In 2012, 100% of the voting was done by mail in Washington state and Oregon. In numerous states, a substantial fraction of a state's vote now comes from absentee voting and early voting. In California, for example, 51% of the vote in the November 2012 presidential election was cast by mail.