

The Language of Liberty Series



Trashing the 12th Amendment with the National Popular Vote

By Publius Huldah, Guest Columnist

The compact for a National Popular Vote (NPV) is a destructive scheme. Yet it's been approved by several States; and is pending in others. Since the text of the compact no longer seems to be set forth on [the NPV website](#), we'll look at the [NPV bill now pending in Tennessee](#), HB1728 and SB1657.

In a nutshell, the compact seeks to evade the 12th Amendment to our Constitution (where the States elect the President); and substitutes a national popular vote where inhabitants of major metropolitan areas elect the President.

The Constitution our Framers gave us

The [federal government created by our Constitution](#) is a Federation of Sovereign States united under a federal government for those limited purposes itemized in the Constitution; with all other powers reserved by the States or the People.

So that The States – The Members of the Federation – could maintain their independence and sovereignty, our Framers wrote these provisions into our Constitution:

- State Legislatures were to choose the U.S. Senators for their State (Art. I, §3, cl. 1); and,
- The States, as separate political entities, were to elect the President (Art. II, §1, cls. 2 & 3).

The People were to elect *only* their Representatives to the House (Art. I, § 2, cl.1).

James Madison explains in [Federalist No. 45](#) (7th para), *why* this ensured that The States would maintain control over the federal government:

“The State governments may be regarded as constituent and essential parts of the federal government ... **Without the intervention of the State legislatures, the President of the United States cannot be elected at all.** They must in all cases have a great share in his appointment, and will, perhaps, in most cases, of themselves determine it. **The Senate will be elected absolutely and exclusively by the State legislatures.** ... Thus, each of the principal branches of the federal government will owe its existence more or less to the favor of the State governments ...” [boldface mine]

The result of State Legislatures choosing the U.S. Senators and controlling the election of the President [via the selection of Electors], was that the States would be able to control the federal government.

The 17th Amendment

But we threw away one of these safeguards when we *foolishly* ratified the 17th Amendment with the popular election of U.S. Senators. **This is how The States – The Members of the Federation – lost their representation in Congress and their control of the Senate.**

Art. II, §1, cl. 2 and the 12th Amendment

We abandoned the other safeguard when we *foolishly* ignored the procedures in the 12th Amendment where small bodies of specially chosen wise and prudent men (Electors) made the selections of President and Vice President for their State. We allowed Electors to become rubber stamps for the popular vote in their State.

Our Framers didn't want popular election of the President because they recognized that People are easily manipulated by those who take advantage of their "hopes and fears", to steer them towards candidates favored by powerful groups ([Federalist No. 64](#) 3rd & 4th paras; [Federalist No. 68](#), etc.)

Furthermore, under the 12th Amendment, the electoral votes of each State are split according to how the Electors vote. If Tennessee obeyed the 12th Amendment, it would work like this when selecting President: 5 Electors vote for Candidate X; 4 vote for Candidate Y; and 2 vote for Candidate Z. *Those would be the vote totals for President which would be sent to Congress.* The same procedures are to be followed in a separate vote for Vice-President. The "winner takes all" practice followed in most States is unconstitutional!

How The National Popular Vote Scheme Will Work.

Under the scheme incorporated in the [NPV bill pending in Tennessee](#), all of Tennessee's electoral votes would be awarded to the presidential candidate who receives the most popular votes in all 50 States and the District of Columbia.

The wording of the compact is deliberately obscure. In plain English, this is what it does:

Art. II

Each Member State will conduct a statewide popular election for President and Vice President.

Art. III

(a) & (b) The State Election official in each Member State will add up the votes cast in all the States and the D.C. to get the total number of votes cast nationally for each presidential ticket. The State official will then designate the presidential ticket with the largest number of votes nationally as the "national popular vote winner".

(c) & (g) Electors will then be appointed in each Member State who are to cast all their votes for the national popular vote winner.

So! If the popular vote in Tennessee is for James Madison, but the total national popular vote favors Adolf Hitler, then all of Tennessee's 11 Electoral Votes are awarded to Adolf Hitler.

Indeed, the winner of the national popular vote will end up with *all* the electoral votes for *every* State. And do not think that the winner will fail to claim a “Mandate” for *whatever he wants to do*.

The States Can’t Lawfully Enter Into A Compact Which Violates The U.S. Constitution!

Every aspect of the NPV violates the 12th Amendment. It sets up a method of electing the President and vice-President which is altogether repugnant to our Constitution.

Furthermore, Art. I, §10, last clause, prohibits States from “enter[ing] into any Agreement or Compact with another State” “without the Consent of Congress”. So, whether the NPV Compact *also* violates Art. I, §10, last clause, depends on whether Congress consents to it. But Congress may not *lawfully* consent to unconstitutional compacts of the States!

Under The NPV Scheme, Votes From Major Metropolitan Areas Will Decide Presidential Elections.

Most of the Population of these United States is located in a few major metropolitan areas. **Under the NPV scheme, these areas would decide the elections for President!**

The NPV is not about “making every vote count”. The NPV is about guaranteeing that every future presidential election is decided by inhabitants of major metropolitan areas. And it further diminishes State sovereignty.

What Should We Do?

Repeal the 17th Amendment. We must henceforth elect to Congress *only* those who are committed to repealing the 17th Amendment. This is the only way The States can regain control of the Senate.

Return to the 12th Amendment. We must dismantle the present unconstitutional and corrupt system and return to the method of electing the President and Vice President established in our Constitution. State Legislators could restore to their States *right now* the power to control the President! All States have to do is obey the 12th Amendment!

Even in its present perverted form, the “Electoral College” serves two important purposes: (1) It balances the influence of the heavily populated urban areas with the more sparsely populated rural areas; and (2) gives the smaller States a voice in the election of President.

As a People, we need to STOP being so eager to amend a Constitution we have never read and don’t understand.

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