

The Breakfast Club

Constitutional Minute for 16 January 2024

Why We Shouldn't Change to a National Popular Vote

"We want a king over us. Then we will be like all the other nations, with a king to lead us and to go out before us and fight our battles."

So shouted the people of Israel to Samuel, the last of the judges. Samuel warned them of all the terrible things a king would do: "These will be the ways of the king who will reign over you: he will take your sons and appoint them to his chariots and to be his horsemen to run before his chariots; and he will appoint for himself commanders of thousands and commanders of fifties, and some to plow his ground and to reap his harvest, and make his implements of war and the equipment of his chariots. He will take your daughters to be perfumers and cooks and bakers. He will take the best of your fields and vineyards and olive orchards and give them to his courtiers."¹

Yet the people persisted in clamoring for a king, so God gave them Saul. This began a long and troubled time for Israel as they oscillated between good kings and evil kings.

Democrats seem to me like the people of Israel; they seem to be asking for a "king," a popularly elected king, to be sure, but a king nevertheless. "But wait, Gary, Democrats are not asking for a popularly elected President, with the power of a king, the President will still be constrained by the Constitution." "Perhaps for a while," I answer, "but that will gradually change as the people become frustrated at the inability of their 'king' to solve their problems." "The Constitution is the problem," progressives already complain, "it is simply too limiting, too confining." "We have big problems to solve in this country and gridlock in Congress, we need action, we need a new Constitution, or at least a major re-write to give the President the ability to fix things."

Perhaps I'm being unfair, I'm sure the American people really don't want to return to monarchy, but I sense they are indeed frustrated that they can't get their various agendas through a gridlocked Congress, and many want change, i.e., "progress." A National Popular Vote (NPV) is the first step in that direction.

NPV will almost assure Democrat victories in the Presidential race for the foreseeable future. Why? Let me explain.

Democrats believe the Electoral College system is "inefficient," it results in "surplus" votes. Once a candidate has achieved 50% of the vote plus one vote in a particular state, all remaining votes for that candidate do not change the outcome. Proponents of NPV forget or ignore that we do not conduct a single, national election for president, we actually conduct 51 separate elections that happen to take place on a designated day (ignoring early voting). Each of these 51 elections is decided by majority rule. In every single election, every vote is counted and counts.

¹ 1 Sam. 8:10-17.

Democrats see those “surplus” votes as a waste of resources. They may have put considerable money and other resources into “getting out” those votes, yet in retrospect it turns out they were not needed and the expenditures were unnecessary.

If there had been a national popular vote in place in 2020, Biden would have won the election by over seven million votes (81,283,501 to Trump’s 74,223,975).² Instead, although Biden won the Electoral College by what might seem a healthy margin of 74 Electoral Votes (306 to Trump’s 232), that win was produced by a mere 21,459 votes that went to Biden instead of Trump in the three swing states of Georgia, Arizona and Wisconsin. If these 21,459 votes had gone to Trump instead, Trump would have won those three states which would have put him two Electoral Votes shy of victory, EVs he would have gained with the swap of about 16,000 votes in Nevada. In other words, Biden “won” the 2020 election by less than 38,000 votes that went to him instead of Trump.³ You would not know it by looking at the “national popular vote” tally but 2020 was an extremely close election, with razor thin margins in some states. In a national popular vote the dense populations of New York, Illinois and California,⁴ will give Democrats an insurmountable advantage. “Fly over country” will become more real than ever.

If the people of the United States wished to replace the Electoral College with a national popular vote mechanism, the proper and constitutional way to proceed would be by constitutional amendment. Knowing there is only minority support for such an amendment in Congress, not the 2/3 majority support an amendment proposal would require, the Left has devised a strategy that does not require amending the Constitution.

The National Popular Vote Interstate Compact project⁵ is well-funded, has a very impressive website, and making headway across the country. NPVIC intends to sign up enough states who will agree to change their state election law so that the state’s electoral votes are awarded to whichever candidate garners the most votes nationally rather than in their state-wide election. If enough states, whose combined electoral votes total at least 270 (the minimum needed to win the presidency), agree to this, the Electoral College process will be bypassed. If Trump won the popular vote in Virginia, but Biden won the national popular vote, Virginia’s 13 Electoral Votes go to Biden, ignoring the will of the majority in Virginia. NPVIC projects Trump will win the Electoral College in 2024, Biden the NPV by 2 million votes.⁶

The U.S. Constitution prohibits states from entering interstate compacts without the approval of Congress⁷ (a provision NPVIC dismisses as inapplicable since NPVIC is not a formal, signed compact, it is simply an “agreement” among states).

² These numbers come from Wikipedia’s 2020 Election page. These are supposed to be the “official” numbers; we all know the election was stolen by thousands of “phantom votes” in the 6-7 swing states.

³ Other commentators calculate a different, yet still small number.

⁴ Comprising a total of 101 Electoral Votes, more than a third of the total needed to win.

⁵ To date, 16 states and the District of Columbia have agreed to the NPVIC; they represent a total of 205 EVs.

⁶ <https://www.nationalpopularvote.com/poll-shows-biden-winning-national-popular-vote-almost-2-million-votes-2024-losing-electoral-college>

⁷ Article 1, Section 10, Clause 3

In November 2020, Public Policy Polling⁸ asked 983 Virginia voters:⁹

“How do you think we should elect the President? Do you think it should be the candidate who gets the most votes in all 50 states, or do you think it should be the current electoral college system?”

The results showed that: 61% of Virginia voters, including 73% of Democrats, 57% of Independents, and 50% of Republicans “favored” a national popular vote for President. The 50% of Republicans who support a national popular vote for president should worry us. I would venture to say that the vast majority of those polled don’t know what’s lurking behind the scenes. Polls can also be misleading and this one certainly is when you examine how the question was posed. Notice they were careful not to mention that an unconstitutional method is planned to change to a national popular vote. If they had asked “Do you think an unconstitutional method should be used to discard the Electoral College in favor of a national popular vote,” I think the results would have been quite different.

The [National Popular Vote Interstate Compact project](#) website’s Virginia page contains a chronological history of the project’s efforts in our state which I’ll summarize here:

In 2020, an NPVIC bill passed in the House but was tabled in a Senate Committee. The next year, [SB1101](#) was introduced in the Senate by Senators Adam Ebbin and Louise Lucas (D-Newport News) but it was pulled before being voted on in committee. A companion bill ([HB1933](#)) died in the House P&E Committee. Probably seeing they lacked the votes to push a bill through both chambers, nothing was introduced in 2022 and 2023. This year¹⁰ [HB 375, Presidential electors; National Popular Vote Compact](#) has been introduced. It is obvious Democrats have the votes to pass it in both chambers.

Everyone who supports retaining the existing Electoral College should know that the “system” is not working as originally designed (I’ll cover this in more detail next week). For the first couple of presidential elections, electors cast their votes independent of any political party, there was no such thing as a “pledged” elector. Electors were chosen by the state legislatures for their maturity, temperance, patriotism and widespread knowledge of the “leading men” in each state. They voted their conscience with the good of the country in mind.

Once political parties emerged in the 1790s, all bets were off; each party did what it could to ensure its preferred electors were chosen by the legislature or, later, by the people as the states gradually allowed citizens to participate in choosing electors.

Conclusion: I have it on good authority that HB375 (and any companion bill in the Senate) will likely be pulled before a floor vote; Governor Youngkin has indicated on more than one occasion he will veto such a bill. But phone calls to your Delegate, Senator and the Governor are still appropriate. Do it.

Prepared by: Gary R. Porter, Executive Director, Constitution Leadership Initiative, Inc. for The Breakfast Club.
Contact: gary@constitutionleadership.org; 757-817-1216

⁸ “Public Policy Polling is a U.S. Democratic polling firm based in Raleigh, North Carolina.” Source: <https://mediabiasfactcheck.com/public-policy-polling-ppp/>

⁹ <https://www.nationalpopularvote.com/state/va>

¹⁰ The NPVIC website says January 2023’