Call for Correction of False Statements in the Paper Claiming that the National Popular Vote Compact Would Undermine Election Integrity

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ABSTRACT

This paper is in response to a paper entitled "The National Popular Vote (NPV) Proposal for U.S. Presidential Elections Undermines Election Integrity" by Ronald Rivest and Philip B. Stark (the "RS" paper).[1]

The RS paper's claim to have discovered an "unchallengeable" way to thwart the operation of the National Popular Vote Compact is demonstrably false.

The RS paper claims that there would be "no way for any party to push back on any state's reported tallies" under NPV—even if "state-level results are untrustworthy or absurd" or a state reported "a billion votes for one candidate." In fact, NPV would operate inside the same legal framework and judicial system as the current system of electing the President (which provides five avenues for challenging vote tallies).

The RS paper's claim that "NPV eliminates critical bulkheads that help assure the integrity of U.S. Presidential elections" is based on an inaccurate and exaggerated picture of the current state of affairs concerning post-election audits. In fact, the type of post-election audit championed by the RS authors was used to audit the presidential race in only two of the battleground states and *none of the outcome-determinative* states in 2024. Because of three additional flaws in the apples-to-oranges comparison conducted by the RS paper, the RS paper fails to show that NPV "undermines" "critical bulkheads" of election security.

None of the arguments against the NPV Compact in the RS paper withstand scrutiny. None demonstrate that the Compact would undermine election integrity in any way. To the extent our elections are legitimate, accurate, and trustworthy today (and they are), they would remain equally legitimate, accurate, and trustworthy under the NPV Compact.

Summary

This paper is in response to a paper entitled "The National Popular Vote (NPV) Proposal for U.S. Presidential Elections Undermines Election Integrity" by Ronald Rivest and Philip B. Stark (the "RS" paper).[2]

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[1] Rivest, Ronald L. and Stark, Philip B. 2024. The National Popular Vote (NPV) Proposal for U.S. Presidential Elections Undermines Election Integrity. November 26, 2024. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5032049

[2] Rivest, Ronald L. and Stark, Philip B. 2024. The National Popular Vote (NPV) Proposal for U.S. Presidential Elections Undermines Election Integrity. November 26, 2024. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5032049

The National Popular Vote (NPV) Interstate Compact will guarantee the presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia. So far, it has been enacted into law by 17 states and the District of Columbia. It will apply the one-person-one-vote principle to presidential elections and make every vote equal throughout the country when it receives the additional requisite approvals.[3]

The RS paper's claim to have discovered an "unchallengeable" way to thwart the operation of the National Popular Vote Compact is demonstrably false (section 1).

The RS paper claims that there would be "no way for any party to push back on any state's reported tallies" under NPV—even if "state-level results are untrustworthy or absurd" or a state reported "a billion votes for one candidate." In fact, NPV would operate inside the same legal framework and judicial system as the current system of electing the President (which provides five avenues for challenging vote tallies). See section 2.

The RS paper ignores actual data on vote margins and recounts to reach conclusions that are not supported by historical evidence (section 3).

The RS paper's claim that "NPV eliminates critical bulkheads that help assure the integrity of U.S. Presidential elections" is based on an inaccurate and exaggerated picture of the current state of affairs concerning post-election audits. In fact, the type of post-election audit championed by the RS authors was used to audit the presidential race in only two of the battleground states and *none of the outcome-determinative* states in 2024 (section 4).

Because of three additional flaws in the apples-to-oranges comparison conducted by the RS paper, the RS paper fails to show that NPV "undermines" "critical bulkheads" of election security (section 5).

The authors of the RS paper acknowledge that the type of audit that they have advocated for years would, if federally conducted, be a satisfactory way to audit a nationwide presidential election. Puzzlingly, they then strenuously argue against their own preferred type of audit by saying it would be onerous, impractical, infeasible, and even unconstitutional. The spurious arguments made by the authors of the RS paper are at odds with the position taken by good government groups that have consistently emphasized the ease of conducting post-election audits and that have urged enactment of federal audit legislation (section 6).

The RS paper fails to disclose to its readers that one of its authors is currently in the process of patenting Risk-Limiting Audits that preserve voter privacy (section 7).

The RS paper resists acknowledging that federal legislation is the most practical route to establishing audits of the U.S. presidential race in all 50 states—under both the current system and NPV (section 8).

By not discussing the miniscule number of votes changed by recounts, the RS paper creates an inaccurate picture of what would happen if an audit ever actually led to a recount in a nationwide election (section 9).

The RS paper uses an out-of-context quotation to falsely accuse the NPV authors of deceptively describing a poll (section 10). It criticizes the NPV authors for a statement about recounts when they, in fact, said exactly the opposite (section 11).

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[3] The National Popular Vote Interstate Compact (NPV) is described in the 2024 *Every Vote Equal* book. See Koza, John R.; Fadem, Barry; Grueskin, Mark; Mandell, Michael S.; Richie, Rob; and Zimmerman, Joseph F. 2024. *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. Los Altos, CA: National Popular Vote Press. Fifth edition. The book is available to read or download for free at www.Every-Vote-Equal.com

The RS paper falsely claims that the NPV Compact is flawed because it treats each state's final count as conclusive—without mentioning that the Compact operates the same way as the current system in this respect (section 12).

The RS paper incorrectly implies that the NPV Compact is unchangeable (section 13).

The paper makes three demonstrably false statements about Ranked Choice Voting (RCV) and its operation in conjunction with NPV. In particular, it incorrectly claims that existing RCV-for-President laws in Maine, Alaska, and the District of Columbia are "unclear." See section 14.

The RS paper falsely claims that there is no "fair" or "correct" definition of the numbers that an RCV state should report as its contribution to the national popular vote (section 15).

The RS paper falsely states that NPV precludes nationwide RCV (section 16).

The RS paper incorrectly claims that the NPV Compact could not work harmoniously with three novel voting methods (STAR, Range, and Approval) that are currently not used anywhere in the United States (except for approval voting's use in Fargo, North Dakota). See section 17.

In short, none of the arguments against the NPV Compact in the RS paper withstand scrutiny. None demonstrate that the Compact would undermine election integrity in any way. To the extent our elections are legitimate, accurate, and trustworthy today (and they are), they would remain equally legitimate, accurate, and trustworthy under the NPV Compact.

1. The authors of the RS paper claim that their proposed "unanimity" law would thwart NPV and would be "unchallengeable."

The authors of the RS paper claim that their "unanimity" law would thwart the operation of the National Popular Vote Interstate Compact (NPV).

They assert that a state government could legally issue official documents saying that all of the state's voters supported a particular presidential candidate *when they, in fact, did not do so.*

The RS paper says:

> **"States are free to adopt voting rules that undermine NPV, such as the unanimity rule."**
>
> "Under federal law, **a state could adopt a 'unanimity rule' as their social choice function: the popular winner of the state officially gets all the votes cast. ... This also 'undoes' NPV.** ... We can easily imagine a cascade of states adopting such a 'unanimity rule.' No legal bar is likely, as such decisions merely recreate the current situation. **The NPV would become worthless while its results would be unchallengeable.**" [Emphasis added]

The hypothetical "unanimity" law does not comply with federal law.

States are required by federal law to certify a *candidate-by-candidate* count of the popular vote for President in a Certificate of Ascertainment issued before the Electoral College meets.

A single unanimous vote for one candidate is not the candidate-by-candidate count required by federal law.

Section 5(a)(1)(A) of *United States Code* provides:

> "Each certificate of ascertainment of appointment of electors shall ... set forth the names of the electors appointed and the canvass or other determination under the laws of such State **of the number of votes given or cast for each person**

for whose appointment any and all votes have been given or cast."[4] [Emphasis added]

A state does not have the power to ignore federal law and issue a Certificate of Ascertainment that does not contain the required information.

The vote count provided by the hypothetical "unanimity" law would be inaccurate.

Each state, of course, has the power to choose the method for appointing its presidential electors under Article II, section 1 of the U.S. Constitution, which provides:

> "Each State shall appoint, in such Manner as the Legislature thereof may direct a Number of Electors..."

However, the RS paper's proposed "unanimity" law is not about the manner of choosing presidential electors. Instead, it is a law purporting to instruct state officials to report numbers other than the actual results of an election.

The effect of the "unanimity" law would be to pretend that everyone who did not vote for the state's *plurality* winner (which could well be a majority of the state's voters) supported a candidate that they did not, in fact, support.

It is unnerving to see a paper concerned with "election integrity" suggesting that there might be any legitimacy to a state government issuing official documents containing manifestly fraudulent information about how their voters voted.

The hypothetical "unanimity" law would not succeed in thwarting the operation of the NPV Compact.

When the National Popular Vote (NPV) Interstate Compact is in effect, officials of the member states will operate in accordance with the requirements of *their own state's law*—that is, the Compact.

The NPV Compact specifically requires member states to use *candidate-by-candidate* tallies in computing the national popular vote. Thus, officials of the member states would pay no attention to irrelevant data, such as a unanimous vote count produced by another state's hypothetical "unanimity" law. A unanimous number is no more relevant to officials of the NPV states than the temperature on the steps of the state Capitol on Election Day.

The Compact requires:

> "The chief election official of each member state shall determine **the number of votes for each presidential slate** in each State of the United States and in the District of Columbia ... and shall add such votes together to produce a 'national popular vote total' for each presidential slate."[5]
>
> "The chief election official of each member state shall treat as conclusive an official statement containing **the number of popular votes in a state for each presidential slate**."[6] [Emphasis added]

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[4] 3 U.S.C. §5(a)(1)(A). Title 3 of the United States Code is also known as the "Electoral Count Reform Act of 2022." The wording "the number of votes given or cast for each person for whose appointment any and all votes have been given or cast" was identical in the earlier 1887 Electoral Count Act.

[5] Article III, clause 1 of the National Popular Vote Compact.

[6] Article III, clause 5 of the National Popular Vote Compact.

Accordingly, the officials of the Compact's member states would simply ignore the irrelevant number produced by the hypothetical "unanimity" law and use the *candidate-by-candidate* numbers required by the NPV Compact.[7]

Note that each state's candidate-by-candidate vote count is initially certified by a designated state canvassing board or official shortly after Election Day.[8] These candidate-by-candidate numbers would necessarily be available, because the "unanimity" law itself requires the candidate-by-candidate vote count in order to identify its sole beneficiary.

There is nothing "unchallengeable" about the hypothetical "unanimity" law.

Despite the claim by the authors of the RS paper that their hypothetical "unanimity" law would be "unchallengeable," legal remedies would be available.

The hypothetical "unanimity" law would most likely be contested in a declaratory-judgment litigation in federal or state court—most likely prior to Election Day, because the courts generally apply the doctrine of *laches* to prevent post-election challenges involving issues of which the plaintiff was aware before the election.

A non-compliant Certificate of Ascertainment could also be challenged in the special three-judge federal court created by the Electoral Count Reform Act of 2022. Aggrieved presidential candidates have guaranteed access to this special court. In fact, this court is only open to them. It has specific jurisdiction over issues involving Certificates of Ascertainment, namely:

> "Any action brought by an aggrieved candidate for President or Vice President that arises under the Constitution or laws of the United States with respect to the issuance of the certification required under section (a)(1), or the transmission of such certification."[9]

This three-judge "Electoral Count Court" has the power to order revision of a defective Certificate of Ascertainment, and the 2022 law further specifies that the revised Certificate supersedes the original. This special three-judge court operates on a highly expedited schedule, and there is expedited appeal to the U.S. Supreme Court. All of the actions of this court and the Supreme Court must be scheduled so as to reach a conclusion prior to the Electoral College meeting.

As will be seen in the next section, the RS paper repeatedly claims that improper actions are "unchallengeable" when they are not.

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[7] The RS paper's "unanimity" law closely resembles other hypothetical schemes that other NPV opponents incorrectly claim would thwart the NPV Compact. For example, NPV opponents have suggested that a state with seven electoral votes might insert seven times the number of popular votes in its Certificate of Ascertainment. The discussion of why this hypothetical "one-person-seven-votes" approach would not thwart the NPV Compact also applies to the hypothetical "unanimity" law in the RS paper. See section 9.31.4 of the 2024 *Every Vote Equal* book. www.Every-Vote-Equal.com

[8] Section 6.2.3 of the 2024 *Every Vote Equal* book contains examples and details of the certification of the popular vote by canvassing boards and officials. Appendix D lists the board or official that performs these functions. www.Every-Vote-Equal.com

[9] 3 U.S.C. §5(d)(1). Electoral Count Reform Act of 2022.

2. The RS paper falsely claims that there would be "no way for any party to push back on any state's reported tallies" under NPV, including a "state reporting a billion votes for one candidate."

The RS paper makes the breath-taking claim that a presidential election under NPV would be conducted by "untrustworthy" states operating outside the reach of existing federal and state law, and outside of the existing federal and state judicial system.

The RS paper falsely claims:

> "**Nothing in the NPV or federal law prevents any state from reporting a billion votes for one candidate.**" [Emphasis added]

The RS paper also falsely claims that, under NPV, there is:

> "**No way for any party to push back** on any state's reported tallies." [Emphasis added]

The RS paper also falsely claims:

> "[NPV] **does not require evidence** that reported tallies are accurate, does not provide a way for member states to demand such evidence, and **does not provide any remedy even if state-level results are untrustworthy or absurd.**" [Emphasis added]

There is nothing unchallengeable about untrustworthy or absurd vote tallies.

The RS paper ignores the simple fact that the NPV Compact—like any state law that specifies how presidential electors are to be chosen—would operate *inside* the existing framework of federal and state laws and *inside* the existing federal and state judicial system.

If there was any truth to the RS paper's claim that there would be "no way for any party to push back" on "untrustworthy or absurd" vote tallies under the NPV Compact, then it would necessarily be true that there is "no way for any party to push back" *under the current system.*

This is, of course, not the case.

Under both the current system and the NPV Compact, if there is any indication that a state's vote count is "untrustworthy or absurd," there are five avenues available to an aggrieved presidential candidate to challenge the count, namely:

- state administrative proceedings (including a recount),
- state lower-court proceedings,
- state supreme court proceedings,
- federal lower-court proceedings, and
- federal proceedings at the U.S. Supreme Court.

Aggrieved presidential candidates have vigorously used all five avenues over the years.

- All five avenues were used in 2000 to challenge Florida's popular vote.
- Four of the five avenues were used in post-election challenges in 2016 in Pennsylvania, Michigan, and Wisconsin.

- All five avenues were used in 2020 in connection with 64 judicial and administrative proceedings initiated in six states by "election integrity" supporters.[10]

The RS paper would have readers believe that none of the numerous administrative and judicial proceedings in 2000, 2016, or 2020 ever occurred.

In any case, the NPV Compact:

- does not repeal or affect any state's judicial system,
- does not repeal or affect the federal judicial system,
- does not repeal or affect any existing federal law, and
- does not repeal or affect the special three-judge federal court created by the Electoral Count Reform Act of 2022.

Among its other astonishing claims, the RS paper would also have its readers believe that the NPV Compact would operate in a lawless world devoid of evidence.

In fact, the NPV Compact would operate inside the same system as the current system.

Under both the current system and the NPV Compact, each state's candidate-by-candidate vote count is initially certified by a designated state canvassing board or official shortly after Election Day.[11] In practice, the candidate-by-candidate vote counts are found in an "official statement" (e.g., the minutes) containing the vote counts certified by the canvassing board or official.[12] In the normal course of events, these certified vote counts are simply copied into the state's Certificate of Ascertainment prior to the federal deadline for issuing the Certificate of Ascertainment (six days before the Electoral College meeting).

These vote counts are contestable in administrative or judicial proceedings which are, of course, based on evidence. If administrative or judicial proceedings adjust the initial vote count, the adjusted vote counts resulting from those proceedings become the "final determination" of the vote count.

Then, after each state's "final determination" of its candidate-by-candidate vote counts are finalized, officials of the states belonging to the NPV Compact perform the ministerial function of adding up the candidate-by-candidate vote counts contained in each state's "official statement."

3. The RS paper fails to recognize that the current state-by-state winner-take-all system of electing the President is far more vulnerable to a small number of miscounted votes than a nationwide system.

The RS paper is replete with examples of telling only half the story.

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[10] Danforth, John; Ginsberg, Benjamin; Griffith, Thomas B.; Hoppe, David; Luttig, J. Michael; McConnell, Michael W.; Olson, Theodore B.; and Smith, Gordon H. 2022. *Lost, Not Stolen: The Conservative Case that Trump Lost and Biden Won the 2020 Presidential Election*. July 2022. https://lostnotstolen.org/

[11] Koza, John R.; Fadem, Barry; Grueskin, Mark; Mandell, Michael S.; Richie, Rob; and Zimmerman, Joseph F. 2024. *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. Los Altos, CA: National Popular Vote Press. Fifth edition. The 2024 *Every Vote Equal* book is available to read or download for free at www.Every-Vote-Equal.com Section 6.2.3 of the 2024 *Every Vote Equal* book contains examples and details of the certification of the popular vote by canvassing boards and officials. Appendix D lists the board or official that performs these functions.

[12] The RS paper incorrectly states: "The chief election officer of each state in the compact adds the tallies in the CoAs to find the 'national popular vote winner.'"

The authors of the RS paper repeatedly talk about what might possibly happen under NPV, while not completing the story by describing what happens under the current system.

For example, had the authors of the RS paper addressed the whole story in the previous section, they would have realized the illogic of what they were saying. They would have been forced to confront the fact that if it were true that there was "no way for any party to push back" on "untrustworthy or absurd" vote tallies under NPV, then it would necessarily be true that there would be "no way for any party to push back" *under the current system*.

Similarly, the RS paper tells only half the story when it says:

> "**Under NPV, any state could undermine** every presidential election."
>
> "Under the current system, a state's error or misbehavior can only affect how its own electors vote; **but with NPV, any state can change the national election outcome**." [Emphasis added]

In fact, the other half of the story is that a single "state's error or misbehavior" is *far more likely* to "change the national election outcome" under the current system than under a nationwide system.

Here are the facts:

- The winning candidate's entire *electoral-vote margin* under the current system came from just one state in 17 of the last 51 presidential elections—that is, a third of the time.[13]
- The winning candidate's entire *national-popular-vote margin* came from just one state in only six out of 51 elections.

Moreover, one, two, or three states regularly decide the national outcome under the current state-by-state winner-take-all method of awarding electoral votes. These "outcome-determinative" states are the states that put the Electoral-College winner over the top (that is, gave that candidate 270 of the 538 electoral votes).[14,15]

In the seven presidential elections between 2000 and 2024:

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[13] There have been 50 presidential elections since 1824—the first year in which a majority of the states (in fact, 18 of 24) conducted popular elections for presidential elector. See table 9.16 and 9.17 in section 9.4.3 of the 2024 *Every Vote Equal* book. www.Every-Vote-Equal.com

[14] We define the "outcome-determinative" states to be the group of states that meet the following two requirements. First, the Electoral-College winner would not have won a majority in the Electoral College without this group of states. Second, the cumulative number of popular votes by which the Electoral-College winner won this group of states was smaller than for any alternative group of states. For example, in 2000, Florida was the outcome-determinative state. In 2016 and 2024, the outcome-determinative states were Pennsylvania, Michigan, and Wisconsin. In section 1.1.4 of the 2024 *Every Vote Equal* book at www.Every-Vote-Equal.com, we called this group of states the "decisive" states.

[15] In 2024, Haidar and Calvelli computed what they called the "Determinative Popular Vote" for elections between 1836 and 2020 and analyzed several slightly different ways of computing this number. See Haidar, Mark R. and Calvelli, Aidan G. *Election Law Journal*. 2024. The "Determinative Popular Vote": Measuring the Margin in U.S. Presidential Elections. In 2019, Professor Robert Alexander's computed the decisive popular-vote margins in what he called "hair breadth" elections. See Alexander, Robert M. 2019. *Representation and the Electoral College*. New York, NY: Oxford University Press. Despite slight differences in methodology and very slight differences in numbers, the overarching conclusion is that a very small number of popular votes have decided a great many American presidential elections under the current state-by-state winner-take-all method of awarding electoral votes.

- The presidency was decided under the current system by an average of a mere 279,628 popular votes spread over an average of three outcome-determinative states.[16]
- The average margin of victory in the national popular vote was 4,327,902—15 times larger.[17]

The winning candidate's share of the two-party vote in the outcome-determinative states is generally only a hair above 50%:

- 50.0046% in the one outcome-determinative state (Florida) in 2000,
- 50.41% in Wisconsin, 50.38% in Pennsylvania, and 50.12% in Michigan in 2016,
- 50.32% in Wisconsin, 50.16% in Arizona, and 50.12% in Georgia in 2020, and
- 50.86% in Pennsylvania, 50.72% in Michigan, and 50.44% in Wisconsin in 2024.

The *multi-million vote margins* regularly produced in a nationwide vote would be far less susceptible to being affected by error or mischief than the *microscopic margins* in one, two, or three outcome-determinative states that regularly decide the presidency under the current system.

Fraud would require a smaller number of participants, be easier to execute, and be easier to conceal under the current system in which microscopic margins in the outcome-determinative states regularly decide the presidency than it would be in a nationwide election where multi-million-vote margins would have to be manipulated.

In short, the RS paper's risk assessment is exactly backwards.

A nationwide election would also have another major advantage. It would reduce the hair-splitting post-election litigation that is incentivized when extremely small margins in one, two, or three states decide the national outcome.

4. The RS paper starts by painting an inaccurate picture of the current "critical bulkheads" of election integrity that it says would be undermined.

The headlined claim of the RS paper is expressed in its title:

> "The National Popular Vote (NPV) proposal for U.S. Presidential Elections **undermines election integrity**." [Emphasis added]

The RS paper claims:

> "**NPV eliminates critical bulkheads** that help assure the integrity of U.S. Presidential elections." [Emphasis added]

An even-handed analysis to justify these claims would require:

- starting with an accurate picture of the current condition of the "critical bulkheads," and
- demonstrating that the proposed change (that is, the NPV Compact) would eliminate the "critical bulkheads."

As will be seen, the RS paper fails to tell the whole story, and it fails to conduct an apples-to-apples comparison.

The RS paper starts by painting an inaccurate picture of the current "critical bulkheads" that it says would be undermined.

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[16] See table 1.33 in section 1.3 of the 2024 *Every Vote Equal* book. www.Every-Vote-Equal.com

[17] Additional details are in section 1.3 of the 2024 *Every Vote Equal* book. www.Every-Vote-Equal.com

In particular, the RS paper attempts to paint a picture of Risk-Limiting Audits vigilantly standing guard to protect today's presidential elections.

By way of background, one of the authors of the RS paper (Philip B. Stark) is known for developing a particular method of post-election auditing called "Risk-Limiting Audits."[18]

Risk-Limiting Audits compare how a human auditor interprets a small random sample of paper ballots with how the *ballot-counting equipment* interpreted those same ballots.

The RS paper repeatedly refers to Risk-Limiting Audits as

"The best current audit."

The authors of the RS paper have urged local and state governments to adopt this particular type of audit for years.

In particular, Stark has provided expert consulting services in connection with Risk-Limiting Audits to Orange County, California,[19] Fairfax, Virginia,[20] and numerous other jurisdictions. He has received funding from federal and state governments and other entities in connection with election auditing.[21] Stark's website describes his extensive consulting activity involving elections and other topics.[22]

Only two battleground states conducted a Risk-Limiting Audit of the presidential race in 2024.

According to Verified Voting, *only six states* have state-level Risk-Limiting Audits.[23]

Recognizing the decisive role of a small number of closely divided battleground states under the current system of electing the President, Verified Voting issued a special report in 2024 that focused on the availability of audits and recounts in the "Seven 2024 Swing States."[24]

Verified Voting found that Risk-Limiting Audits existed in *only three* of these seven states.

Moreover, the presidential race was audited in *only two* of these battleground states in 2024.[25]

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[18] Philip B. Stark. 2008. Conservative statistical post-election audits. *Annals of Applied Statistics*, 2:550–581. http://arxiv.org/abs/0807.4005

[19] Orange County, CA Pilot Risk-Limiting Audit. December 7, 2018. https://verifiedvoting.org/publication/orange-county-ca-pilot-risk-limiting-audit/

[20] City of Fairfax, VA Pilot Risk-Limiting Audit. December 7, 2018. https://verifiedvoting.org/wp-content/uploads/2020/07/2018-RLA-Report-City-of-Fairfax-VA.pdf

[21] Curriculum Vitae Philip Bradford Stark. December 20, 2024. Pages 158–161. https://www.stat.berkeley.edu/~stark/bio.pdf

[22] Stark's website says: "I've consulted in product liability litigation, truth in advertising, equal protection under the law, jury selection, election security and contested elections, trade secret litigation, employment discrimination litigation, import restrictions, insurance litigation, natural resource legislation, environmental litigation, patent litigation, sampling in litigation, wage and hour class actions, product liability class actions, consumer class actions, the U.S. census, clinical trials, signal processing, geochemistry, IC mask quality control, targeted marketing, water treatment, sampling the web, risk assessment, and whistleblower cases." https://statistics.berkeley.edu/people/philip-b-stark

[23] Verified Voting. 2024. *The Verifier—Post-Election Audits—November 2024*. Accessed December 8, 2024. https://verifiedvoting.org/verifier/#mode/navigate/map/auditLaw/mapType/audit/year/2024

[24] Verified Voting. 2024. *Recounts and Audits in Seven 2024 Swing States*. November 7, 2024. https://verifiedvoting.org/publication/recounts-audits-2024-verified-voting/

[25] Verified Voting. 2024. *The Verifier—Post-Election Audits—November 2024*. Accessed December 8, 2024. https://verifiedvoting.org/verifier/#mode/navigate/map/auditLaw/mapType/audit/year/2024

Despite the fact that Pennsylvania was generally viewed as the most important of the seven battleground states in 2024, Pennsylvania's Risk-Limiting Audit covered the state treasurer's race—not the presidential race.[26] Pennsylvania's audit of the state treasurer's race examined 37,098 randomly selected ballots. It found only seven discrepancies between the human-examined ballots and what was reported by the ballot-counting machines. The result was a net change of two votes.

In 2024, Georgia's Risk-Limiting Audit of the presidential race examined 753,651 ballots out of 5,270,912 votes cast. In the audit, Trump lost 11 votes and Harris gained six votes—resulting in a net change of five votes.[27]

Nevada requires a Risk-Limiting Audit for one "randomly chosen statewide race."[28] As it happens, the presidential race was chosen to be audited in Nevada in 2024. Nevada's audit examined 220 randomly chosen ballots out of 1,484,840 votes cast for President. Nevada found no discrepancies between the examined ballots and what was reported by the ballot-counting machines.[29]

Overall, only about 4% of the 155 million votes cast for President in 2024 were cast in the two battleground states where a Risk-Limiting Audit of the presidential race was conducted.[30]

No outcome-determinative state conducted a Risk-Limiting Audit of the presidential race in 2024.

The "outcome-determinative" states are the states where the smallest total number of popular votes provided a presidential candidate with enough electoral votes to become President.

A very small number of popular votes in an average of three "outcome-determinative" states regularly decide the national outcome of presidential elections under the current state-by-state winner-take-all method of awarding electoral votes.

In 2024, the three "outcome-determinative" states were Pennsylvania, Michigan, and Wisconsin.

In these states, the winning candidate received 50.86%, 50.72%, and 50.44% of the two-party popular vote, respectively.

However, *none* of these outcome-determinative states conducted a Risk-Limiting Audit of the presidential race in 2024.

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[26] November 5, 2024, Risk-Limiting Audit Report. https://www.pa.gov/agencies/vote/elections/post-election-audits/2024-general-rla-report.html

[27] Georgia's 2024 Statewide Risk Limiting Audit Confirms Voting System Accuracy. November 20, 2024. https://sos.ga.gov/news/georgias-2024-statewide-risk-limiting-audit-confirms-voting-system-accuracy

[28] Nevada Administrative Code 293.481 provides: "The Secretary of State will randomly select one race for statewide office to be audited at the election using a method determined by the Secretary of State in which all races for statewide office on the ballot at the election have an equal chance of being selected." https://www.leg.state.nv.us/Division/Legal/LawLibrary/NAC/NAC-293.html#NAC293Sec481

[29] *Certificate of Completion, Risk-Limiting Audit (RLA), 2024 General Election*. Secretary of State Memorandum. November 20, 2024. https://www.nvsos.gov/sos/home/showpublisheddocument/15625/638682082174300000

[30] Note that the Risk-Limiting Audits in Nevada and Georgia did not answer the question of whether the correct candidate became President of the United States in 2024. Instead, these two audits only gave assurance that Nevada's six electoral votes and Georgia's 16 electoral votes were likely (with a 95% level of confidence) awarded to the correct candidate.

In short, the "base case" for an even-handed evaluation of the "bulkheads" (that is, Risk-Limiting Audits) is *zero*.

Risk-Limiting Audits check on only one narrow category of potential error.

Risk-Limiting Audits check for discrepancies between a human examination of randomly selected ballots and what the *ballot-counting machines* reported.[31,32]

Risk-Limiting Audit cannot discover—and do not claim to be able to discover—numerous categories of error or mischief, including but not limited to:

- good old-fashioned ballot-box-stuffing,
- altering valid ballots before they reach the ballot-counting machines,
- replacing valid ballots with illegitimate substitutes before they reach the ballot-counting machines,
- preventing legitimate ballots from reaching the ballot-counting machines,
- allowing ineligible people to vote,
- frustrating the ability of eligible people to vote, and
- errors and mischief involving so-called "Ballot Marking Devices."

The last category neglected by Risk-Limiting Audits is especially important because it involves voting machinery. Almost a quarter of American voters,[33] register their choices on the computer screen of a "Ballot Marking Device" at their local polling place. These machines then print out a paper ballot that the voter places in the ballot box. Most voters simply deposit the machine-generated ballot in the ballot box after, at most, a cursory glance.[34]

No Risk-Limiting Audit has ever found enough discrepancies to warrant a full statewide recount—much less reversed the outcome of any election.

Getting back to the one narrow category of error and mischief that Risk-Limiting Audits actually monitor (that is, ballot-counting equipment), there is *no instance* of a Risk-Limiting Audit uncovering any statistically significant and actionable number of discrepancies in any election for President or any state office or ballot proposition.

There is *no instance* of a Risk-Limiting Audit ever leading to a full statewide recount (the presumed follow-up step if an audit were ever to uncover a significant number of discrepancies)—much less reversing the outcome of any election.

These audits have never found anything more than a tiny number of discrepancies. For example, the two Risk-Limiting Audits of the presidential race that were conducted in the battleground states in 2024 discovered a net change of five votes in Georgia and zero votes in Nevada.

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[31] A small percentage of ballots may receive special handling outside the major flow, such as overseas and military ballots.

[32] Nevada explicitly noted their Risk-Limiting Audit involved only a comparison of the numbers reported by its voting machinery with the randomly chosen physical ballots. *Certificate of Completion, Risk-Limiting Audit (RLA), 2024 General Election*. Secretary of State Memorandum. November 20, 2024. https://www.nvsos.gov/sos/home/showpublisheddocument/15625/638682082174300000

[33] Verified Voting. 2024. *Election Day Equipment Visualizer—November 2024*. Accessed January 12, 2025. https://verifiedvoting.org/verifier/#mode/visualization/year/2024

[34] Auditing of Ballot Marking Devices would require that auditors be present at the local location and moment when the voter uses it.

We present these facts about the limited scope and practical impact of Risk-Limiting Audits not to argue against conducting them, but to give a realistic picture of the "bulkheads" that the RS paper claims to be in danger of being undermined by NPV.

In reality, the "bulkheads that help assure the integrity of U.S. Presidential elections" are existing state and federal laws, the generally excellent and conscientious work of election administrators and workers, the many types of controls that cover potential problems beyond just ballot-counting machines (such as procedural audits, paper trail and chain of custody requirements, physical security requirements, logic and accuracy testing, observer transparency requirements, bipartisan counting and ballot-adjudication requirements), and the five administrative and judicial avenues that enable aggrieved candidates to challenge vote counts (discussed earlier).

Despite all the hype about "untrustworthy" states in the RS paper, American elections are trustworthy—a fact that has been verified on those occasions when full recounts have been conducted. There were 36 recounts among the 6,929 statewide elections in the 24-year period between 2000 and 2023. Only three of those 36 recounts resulted in the original result being overturned.[35] In these three recounts, the net changes were 239, 390, and 440 votes out of millions of votes. No statewide recount has overturned the original result since 2008.

5. The RS paper fails to conduct an even-handed comparison in attempting to establish its "undermining" claim.

The presidential race should be audited in all 50 states and the District of Columbia.

This ideal world could come into being either by:

- action by all 50 states and the District of Columbia or
- action by a federal requirement.

However, this ideal state of affairs does not currently exist.

The RS paper claims:

> "The National Popular Vote (NPV) proposal for U.S. Presidential Elections **undermines** election integrity." [Emphasis added]

Justifying a claim of "undermining" requires comparing the current state of affairs with the state of affairs after some hypothesized event happens (in this case, adoption of NPV).

The comparison attempted by the RS paper fails because of three major flaws.

First, the actual state of affairs concerning Risk-Limiting Audits of presidential elections is that they were conducted in only two of the battleground states and *none* of the outcome-determinative states in 2024.[36]

Nonetheless, the RS paper insists:

> "The National Popular Vote Compact should not be adopted without a mandate for audited election results **in each state.**" [Emphasis added]

The RS paper also says:

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[35] Section 9.34 of 2024 *Every Vote Equal* book. www.Every-Vote-Equal.com

[36] While political commentators concentrated their attention on the seven top-tier battleground states in 2024, there were other second-tier battleground states and districts in 2024. Examples include Maine's 2nd congressional district (in a state that conducts no post-election audit of the types under discussion here), Nebraska's 2nd congressional district (in a state where audits are discretionary according to Verified Voting), and second-tier battleground states such as New Hampshire, Minnesota, and New Mexico. None of these states and districts have Risk-Limiting Audits. Verified Voting. 2024. *The Verifier—Post-Election Audits—November 2024.* Accessed December 8, 2024. https://verifiedvoting.org/verifier/#mode/navigate/map/auditLaw/mapType/audit/year/2024

> "**NPV is a bad idea unless every state** is required to use plurality voting and report those votes accurately in their Certificate of Ascertainment (we call this a simple direct election), has a trustworthy, organized, physically inventoried paper trail of votes and a rigorous canvass; and there is a **federal requirement to conduct a rigorous, binding risk-limiting audit (at the national level)** of the outcome of the presidential contest." [Emphasis added]

In other words, the RS paper deems NPV to be "bad" unless there is a Risk-Limiting Audit of the presidential race in *all 50 states*, but the current system is deemed trustworthy and acceptable even though a Risk-Limiting Audit of the presidential race was conducted in *none* of the outcome-determinative states in 2024.

The RS paper fails to establish that NPV would "undermine" anything, because it is based on a 0-to-50 apples-to-oranges comparison.

This uneven treatment is especially wrong-headed because *the multi-million vote margins* (averaging 4.3 million votes) that are regularly produced at the nationwide level would be far less susceptible to manipulation or error than the *microscopic margins* in the outcome-determinative states that decide the presidency under the current system (as discussed in a previous section of this paper).

A second flaw in the comparison conducted by the RS paper is its *Catch 22* requirement that a federal audit must be in place in all 50 states *before* NPV is adopted. The authors of the RS paper are surely aware of the reality that Congress would have no reason to consider—much less enact—federal audit legislation in advance of need. Nonetheless, the RS paper turns a blind eye to the virtual absence of Risk-Limiting Audits in present-day presidential elections, while demanding that such audits be firmly in place (in advance) in all 50 states under NPV.

A related inaccuracy in the RS paper is its repeated rhetorical claim that NPV would "eliminate" existing "bulkheads." The RS paper says:

> "**NPV eliminates critical bulkheads** that help assure the integrity of U.S. Presidential elections." [Emphasis added]

The reader can read the 888 words of the National Popular Vote Compact to verify that it does not eliminate any audit of any kind or any other "bulkhead" of election integrity.[37]

In fact, the NPV Compact has only one significant operative clause, and that clause does not "eliminate" anything related to election security or integrity. The key operative clause of the Compact would replace the current "winner-take-all" formula for awarding all of a state's electoral votes to the statewide winner with a formula that awards those electoral votes to the national popular vote winner.[38]

The third flaw in the RS paper's comparison is discussed in the next section.

6. Puzzlingly, the authors of the RS paper strenuously emphasize the onerousness, impracticality, infeasibility, and

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[37] The 888-word National Popular Vote Compact may be found in section 6.1 of the 2024 *Every Vote Equal* book. www.Every-Vote-Equal.com

[38] Specifically, Article III, clause 3 of the NPV Compact provides: "The presidential elector certifying official of each member state shall certify the appointment in that official's own state of the elector slate nominated in that state in association with the national popular vote winner." See section 6.1 of the 2024 *Every Vote Equal* book. www.Every-Vote-Equal.com

unconstitutionality of the very type of audit that they have advocated for years.

The authors of the RS paper have spent a considerable amount of time and effort, over an extended period of years, trying to convince state governments to adopt Risk-Limiting Audits.

Despite their efforts, the vast majority of states (44) have not adopted Risk-Limiting Audits.[39]

The RS paper acknowledges that a federal Risk-Limiting Audit encompassing all 50 states could be used under NPV.

One would think that the authors of the RS paper would be delighted to see their preferred method of auditing expand from its current tiny toehold to all 50 states.

Puzzlingly, the authors of the RS paper do a turn-about and strenuously argue against conducting a federal Risk-Limiting Audit (RLA) of all 50 states, saying:

> "Auditing NPV would require **sweeping changes to state election administration**." [Emphasis added]

They also say:

> "An RLA of NPV is **infeasible**." [Emphasis added]

They add:

> "There is **no practical way** to audit an NPV election, absent sweeping changes to election administration nationally." [Emphasis added]

The RS paper identifies three specific "sweeping changes," namely:

- "unless every state is required to … report those votes accurately in their Certificate of Ascertainment,"
- "unless every state … has … a rigorous canvass," and
- "unless every state … has … a trustworthy, organized, physically inventoried paper trail of votes."

Let's examine these three specific obstacles that the RS paper raises to the adoption of a federal Risk-Limiting Audit of all 50 states.

First, existing federal law already requires accurate reporting of votes in a state's Certificate of Ascertainment. Federal law applies equally to both the current system and NPV, and NPV manifestly does not eliminate the current federal law. Moreover, despite all the hype about "untrustworthy" states, the RS paper provides no evidence of the existence of any inaccurate Certificate of Ascertainment from any state.

Second, the RS paper provides no evidence that any state today lacks "a rigorous canvass." If there were such a state, the (modest) amount of effort to remedy this deficiency would be identical under the current system and NPV. Moreover, the NPV Compact does not eliminate any state's existing "rigorous canvass" or prevent any deficient state from installing one.

Third, if there is a state that currently does not have "inventoried paper trails," the (modest) effort required to create them would be identical under both the current system and NPV. Moreover, the NPV Compact does not eliminate any state's existing paper trails or prevent any deficient state from installing them.

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[39] Three non-battleground states had Risk-Limiting Audits in 2024, namely Rhode Island, Colorado, and Virginia. Verified Voting. 2024. *The Verifier—Post-Election Audits—November 2024*. Accessed December 8, 2024. https://verifiedvoting.org/verifier/#mode/navigate/map/auditLaw/mapType/audit/year/2024

The "sweeping changes" are not uniquely required to audit NPV.

The above "sweeping changes" are things that would need to be done to install audits in all 50 states *regardless* of whether the audits come into existence by federal mandate or action by individual states, and *regardless* of whether the audits are going to be used under NPV or the current system of electing the President.

That is, these "sweeping changes" are not uniquely required to audit NPV.

If "sweeping changes" would be required to conduct a federal Risk-Limiting Audit under NPV, there must be a certain number of deficient states where these changes are needed.

In particular, if any one of these deficient states wanted to start using a Risk-Limiting Audit inside its own borders today, under the current system of electing the President, it would have to make these "sweeping changes."

Does anyone believe that when the authors of the RS paper try to convince one of these individual deficient states to start using Risk-Limiting Audits today that they tell state officials that their recommended audit is "impractical," is "infeasible," and requires "sweeping changes to election administration"? Of course not.

When good-government groups try to convince governments to start using Risk-Limiting Audits today, they certainly do not tell officials that these audits are "impractical," "infeasible," and require "sweeping changes to election administration."

Indeed, the RS paper's arguments about the difficulties of adopting a Risk-Limiting Audit are at odds with the position taken by good government groups. Those groups have consistently emphasized the *ease* of conducting post-election audits and urged enactment of federal audit legislation.

For example, Verified Voting said in 2012 that it was "proud to endorse" Congressman Russ Holt's bill for "hand-counted audits of electronic vote tallies" that required (among many other things):

> "Routine random audits must be conducted by hand count in at least 3% of the precincts **in all Federal elections**, and at least 5% or 10% in very close races."
>
> "States must document a secure chain of custody for ballots and election media."[40,41] [Emphasis added]

Instead, good government groups make the following kinds of factually correct statements about audits:

- An audit is not onerous. Audits generally take only a few days.
- Audits are practical and feasible. Audits require far less work than a full statewide recount. And, of course, there is nothing impractical or infeasible about conducting a recount. For example, recent full statewide recounts of the presidential race (e.g., Georgia in 2020 and Wisconsin in 2016) were accomplished in a week. They were efficiently and uneventfully completed during the brief period after ballots were initially counted but before the federal deadline.[42]

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[40] Verified Voting. June 5, 2012. https://verifiedvoting.org/rush-holts-voter-confidence-and-increased-accessibility-act-of-2011-hr-5816/ The proposed legislation also required,

[41] The *Every Vote Equal* book endorsed the Holt bill at the time when it was being considered in Congress. See the 2013 edition at https://every-vote-equal.com/4th-edition/

[42] See section 9.34.2 of the 2024 book *Every Vote Equal*. www.Every-Vote-Equal.com

- Establishing an audit is not a complicated legal matter. An audit can be established by administrative action (as opposed to statutory change) in most states. For example, the Risk-Limiting Audit in Pennsylvania in 2024 was established by means of a four-page administrative directive.[43] Even when an audit is established by statute, the detailed procedures remain administrative matters.[44]
- An audit is a worthwhile expenditure of time and money. The additional cost of conducting an audit is modest in comparison to the overall amount of time and money required to run a statewide election involving hundreds or thousands of precincts and many thousands of election workers.

States' rights and a federal audit

Finally, let's discuss the remaining specific objection that the RS authors raise against adoption of a federal Risk-Limiting Audit.

The RS paper says that a:

> "national risk-limiting audit might **run afoul of the constitutional right** of states to run their own elections" [Emphasis added]

It also says:

> "There is no practical way to audit an NPV election, absent sweeping changes to election administration nationally, which might **infringe on states' rights.**" [Emphasis added]

We are not aware of any good-government group that has ever opposed federal audit legislation on "states' rights" grounds.

Congress has exercised its authority over the count in presidential elections by requiring popular vote counts from each state in the Electoral Count Act of 1887 as well as in the recent Electoral Count Reform Act of 2022.[45] Both laws are a necessary and proper exercise of Congress's power over the count in presidential elections provided by Article II, section 1 of the original Constitution and similar provisions in the 12th Amendment.[46]

If the authors of the RS paper believe that federal audit legislation would be unconstitutional, did they publicize their constitutional concerns at the time when the Holt bill was being endorsed by Verified Voting and other good-government groups?

In short, it is puzzling why the RS paper's authors are so strenuously opposed to the use of their own preferred type of audit (that is, Risk-Limiting Audits) at the federal level.

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[43] Pennsylvania Department of State. 2022. Risk Limiting Audit Directive. September 30, 2022. Directive 1 of 2022. https://www.pa.gov/content/dam/copapwp-pagov/en/dos/resources/voting-and-elections/directives-and-guidance/2022-09-30-Risk-Limiting-Audit-Directive.pdf

[44] The National Conference of State Legislatures provides citations to existing statutes (which generally leave the details to administrators). See National Conference of State Legislatures. 2024. Risk-Limiting Audits. September 6, 2024. Accessed January 25, 2025. https://www.ncsl.org/elections-and-campaigns/risk-limiting-audits

[45] This federal reporting requirement is, of course, applicable only if a state conduct conducts a popular election for presidential electors (as every state has done so since 1880).

[46] Congress also has power over the count in congressional elections. Article I, section 4 of the Constitution gives Congress the power to "make or alter" any state law governing the conduct of congressional elections.

7. The RS paper fails to disclose to its readers that one of its authors is currently in the process of patenting Risk-Limiting Audits that preserve voter privacy.

Protecting voter secrecy is, of course, a high priority for election officials.

One of the authors of the RS paper filed U.S. Patent Application Publication 20240153333 in 2023 entitled:

> "Systems and Methods for Performing a Ballot-Level Comparison Risk-Limiting Audit While Ensuring Voter Privacy."[47]

Professor Philip B. Stark said in his patent application:

> "Risk-limiting audits (RLAs) correct incorrect reported election outcomes or confirm that reported election outcomes are in fact correct. Ballot-level comparison audits (BLCAs) are a type of RLA which compare an interpretation of a randomly-selected cast-vote record (CVR) from an electronic voting system to a human interpretation of the corresponding cast ballot card. **Matching CVRs to their corresponding cast ballot cards comes with its own set of challenges, such as ensuring voter privacy** and time efficiency.
>
> "One approach to matching CVRs to their corresponding cast ballot card involves **keeping ballot cards in the same order** in which they were scanned so that the order of the CVRs matches the order of the cast ballot cards. Another approach involves imprinting or **marking identifiers**, such as serial numbers, on cast ballot cards after voters have turned them in but before scanning the ballot cards to generate CVRs. However, **both of these approaches could compromise voter privacy** when ballots are scanned in precincts as opposed to in vote centers or using central scanning. For example, **one could keep track of the order of voters** and conclude that a given voter was, e.g., the 17th voter to cast a ballot, thus the 17th CVR voting selection corresponds to the given voter. Moreover, **an insider could use the serial numbers** to correlate the serial number of a cast ballot card with the respective CVR. **In addition to these approaches potentially compromising voter privacy**, the approaches can be time-consuming."[48] [Emphasis added]

Given that Professor Stark is a recognized expert on Risk-Limiting Audits, we should take him at his word when he tells the Patent Office that there is a significant potential problem of "compromising voter privacy" inherent in existing Risk-Limiting Audits.[49]

State officials (who generally want to use every available means to protect voter secrecy) might well feel compelled to pay for a license in order to use a patent that solves the problem of "compromising voter privacy."

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[47] Stark, Philip B. 2024. Systems and Methods for Performing a Ballot-Level Comparison Risk-Limiting Audit While Ensuring Voter Privacy. United States Patent Application Publication 20240153333. May 9, 2024.

[48] *Ibid.*

[49] In a patent application, the inventor (Stark, in this case) signs a statement saying: "I hereby acknowledge that any willful false statement made in this declaration is punishable under 18 U.S.C. 1001 by fine or imprisonment of not more than five (5) years, or both."

In the normal course of events under the University of California Patent Policy, a university employee would have a 35% financial interest in a patent's "net Commercialization Income."[50,51]

Given the fact that states typically audit only one race in any given election, if the federal government were to conduct a nationwide Risk-Limiting Audit of the presidential race, there might well be no state government willing to pay royalties in order to conduct a state-level audit using "Risk-Limiting Audit While Ensuring Voter Privacy."

What about royalty payments from the federal government?

Professor Philip B. Stark of the University of California was principal investigator and recipient of a 2022–2025 federal grant from the National Science Foundation for $540,728 involving Risk-Limiting Audits.[52]

The authors of the RS paper fail to disclose to its readers whether it is their position that the federal government would have a royalty-free right-to-use to use "Risk-Limiting Audit While Ensuring Voter Privacy" by virtue of federal research funding under the Bayh-Dole Act of 1980.[53]

If the Bayh-Dole Act applies and there is a federal audit, it would appear that there would be no government—state or federal—interested in paying royalties in order to conduct a "Risk-Limiting Audit While Ensuring Voter Privacy."

8. The authors of the RS paper resist acknowledging that federal legislation is the most practical route to establishing audits of the presidential race in all 50 states.

As previously mentioned, Risk-Limiting Audits were performed in *only two* of the closely divided battleground states and *none* of the outcome-determinative battleground states in 2024.

That is, the U.S. presidential race is not being meaningfully audited today under the current system of electing the President.

A complete 50-state audit of the presidential race could come into being either by:

- unanimous action by all 50 states and the District of Columbia or
- action by a federal requirement.

The best audit technique depends on the situation.

A Risk-Limiting Audit of an election answers only the bare-boned yes-or-no question of whether it is likely that the apparent leading candidate received more votes than the apparent loser.

The RS paper explicitly acknowledges this:

> **"Risk-Limiting Audits (RLAs) (Stark, 2008, 2020, 2023) ... do not check the accuracy of tallies.** The best current audits check only whether the reported winner in a state actually won that state." [Emphasis added]

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[50] Policy on Inventions, Patents, and Innovation Transfer. University of California. February 2, 2024. https://policy.ucop.edu/doc/2500493/PatentPolicy

[51] State governments do not have the right to use federally funded inventions on a royalty-free basis.

[52] "This project develops methods and software to simplify and reduce the cost of providing strong evidence that reported winners really won--or correcting the results if not. The key statistical tool is a risk-limiting audit (RLA) using a trustworthy paper record of the votes." National Science Foundation Grant SaTC–2228884 to Philip Stark for period October 1, 2022, to September 31, 2025. LESS DOUBT: Learning Efficiently form Statistical Samples-Demonstrating Outcomes Using Better Tests. $540,728. https://www.nsf.gov/awardsearch/showAward?AWD_ID=2228884&HistoricalAwards=false

[53] 36 U.S.C. 18.

That is, Risk-Limiting Audits do not address the accuracy of the numerical vote count—something that may be of great interest to the candidates, media, and voters.

It is important to understand the difference between a Risk-Limiting Audit designed for use in elections and the statistical audits that have been routinely conducted for decades in business, manufacturing, and innumerable other fields.

When financial auditors scrutinize a business, they try to confirm (within a certain confidence limit) the accuracy of the numbers shown in a company's books for sales, expenses, and especially the *amount of profit* that the company made. Financial auditors, managers, and investors are rarely interested in the bare-boned yes-or-no question of whether the company *made a profit*. They want to know the *amount of profit*. In short, a Risk-Limiting Audit designed for use in elections is analogous to asking if a company made a profit—but not the amount of profit.

A federal Risk-Limiting Audit could indeed satisfactorily answer the bare-boned yes-or-no question about whether a particular presidential candidate won the national popular vote (with a certain level of confidence).

However, if states (as opposed to the federal government) are the entities conducting the audit, the numerical size of the candidate's lead in each state becomes important.

If states (as opposed to the federal government) are the actors conducting the audit, the type of audit preferred by the RS paper (that is, a Risk-Limiting Audit) is not the best choice, because it does not address the numerical size of the candidate's lead in each state.

The field of statistics offers a variety of long-established techniques that can provide assurance about the numerical size of a candidate's lead in a particular state.

An audit to confirm the numerical size of a candidate's lead in a state generally requires examining more ballots than an audit that seeks merely to address the bare-boned yes-or-no question whether a particular candidate was ahead.

However, the number of ballots that need to be examined in an audit would still be small in comparison to the number of ballots that would be involved in a full statewide recount.

To put the amount of work required to conduct a *full* statewide recount in perspective, recent full statewide recounts of the presidential race (e.g., Georgia in 2020 and Wisconsin in 2016) were accomplished in a week. They took place in the brief period after ballots were initially counted but before the federal deadline for certification of the state's final determination of the presidential race.[54]

Note that if an audit (of any type) were to ever indicate a statistically significant number of discrepancies, a full statewide recount of all of the ballots would have to be conducted before the result could be overturned. That is, audits are trip wires. They can alert candidates and officials that a recount is warranted.

Regardless of whether the federal government or the states conduct the audit, the presidential candidates would receive and evaluate information from the audit in order to decide whether to pursue administrative remedies or judicial remedies, including a recount.

Under both the current system and NPV, a federal audit would be the preferable way to audit a presidential race, and 50 appropriate state audits would be also be serviceable.

9. By not discussing the miniscule number of votes changed by recounts, the RS paper creates an inaccurate picture of what

[54] See section 9.34.2 of the 2024 book *Every Vote Equal*. www.Every-Vote-Equal.com

would happen if an audit ever actually led to a recount in a nationwide election.

Discrepancies among the ballots examined in an audit provide a statistical indication that it would be advisable that an election be examined more closely—up to and including a full statewide recount.

By not discussing the miniscule number of votes changed by recounts, the RS paper paints an inaccurate picture of what would happen if an audit ever actually found anything that would lead to a recount of a nationwide election.

The number of votes that are likely to be changed by a nationwide recount can be estimated by standard statistical methods applied to known historical data.

According to FairVote, there have been 6,929 statewide general elections in the 24-year period from 2000 to 2023.[55]

There were 36 recounts among the 6,929 statewide general elections.[56]

The average change in the initial winner's number of votes due to a recount was 57 votes—a mere 0.002% of the average number of votes cast in the recounted races.

The standard deviation of the distribution of changes in the initial winner's number of votes as a result of the recounts was 1,134 votes.

The number of votes that are likely to be changed by a nationwide recount (that is, recounts in all 50 states) can be estimated by standard statistical methods applied to data about actual recounts (that is, the mean and standard deviation) and the data about popular-vote margins in presidential elections. This analysis[57] shows:

- The probability is very high (99.74%) that a nationwide recount would change the initial winner's lead by fewer than 24,294 votes in one direction or the other.
- That is, the probability is very low (0.26% or approximately one chance in 369) that a nationwide recount would change more than 24,294 votes.
- The probability is very high (99.74%) that only one nationwide presidential election in 324 would be close enough to be reversed by a recount. That is, the outcome of only one nationwide presidential election in 1,296 years is likely to be changed by a recount.

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[55] Otis, Deb. 2023. *An Analysis of Statewide Elections Recounts 2000—2023.* FairVote. https://fairvote.org/report/election-recounts-2023/. Additional information about each race, including the separate vote counts for each candidate and ballot proposition—before and after the recount—and other details are shown in FairVote's recount spreadsheet at https://docs.google.com/spreadsheets/d/1ZSpGqPk7tElu__dRC3ulb3czFFJ72BCsybygpn1IorA/edit#gid=1833378664

[56] See table 9.48 in section 9.34 of the 2024 *Every Vote Equal* book. www.Every-Vote-Equal.com

[57] See table 9.50 and figure 9.26 in section 9.34 of the 2024 *Every Vote Equal* book. Note that figure 9.26 was inadvertently omitted from the *first* printing of the 2024 edition, but it can be seen in the *second* printing at www.Every-Vote-Equal.com

10. The RS paper uses an out-of-context quotation to falsely accuse the NPV authors of deceptively describing a poll.

The RS paper accuses the authors of the 2024 *Every Vote Equal* book[58] of deceptively describing a Utah poll. The RS paper says:

> "NPV is often conflated with direct elections. For example, one voter survey cited as support for NPV [Koza et al., 2024; p. 1099] asked,
>
> > 'How do you think we should elect the President: Should it be the candidate who gets the most votes in all 50 states, or the current electoral college system?'
>
> "This question is about direct elections, ***not*** about NPV." [Italics in original]

In fact, the *Every Vote Equal* book did not conflate NPV with direct election. The book did not say that the Utah poll was specifically about the NPV Compact.

It did the opposite.

The authors of the RS paper selectively omitted the sentence immediately before their out-of-context quotation.

Here is what the *Every Vote Equal* book actually said about the Utah poll:

> "A survey of 800 Utah voters conducted on May 19–20, 2009, **showed 70% overall support for the idea that the President of the United States should be the candidate who receives the most popular votes in all 50 states.** Voters were asked:
>
> > "How do you think we should elect the President: Should it be the candidate who gets the most votes in all 50 states, or the current Electoral College system?"[59,60] [Emphasis added]

11. The RS paper misquotes what the *Every Vote Equal* book said about recounts.

The RS paper falsely described what the 2024 *Every Vote Equal* book says about recounts, saying:

> "In many circumstances—legal and logistical—they [recounts] are the only way to check whether a reported outcome is correct. Koza et al. [2024; P. 1061] says,
>
> > 'There is unlikely to ever be a need to conduct a nationwide recount under the National Popular Vote Compact.'
>
> **Their implicit argument is that a recount is only called for when the reported margin of victory** (reported vote count difference between the

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[58] Koza, John R.; Fadem, Barry; Grueskin, Mark; Mandell, Michael S.; Richie, Rob; and Zimmerman, Joseph F. 2024. *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. Los Altos, CA: National Popular Vote Press. Fifth edition. Available to read or download for free at www.Every-Vote-Equal.com

[59] Section 9.37 of 2024 *Every Vote Equal* book. Page 1099. www.Every-Vote-Equal.com

[60] The wording of the Utah poll was essentially the same wording that has been used by many polling organizations over the years. For example, the Pew Research Center (which has regularly polled this issue since 2000) recently asked: "Thinking about the way the President is elected in this country, would you prefer to change the current system so that the candidate who receives the most votes wins, or keep the current system so the candidate who wins the Electoral College wins?" Kiley, Joselyn. 2023. Majority of Americans continue to favor moving away from Electoral College. Pew Research Center. September 25, 2023. https://www.pewresearch.org/short-reads/2023/09/25/majority-of-americans-continue-to-favor-moving-away-from-electoral-college/

reported national popular vote winner and the reported runner-up) **is small. That is wrong**: the reported margin may be large even when the reported outcome is incorrect." [Emphasis added]

No such argument—implicit or explicit—is made in the 2024 *Every Vote Equal* book. In fact, the book makes the very opposite argument.

The 2024 *Every Vote Equal* book strongly condemns the fact that many existing state laws severely and unnecessarily limit recounts. It actually says:

> "In many states, a candidate only has the right to request a recount if the apparent winning candidate's lead in the initial count is within a specified very small percentage. That is, **recount laws in many states paradoxically offer the promise of correcting a small error in the initial count—but no way to correct a large error.**"[61] [Emphasis added]

For example, the closely divided battleground state of Arizona is one of the many states that allows a recount only if the reported margin of the apparent winner falls inside some narrow band. Specifically, a recount is available in Arizona only:

> "when the margin separating the two leading candidates in a contest is less than or equal to 0.5%."[62]

As it happens, Arizona conducts a post-election audit (albeit not the type preferred by the RS paper). According to Verified Voting, Arizona's audit is:

> "binding on the outcome only when it leads to a full recount."[63]

The RS paper's misquotation of the 2024 *Every Vote Equal* book is especially egregious because post-election audits are utterly dependent on recounts in order to have any practical effect. Audits do not overturn elections.

The courts generally require close conformity to the state legislature's framework for conducting presidential elections. If a state law is highly restrictive about when a recount can occur (e.g., Arizona), no recount (and hence no change in the election's overall outcome) may be possible. In other words, an audit (regrettably) becomes an exercise with no practical consequences in any state that severely and unnecessarily limits recounts.

Note also that the 2024 *Every Vote Equal* book strongly condemned the inability of presidential candidates to obtain recounts in 2000, 2004, 2016, and 2020—including the inability to get a recount in 2000 when 537 votes in Florida decided the presidency.[64] In particular, the 2024 *Every Vote Equal* book advocated adoption of a federal *recount* law (section 9.37.4) as did the book's 2013 edition.

12. The RS paper falsely claims that the NPV Compact is flawed because it treats each state's final count as conclusive

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[61] *Every Vote Equal.* Section 9.34.2. www.Every-Vote-Equal.com

[62] Verified Voting. Arizona Recount Laws. Accessed January 12, 2025. https://verifiedvoting.org/recountlaw/arizona/

[63] Verified Voting. Arizona Audit Laws. Accessed January 12, 2025. https://verifiedvoting.org/auditlaw/arizona/

[64] *Every Vote Equal.* Section 9.34.2. www.Every-Vote-Equal.com

without mentioning that the Compact operates in the same way as the current system in this respect.

This criticism of the NPV Compact is another example of the RS paper telling only half the story—that is, where the RS paper talks about what might possibly happen under NPV, while not mentioning what happens under the current system.

The RS paper criticizes the NPV Compact, saying:

> "**NPV requires member states to accept as conclusive and correct the reported vote tallies in every state**—including states that are not members of the compact."[65] [Emphasis added]

The RS paper says:

> "NPV requires election officials in member states to accept as correct and conclusive the counts in other states—**counts they have no way to check.**" [Emphasis added]

There is nothing novel—much less incorrect—about the NPV Compact's "conclusiveness" requirement.

Current federal law[66] and the NPV Compact[67] are identical in that they treat each state's final determination to be "conclusive" *after* each state's tally has been created, scrutinized, challenged, and potentially corrected using the five avenues for state and federal administrative and judicial proceedings (described earlier this paper).

All of these proceedings would have started in the state where the alleged irregularity occurred—that is, the place where the ballots are located; where the election officials and workers are located; where the witnesses (if any) are located.

By the time when election officials of the states belonging to the NPV Compact need to perform the ministerial function of adding up each state's final determination of its vote count, the five available types of state and federal administrative and judicial proceedings would already have been completed.

Because the officials in the compacting states will be adding up the same numbers, they will inevitably reach the same conclusion as to who is the national popular vote winner.

Moreover, the approach to conclusiveness used by both current federal law and the NPV Compact is consistent with the Full Faith and Credit Clause of U.S. Constitution which requires:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."[68]

The RS paper embraces the *legally invalid* "Stop the Steal" theory that every state's "final determination" of its presidential vote count is subject to re-litigation by any or all of the 49 other states.

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[65] All the quotations in this memo attributed to "the critics" are from a paper posted on the web on November 26, 2024. See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5032049

[66] 3 U.S.C. §5(a)(1)(A). Title 3 of the United States Code is also known as the "Electoral Count Reform Act of 2022." Similar wording is found in the earlier 1887 Electoral Count Act.

[67] Article III, clause 5 of the NPV Compact.

[68] U.S. Constitution. Article IV. Section 1.

In 2020, the "Stop the Steal" movement challenged Pennsylvania's presidential vote count in both state and federal courts in Pennsylvania, including at the U.S. Supreme Court. Their judicial efforts failed because they had neither law nor facts on their side.[69]

Then, Texas Attorney General Ken Paxton requested that the U.S. Supreme Court allow the state of Texas to file a complaint challenging the election results in the state of Pennsylvania.

The U.S. Constitution gives the Supreme Court exclusive jurisdiction over cases between states.

Despite the fact the Court ordinarily hears almost all cases between states, the U.S. Supreme Court refused Texas' request to even present its bill of complaint on December 11, 2020, saying:

> "Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections."[70,71]

Like many of the scenarios suggested by opponents of a nationwide popular vote for President, the RS paper's objection (even if valid) would apply equally to the current system.

13. The RS paper incorrectly implies that the NPV Compact is unchangeable.

The RS paper says:

> "Because some states have now adopted NPV, changing its terms would be nearly impossible."

In fact, interstate compacts can be amended and/or supplemented by additional legislation as needed.

However, the RS paper has not demonstrated that any part of the NPV Compact requires adjustment.

14. The RS paper falsely claims that it is not clear what numbers Ranked Choice Voting states should report as their contribution to the national popular vote.

The authors of the RS paper say the following about Ranked Choice Voting (RCV)—also called Instant Runoff Voting (IRV):

> "It is not clear what numbers a state that uses IRV should report as its tallies for each slate." ...
>
> "Why not report the tallies for the last three candidates standing?" ...
>
> "There is no single 'correct' way to combine them."[72]

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[69] Danforth, John; Ginsberg, Benjamin; Griffith, Thomas B.; Hoppe, David; Luttig, J. Michael; McConnell, Michael W.; Olson, Theodore B.; and Smith, Gordon H. 2022. *Lost, Not Stolen: The Conservative Case that Trump Lost and Biden Won the 2020 Presidential Election*. July 2022. https://lostnotstolen.org/

[70] *Texas v. Pennsylvania*. Motion for Leave to File Bill of Complaint. https://www.supremecourt.gov/DocketPDF/22/22O155/162953/20201207234611533_TX-v-State-Motion-2020-12-07%20FINAL.pdf

[71] *Texas v. Pennsylvania*. U.S. Supreme Court Order List. December 11, 2020. 592 U.S. https://www.supremecourt.gov/orders/courtorders/121120zr_p860.pdf

[72] All the quotations in this memo attributed to "the critics" are from a paper posted on the web on November 26, 2024 AT https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5032049

One may not like RCV, and one may not like NPV, but there is nothing unclear as to how RCV and NPV would work in RCV-for-President states.

All three jurisdictions that currently have RCV-for-President laws (Maine, Alaska, and the District of Columbia) are unambiguous as to what numbers should be used. They agree that the vote tally from the **final round** of RCV counting is to be used in reporting their popular vote for President.

The Maine-Alaska-DC consensus definition has also been endorsed by FairVote, the pioneering and leading advocate of RCV.

Tellingly, the RS paper does not quote from any of the existing RCV-for-President statutes to support its claim that these statutes are "not clear."

Let's look at what the actual RCV-for-President statutes say.

Maine's RCV-for-President law provides:

> "When the National Popular Vote for President Act governs the appointment of presidential electors, ... the statewide number of votes for each presidential slate that received votes **in the final round** ... is deemed to be the determination of the vote in the State for the purposes of [the National Popular Vote Compact]."[73] [Emphasis added]

The District of Columbia's RCV-for-President law provides:

> "If the appointment of presidential electors ... is governed by the National Popular Vote Interstate Agreement Act of 2010, ... the final determination of the presidential vote count reported and certified to the States that have enacted such Act, for purposes of that Act, shall be the votes received **in the final round** of tabulation by each slate of candidate."[74] [Emphasis added]

The Alaska Supreme Court unanimously stated in 2022:

> "According to both [Alaska and Maine's] ranked choice voting laws, the vote count is not complete until **the final round** of tabulation."[75,76] [Emphasis added]

In 2024, the Oregon state legislature referred an RCV-for-President law to its voters. Although the proposal did not pass, the law that the Oregon legislature submitted to its voters contained the Maine-Alaska-DC consensus definition:

> "If the National Popular Vote interstate compact ... governs the appointment of presidential electors and the election of presidential electors in this state is determined by ranked choice voting, ... the 'final determination' of the presidential vote count reported and certified to the member states of the

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[73] Chapter 628 Public Law. https://legislature.maine.gov/bills/getPDF.asp?paper=HP1023&item=4&snum=131 The Maine law is discussed in the 2024 *Every Vote Equal* book in section 9.27.1 (page 919). www.Every-Vote-Equal.com

[74] The District of Columbia law may be found at https://makeallvotescountdc.org/ballot-initiative/ The D.C. law is discussed in the 2024 *Every Vote Equal* book in section 9.27.1 (pages 920–921). www.Every-Vote-Equal.com

[75] *Kohlhaas v. State*. 518 P.3d 1095 at 1121. (2022). https://casetext.com/case/kohlhaas-v-state-2

[76] Oregon Enrolled Bill HB2004 of 2023. https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2004/Enrolled The Oregon law is discussed in section 9.27.1 of the 2024 book (pages 920).

compact and to the federal government shall be … the votes received in the **final round** of statewide tabulation by each slate of candidates."[77] [Emphasis added]

Jeanne Massey, Executive Director of FairVote Minnesota (the leading advocate for RCV in Minnesota),[78] submitted written testimony to a Minnesota House committee in 2023 in response to the false claim that RCV-for-President laws are "unclear" saying:

> "I have read the opposing testimony related to RCV and National Popular Vote compatibility, and it is misleading and incorrect. **The testimony comes from an organization opposed to both RCV and NPV and has a clear motive—to hurt both reforms**. … I urge you to disregard the unproven, misleading argument that RCV and NPV are incompatible and support the NPV legislation before you."[79] [Emphasis added]

Finally, even if there was something "unclear" about the Maine-Alaska-DC consensus definition, the only consequence would be that there would be declaratory-judgment litigation prior to the first use of the NPV Compact. Voters need to know how their vote for President will be counted before they decide how to cast it. For example, if the Maine-Alaska-DC consensus definition applies, Libertarian and Green Party voters would feel comfortable giving their first-choice ranking to their genuine first choice. However, they would likely vote differently if they knew that only their first choice was going to go into the national popular vote count.

Voters would be required to raise this issue in court before the first election because courts apply the doctrine of *laches* to prevent post-election challenges in cases in which the plaintiff was aware of an issue before the election but waited to see the election results before raising it.

As a practical matter, this issue involves only the microscopic number of minor-party votes cast in the RCV states. In 2024, a grand total of 31,439 minor-party votes were cast for President in Maine and Alaska out of 155,488,009 votes nationwide—that is, 0.02% of the national popular vote.[80] Even if there were legitimate uncertainty about the clarity of the existing RCV-for-President laws, this issue involving 0.02% of the national popular vote would be settled once-and-for-all ahead of the first election.

The RS paper concludes by saying:

> "The National Popular Vote Compact should not be adopted … without clear and **workable** policies for states having non-plurality voting rules." [Emphasis added]

There is, of course, nothing unworkable or unclear about the RCV-for-President laws enacted by Maine, Alaska, and the District of Columbia. The only issue is that some opponents dislike both RCV and NPV.

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[77] Oregon Enrolled Bill HB2004 of 2023. https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2004/Enrolled The Oregon law is discussed in the 2024 *Every Vote Equal* in section 9.27.1 (pages 920). www.Every-Vote-Equal.com

[78] Traub, James. 2023. The Hottest Political Reform of the Moment Gains Ground: Inside Jeanne Massey's relentless campaign to fix democracy, starting in Minnesota. *Politico*. April 16, 2023. https://www.politico.com/news/magazine/2023/04/16/ranked-choice-voting-minnesota-00089505

[79] Massey, Jeanne. 2023. Testimony before Minnesota House Elections Finance and Policy Committee. February 1, 2023. https://www.house.mn.gov/comm/docs/TYRWZhxR-kCyJCxmXC5Z1Q.pdf

[80] The District of Columbia passed its RCV-for-President law in November 2024. Therefore, its law will apply to the 2028 presidential election.

In any event, this question about how Maine, Alaska, and the District of Columbia handle the counting of their RCV votes has nothing to do with election integrity in general or auditing a presidential election in particular—the advertised topic of the RS paper.

15. The RS paper falsely claims that there is no "fair" or "correct" definition of the numbers that an RCV state should report as its contribution to the national popular vote.

In addition to falsely claiming that the RCV-for-President laws enacted by Maine, Alaska, and the District of Columbia are "unclear," the authors of the RS paper say:

> "The 'national popular winner' has **no objectively fair or correct definition** if any state uses a non-plurality method (such as ranked-choice voting) for presidential elections, as two states currently do."[81] [Emphasis added]

The RS paper does not provide any argument why the Maine–Alaska–DC–FairVote consensus definition is flawed. Instead, it merely dismisses the Maine-Alaska-DC consensus definition as "ad hoc" and throws out the rhetorical question:

> "Why not report the tallies for the last three candidates standing?"[82]

The answer to this rhetorical question is that the Maine-Alaska-DC consensus definition exists because it is consistent with the aims of RCV, whereas the RS paper's suggested approach is not.

First, one of the major aims of RCV is to guarantee that one candidate ends up with an absolute majority of those voters expressing a choice.[83] Stopping the RCV process with three candidates left standing would work against achievement of this goal.

Second, another aim of RCV is to eliminate the dilemma inherent in ordinary plurality voting of forcing a voter to vote for the "lesser of evils" in multi-candidate races, instead of voting for their true first choice. If a voter votes for their true first choice in a multi-candidate race without RCV, the beneficiary is often the voter's least-favorite candidate. The voter's dilemma would remain unsolved if the RCV process were to be stopped with three candidates left standing.

The title of the RS paper is:

> "The National Popular Vote (NPV) proposal for U.S. Presidential Elections undermines election integrity."

The RS paper's disdain for the Maine-Alaska-DC consensus definition has nothing to do with the integrity of vote counts, election security, or audits.

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[81] All the quotations in this memo attributed to "the critics" are from a paper posted on the web on November 26, 2024 AT https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5032049

[82] All the quotations in this memo attributed to "the critics" are from a paper posted on the web on November 26, 2024 at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5032049

[83] The RS paper also inaccurately suggests that the successful operation of the National Popular Vote Compact is somehow dependent on the use of the Maine-Alaska-DC-FairVote consensus definition because the consensus definition is the "the right thing to do." The RS paper says: "Koza et al. [2024; pp. 918–921] explains that Maine, which uses IRV, decided to report on its CoA the tallies for the last two candidates standing after all others have been eliminated and **argues that it was the right thing to do**." [Emphasis added]. In fact, the 2024 *Every Vote Equal* book (section 9.27.2) says: "While FairVote and virtually all other supporters of RCV believe that the only reasonable interpretation of an RCV-for-President law that is consistent with RCV's essential purpose is that the final-round count should be used to compute the national popular vote total, the alternative interpretation would present no operational difficulty for the National Popular Vote Compact." www.Every-Vote-Equal.com

16. The RS paper falsely states that NPV precludes nationwide RCV.

The RS paper falsely states that the NPV Compact would preclude nationwide RCV, saying:

> "**NPV precludes** selecting the president by national IRV: to find the national IRV winner would require every state to use IRV and to report on its Certificate of Ascertainment the number of voters who ranked the candidates in each possible way; otherwise, the national IRV winner could not be found from the Certificates of Ascertainment." [Emphasis added]

In fact, there are two possible ways to implement nationwide RCV (IRV) for presidential elections.

One way would be by means of a federal constitutional amendment. The NPV Compact is state legislation. Manifestly, it could not possibly "preclude" adoption of a federal constitutional amendment concerning RCV (or any other topic).

A second way to implement nationwide RCV is by means of state legislation (in fact, an interstate compact). This approach was described in an article in the *Harvard Law & Policy Review* by FairVote's founding Chief Executive Officer (Rob Richie) and his FairVote colleagues.[84] The article describes a state-law system for pooling RCV ballots from multiple states. This state-based approach could operate under the current system or in conjunction with the NPV Compact.

In any event, the NPV Compact manifestly does not "preclude" a nationwide RCV presidential election.

17. The RS paper falsely claims that the NPV Compact would not work well with three novel voting methods that are not used anywhere except Fargo, North Dakota.

The RS paper says:

> "If any state uses a social choice function other than plurality, adding the CoA [Certificate of Ascertainment] tallies does not yield a simple direct election, and translating state-level results into 'tallies' that can be combined across states requires *ad hoc* choices: there is no single "correct" way to combine them."
>
> "Koza et al. [2024; Sections 9.27, 9.28] suggest that **RCV, STAR, Range, and Approval voting can all be made compatible with NPV**. Their suggestions indeed yield numbers that can be added, but require arbitrary choices, and summing the resulting numbers does not yield simple direct elections. Indeed, **some of the suggested choices don't represent voters' wishes at all well**." [Emphasis added]

STAR voting is not currently in use today in the United States in any public election.[85]

Range voting is not currently in use today in the United States in any public election.

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[84] Richie, Robert; Hynds, Patrick; DeGroff, Stevie; O'Brien, David; and Seitz-Brown, Jeremy 2020. Toward a More Perfect Union: Integrating Ranked Choice Voting with the National Popular Vote Interstate Compact. *Harvard Law & Policy Review.* Volume 15. Issue 1. Winter 2020. Pages 145–207. https://harvardlpr.com/wp-content/uploads/sites/20/2021/08/HLP106.pdf

[85] Section 9.28 of 2024 *Every Vote Equal* book. www.Every-Vote-Equal.com

Approval Voting is used only in municipal elections in Fargo, North Dakota and its use there may be curtailed by the legislature in the near future.[86]

In any case, we know of no pending bill in any state legislature to adopt any of these three methods on a statewide basis.

The 2024 *Every Vote Equal* book offered specific suggestions by which each of these novel voting methods could work harmoniously with NPV. The suggested approaches are not the only approaches. If the advocates of these novel voting systems decide to include presidential elections in their proposal to some state legislature in the future, they might, or might not, follow these suggestions. In any case, it is the obligation and prerogative of these advocates to select a method to "represent voters' wishes ... well" and then to persuade a state legislature to enact their proposal.

Even if it were true that "some of the suggested choices don't represent voters' wishes at all well," that would be an argument not to start using the novel voting method in presidential elections—not an argument against conducting presidential elections on the basis of the national popular vote.

In any event, the RS paper's discussion about these three essentially non-existent voting methods has nothing to do with election integrity in general or auditing presidential elections in particular—the advertised topic of the RS paper.

Conclusion

None of the unsupported arguments against the NPV Compact in the RS paper withstand scrutiny or demonstrate that the Compact would undermine election integrity in any way. To the extent our elections are legitimate, accurate, and trustworthy today (and they are), they would remain equally legitimate, accurate, and trustworthy under the NPV Compact.

[86] Van Der Stad, Melissa. 2025. Fargo leaders defend citizen-initiated approval voting at state Capitol. *Inforum*. February 5, 2025. https://www.inforum.com/news/fargo/fargo-leaders-defend-citizen-initiated-approval-voting-at-state-capitol

National Popular Election of the President

National Popular Vote!

www.NationalPopularVote.com

"Agreement Among the States to Elect the President by National Popular Vote"

March 24, 2025

The National Popular Vote Interstate Compact will guarantee the Presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia.

It will apply the one-person-one-vote principle to presidential elections and make every vote equal.

Why a National Popular Vote for President Is Needed

The shortcomings of the current system stem from "winner-take-all" laws that award all of a state's electoral votes to the candidate receiving the most popular votes in that particular state.

Because of these state winner-take-all laws, presidential candidates only pay attention to voters in closely divided battleground states. In 2024, almost all (94%) of the general-election campaign events took place in just seven states. That is, 43 states and 80% of the U.S. population were on the sidelines.

A few votes in these closely divided states regularly decide the presidency. An average of about 280,000 popular votes spread over one, two, or three states has decided the last seven presidential elections. The winner-take-all method of awarding electoral votes repeatedly generates controversies over real or imagined irregularities and incentivizes hair-splitting litigation.

Because of these state winner-take-all laws, five of our 47 Presidents have entered office without winning the most popular votes nationwide. The loser of the national popular vote would have become President but for about 119,000 votes in 2004, 43,000 in 2020, and 240,000 in 2024.

Currently, every vote is not equal throughout the United States—for reasons including the formula for allocating electoral votes to the states, intra-decade population changes, and turnout differences. Voters in the seven closely divided battleground states have an average of 200 times the weight of voters elsewhere in deciding the outcome.

Voter participation is 11% higher in closely divided battleground states than elsewhere.

How the National Popular Vote Interstate Compact Works

Winner-take-all is *not* in the U.S. Constitution. It was not mentioned at the Constitutional Convention.

Instead, the U.S. Constitution (Article II) gives the states exclusive control over the choice of method of awarding their electoral votes—thereby giving the states a built-in way to reform the system.

The National Popular Vote Interstate Compact will take effect when enacted by states with a majority of the electoral votes (270 of 538). The candidate receiving the most popular votes in all 50 states and DC will get all the electoral votes from the enacting states. This guarantees that the candidate receiving the most popular votes nationwide will get enough votes in the Electoral College to become President.

Under the National Popular Vote Interstate Compact, no voter will have their vote cancelled out at the state-level because their choice differed from plurality sentiment in their state. Instead, every voter's vote will be added directly into the national count for the candidate of their choice. This will ensure that ***every*** voter, in ***every*** state, will be politically relevant in ***every*** presidential election.

National Popular Vote has been enacted into law by 18 jurisdictions, including 6 small states (DC, DE, HI, ME, RI, VT), 9 medium-sized states (CO, CT, MD, MA, MN, NJ, NM, OR, WA), and 3 big states (CA, IL, NY). These jurisdictions have 209 of the 270 electoral votes needed to activate the law.

It has also passed in legislative chambers in 7 additional states with 74 electoral votes (AR, AZ, MI, NC, NV, OK, VA). Over 3,800 state legislators have sponsored or cast a recorded vote in favor of it.

More Information

Our book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* can be read or downloaded for free at www.Every-Vote-Equal.com. It contains answers to 175 myths about National Popular Vote. More information is available at www.NationalPopularVote.com.

National Popular Election of the President

National Popular Vote!

www.NationalPopularVote.com

12 False or Misleading Criticisms of the National Popular Vote Interstate Compact (LD252, LD1373, LD234)

April 14, 2025

Sean Parnell, the senior lobbyist for Save Our States, made 12 false or misleading statements about the National Popular Vote Interstate Compact[1] at last year's hearing before the Maine Veterans and Legal Affairs Committee and at recent hearings in Rhode Island and elsewhere.

All 12 of Parnell's criticisms of the Compact were based on inaccurate statements about what is actually in the Compact, what is actually in existing federal law, or other easily verified facts.

Meanwhile, the opponents of the National Popular Vote Compact never address—and cannot address—the shortcomings of the current system of electing the President, namely that it does not

- guarantee the Presidency to the candidate who gets the most votes nationwide,
- make every vote equal throughout the country,
- give candidates a reason to pay attention to voters in all 50 states—especially important given the fact that the presidential race is no longer competitive in either Maine as a whole or either of Maine's congressional districts.

Clickable Table of Contents:

[1] The 2024 Maine law approving the National Popular Vote Compact (LD 1578, April 16, 2024) is at https://legislature.maine.gov/bills/getPDF.asp?paper=HP1023&item=4&snum=131

False Statement #1: The National Popular Vote Compact allows estimated vote totals.

Sean Parnell, the Senior Legislative Director of Save Our States, told the Maine Veterans and Legal Affairs Committee on January 8, 2024:

> "The chief election official in NPV member states has the power to estimate vote totals for that state using any methodology they think appropriate."[2]

Parnell has made similar false statements to state legislative committees in numerous other states—most recently to the Rhode Island House Committee on State Government and Elections on March 25, 2025:

> "There are a number of technical problems, defects in the Compact. ... [One] of these problems include that if for some reason, a non-member state has not yet made its vote totals public by the time the compact requires it, **estimated vote totals can be used instead of real, authentic vote totals**, in order to calculate the national popular vote totals."[3] [Emphasis added]

The reader is invited to read the 888 words of the National Popular Vote Compact and verify that there is no truth to Parnell's statement that the Compact allows vote totals to be estimated.[4]

The facts are that, under both the current system of electing the President and the National Popular Vote Compact, each state's candidate-by-candidate popular vote count is certified by a designated state canvassing board or official shortly after Election Day. Then, the initial certification may be challenged in a court or a recount.

Moreover, federal law sets a deadline for completion of the process of making a "final determination" of each state's presidential vote count and issuing a Certificate of Ascertainment before the Electoral College meeting.[5]

That same federal law requires that each state transmit to the National Archives its Certificate

> "immediately after the issuance ... by the most expeditious method available."

The National Archives, in turn, is required to make them "public."

After the "final determination" of each state's official vote count, the National Popular Vote Compact requires that:

> "The chief election official of each member state **shall treat as conclusive** an official statement containing the number of popular votes in a state for each presidential slate."[6] [Emphasis added]

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[2] Testimony of Sean Parnell, Veterans and Legal Affairs Committee of the Maine Legislature Re: LD 1578 (The National Popular Vote interstate compact). January 8, 2024. Page 4. https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10025776

[3] Hearing before the Rhode Island House Committee on State Government and Elections. March 25, 2025. Timestamp –2:17:38. https://capitoltvri.cablecast.tv/show/11009?site=1

[4] National Popular Vote Compact. Article III, Clause 5. The full text of the Compact is at https://www.nationalpopularvote.com/bill-text and in Maine's 2024 law at https://legislature.maine.gov/bills/getPDF.asp?paper=HP1023&item=4&snum=131

[5] 3 U.S.C. §5(d)(1). The Electoral Count Reform Act of 2022 can be found in appendix B of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com

[6] National Popular Vote Compact. Article III, Clause 5. The full text of the Compact is at https://www.nationalpopularvote.com/bill-text and in Maine's 2024 law at https://legislature.maine.gov/bills/getPDF.asp?paper=HP1023&item=4&snum=131

Thus, the Compact's computation of the national-popular-vote total is based entirely on the *official, certified* vote count produced for each state.

Despite what Parnell says, the officials of states belonging to the National Popular Vote Compact have no authority to "estimate" the presidential vote count from any state.

Sections 9.30.7 and 6.2.3 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com contain additional details about the process of certifying the popular vote by canvassing boards and officials.[7]

False Statement #2: The Compact allows a state to judge counts from other states.

Parnell told the Maine Veterans and Legal Affairs Committee on January 8, 2024:

> "One of the real problems with this compact is that **it puts so much power in the hands of the Secretary of State** or equivalent official. Very wide discretion."[8] [Emphasis added]

In written testimony submitted to the Minnesota Senate Elections Committee on January 31, 2023, Parnell said:

> **"NPV provides no guidance on which vote totals to use in calculating the national vote total.** The choice is left to the chief election official within each compact state. ... In a close election, this could **give a group of often obscure state officials the power to manipulate the national vote count based on which vote totals they use from other states.** ... This is too much power to vest in any official, and will lead to confusion, controversy, and chaos."[9] [Emphasis added]

In fact, the National Popular Vote Compact does not give administrative officials in the states belonging to the Compact any power to judge, second-guess, or manipulate the election returns of other states.

Instead, the Compact explicitly states the opposite:

> "The chief election official of each member state **shall treat as conclusive** an official statement containing the number of popular votes in a state for each presidential slate."[10] [Emphasis added]

In short, the chief election officials of the states belonging to the National Popular Vote Compact perform a purely ministerial function, namely to use simple arithmetic to add up the official vote counts that have been finalized and certified by the state of origin. The Compact does not give administrative officials of states belonging to the Compact any power to judge, second-guess, or manipulate the decisions made in the state-of-origin.

Having said that, questionable vote counts are not exempt from challenge.

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[7] Koza, John R.; Fadem, Barry; Grueskin, Mark; Mandell, Michael S.; Richie, Rob; and Zimmerman, Joseph F. 2024. *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. Los Altos, CA: National Popular Vote Press. Fifth edition. The 2024 edition of the book is available to read or download for free at www.Every-Vote-Equal.com

[8] Parnell, Sean. 2024. Testimony at Maine Veterans and Legal Affairs Committee on LD1578. January 8, 2024. Timestamp 12:22:07. https://legislature.maine.gov/audio/#437?event=90002&startDate=2024-01-08T10:00:00-05:00

[9] Parnell, Sean. 2023. *Save Our States Policy Memo: Ranked-Choice Voting vs. National Popular Vote*. January 27, 2023. https://www.senate.mn/committees/2023-2024/3121_Committee_on_Elections/SF%20538%20-%20Save%20Our%20States%20handout%20RCV%20vs%20NPV.pdf

[10] National Popular Vote Compact. Article III, Clause 5. The full text of the Compact may be found at https://www.nationalpopularvote.com/bill-text

A state's determination of its presidential vote count may be challenged under the National Popular Vote Compact in the same five ways that they can be under the current system, namely

- state administrative proceedings (e.g., recounts, audits),
- lower state court proceedings,
- state supreme court proceedings,
- lower federal court proceedings, and
- U.S. Supreme Court proceedings.

For example, all five of the above ways for challenging a state's vote count were used in resolving Florida's disputed count in the 2000 presidential election.

The Compact and the current system are identical as to how challenges to presidential vote counts are handled. Challenges must be started in the administrative and judicial system of the state of origin or in the federal court system starting in the state of origin. The state of origin is the place where the questionable events took place, where the records exist, where the witnesses are located, and where the officials and judges (state and federal) are most knowledgeable about applicable laws and procedures.

Then, after all challenges are exhausted, the administrative officials of the states belonging to the Compact perform the purely ministerial arithmetic task of adding up the vote counts for each presidential candidate from each state.

In other words, a questionable presidential vote count from a state will necessarily have been litigated in judicial and/or administrative proceedings in the state of origin *before* the officials of the states belonging to the National Popular Vote add up the vote counts from other states.

Note that the National Popular Vote Compact is consistent with the Full Faith and Credit Clause of the U.S. Constitution and the principles of federalism on which the Constitution is based. Under our federal system, once a dispute has been litigated in the state-of-origin, the Full Faith and Credit Clause of the Constitution prevents another state's officials (both administrative or judicial) from second-guessing that decision. Given that any state's questionable presidential vote count will necessarily have been litigated in judicial and/or administrative proceedings inside the state of origin before it finalized its vote count, the U.S. Constitution requires that

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."[11]

On December 7, 2020, Texas Attorney General Ken Paxton challenged that cornerstone of federalism by requesting that the U.S. Supreme Court allow the state of Texas to file a complaint against the state of Pennsylvania challenging Pennsylvania's presidential vote count.[12] The U.S. Constitution gives the Supreme Court exclusive jurisdiction over cases between states, and the Court usually gives states the chance to present their case.

Nonetheless, on December 11, 2020, the U.S. Supreme Court refused Texas's request, saying:

> "The State of Texas's motion for leave to file a bill of complaint is denied for lack of standing under Article III of the Constitution. Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections."[13]

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[11] U.S. Constitution. Article IV. Section 1. https://constitution.congress.gov/constitution/article-4

[12] *Texas vs. Pennsylvania*. Motion for Leave to File Bill of Complaint. https://www.supremecourt.gov/DocketPDF/22/22O155/162953/20201207234611533_TX-v-State-Motion-2020-12-07%20FINAL.pdf

[13] *Texas v. Pennsylvania*. December 11, 2020. Order 155-ORIG. 592 U.S. https://www.supremecourt.gov/orders/courtorders/121120zr_p860.pdf

Opponents of the National Popular Vote Compact frequently contradict themselves in their criticisms of the Compact.

For example, 11 minutes after (falsely) telling the Maine Veterans and Legal Affairs Committee on January 8, 2024, that the Compact allows member states to judge the election returns of other states, Parnell complained that member states are forced to accept other state's election returns. He said:

> "The compact requires your chief election official to accept inaccurate or even manipulated vote totals from other states."[14]

Parnell has repeatedly made similar statements. For example, he wrote in an op-ed in 2020:

> "The NPV compact also risks causing an electoral crisis due to its poor design. ... **States that join the compact are supposed to accept vote totals from every other state even if they are disputed, inaccurate, incomplete, or the result of fraud or vote suppression.**"[15] [Emphasis added]

False Statement #3: It is unclear how the Compact counts Ranked Choice Voting.

Parnell told the Rhode Island House Committee on State Government and Elections on March 25, 2025:

> "Ranked choice voting creates a problem because [the National Popular Vote Compact] anticipates that every state is going to produce a single vote total for each candidate. [In] ranked choice voting, there at least two [vote totals]—an initial and a final. These numbers can differ by tens or hundreds of thousands of votes, and **it's not clear which vote total is supposed to be used** ... when they're aggregating votes across state lines."[16] [Emphasis added]

Despite what Parnell says, there is no legitimate uncertainty as to whether to use the first-round count or the final-round count in computing the national popular vote from the states that use ranked choice voting (RCV) for President.

All three RCV-for-President jurisdictions (Maine, Alaska, and the District of Columbia) agree that the vote tally from the **final round** of RCV counting is to be used for computing the national popular vote for President.

Specifically, Maine's RCV-for-President law provides:

> "When the National Popular Vote for President Act governs the appointment of presidential electors, ... the statewide number of votes for each presidential slate that received votes **in the final round** ... is deemed to be the determination of the vote in the State for the purposes of [the National Popular Vote Compact]."[17] [Emphasis added]

The District of Columbia's RCV-for-President law provides:

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[14] Parnell, Sean. 2024. Testimony at Maine Veterans and Legal Affairs Committee on LD1578. January 8, 2024. Timestamp 1:11:09. https://legislature.maine.gov/audio/#437?event=90002&startDate=2024-01-08T10:00:00-05:00

[15] Parnell, Sean. Opinion: Voting compact would serve Virginians badly. Charlottesville Virginia *Daily Progress*. August 9, 2020. https://dailyprogress.com/opinion/columnists/opinion-commentary-voting-compact-would-serve-virginians-badly/article_10a1c1bd-2ca3-5c97-b46d-a4b15289062d.html

[16] Hearing before the Rhode Island House Committee on State Government and Elections. March 25, 2025. Timestamp – 2:11:43. https://capitoltvri.cablecast.tv/show/11009?site=1

[17] Chapter 628 Public Law. https://legislature.maine.gov/bills/getPDF.asp?paper=HP1023&item=4&snum=131 The Maine law is discussed in the 2024 *Every Vote Equal* book in section 9.27.1 (page 919). www.Every-Vote-Equal.com

"If the appointment of presidential electors … is governed by the National Popular Vote Interstate Agreement Act of 2010, … the final determination of the presidential vote count reported and certified to the States that have enacted such Act, for purposes of that Act, shall be the votes received **in the final round** of tabulation by each slate of candidate."[18] [Emphasis added]

The Alaska Supreme Court unanimously stated in 2022:

"According to both [Alaska's and Maine's] ranked choice voting laws, the vote count is not complete until **the final round** of tabulation."[19] [Emphasis added]

After Parnell told a Minnesota legislative committee in 2023 that RCV-for-President laws are "unclear," Jeanne Massey, Executive Director of FairVote Minnesota (the leading advocate for RCV in Minnesota[20]), said:

"I have read the opposing testimony related to RCV and National Popular Vote compatibility, and it is misleading and incorrect. **The testimony comes from an organization opposed to both RCV and NPV and has a clear motive—to hurt both reforms**. … I urge you to disregard the unproven, misleading argument that RCV and NPV are incompatible and support the NPV legislation before you."[21] [Emphasis added]

Additional details are in section 9.27 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com.

False Statement #4: California gave Trump an extra 4.5 million votes in 2016.

Parnell told the Rhode Island House Committee on State Government and Elections on March 25, 2025:

"California … wound up giving Donald Trump an extra 4.5 million votes that would have been applied in the national vote count, because he was the endorsed candidate in California, of course, of the Republican Party, but he was also the endorsed candidate of something called the American Independent Party. And because there was only a single line on the ballot for people to vote for Donald Trump, and there were separate slates of electors. The way the Compact is written, … it would have **given him [Trump] an extra four and a half million votes in 2016**. Meaning that technically, **Donald Trump would have won under the national popular vote compact in 2016**. Which seems like a pretty defective and broken system, if you ask me."[22] [Emphasis added]

Parnell testified similarly on January 8, 2024, before the Maine Veterans and Legal Affairs Committee saying (inaccurately):

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[18] The District of Columbia law may be found at https://makeallvotescountdc.org/ballot-initiative/ The D.C. law is discussed in the 2024 *Every Vote Equal* book in section 9.27.1 (pages 920–921). www.Every-Vote-Equal.com

[19] *Kohlhaas v. State*. 518 P.3d 1095 at 1121. (2022). https://casetext.com/case/kohlhaas-v-state-2

[20] Traub, James. 2023. The Hottest Political Reform of the Moment Gains Ground: Inside Jeanne Massey's relentless campaign to fix democracy, starting in Minnesota. *Politico*. April 16, 2023. https://www.politico.com/news/magazine/2023/04/16/ranked-choice-voting-minnesota-00089505

[21] Massey, Jeanne. 2023. Testimony before Minnesota House Elections Finance and Policy Committee. February 1, 2023. https://www.house.mn.gov/comm/docs/TYRWZhxR-kCyJCxmXC5Z1Q.pdf

[22] Hearing before the Rhode Island House Committee on State Government and Elections. March 25, 2025. Timestamp – 2:10:30. https://capitoltvri.cablecast.tv/show/11009?site=1

"California election officials ... treated and reported every Trump/Pence voter as having cast two votes."[23]

Contrary to what Parnell says, the fact that the Trump–Pence ticket happened to have been endorsed by two different political parties does not double the number of votes that the Trump–Pence ticket received from California voters.

The facts are:

- The Trump-Pence slate received 4,483,810 popular votes in California in 2016.
- California did not count votes for the Trump-Pence slate twice in 2016.
- The *only* number appearing anywhere on California's 2016 Certificate of Ascertainment in connection with the Trump-Pence slate is 4,483,810.
- California's 2016 Certificate of Ascertainment did not give the Trump-Pence slate an extra 4,483,810 votes.
- If the National Popular Vote Compact had been in effect in 2016, the states belonging to the Compact would have uneventfully credited the Trump-Pence slate with the number of popular votes that it actually received in California, namely 4,483,810.

Moreover, California's 2016 Certificate of Ascertainment explicitly states that the Clinton-Kaine ticket's 8,753,788 vote total was higher than the vote total of any other ticket listed on the Certificate—including the 4,483,810 votes received by the Trump-Pence slate.

The Certificate reads:

"I, Edmond G. Brown, Governor of the State of California, herby certify ... the following persons **received the highest number of votes** for Electors of the President and Vice President of the United States for the State of California ... **California Democratic Party Electors Pledged to Hillary Clinton for President** of the United States and Tim Kaine for Vice President of the United States ... **Number of Votes—8,753,788.**"[24] [Emphasis added]

Additional details are in section 9.30.5 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com.

False Statement #5: A "one-person-three-votes" scheme would inflate a state's vote.

Parnell told the Rhode Island House Committee on State Government and Elections on March 25, 2025, that states are free to inflate their vote counts.

"Another issue is that the compact can be very easily manipulated by states. ... A state could simply decide they're going to report their votes as if every voter had cast as many votes as the state has electors. So Wyoming could, **instead of reporting 125,000 vote margin** for the Republican in the last go around, **they could have reported a 375,000 vote margin, because they have three electors. And there's nothing that you would be able**

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[23] Testimony of Sean Parnell, Veterans and Legal Affairs Committee of the Maine Legislature Re: LD 1578 (The National Popular Vote interstate compact). January 8, 2024. Page 5. https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10025776

[24] California's 2016 Certificate of Ascertainment is at https://www.archives.gov/files/electoral-college/2016/ascertainment-california.pdf

to do about it. If you're in the Compact, you would have to accept these inflated or manipulated vote totals."[25] [Emphasis added]

Parnell testified similarly on January 8, 2024, before the Maine Veterans and Legal Affairs Committee saying (inaccurately):

> "The chief election officials in NPV member states would be required to accept these inflated vote totals."[26]

Parnell's "one-person-three-votes" scheme would not work because the National Popular Vote Compact specifically calls for the use of the number of popular votes received by each "*presidential slate.*"

The Compact does *not* call for the *cumulative* number of votes received by the three separate candidates for presidential elector in Wyoming (which would be three times larger).

The *cumulative* number of votes cast for all three of Wyoming's presidential electors is no more relevant to the calculation specified by the Compact than the temperature on the steps of the Wyoming State Capitol on Election Day.

Article III, clause 1 of the Compact unambiguously states:

> "[T]he chief election official of each member state shall determine **the number of votes for each presidential slate** in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a 'national popular vote total' for each presidential slate." [Emphasis added]

Article V of the Compact defines the term "presidential slate" as follows:

> "**'presidential slate' shall mean** a slate of two persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States...." [Emphasis added]

Article III, clause 5 of the Compact says:

> "The chief election official of each member state shall treat as conclusive an official statement containing **the number of popular votes in a state for each presidential slate**." [Emphasis added]

Additional details are in section 9.31.4 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com.

False Statement #6: There is no such thing as an official national popular vote count.

In written testimony to the Maine Veterans and Legal Affairs Committee on January 8, 2024 Parnell claimed:

> "As for the technical defects in this compact, they are numerous and serious. In most cases, these defects stem from the same basic problem: **there is no official, timely, accurate,**

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[25] Hearing before the Rhode Island House Committee on State Government and Elections. March 25, 2025. Timestamp –2:09:24. https://capitoltvri.cablecast.tv/show/11009?site=1

[26] Testimony of Sean Parnell, Veterans and Legal Affairs Committee of the Maine Legislature Re: LD 1578 (The National Popular Vote interstate compact). January 8, 2024. Page 6. https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10025776

and conclusive national vote count that can be used for this compact."[27] [Emphasis added]

Contrary to Parnell's statement, there **is** an official national popular vote count.

Under both the current system of electing the President and the National Popular Vote Compact, each state's candidate-by-candidate popular vote count is certified by a designated state canvassing board or official shortly after Election Day.

Under both the current system and the National Popular Vote Compact, there are five avenues available to an aggrieved candidate to challenge the accuracy of the presidential vote count, namely:

- state administrative proceedings (including a recount),
- state lower-court proceedings,
- state supreme court proceedings,
- federal lower-court proceedings, and
- federal proceedings at the U.S. Supreme Court.

Federal law has required the executive of each state to issue certificates reporting on the results of presidential elections since 1792.[28]

Current federal law sets a deadline for each state to make a "final determination" of its presidential vote count and issue a Certificate of Ascertainment six days before the Electoral College meets. It requires:

> "Not later than the date that is 6 days before the time fixed for the meeting of the electors, the executive of **each State shall issue a certificate of ascertainment. ... Each certificate of ascertainment of appointment of electors shall set forth** the names of the electors appointed and **the canvass** or other determination under the laws of such State **of the number of votes** given or cast for each person for whose appointment any and all votes have been given or cast."[29] [Emphasis added]

Current federal law also requires that each state transmit its Certificate of Ascertainment to the National Archives

> "immediately after the issuance ... by the most expeditious method available."[30]

Federal law also requires that the National Archives, make the certificates "public" and "open to public inspection."

The 51 Certificates of Ascertainment showing each state's popular-vote count for President in 2020 may be viewed at https://www.archives.gov/electoral-college/2020.

To ensure the timely issuance and transmission of each state's Certificate of Ascertainment, the Electoral Count Reform Act of 2022 (passed in response to the tumultuous events of January 6, 2021)

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[27] Testimony of Sean Parnell, Veterans and Legal Affairs Committee of the Maine Legislature Re: LD 1578 (The National Popular Vote interstate compact). January 8, 2024. Page 2. https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10025776

[28] An Act relative to the Election of a President and Vice President of the United States, and declaring the Officer who shall act as President in case of Vacancies in the offices both of President and Vice President. 2nd Congress. 1 Stat. 239. March 1, 1792. Page 240. https://tile.loc.gov/storage-services/service/ll/llsl//llsl-c2/llsl-c2.pdf

[29] Section 5 of the Electoral Count Reform Act of 2022 https://uscode.house.gov/view.xhtml?path=/prelim@title3/chapter1&edition=prelim. This section is similar to the wording of the earlier Electoral Count Act of 1887 which was in effect between 1887 and 2022. The 1887 Electoral Count Act may be found (starting on page 6) of https://www.every-vote-equal.com/sites/default/files/eve-4th-ed-appendixa-hh-web-v1.pdf

[30] Section 5 of the Electoral Count Reform Act of 2022 https://uscode.house.gov/view.xhtml?path=/prelim@title3/chapter1&edition=prelim..

created a special three-judge federal court whose sole function is to enforce the federal requirement for the timely "issuance" and prompt "transmission" of each state's Certificate. This new court is open only to presidential candidates. It operates on a highly expedited basis, with expedited appeals. Specifically, all issues are required to be resolved by the new court and the U.S. Supreme Court before the Electoral College meeting.

After the "final determination" of each state's official vote count, the National Popular Vote Compact requires that:

> "The chief election official of each member state **shall treat as conclusive** an official statement containing the number of popular votes in a state for each presidential slate."[31] [Emphasis added]

The defenders of the current system try to deny the officialness, timeliness, accuracy, and conclusiveness of the presidential vote counts certified by the states in connection with the National Popular Vote Compact. Nonetheless, they extol the accuracy and reliability of the very same numbers when used to decide the presidency under the current system—such as the 537-vote difference in Florida that made George W. Bush President in 2000, or the margins of 10,704 in Michigan, 22,748 in Wisconsin, or 44,292 in Pennsylvania that made Donald Trump President in 2016.

The legal definition of the "national popular vote total" is contained in the National Popular Vote Compact.

The Compact arrives at the national total by simple arithmetic—adding up the officially certified number of popular votes received by each presidential candidate in each state. The Compact states:

> "The chief election official of each member state shall determine the number of votes for each presidential slate in each state ... and **shall add such votes together to produce a "national popular vote total"** for each presidential slate."[32] [Emphasis added]

Parnell tries to characterize the simple arithmetic process of adding up the 51 numbers for each presidential candidate as some kind of perplexing and unresolvable mystery. He told the Minnesota House Elections Finance and Policy Committee on February 1, 2023:

> "There is no official national popular vote count. There are 51 official state vote counts that **national popular vote attempts to cobble together**."[33] [Emphasis added]

There is no mystery or ambiguity—much less cobbling—when it comes to adding up the official vote counts from the 50 states and the District of Columbia.

In fact, the National Popular Vote Compact arrives at the national popular vote total in the same way as the constitutional amendment passed by a bipartisan 338–70 vote in the U.S. House of Representatives in 1969—namely simple arithmetic. That amendment relied on adding up the official numbers certified by the states and simply said:

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[31] National Popular Vote Compact. Article III, Clause 5. The full text of the Compact is at https://www.nationalpopularvote.com/bill-text and in Maine's 2024 law at https://legislature.maine.gov/bills/getPDF.asp?paper=HP1023&item=4&snum=131

[32] National Popular Vote Compact. Article III, Clause 1. The full text of the Compact is at https://www.nationalpopularvote.com/bill-text The Compact may also be found starting on page 4 of Alaska Senate Bill 61 at https://www.akleg.gov/PDF/33/Bills/SB0061A.PDF

[33] Parnell, Sean. 2023. *Testimony at Minnesota House Elections Finance and Policy Committee on HB642*. February 1, 2023. Timestamp 1:11:14. https://www.house.leg.state.mn.us/hjvid/93/896232

"The pair of persons having **the greatest number of votes** for President and Vice President shall be elected..."[34] [Emphasis added]

In short, contrary to what Parnell says, there is an "official, timely, accurate, and conclusive national vote count."

False Statement #7: There is no way to challenge vote counts under the Compact.

Parnell has repeatedly asserted that there is no way to challenge incorrect vote counts under the National Popular Vote Compact.

In connection with his "one-person-three-votes" scheme, he told the Rhode Island House Committee on State Government and Elections on March 25, 2025:

"And there's nothing that you would be able to do about it. If you're in the Compact, you would have to accept these inflated or manipulated vote totals."[35]

Parnell's written testimony to the Minnesota Senate Elections Committee on January 31, 2023 said:

"NPV provides no mechanism for resolving differences or **disputes**.... NPV's failure to anticipate the conflict between the compact and RCV, and its additional failure to provide any guidance or process for resolving this and similar issues, makes it **fatally flawed and dangerous to democracy**."[36] [Emphasis added]

The National Popular Vote Compact—like any law that specifies how presidential electors are to be chosen—operates *inside* the existing framework of federal and state laws and *inside* the existing federal and state judicial system.

Under both the current system and the National Popular Vote Compact, there are five avenues available to an aggrieved presidential candidate to challenge an incorrect vote count, namely:

- state administrative proceedings (including a recount),
- state lower-court proceedings,
- state supreme court proceedings,
- federal lower-court proceedings, and
- federal proceedings at the U.S. Supreme Court.

In particular, a special three-judge federal court was created by the Electoral Count Reform Act of 2022 to guarantee prompt resolution of disputes over presidential vote counts. Presidential candidates have guaranteed access to this special court. In fact, this special court is only open to them. It has jurisdiction over:

"Any action brought by an aggrieved candidate for President or Vice President that arises under the Constitution or laws of the United States with respect to the issuance of the certification required under section (a)(1), or the transmission of such certification."[37]

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[34] House Joint Resolution 681. 91st Congress. 1969. https://fedora.dlib.indiana.edu/fedora/get/iudl:2402061/OVERVIEW

[35] Hearing before the Rhode Island House Committee on State Government and Elections. March 25, 2025. Timestamp – 2:08:44. https://capitoltvri.cablecast.tv/show/11009?site=1

[36] Parnell, Sean. 2023. *Save Our States Policy Memo: Ranked-Choice Voting vs. National Popular Vote*. January 27, 2023. https://www.senate.mn/committees/2023-2024/3121_Committee_on_Elections/SF%20538%20-%20Save%20Our%20States%20handout%20RCV%20vs%20NPV.pdf

[37] 3 U.S.C. §5(d)(1). The Electoral Count Reform Act of 2022 can be found in appendix B of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com

This three-judge "Electoral Count Court" has the power to order the revision of a defective Certificate of Ascertainment, and the 2022 law further specifies that the revised Certificate supersedes the original. This special three-judge court operates on a highly expedited schedule, and there is expedited appeal to the U.S. Supreme Court. All of the actions of this court and the Supreme Court must be scheduled so as to reach a conclusion prior to the Electoral College meeting.

Additional details are in section 9.30 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com.

False Statement #8: The Compact can be thwarted with secret elections.

Parnell's statement to the Rhode Island House Committee on State Government and Elections on March 25, 2025, falsely claims that states can keep election returns secret.

> "There are a number of technical problems, defects in the Compact. ... [One] of these problems include that if for some reason, **a non-member state has not yet made its vote totals public by the time the compact requires it**, estimated vote totals can be used instead of real, authentic vote totals, in order to calculate the national popular vote totals."[38] [Emphasis added]

First of all, the National Popular Vote Compact does not "require" any non-member state to do anything.

However, federal law does.

Federal law sets a firm deadline for a state to make a final determination of its presidential vote count and issue a Certificate of Ascertainment, namely six days before the Electoral College meeting.[39]

That same federal law requires that each state transmit to the National Archives its Certificate of Ascertainment

> "immediately after the issuance ... by the most expeditious method available."

The National Archives, in turn, is required to make them "public."

Federal law also established a special three-judge federal court—open only to presidential candidates and operating on a highly expedited schedule—to enforce the "issuance" of each state's Certificate of Ascertainment and its "transmission" to the National Archives.

In short, federal law does not allow a state to keep its presidential vote count secret.

Despite the requirements of federal law, Parnell has advanced the theory for many years that a state can keep election returns secret.

For example, Parnell told the Connecticut Government Administration and Elections Committee on February 24, 2014, that:

> **"A very simple way for any non-member state to thwart the Compact, either intentionally or unintentionally, would simply be to not submit their Certificate or release it to the public until after the electoral college has met**. This simple act would leave states that are members of the compact without vote totals from every state, **throwing the system into chaos**."[40] [Emphasis added]

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[38] Hearing before the Rhode Island House Committee on State Government and Elections. March 25, 2025. Timestamp – 2:17:38. https://capitoltvri.cablecast.tv/show/11009?site=1

[39] 3 U.S.C. §5(d)(1). The Electoral Count Reform Act of 2022 can be found in appendix B of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com

[40] Parnell, Sean. 2014. Testimony before Connecticut Government Administration and Elections Committee. February 24, 2014.

State legislative bills to implement Parnell's plan for secret elections were introduced and defeated in New Hampshire,[41,42] South Dakota,[43,44,45] and North Dakota[46] in 2020 and 2021.

Parnell summarized efforts to pass secret election legislation on the Save Our States's blog on February 10, 2021:

> "**What if a state was deliberately trying to thwart the compact? Could they deny NPV compact states access to the vote totals they needed to operate?** Last year legislation was introduced in New Hampshire, HB 1531, that would prevent the release of vote totals prior to the meeting of the Electoral College. Two more states, Mississippi and North Dakota, have similar bills this year (HB 1176 and SB 2271, respectively)."
>
> "**This legislation is specifically aimed at thwarting NPV.**"[47] [Emphasis added]

Federal law prevents a state from playing Parnell's "hide the ball" game with its presidential vote counts:

> "§5(a)(1) Certification—Not later than the date that is **6 days before** the time fixed for the meeting of the electors, **the executive of each State shall issue a certificate of ascertainment** of appointment of electors, under and in pursuance of the laws of such State providing for such appointment and ascertainment enacted prior to election day.
>
> "(2) Form of certificate—Each certificate of ascertainment of appointment of electors shall (A) set forth the names of the electors appointed and the canvass or other determination under the laws of such State of **the number of votes** given or cast for each person for whose appointment any and all votes have been given or cast...."[48] [Emphasis added]

Federal law also requires that the Certificate be "immediately" transmitted to the National Archives in Washington using "the most expeditious method available."

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[41] New Hampshire House Bill 1531 of 2020 entitled "Relative to the release of voting information in a presidential election." https://www.gencourt.state.nh.us/bill_status/legacy/bs2016/

[42] On January 28, 2020, former Michigan Republican Chair Saul Anuzis testified on behalf of the National Popular Vote organization against the bill. See Testimony Against the Secret Presidential Elections Bill (HB1531) by Saul Anuzis at the New Hampshire House Committee on Election Law https://www.nationalpopularvote.com/sites/default/files/testimony-nh-bill-hb1531-secret_elections-2020-1-28.pdf

[43] Hess, Dana. 2020. GOP bill keeps presidential election vote totals a secret in state. *Rapid City Journal*. February 10, 2020. https://rapidcityjournal.com/news/local/gop-bill-keeps-presidential-election-vote-totals-a-secret-in/article_d557b7d1-19b8-5f57-ae23-e4867bdd7c97.html

[44] Heidelberger, Cory Allen. 2020. SB 103: Stalzer Sabotaging National Popular Vote by Keeping South Dakota Vote Count Secret? *Dakota Free Press*. February 10, 2020. https://dakotafreepress.com/2020/02/10/sb-103-stalzer-sabotaging-national-popular-vote-by-keeping-south-dakota-vote-count-secret/

[45] South Dakota SB103 of 2020. Limit the disclosure of presidential election results and to provide for a suspension of such disclosure. http://sdlegislature.gov/Legislative_Session/Bills/Bill.aspx?Bill=103&Session=2020

[46] North Dakota SB2271 of 2021. An Act relating to withholding vote totals for presidential elections. https://ndlegis.gov/assembly/67-2021/regular/bill-overview/bo2271.html?bill_year=2021&bill_number=2271

[47] Parnell, Sean. 2021. States consider preemptive measures against National Popular Vote. *Save Our States Blog*. February 10, 2021. Accessed March 31, 2025. https://saveourstates.com/blog/states-consider-preemptive-measures-against-national-popular-vote

[48] 3 U.S.C. §5(d)(1). The Electoral Count Reform Act of 2022 can be found in appendix B of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com

"§5(b)(1) Transmission—It shall be the duty of the executive of each State—(1) to transmit to the Archivist of the United States, **immediately after the issuance** of a certificate of ascertainment of appointment of electors and by **the most expeditious method available**, such certificate of ascertainment of appointment of electors."[49] [Emphasis added]

Certificates received by the National Archives must be open to public inspection according to section 6 of the 2022 Act.

False Statement #9: Campaigns under NPV will focus only on national issues.

Parnell's written testimony to the Maine Veterans and Legal Affairs Committee on January 8, 2024 claimed:

"[An] NPV lobbyist explained that once the compact is in effect, presidential **candidates will only focus** on 'issues on a national level' rather than what she termed 'specialized interests' that only affect smaller groups of Americans."[50] [Emphasis added]

Parnell's written testimony cites a 2023 news story that quoted Eileen Reavey.

However, Reavey did not say that "candidates will *only* focus" on national issues.

She said that candidates will be "more concerned" about national issues.

Here is what the news story that Parnell cited actually said:

"Reavey also thinks this [National Popular Vote] movement will encourage presidential candidates to campaign in every state instead of focusing on just a handful of battleground states like Pennsylvania or Nevada.

'We're going to see them being **more concerned** about issues on a national level, rather than really specialized interests that affect a small amount of chronically undecided voters in these states,'

said Reavey."[51] [Emphasis added]

Misleading Statement A: States could give parents one extra vote for each child.

Parnell told the Maine Veterans and Legal Affairs Committee on January 8, 2024:

"The compact can be easily gamed or manipulated. One fairly simple way for a state to increase its influence in the final outcome would be … **allowing parents to cast votes on behalf of their minor children**."[52,53] [Emphasis added]

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[49] Section 5(b)(1) of the 2022 Act further requires the executive of each state "to transmit to the electors of such State, on or before the day on which the electors are required to meet under section 7, six duplicate-originals of the same certificate."

[50] *Testimony of Sean Parnell to the Veterans and Legal Affairs Committee of the Maine Legislature Re: LD 1578 (The National Popular Vote interstate compact).* January 8, 2024. Page 2. https://legislature.maine.gov/testimony/resources/VLA20240108Parnell133489622801109869.pdf

[51] Nevada may join interstate compact to elect president through national popular vote. *3News.* April 7, 2023. https://news3lv.com/news/local/nevada-may-join-interstate-compact-to-nominate-president-through-national-popular-vote

[52] Testimony of Sean Parnell, Veterans and Legal Affairs Committee of the Maine Legislature Re: LD 1578 (The National Popular Vote interstate compact). January 8, 2024. Page 6. https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10025776

[53] Parnell said substantially the same thing at the hearing before the Rhode Island House Committee on State Government and Elections on March 25, 2025. Timestamp – 2:09:24. https://capitoltvri.cablecast.tv/show/11009?site=1

The partisan impact of the parental-voting proposal is freely acknowledged by its advocates. Professor Joshua Kleinfeld of the Antonin Scalia Law School and Professor Stephen E. Sachs, the Antonin Scalia Professor of Law at Harvard Law School, have said that there is a

> "two-percentage-point increase in the Republican advantage as between nonparents and parents of children under 18."[54]

There is, of course, no shortage of state-level schemes for manipulating the electorate for partisan advantage. For example, giving a voter an extra vote for each year of higher education would skew politics in favor of left-of-center policies.

In any case, Parnell tells only half the story. He fails to mention that the current system of electing the President is more vulnerable to this kind of partisan maneuver than a nationwide system.

For example, if a Republican-controlled state government in one of the seven closely divided battleground states (say, Georgia) gave parents extra votes, it would be far more likely to affect the national outcome under the current system than it would in a nationwide election in which over 155 million votes are cast.

Like many criticisms aimed at the National Popular Vote Compact, the criticism applies more to the current state-by-state winter-take-all system than a nationwide system.

Of course, a state law that gives certain adults extra votes based on their number of underage children would violate the Equal Protection Clause of the 14th Amendment. The categories of disadvantaged citizens who would challenge such a law would include:

- married couples with no children (and particularly infertile couples);
- married couples with only one child (who would be less influential than those with two or more children);
- married couples with only two children (who would be less influential than those with three children), and so forth;
- divorced parents who do not have custody of their children;
- single parents (whose children would be less influential than children in households with two parents);
- single persons without children; and
- members of the United Society of Believers in Christ's Second Appearing (commonly known as Shakers), who believe in celibacy and would therefore add religious discrimination to the proposal's constitutional vulnerability.

As a practical matter, there is no significant support for giving parents an additional vote for each of their children.

Additional details are in section 9.39 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com.

Misleading Statement B: States could lower their voting age.

Parnell told the Maine Veterans and Legal Affairs Committee on January 8, 2024,:

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[54] Kleinfeld, Joshua and Sachs, Stephen E. 2024. Give Parents the Vote. *Notre Dame Law Review*. Page 62. Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4723276

"The compact can be easily gamed or manipulated. One fairly simple way for a state to increase its influence in the final outcome would be to **expand voting rights to those under 18.**"[55,56] [Emphasis added]

Parnell tells only half the story. In particular, he fails to mention that the current system of electing the President is more vulnerable to this kind of partisan maneuver than a nationwide system.

Extra votes in a closely divided battleground state would be far more likely to affect the national outcome of a presidential election under the current system than it would in a nationwide system in which all 50 states matter. Like many criticisms aimed at the National Popular Vote Compact, the criticism applies more to the current state-by-state winter-take-all system than a nationwide system.

As a practical political matter, lowering the voting age to 17 would have negligible effect. It would result in a net gain of about 0.08% in favor of one candidate in the particular state involved:

- Seventeen-year-olds represent only about 1.2% of the population.
- Only about a third of 17-year-olds would be likely to vote.[57]
- A third of 1.2% is 0.4%.
- Assuming that one candidate had a lead as large as three-to-two among this 0.4% sliver of the electorate (that is, a split of 0.24% for the favored candidate and 0.16% for the other), the favored candidate's net gain would be only 0.08% in the state involved.

In almost every state, lowering the voting age is not easy. It would require a state constitutional amendment requiring a vote of the people. In general, there is little political support for giving the vote to 17-year-olds. For example, in 2020 in California (the state that Parnell specifically mentions), voters decisively defeated a constitutional amendment to allow 17-year-olds to vote in the state's June primary if they would be 18 by the time of the November general election.

Additional details are in section 9.18 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com.

Misleading Statement C: A recount might not be available in every state.

Parnell also told the Rhode Island House Committee on State Government and Elections on March 25, 2025:

"If the national vote margin were very close, you could not have a national recount, because every state has its own recount laws, and many of them would simply not be able to apply

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[55] Testimony of Sean Parnell, Veterans and Legal Affairs Committee of the Maine Legislature Re: LD 1578 (The National Popular Vote interstate compact). January 8, 2024. Page 6. https://legislature.maine.gov/legis/bills/getTestimonyDoc.asp?id=10025776

[56] Parnell said substantially the same thing at the hearing before the Rhode Island House Committee on State Government and Elections on March 25, 2025. Timestamp – 2:09:24. https://capitoltvri.cablecast.tv/show/11009?site=1

[57] This estimate is based on the fact that the percentage of the U.S. population who voted in the November 2020 general election is highly correlated to age. Turnout was 70% for those aged 75 and over, and it dropped to 64% for those aged 25-34. Then, it dropped to 49%, 47% and 40% for those aged 20, 19, and 18, respectively. The sharp decline in voter turnout from age 20 to 19 to 18 suggests that fewer than 40% of 17-year-olds would be likely to vote if they were permitted to do so. So, a one-third turnout seems like a reasonable estimate for 17-year-olds. See U.S. Census data at https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html

a national margin to their in-state votes. That's just not the way that their state recount laws are written. **So you would have a partial recount.**"[58] [Emphasis added]

This is another example of Parnell telling only half the story.

In fact, getting a recount today under the current system is the exception—not the rule.

Since 2000, only two of the six requested statewide recounts of outcome-determinative states actually took place.

- In 2000, supporters of George W. Bush were able to use the courts to thwart a hand recount of his slender 537-popular-vote lead in the decisive state of Florida.
- In 2004, attempts to obtain a recount in the decisive state of Ohio were unsuccessful.
- In 2016, requests to obtain recounts in two of that election's three decisive states (Michigan and Pennsylvania) were successfully blocked in court by the candidate who was in the lead. Only one of the three requested recounts was actually conducted—Wisconsin.
- In 2020, the results of six closely divided states were vigorously disputed, but a statewide recount was conducted in only one state—Georgia.

Moreover, recounts are frequently warranted under the current system, because the winning candidate's share of the two-party vote in the outcome-determinative states is often only a hair above 50%:

- 50.0046% in the one outcome-determinative state (Florida) in 2000,
- 50.41% in Wisconsin, 50.38% in Pennsylvania, and 50.12% in Michigan in 2016,
- 50.32% in Wisconsin, 50.16% in Arizona, and 50.12% in Georgia in 2020, and
- 50.86% in Pennsylvania, 50.72% in Michigan, and 50.44% in Wisconsin in 2024.

Moreover, the outcome of a single state is more likely to decide the national outcome under the current state-by-state winner-take-all system than under a nationwide system in which all 50 states matter.

- The winning candidate's entire *electoral-vote margin* under the current system came from just one state in 17 of the last 50 presidential elections—that is, a third of the time.[59]
- In contrast, the winning candidate's entire *national-popular-vote margin* came from just one state in only six out of 50 elections.

It is unfortunate that most state recount laws do not, in practice, allow a presidential election under the current system to be recounted.

The unfortunate unavailability could be addressed if all 50 states and the District of Columbia updated their recount laws. Alternatively, Congress could pass a federal law guaranteeing presidential candidates the right to a timely recount.

The good news is that it is very unlikely that a nationwide recount would ever be needed in a national popular vote for President.

The **multi-million vote margins** regularly produced in a nationwide vote would be far less susceptible to being affected by error or mischief than the **microscopic margins** in one, two, or three outcome-determinative states that regularly decide the presidency under the current system.

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[58] Hearing before the Rhode Island House Committee on State Government and Elections. March 25, 2025. Timestamp 2:11:20. https://capitoltvri.cablecast.tv/show/11009?site=1

[59] There have been 50 presidential elections since 1824—the first year in which a majority of the states (in fact, 18 of 24) conducted popular elections for presidential elector. See table 9.16 and table 9.17 in section 9.4.3 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com

In the seven presidential elections between 2000 and 2024:

- The average margin of victory in the national popular vote was 4,327,902.
- The presidency was decided under the current system by an average of a mere 279,628 popular votes spread over an average of three outcome-determinative states.[60]

The number of votes that are likely to be changed by a nationwide recount (that is, recounts in all 50 states) can be estimated by standard statistical methods applied to historical data about actual recounts.

Data compiled by FairVote shows that there were 36 recounts among the 6,929 statewide general elections in the 24-year period between 2000 and 2023. The probability of a statewide general-election recount is 1-in-192. Only one in 12 recounts changed the outcome. The distribution of changes in the initial winner's number of votes as a result of the recounts in all the statewide recounts during this 24-year period has a mean of 57 votes and a standard deviation of 1,134 votes.

Applying standard statistical methods to the distribution of changes in the initial winner's number of votes as a result of the recounts to 50 states (that is, a nationwide recount) shows that:

- The probability is very high (99.74%) that a nationwide recount would change the initial winner's lead by fewer than 24,294 votes in one direction or the other.
- To say it another way, the probability is very low (0.26% or approximately one chance in 369) that a nationwide recount would change the initial winner's lead by more than 24,294 votes.
- Also, the probability is very high (99.74%) that only one nationwide presidential election in 324 would be close enough to be reversed by a recount. That is, one nationwide presidential election every 1,296 years would be close enough to be reversed by a recount.[61]

In other words, there would be considerably less need for a recount in a nationwide election than under the current state-by-state winner-take-all method of awarding electoral votes.

Because a recount would almost never be needed under the Compact, the Compact is superior to the current system if one is concerned about recounts.

Additional details are in section 9.34 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com.

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[60] See table 1.33 in section 1.3 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* at www.Every-Vote-Equal.com

[61] See table 9.50 and figure 9.26 in section 9.34 of the 2024 edition of *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. Note that figure 9.26 was inadvertently omitted from the *first* printing of the 2024 book. The missing figure can be found on-line in the *second* printing at www.Every-Vote-Equal.com