

FEDERALIST FOUNDATIONS: A CRITIQUE OF THE NATIONAL POPULAR VOTE INTERSTATE COMPACT

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Abstract

The National Popular Vote Interstate Compact (NPVIC) challenges the constitutional and federalist principles embedded in the Electoral College system. By attempting to bypass the traditional amendment process, the NPVIC risks destabilizing the carefully calibrated balance between state and national sovereignty that has guided presidential elections for centuries. Rooted in federalism, the Electoral College was designed to ensure equitable representation among states, giving smaller and less populous states a meaningful voice in the electoral process.

This Article critiques the NPVIC through a comprehensive examination of its constitutional, practical, and federalist implications. It analyzes the constitutional hurdles posed by the Electors Appointment Clause, the Compact Clause, the Guarantee Clause, and the Equal Protection Clause. Drawing on recent Supreme Court precedents, including *Chiafalo v. Washington*, this Article contends that while states retain considerable discretion in managing elections, their actions are constrained by constitutional principles designed to preserve the integrity of state sovereignty and national cohesion.

Beyond legal concerns, the NPVIC faces significant practical challenges, as public resistance to electoral reform underscores the difficulty of achieving lasting change through unilateral interstate agreements. This Article argues that meaningful reform of the Electoral College requires adherence to the rigorous deliberation and broad national consensus embodied in the Article V amendment process. Ultimately, the NPVIC represents not just a constitutional shortcut but a threat to the foundational principles that have sustained American republicanism.

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INTRODUCTION

Free elections are foundational to our representative democracy. The freedom to choose our leaders was one of the fundamental rationales for declaring independence in 1776.¹ However, the founders understood that a majority could be easily swayed—what Madison expressed as the tyranny of the majority.² Those men established a republic: a system built with checks and balances, designed to carefully protect the rights of both the majority and the minority. As a republic, we elect our president through the Electoral College instead of a simple, majority-rule vote.³

Reforming the Electoral College—or abolishing it altogether—has become a predictable rallying cry after a close presidential election. Each quadrennial cycle invites scrutiny of a system that has endured as the backbone of American republicanism for over two centuries. Indeed, since its inception, well over 700 proposals have been introduced in

1. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); *see also* David Schoenbrod, *Consent of the Governed: A Constitutional Norm that the Court Should Substantially Enforce*, 43 HARV. J.L. & PUB. POL'Y 213, 214 (2020).

2. THE FEDERALIST NO. 51, at 254 (James Madison) (Coventry House Publ'g ed., 2015); *see also* THE FEDERALIST NO. 10, at 46 (James Madison) (Coventry House Publ'g ed., 2015) (“The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States.”).

3. Edwin J. Feulner, *Preventing “The Tyranny of the Majority,”* HERITAGE FOUND. (Mar. 7, 2018), <https://www.heritage.org/conservatism/commentary/preventing-the-tyranny-the-majority> [<https://perma.cc/Y5SE-8JXQ>].

Congress to revise or dismantle the Electoral College.⁴ Yet, the framers of our Constitution viewed it as more than just a mechanism for selecting presidents—they saw it as a stabilizing force, tempering the fiery whims of transient majorities and protecting the delicate balance of federalism.⁵

“The Constitution’s structural safeguards sought to prevent the concentration of power by dividing it across federal and state lines.”⁶ The Electoral College exemplifies this principle, ensuring that all states—not just the most populous—retain a voice in choosing the nation’s leader. To critics, the Electoral College appears undemocratic because it favors a few swing states while sidelining millions of voters.⁷ Critics argue instead for the direct election of the president, claiming it would ensure every vote carries equal weight. However, this vision disregards the framers’ wisdom. Those who designed the Electoral College did so with federalism at its core, to ensure that all *states*—not just the most populous—would have a voice in electing the nation’s leader.⁸ Citizens of each state gather to elect a president, not as individuals, but as a quasi-sovereign body. The citizens choose electors who choose a president. This is the same reason why, should no candidate receive a majority of votes in the Electoral College, the Constitution gives each state delegation in the House of Representatives a single vote for president.⁹

That there are institutions ensconced in our founding documents that are anti-majoritarian is undoubtedly true. However, such a design choice was a feature of the federalist system, not a bug. James Madison wrote to Thomas Jefferson that the Senate was envisioned as a “necessary fence” against the “fickleness and passion” of public opinion.¹⁰ Similarly, George Washington reputedly likened the Senate to a saucer used to cool hot tea, symbolizing its role in refining and stabilizing governance.¹¹ The Electoral College functions as the executive counterpart to the legislature’s “saucer” principle: a system that prevents presidential elections from being swayed by fleeting passions or majoritarian

4. *Electoral College History*, NAT’L ARCHIVES (June 26, 2024), <https://www.archives.gov/electoral-college/history> [https://perma.cc/2S73-GE3H].

5. See THE FEDERALIST NO. 68, at 333 (Alexander Hamilton) (Coventry House Publ’g ed., 2015).

6. Joseph A. D’Angelo, *Seeds of Power: Uprooting Wickard V. Filburn to Restore the Separation of Powers*, 50 T. MARSHALL L. REV. 37, 53 (2025).

7. *Electoral College Reform*, BRENNAN CTR FOR JUST., <https://www.brennancenter.org/issues/advance-constitutional-change/electoral-college-reform> [https://perma.cc/728Q-8LY3] (last visited Feb. 26, 2026).

8. THE FEDERALIST NO. 68, *supra* note 5, at 334–35.

9. See U.S. CONST. art. II, § 1, cl. 3, *amended by*, U.S. CONST. amend. XII.

10. 10 JAMES MADISON, THE PAPERS OF JAMES MADISON, 76–78 (Robert A. Rutland et al. eds., 1977) (May 27, 1787–Mar. 3, 1788). This was the rationale for staggered six-year senate terms, a continuity of government, no matter the passions of the current political climate.

11. Senate Created, U.S. SENATE, https://www.senate.gov/artandhistory/history/minute/Senate_Created.htm [https://perma.cc/6TB9-BRG8] (last visited Feb. 26, 2026).

impulses. It is a system that properly allocates a voice to every citizen in determining who they, as a state, believe should lead our nation and requires nothing less than an amendment to the Constitution to make a change.

However, modern proposals like the National Popular Vote Interstate Compact (NPVIC) threaten to unravel this carefully constructed system.¹² By requiring participating states to award their electoral votes to the winner of the national popular vote, regardless of their state's electoral outcome, the NPVIC attempts to bypass the federalist structure enshrined in the Constitution in favor of a majoritarian system reflecting a political calculus formed as a response to the particularly close 2000 Presidential election.¹³ The compact raises serious constitutional questions, from the Electors Appointments Clause,¹⁴ to the Compact Clause,¹⁵ to the Guarantee Clause,¹⁶ and some argue it may even go against federal laws against disenfranchisement, including the Equal Protection Clause.¹⁷ Ultimately, this Article contends that the NPVIC jeopardizes the delicate balance of federalism—between state sovereignty and national cohesion—and will not withstand scrutiny under constitutional, practical, and legal analysis.

The following sections will examine the founders' intent in establishing the Electoral College, the origins and mechanics of the NPVIC, the constitutional hurdles it faces, the practical challenges to its implementation, and its potential conflicts with federal law. But before exploring these modern debates, we must turn back to the summer of 1787, when the framers grappled with profound questions of governance and crafted the constitutional system that endures to this day.

12. See *Text of the National Popular Vote Compact Bill*, NAT'L POPULAR VOTE, <https://www.nationalpopularvote.com/bill-text> [<https://perma.cc/S82H-2VCC>] (last visited Feb. 26, 2026).

13. See THOMAS H. NEALE & ANDREW NOLAN, CONG. RSCH. SERV., R43823, NATIONAL POPULAR VOTE (NPV) INITIATIVE: DIRECT ELECTION OF THE PRESIDENT BY INTERSTATE COMPACT 5 (2019); see also *Bush v. Gore*, 531 U.S. 98 (2000) (effectively ending the contested 2000 election).

14. U.S. CONST. art. II, § 1, cl. 2 (“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.”).

15. U.S. CONST. art. I, § 10, cl. 3 (“No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State.”).

16. U.S. CONST. art. IV, § 4 (“The United States shall guarantee to every State in this Union a Republican Form of Government.”).

17. U.S. CONST. amend. XIV, § 1 (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.”).

I. THE FOUNDERS' VISION: FEDERALISM AND THE ELECTORAL COLLEGE

From the beginning, the Electoral College was a compromise.¹⁸ While media tends to report the creation of the Electoral College as a concession to Southern slave-holding states,¹⁹ it was, more accurately, a compromise based upon federalism and equality of all states.²⁰

The Electoral College emerged as a carefully crafted compromise at the Constitutional Convention to resolve tensions between large and small states and prevent a deadlock over presidential elections.²¹ Larger states favored direct popular elections, while smaller states feared losing influence, warning that populous states could dominate the outcome.²² Direct election also faced practical concerns, including geographic challenges, limited public knowledge of candidates, and fears of concentrating too much power on one individual.²³ Conversely, election by Congress raised concerns that the president would become subservient to the legislature, thus undermining the independence of the office.²⁴

James Wilson of Pennsylvania proposed a middle ground: an intermediate election by a college of electors apportioned based on each state's congressional representation and effectuated based on the popular will of the people in each state.²⁵ This system gave larger states influence proportional to their population while guaranteeing smaller states at least three electoral votes.²⁶ If no candidate received a majority, the decision would default to the House of Representatives, where each state would

18. Joy McAfee, 2001: *Should the College Electors Finally Graduate - The Electoral College: An American Compromise from Its Inception to Election 2000*, 32 CUMB. L. REV. 643, 645 (2002).

19. Wilfred U. Codrington, III, *The Electoral College's Racist Origins*, THE BRENNAN CTR. FOR JUST. (Apr. 1, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/electoral-colleges-racist-origins> [<https://perma.cc/4939-S9Y3>] ("Commentators today tend to downplay the extent to which race and slavery contributed to the Framers' creation of the Electoral College, in effect whitewashing history: Of the considerations that factored into the Framers' calculus, race and slavery were perhaps the foremost.").

20. McAfee, *supra* note 18, at 646 ("The creation of the Electoral College is no exception to the many other great compromises of the Constitution that created a unified republic in the midst of the diverse thirteen states. Tracing the intentions of our founding fathers at the Constitutional Convention of 1787 in the creation of the Electoral College is imperative, because it not only provides a glance into the great compromise that unified the original thirteen colonies, but also foreshadows the unity needed for the fifty states with diversified characteristics stretching from the Atlantic to the Pacific Ocean.").

21. WILLIAM C. KIMBERLING, *THE ELECTORAL COLLEGE*, 1 (1992), <https://aceproject.org/ero-en/regions/americas/US/eleccoll.pdf> [<https://perma.cc/6ZKN-CQAE>].

22. *Id.*

23. *Id.*

24. *Id.*

25. See Michael Brody, *Circumventing the Electoral College: Why the National Popular Vote Interstate Compact Survives Constitutional Scrutiny Under the Compact Clause*, 5 LEGIS. & POL'Y BRIEF 33, 37 (2013); McAfee, *supra* note 18, at 647.

26. McAfee, *supra* note 18, at 648.

cast one vote.²⁷ The resulting Electoral College not only balanced competing state interests but also addressed fears of majority tyranny and centralized power by allowing states to determine their own methods for choosing electors. This compromise exemplified the spirit of federalism and the art of negotiation that shaped the Constitution.

The founders designed the Electoral College as a vital component of the broader republican system enshrined in our constitutional structure. Just as citizens do not directly enact legislation but instead elect representatives and senators to legislate on their behalf, the Electoral College reflects this principle of indirect representation. Alexander Hamilton praised the Electoral College as one of the Constitution's "least criticized" provisions, emphasizing its role in ensuring that a president must garner broad, national support rather than relying on "regional popularity" or concentrated factions.²⁸ The system requires candidates to appeal to a wide cross-section of the country, uniting diverse interests rather than catering to narrow majorities.

The Electoral College was carefully crafted to balance the competing interests of large and small states, ensuring that urban centers with high concentrations of voters do not drown out the voices of less populous and rural regions.²⁹ As one observer notes, it prevents candidates from winning an election by focusing exclusively on "high-population urban centers . . . , ignoring smaller states and the more rural areas of the country"—the places some consider "flyover country."³⁰ This structure safeguards the influence of states like Wyoming, Delaware, and Vermont, where every citizen's voice is weighted equally in a system designed to respect federalism.

In the United States, the minority voice matters. Here, ideology and political diversity are not confined to population centers but spread across the entire country. The United States does not hold a single national election. There is no *federal* election system, but instead, a *federalist* election system in which state citizens gather to determine who they, as a quasi-sovereign body, want to elect as president. The Electoral College reflects this principle, preserving the idea that the United States is not merely a nation of two political parties but a nation of fifty states, each with its own voice and role in shaping the presidency.

27. THE FEDERALIST NO. 68, *supra* note 5.

28. THE FEDERALIST NO. 68, *supra* note 5, at 333–35.

29. Hans von Spakovsky, *The Electoral College: A Safeguard for Stable Elections*, THE HERITAGE FOUND. (Oct. 2, 2017), <https://www.heritage.org/election-integrity/commentary/the-electoral-college-safeguard-stable-elections> [<https://perma.cc/89FU-63ZJ>].

30. *Id.*

II. ORIGINS AND RISE OF THE NATIONAL POPULAR VOTE INTERSTATE COMPACT

In the sixty presidential elections since 1789, just five elections have had a “Constitutional Misfire.”³¹ Yet after the 2000 election, where Governor George Bush emerged victorious in the Electoral College despite losing the popular vote to Vice President Al Gore, discussions began in earnest on how to circumvent the electoral college system without using an Article V method.³²

Just a few short years later, there emerged the National Popular Vote Interstate Compact (NPVIC).³³ The NPVIC was first proposed in 2001 by law professors Akhil Reed Amar and Vikram David Amar as a way for state legislatures to allocate their electoral votes to the winner of the national popular vote.³⁴ This proposal aimed to address perceived flaws in the Electoral College without amending the Constitution. In 2006, the bipartisan organization National Popular Vote (NPV) formally introduced model legislation to implement the Compact, emphasizing that the plan could be enacted solely through an agreement among states, avoiding the rigorous constitutional amendment process.³⁵

The NPVIC seeks to transform presidential elections by ensuring that the candidate who wins the national popular vote also wins the presidency.³⁶ Participating states agree to award all their electoral votes to the national popular vote winner, effectively bypassing the winner-take-all approach used by most states.³⁷ Proponents argue that the Compact makes all votes equal, eliminates the outsized influence of swing states, and addresses disparities where candidates win the

31. Brody, *supra* note 25, at 34 n.2 (citing Norman R. Williams, *Reforming the Electoral College: Federalism, Majoritarianism, and the Perils of Sub-Constitutional Change*, 100 GEO. L.J. 173, 196 (2011) (“A ‘misfire’ refers to an election in which the presidential candidate who won the most popular votes failed to win the presidency. Five such elections have occurred (1824, 1876, 1888, 2000, and 2016).”).

32. Norman R. Williams, *Why the National Popular Vote Compact is Unconstitutional*, 2012 BYU L. REV. 1523, 1524 (2012).

33. JOHN R. KOZA ET AL., *EVERY VOTE EQUAL: A STATE-BASED PLAN FOR ELECTING THE PRESIDENT BY NATIONAL POPULAR VOTE* (4th ed. 2013) (arguing that the President of the United States should be elected in the same manner as all other elected officials, namely a popular election in which each vote is equally important).

34. Akhil Reed Amar & Vikram David Amar, *How to Achieve Direct National Election of the President Without Amending the Constitution*, FINDLAW (Dec. 28, 2001), <https://supreme.findlaw.com/legal-commentary/how-to-achieve-direct-national-election-of-the-president-without-amending-the-constitution.html> [<https://perma.cc/J886-MFC3>].

35. NAT’L POPULAR VOTE, *supra* note 12.

36. *Agreement Among the States to Elect the President by National Popular Vote*, NAT’L POPULAR VOTE, <https://www.nationalpopularvote.com/written-explanation> [<https://perma.cc/59DA-V88X>] (last visited Feb. 12, 2026).

37. See NAT’L POPULAR VOTE, *supra* note 12.

presidency despite losing the national popular vote. However, this approach raises significant legal, practical, and constitutional concerns.

Critics of the NPVIC argue that it undermines the federalist structure of the Electoral College, which was designed to balance state sovereignty with national cohesion. Historically, the Electoral College has ensured that states, not a consolidated national majority, determine presidential elections. The Compact challenges this by prioritizing the national popular vote over state results, potentially requiring a state to allocate its electoral votes against the will of its own voters. This dynamic has been criticized as an affront to state sovereignty and an attempt to circumvent the deliberate constitutional framework governing presidential elections.

As of the end of 2024, the NPVIC has been enacted into law in eighteen jurisdictions, encompassing 209 electoral votes—just sixty-one votes short of the 270 required for activation. These jurisdictions include six small states, nine medium-sized states, and three large states.³⁸ The Compact has also passed at least one legislative chamber in seven additional states, accounting for a further seventy-four electoral votes.³⁹ Overall, the National Popular Vote bill has passed forty-three state legislative chambers across twenty-four states and has been introduced in all fifty states at various times.

Advocates highlight the growing momentum of the Compact and its progress toward achieving the necessary support for activation. However, critics question whether the Compact can overcome its reliance on interstate cooperation and avoid significant legal challenges. While proponents present the NPVIC as a constitutionally conservative reform, its critics argue that it disrupts over two centuries of precedent in how states conduct presidential elections. By attempting to bypass the Electoral College's state-based framework, the Compact challenges the balance between federal and state authority, raising fundamental questions about its compatibility with the Constitution's federalist principles. As the NPVIC approaches the threshold for activation, debates about its legality, practicality, and long-term implications remain unresolved.

III. CONSTITUTIONAL ISSUES

The NPVIC raises significant constitutional questions that threaten its implementation, even if it secures the participation of states totaling the requisite 270 electoral votes.⁴⁰ While proponents argue that the Compact

38. NAT'L POPULAR VOTE, *supra* note 36 (small states and territories (District of Columbia, Delaware, Hawaii, Maine, Rhode Island, Vermont), medium-sized states (Colorado, Connecticut, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, Oregon, Washington), and large states (California, Illinois, New York)).

39. NAT'L POPULAR VOTE, *supra* note 36.

40. Williams, *supra* note 32, at 1526–27.

is both legal and constitutionally sound, its framework faces at least four formidable barriers rooted in the Constitution: the Electors Appointment Clause, the Compact Clause, the Guarantee Clause, and the Equal Protection Clause. These issues are likely to provoke intense scrutiny in Congress or judicial challenges in the courts, either of which could ultimately block the Compact from taking effect.

A. *The Elector's Appointments Clause*

The Supreme Court's 2020 decision in *Chiafalo v. Washington*⁴¹ clarified the interpretation of Article II and the role of states in regulating the Electoral College. Article II grants each state the authority to appoint electors "in such Manner as the Legislature thereof may direct," leaving the states significant discretion.⁴²

In *Chiafalo*, three Washington state electors—Peter Chiafalo, Levi Guerra, and Esther John—violated their pledges during the 2016 presidential election.⁴³ Although Washington voters had selected Hillary Clinton, the electors cast their ballots for Colin Powell in an attempt to sway other electors and deny Donald Trump a majority.⁴⁴ The state fined each elector \$1,000 for breaking their pledges, prompting a constitutional challenge questioning whether states could impose such sanctions under Article II.⁴⁵

The Supreme Court upheld Washington's penalties, holding that states may sanction faithless electors to enforce state laws.⁴⁶ Justice Kagan, writing for the majority, noted that the modern practice of binding electors to state outcomes is well-established, with only 180 instances of faithless electors out of more than 23,000 votes cast.⁴⁷ The decision reinforced the principle that electors act as agents of the voters rather than independent actors, ensuring the Electoral College operates within the framework of state sovereignty and reflects the will of the people.⁴⁸

When applied to the NPVIC, however, *Chiafalo* raises significant challenges. Proponents of the Compact argue that the decision affirms a state's ability to enforce laws requiring electors to align with the national popular vote, even if it contradicts the state's popular vote.⁴⁹ However,

41. *Chiafalo v. Washington*, 591 U.S. 578 (2020).

42. U.S. Const. art. II, § 1, cl. 2.

43. *Chiafalo*, 591 U.S. at 578.

44. *Id.*

45. *Id.*

46. *Id.* at 597.

47. *Id.* at 596.

48. *See id.*

49. Coy Allen Westbrook, *Faithless Electors and the National Popular Vote Interstate Compact After Chiafalo v. Washington*, 53 ST. MARY'S L.J. 1245, 1281 (2022). *But see* JACOB D. SHELLEY, CONG. RSCH. SERV., LSB10515, SUPREME COURT CLARIFIES RULES FOR ELECTORAL

Chiafalo ultimately raises challenges to this interpretation. The Court held that states can bind electors to their state's popular vote, relying on "long settled and established practice" that electors reflect their state's will.⁵⁰ By contrast, there is no historical precedent for states compelling electors to vote for the national popular vote winner, particularly when it contradicts the state's own popular outcome.⁵¹

This shift would contradict over a century of state-based electoral representation. As the Court emphasized, the Electoral College has long operated within a framework rooted in state sovereignty and historical norms.⁵² Directing electors to disregard their state's voters would undermine these principles and create significant constitutional concerns.

The Court further emphasized that states are constrained by other constitutional provisions, stating, "[s]o long as nothing else in the Constitution poses an obstacle—a State can . . . demand that the elector actually live up to his pledge . . . on pain of penalty."⁵³ Requiring electors to defy the statewide majority, to comply with the NPVIC, conflicts with both the intent and structure of the Electoral College, which was designed to respect state sovereignty and popular will.⁵⁴ Ultimately, directing electors to align with the national popular vote, against the will of their state's voters, undermines the principles affirmed in *Chiafalo* and threatens the integrity of the federalist system.

IV. THE COMPACT CLAUSE

The Compact Clause, located in Article I, section 10 of the U.S. Constitution, prevents states from entering into agreements or compacts with one another without the consent of Congress.⁵⁵ Rooted in colonial practices, the clause was originally used to manage boundary disputes, requiring approval from the Crown.⁵⁶ After independence, the Articles of Confederation carried forward this requirement to prevent interstate conflicts that could threaten national unity.⁵⁷ The Framers of the

COLLEGE: STATES MAY RESTRICT FAITHLESS ELECTORS 4 (2020) ("By affirming that Article II allows each state to appoint electors 'in whatever way it likes,' the Supreme Court's opinion in *Chiafalo* could be read to suggest the plan, if enacted, would survive constitutional challenge.").

50. *Chiafalo*, 591 U.S. at 597.

51. Zachary Reger, *Does Chiafalo v. Washington Bolster the Case for the National Popular Vote Interstate Compact? Not So Fast.*, 2021 U. CHI. L. REV. ONLINE 1, *3–5 (2021).

52. *Chiafalo*, 591 U.S. at 597.

53. *Id.* at 588–89.

54. *Id.* at 589–91.

55. U.S. CONST. art. I, § 10, cl. 3.

56. Felix Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 YALE L.J. 685, 692 (1925).

57. ARTICLES OF CONFEDERATION OF 1781, art. VI, para. 2 ("No two or more States shall enter into any treaty, confederation or alliance whatever between them, without the consent of the

Constitution expanded the Compact Clause's scope, embedding it alongside other restrictions on state power in Article I, section 10, to ensure that states did not undermine federal authority or harm their sister states through unilateral agreements.⁵⁸

Supreme Court jurisprudence has clarified the application of the Compact Clause, particularly in *United States Steel Corp. v. Multistate Tax Commission*.⁵⁹ The Court established a two-part test for assessing whether a compact violates the clause: (1) whether the compact encroaches on federal supremacy and (2) whether it infringes upon the sovereignty of non-compacting states.⁶⁰ The Court also held that not all interstate agreements require congressional approval, only those that implicate federal supremacy or disadvantage other states.⁶¹ Agreements that allow states to coordinate their efforts without threatening federal authority or the balance of state sovereignty are generally permissible.⁶²

The NPVIC raises significant Compact Clause questions. Proponents argue that states retain plenary power under Article II to determine how to allocate their electors, and the Compact merely exercises this state-level discretion. However, opponents contend that the NPVIC fundamentally alters the constitutional process for electing the president, bypassing the federalist framework enshrined in the Electoral College. They argue that such a significant change requires congressional approval and risks disadvantaging non-participating states by diluting their electoral influence. Whether the NPVIC violates the Compact Clause ultimately hinges on whether it is viewed as a permissible exercise of state power or an unconstitutional attempt to circumvent the federal framework for presidential elections.⁶³

This analysis suggests that while the NPVIC may pass a narrow reading of existing precedent, its far-reaching implications for federal

United States in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.”). Congressional consent under the Articles of Confederation was different in that the congressional body itself was different—a unicameral one instead of the modern bicameral one. Brody, *supra* note 25, at 42.

58. See JOSEPH F. ZIMMERMAN, *INTERSTATE RELATIONS: THE NEGLECTED DIMENSION OF FEDERALISM* 36 (Greenwood Publ'g Group, Inc. 1996) (“The purpose of the congressional consent requirement is to protect the Union by controlling collective actions of states.”). See also *U.S. Steel Corp. v. Multistate Tax Comm’n*, 434 U.S. 452, 496 (1978) (White, J., dissenting) (“As the constitutional arbiter of political differences between States, the Congress is the proper body to evaluate the extent of harm being imposed on non-compact States, and to impose ameliorative restrictions as might be necessary.”).

59. 434 U.S. 452 (1978).

60. *Id.* at 471.

61. *Id.* at 475–76.

62. Brody, *supra* note 25, at 45.

63. Brody, *supra* note 25, at 46. See also PAUL BREST ET AL., *PROCESSES OF CONSTITUTIONAL DECISIONMAKING* 121 (Aspen, 5th ed. Supp. 2011).

supremacy and state sovereignty present unresolved constitutional challenges.⁶⁴

A. *The Guarantee Clause*

The Guarantee Clause obligates the United States to “guarantee to every State in this Union a Republican Form of Government.”⁶⁵ Unlike the powers articulated in the first three Articles, this clause is not tied to any specific branch of the federal government or to any state power; without a clear tie to any one power, this clause insists that it is the collective duty of the union to guarantee this form of government: one where citizens are represented by their elected officials at all levels of power, and each citizen has a voice in electing those representatives. While the scope of the Guarantee Clause remains largely uncharted—having only been explored briefly during Reconstruction⁶⁶—it invites us to examine its origins and the intent of the framers for guidance.⁶⁷ Looking deeper into the founding debate sheds light on the framers’ intent.

The Guarantee Clause originated in the Virginia Plan, presented at the Constitutional Convention by Edmund Randolph and credited to James Madison.⁶⁸ The plan’s early drafts evolved significantly through debate.⁶⁹ One such debate featured Gouverneur Morris objecting to the resolution, citing his reluctance to guarantee the questionable laws of states like Rhode Island.⁷⁰ Randolph, addressing this concern, clarified that the provision had two main purposes: (1) securing a republican form of government and (2) suppressing domestic unrest. Beyond concerns over rebellion, delegates feared the possibility of a monarchy emerging in a state, potentially jeopardizing the liberty of the entire union.

64. See Brody, *supra* note 25, at 48 (“A reading of the NPVC’s text makes it difficult to see any provision by which the federal government can claim supreme power over the election for president.”).

65. U.S. CONST. art. IV, § 4.

66. See generally WILLIAM M. WIECEK, *THE GUARANTEE CLAUSE OF THE U.S. CONSTITUTION* chs. 5–7 (1972) (discussing slavery and Reconstruction from 1861–1877); *Texas v. White*, 74 U.S. 700, 728–29 (1868) (Chase, C.J.) (grounding the establishment of Reconstruction governments in the former Confederate states as an exercise of the power conferred by the guaranty clause to the United States).

67. See Deborah Jones Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88 COLUM. L. REV. 1, 23 (1988) (“Even today, the outer boundaries of the guarantee clause remain murky; no single scholarly work can capture the full meaning of ‘republican government.’”).

68. 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 22 (Max Farrand ed., 1911).

69. See ArtIV.S4.1 Historical Background on Guarantee of Republican Form of Government, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/artIV-S4-1/ALDE_00013635/#ALDF_00027098 [<https://perma.cc/PH9D-XBUW>] (last visited Feb. 8, 2026).

70. *Id.*

To address these anxieties, Madison proposed substituting language to ensure that states' constitutional authority would be protected against domestic and foreign violence. Randolph then suggested an addition to bar any state from forming anything other than a republican government.⁷¹ Ultimately, James Wilson proposed language closely resembling the Guarantee Clause as it exists today—a formulation that the Convention approved unanimously, reflecting a shared commitment to safeguarding Republican governance throughout the United States.⁷²

The 1793 case of *Chisholm v. Georgia* defined a republican form of government as one in which “the Supreme Power resid[es] in the body of the people.”⁷³ While *Luther v. Borden*⁷⁴ established that the determination of what constitutes a republican form of government is a political question left to the discretion of the political branches,⁷⁵ the deeply constitutional implications of the NPVIC may prompt the Court to revisit *Luther*'s holding. The Compact's attempt to reshape the Electoral College through interstate agreements rather than constitutional amendments raises questions that strike at the heart of the Guarantee Clause and the federalist structure, potentially compelling judicial intervention in what has long been considered a non-justiciable issue.

Ultimately, the Electoral College is a mere extension of this republican form of government, guaranteed by Article 4, section 4. Citizens elect electors who, in turn, choose the president. Moving from a republican system such as the Electoral College to a direct vote like the NPVIC jeopardizes the continuity present throughout the Constitutional structure. To echo Justice Ginsburg's sentiment, eliminating the Electoral College in place of the NPVIC “is like throwing away your umbrella in a rainstorm because you are not getting wet”⁷⁶—it threatens other republican systems and ensures the exploration and expansion of Guarantee Clause jurisprudence.

V. THE EQUAL PROTECTION CLAUSE

The NPVIC raises critical concerns regarding minority voting rights under the Voting Rights Act (VRA)⁷⁷ and the Equal Protection Clause of the 14th Amendment.⁷⁸ By shifting from a state-based Electoral College system to a national popular vote, the NPVIC risks diluting the localized influence of minority communities, which have historically leveraged

71. *Id.*

72. *Id.*

73. *Chisholm v. Georgia*, 2 U.S. 419, 457 (1793) (Wilson, J.).

74. *Luther v. Borden*, 48 U.S. 1, 42 (1849) (Taney, C.J.).

75. *See Baker v. Carr*, 369 U.S. 186, 210 (1962) (“The nonjusticiability of a political question is primarily a function of the separation of powers.”).

76. *Shelby County v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

77. 42 U.S.C. § 1973 (1965) (current version at 52 U.S.C. § 10501).

78. U.S. CONST. amend. XIV, § 1.

their political power more effectively within state-centric electoral systems. At-large voting structures, which mirror the national popular vote concept, have been repeatedly challenged under the VRA for diluting minority voting strength.⁷⁹ These systems often nullify the ability of minority groups to elect candidates of their choice by subsuming their voices into larger voting pools dominated by majority groups.⁸⁰ This risk is exacerbated under the NPVIC, as it effectively converts presidential elections into one large, at-large district.⁸¹

Historically, cases like *Thornburg v. Gingles*⁸² established that at-large voting systems could violate the VRA by denying minority groups an equal opportunity to participate in the political process and elect representatives of their choice.⁸³ Proponents of the Compact champion the slogan “one person, one vote” as a rallying cry for fairness and equality.⁸⁴ However, the national aggregation of votes under the NPVIC risks undermining the very principles it seeks to uphold, replicating the inequities of at-large voting systems on a national scale and eroding the regional protections inherent in state-by-state electoral outcomes. For example, under the Electoral College system, minority voters in states like Georgia or Michigan often have a disproportionate impact on presidential elections relative to their national population.⁸⁵ The NPVIC would diminish this influence by subsuming their votes into a nationwide tally, effectively diluting the distinct voices of these communities.

In addition to vote dilution, the NPVIC raises serious Equal Protection concerns under the 14th Amendment, as articulated in *Bush v. Gore*.⁸⁶ The aggregation of votes across states with differing electoral standards—including voter eligibility criteria, ballot access rules, and

79. See *Grove v. Emison*, 507 U.S. 25, 40–41 (1993) (“It would be peculiar to conclude that a vote-dilution challenge to the (more dangerous) multimember district requires a higher threshold showing than a vote-fragmentation challenge to a single-member district.”).

80. *Id.*

81. Michael T. Morley, *The Framers’ Inadvertent Gift: The Electoral College and the Constitutional Infirmities of the National Popular Vote Compact*, 15 HARV. L. & POL’Y REV. 81, 108 (2020) (“The Compact likely requires most member states to violate their citizens’ right to vote under the U.S. Constitution.”).

82. *Thornburg v. Gingles*, 478 U.S. 30, 42 (1986) (Under the three-pronged test, (1) “the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) “the minority group must be able to show that it is politically cohesive”; and (3) the minority group must be able to demonstrate that the majority votes sufficiently as a bloc to enable the majority to defeat the minority group’s preferred candidate absent special circumstances, such as the minority candidate running unopposed.).

83. See THOMAS H. NEALE, CONG. RSCH. SERV., IF11191, NPV—THE NATIONAL POPULAR VOTE INITIATIVE: PROPOSING DIRECT ELECTION OF THE PRESIDENT THROUGH AND INTERSTATE (2019).

84. KOZA ET AL., *supra* note 33, at 654, 657.

85. Charles S. Bullock III et al., *Electoral College Reform and Voting Rights*, 1 FAULKNER L. REV. 89, 108–09 (2009).

86. 531 U.S. 525, 543 (2000).

recount procedures—introduces systemic inequities. These disparities create a scenario in which voters in one state may be effectively advantaged or disadvantaged compared to voters in another, undermining the principle of equal treatment.⁸⁷ For instance, states with more permissive absentee ballot rules or broader voter eligibility criteria could disproportionately shape the national outcome, imposing their electoral processes on states with more restrictive rules.

Critics also highlight the implications for minority representation, arguing that the NPVIC undermines the federalist principles embedded in the Electoral College. By prioritizing the national majority over state-level outcomes, the Compact diminishes the protections that allow minority communities to wield meaningful influence within smaller electoral units. Historically, these protections have enabled minority groups to play a decisive role in closely contested states, ensuring their voices are heard in presidential elections. Under the NPVIC, however, this influence would be diluted as their votes are aggregated into a larger, more homogenous national electorate.

While proponents of the NPVIC argue that a national popular vote would make every vote equal, this framing oversimplifies the complex dynamics of minority representation in a federalist system.⁸⁸ Minority communities often achieve greater representation through geographically concentrated voting power within state boundaries—a dynamic that is undermined by the NPVIC’s focus on raw national vote totals. These structural and constitutional challenges underscore the risks posed by the NPVIC, as it threatens to erode the very principles of equality and representation that underpin the American electoral system. Without addressing these concerns, the Compact risks undermining the protections afforded to minority voters under the VRA and the 14th Amendment while destabilizing the federalist balance that has defined the nation’s democratic framework.

VI. OBSTACLES TO THE NPVIC’S IMPLEMENTATION

Along with constitutional questions, practical challenges to election reform have become increasingly evident, particularly after the 2024 election cycle.⁸⁹ Efforts to implement sweeping changes to electoral systems—such as ranked-choice voting and nonpartisan primaries—

87. *Id.* at 529–30 (“Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another. It must be remembered that ‘the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.’”).

88. NAT’L POPULAR VOTE, *supra* note 36.

89. Russell Berman, *Why Voters Rejected Election Reform: In State After State, They Rejected Proposals to Fix Two of the Most Hated Problems in Politics*, THE ATLANTIC (Dec. 8, 2024), <https://www.theatlantic.com/politics/archive/2024/12/election-reform-ranked-choice-partisan-primaries/680912/> [https://perma.cc/4FU2-4UNV].

faced widespread resistance across the country.⁹⁰ States including Arizona, Colorado, Idaho, Montana, Nevada, Oregon, and South Dakota considered ballot measures aimed at reforming their electoral systems, yet all these initiatives failed.⁹¹ Alaska, which had implemented ranked-choice voting and open primaries in recent years, narrowly defeated a 2024 ballot measure to repeal those reforms, signaling growing voter skepticism towards systemic changes.⁹²

This resistance underscores a broader hesitation toward altering electoral systems, which has significant implications for the viability of the NPVIC. If voters and legislatures are unwilling to embrace smaller reforms like ranked-choice voting, the far-reaching changes proposed by the NPVIC are even less likely to gain lasting support.⁹³ The Compact's attempt to sidestep the constitutional amendment process amplifies concerns, as it bypasses the rigorous deliberation and consensus required for meaningful reform. Stable governance requires adherence to constitutional principles, even when they produce outcomes that are politically inconvenient in the short term.⁹⁴

Winning the popular vote does not always reflect broad, national support—a key principle the Electoral College was designed to address.⁹⁵ For instance, in 1980, Ronald Reagan won a staggering 90.9% of the electoral vote while receiving just 50.8% of the popular vote, a testament to his ability to unite states across diverse regions.⁹⁶ The NPVIC, by contrast, risks overemphasizing raw vote totals at the expense of the federalist structure that ensures all states, large and small, have a voice in presidential elections.

90. Ashley Lopez, *Ballot Measures to Upend State Election Systems Failed Across the Country*, NPR (Nov. 8, 2024, at 16:30 ET), <https://www.npr.org/2024/11/08/nx-s1-5183210/nonpartisan-primary-ranked-choice-voting-results> [https://perma.cc/DT82-LDRT].

91. Erin X. Wong, *Western Voters Reject Ranked-choice Voting*, HIGH COUNTRY NEWS (Nov. 14, 2024), <https://www.hcn.org/articles/western-voters-reject-ranked-choice-voting/> [https://perma.cc/93SQ-68FD].

92. *Id.*

93. See Dylan Matthews, *Can Ranking Candidates Fix Elections?: The Limitations of Ranked-choice Voting*, VOX (Nov. 6, 2024), <https://www.vox.com/future-perfect/382097/ranked-choice-voting-nevada-colorado-dc-final-five> [https://perma.cc/65YS-YWQR] (explaining how ranked-choice voting aims to improve electoral outcomes by reducing vote splitting and promoting broader consensus but also exacerbates challenges like voter confusion and increased ballot errors).

94. See Joseph A. D'Angelo, *Chevron Solutions: Restoring the Separation of Powers in a Post-Chevron Landscape*, 35 U. FLA. J.L. & PUB. POL'Y 1, 21 (2025) (discussing the positive effects of the Court's *Loper Bright* decision on Americans even at the cost of administrative chaos within the government).

95. Williams, *supra* note 32, at 1524.

96. David Leip, *1980 Presidential General Election Results*, ATLAS OF U.S. ELECTIONS, <http://uselectionatlas.org/RESULTS/national.php?year=1980&off=0&f=1> [https://perma.cc/885G-DZEE] (last visited Feb. 26, 2026).

The failures of the 2024 election reforms illustrate the practical and political barriers facing any attempt to overhaul longstanding electoral systems. As skepticism toward sweeping reforms grows, the NPVIC's prospects diminish. Practical concerns, coupled with constitutional and federalist principles, reveal the Compact not as a pathway to electoral fairness but as an ill-conceived shortcut that undermines the foundations of our republic.

CONCLUSION

I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them and find practical means of correcting their ill effects. But I also know that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must also advance and keep pace with the times.⁹⁷

The way we elect a president, while “not perfect, it is at least excellent”—a system embodying the careful balance of advantages the framers sought to achieve.⁹⁸ Patrick Henry, though a fierce critic of the original Constitution, offered a model of principled fidelity to republican ideals when he pledged to pursue change “in a constitutional way” and to support the government “fairly sanctioned by [his] countrymen.”⁹⁹ His words resonate as a reminder that the path to reform lies within the framework of the Constitution, not outside of it.

The Founders understood that institutional adaptation is essential to a republic's vitality, yet they simultaneously crafted mechanisms of change that demand rigorous consensus and deliberation. The NPVIC circumvents these processes, undermining the federal balance that has sustained our political system. “[O]ur august Founding Fathers used every ounce of their sagacity to develop a system where we no longer had to fear the tyranny of the majority or a dark cabal of bad actors seeking to dictate every aspect to a group they deemed inferior.”¹⁰⁰ Advocates for abolishing the Electoral College should emulate Henry's resolve and

97. Letter from Thomas Jefferson to Samuel Kercheval, in *THE COMPLETE JEFFERSON* 291 (Saul K. Padover ed., 1943).

98. *THE FEDERALIST* No. 68, *supra* note 5, at 333.

99. Letter from Patrick Henry to George Washington, in *19 THE PAPERS OF GEORGE WASHINGTON, PRESIDENTIAL SERIES* 53–54 (David R. Roth ed., 2016).

100. Westbrook, *supra* note 49, at 1284.

commitment to the rule of law. Meaningful electoral reform must emerge through the amendment process—a mechanism requiring broad national consensus and protecting state sovereignty. This honors the Founders’ insight that lasting change must arise from principled negotiation, not political expedience.

The enduring strength of the Constitution lies in its federalist design—a system that balances power between the states and the national government, safeguarding liberty and cohesion. The NPVIC threatens this balance by prioritizing fleeting majoritarian impulses over foundational principles of federalism.

A federalist approach to lawmaking demands respect for the processes and institutions that have preserved our republic through centuries of challenge and change. Article V provides a clear mechanism for reform, requiring national consensus to alter foundational structures. To abandon this path for political expediency disregards the Framers’ wisdom and the enduring value of federalism.

The NPVIC must be firmly rejected—not merely as flawed policy but as a dangerous erosion of the principles that bind our nation together. Let us recommit to the Constitution’s vision of a republic that tempers passion with reason, protects minority voices, and ensures all states, large and small, have a role in shaping the future. Preserving these principles honors the Founders’ vision and the enduring legacy of self-governance that defines the American experiment.