



Primer: The Interstate Compact Complication: The Left's Backdoor Attempt to Abolish the Electoral College

By Benjamin Osborne

Marketed as “election reform,” the National Popular Vote Interstate Compact is in reality a coordinated effort by progressive states to bypass Article V, nationalize presidential elections, and replace the Constitution’s federal republic with a system of raw democracy.

For decades, opponents of the electoral college have sought to replace it with the direct popular election of the president. Because the Constitution establishes the electoral college itself, however, abolishing it ordinarily would require a constitutional amendment under Article V, a process requiring overwhelming national consensus.¹ After electoral college amendment efforts failed in the past,² supporters of direct popular election including Minnesota Governor Tim Walz and Virginia Governor Abigail Spanberger have turned to a different strategy: persuading enough states to join the National Popular Vote Interstate Compact ("NPVIC").³ If states collectively possessing at least 270 electoral votes join the compact, each agrees to award its presidential electors to the winner of the nationwide popular vote, regardless of how its own citizens voted.⁴ Although the electoral college would remain formally intact, the compact would operate as a de facto national popular election for president.

But the Constitution does not provide for the direct national election of the President of the United States. Instead, it establishes a federal mechanism in which “each State shall appoint, in such Manner as the Legislature thereof may direct,” a number of electors equal to its total representation in Congress, and those electors then cast votes for president and vice president

¹ U.S. CONST. art. V.

² Office of the Historian, U.S. House of Representatives, *A Constitutional Amendment to Abolish the Electoral College* (Sep. 18, 1969), <https://history.house.gov/HistoricalHighlight/Detail/25769816548>.

³ Ashley Lopez, Virginia joins a national effort to ensure only popular vote winners become president, NPR (April 14, 2026), <https://www.npr.org/2026/04/14/nx-s1-5742595/virginia-popular-vote-compact>; Bill Chappell, How the Electoral College survived, despite being perennially unpopular?, NPR (Nov. 4, 2024), <https://www.npr.org/2024/11/04/nx-s1-5173568/electoral-college-explained>; Nat'l Popular Vote Interstate Compact art. III, <https://www.nationalpopularvote.com/bill-text>.

⁴ Nat'l Popular Vote Interstate Compact . arts. III, IV.

pursuant to the Twelfth Amendment.⁵ The Electoral College is an instrumental piece in the Constitution's original structure for selecting the nation's sole executive officer.⁶

The compact does not merely alter internal state election procedures; it binds participating states into a coordinated electoral bloc for the express purpose of controlling the outcome of the presidential election.⁷ It makes the appointment of a state's electors dependent on out-of-state vote tabulations, out-of-state certification decisions, and out-of-state legal rules.⁸

The Constitution does not prohibit interstate compacts. To the contrary, interstate compacts have long served legitimate federalism purposes by allowing states to cooperate on matters of mutual concern while preserving the system established by the framers. There are over two hundred active interstate compacts which address issues like transportation, water rights, and law enforcement.⁹ The Compact Clause permits such cooperation with congressional consent. The constitutional problem presented by the NPVIC is therefore not that states are cooperating. It is that they are combining their sovereign authority to alter the structure of the national government and fundamentally transform the method of electing the president without resorting to the amendment process prescribed by Article V. That places the NPVIC in a fundamentally different constitutional category.

As of the time of this writing, eighteen states and the District of Columbia have enacted the compact, representing 222 electoral votes, leaving the compact just 48 electoral votes short of the 270 votes needed to take effect.¹⁰

I. Why the NPVIC Is Unconstitutional

The NPVIC is unconstitutional for multiple independent reasons. In simple terms, the compact fails because it attempts to accomplish through coordinated state legislation what the Constitution reserves either to Congress acting under the Compact Clause or to the people acting through Article V.

First, it violates the Compact Clause.¹¹ The NPVIC is an agreement among states in the fullest constitutional sense: It contains reciprocal obligations, a common activation threshold, mutual commitments, and coordinated legal consequences.¹² The compact increases the collective political power of member states in a way that directly affects the structure of the national

⁵ U.S. CONST. art. II, § 1, cl. 2; U.S. CONST. amend. XII.

⁶ *Id.*

⁷ Nat'l Popular Vote Interstate Compact art. III.

⁸ *Id.*

⁹ NATIONAL CENTER FOR INTERSTATE COMPACTS, *Where States Work Together*, <https://compacts.csg.org>.

¹⁰ NAT'L CONF. OF STATE LEGISLATURES, *National Popular Vote* (updated Apr. 16, 2026), <https://www.ncsl.org/elections-and-campaigns/national-popular-vote>.

¹¹ U.S. CONST. art. I, § 10, cl. 3.

¹² *Id.*; Nat'l Popular Vote Interstate Compact arts. I–IV.

government by enabling a coalition of states to control the election of the president.¹³ Under the Supreme Court’s precedents, that is precisely the sort of interstate arrangement that requires congressional consent. In *Virginia v. Tennessee*, the court said that “looking at the [Compact] clause in which the terms ‘compact’ or ‘agreement’ appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States.”¹⁴

Second, the compact affects a structural constitutional change that Article V reserves to the amendment process.¹⁵ The Constitution establishes a state-based electoral system and not a single national college of electors.¹⁶ The compact preserves the shell of the Electoral College while replacing its substance; therefore, it attempts to accomplish through coordinated legislation what the Constitution permits only through formal amendment.¹⁷ In terms of constitutional structure, Congress’s exercise of its enumerated powers remains subject to the Constitution’s other express limitations, including the First Amendment and the prohibition on bills of attainder and ex post facto laws.¹⁸ Likewise, a state legislature’s authority under the Elections Clause remains subject to the Constitution’s other structural and individual-rights limitations.¹⁹ A state’s Article II power to appoint electors therefore *must be exercised within*, not against, the Constitution’s broader design for selecting the president.

Third, although states possess broad authority in the Electors Clause in Article 1, § 1 over the manner of appointing electors, that authority exists within the Constitution’s broader structure and cannot be used to destroy that structure.²⁰ That authority found in the Electors Clause permits states to decide *how* their own electors are appointed through various methods like winner-take-all allocation, congressional districts, legislative appointment, or popular election within that state. The clause does not authorize states to abandon their independent constitutional role by making the appointment of their electors wholly contingent on a nationwide vote tally generated under the laws and election procedures of other states. Nor does it contemplate a national election whose outcome depends on ballots cast and counted under dozens of different legal standards governing voter eligibility, absentee voting, ballot curing, recounts, and voter tabulation. The Constitution does not authorize a coalition of states to transform presidential elections into a direct national vote conducted under no uniform national legal standard.²¹

¹³ *Id.*

¹⁴ 148 U.S. 503, 519 (1893).

¹⁵ U.S. CONST. art. V.

¹⁶ U.S. CONST. art. II, § 1, cl. 2; U.S. CONST. amend. XII.

¹⁷ Nat’l Popular Vote Interstate Compact art. III; *see also* U.S. CONST. art. V.

¹⁸ U.S. CONST. art. I, § 8; *id.* amend. I; *id.* art. I, § 9, cl. 3.

¹⁹ U.S. CONST. art. II, § 1, cl. 2.

²⁰ *Id.*; *see also* *McPherson v. Blacker*, 146 U.S. 1, 27, 35 (1892) (recognizing that state legislatures possess broad authority under U.S. CONST. art. II, § 1 to determine the manner of appointing presidential electors); *see also* *Bush v. Gore*, 531 U.S. 98, 104 (2000) (describing the state legislature’s authority over the appointment of electors as “plenary”); *cf.* *McPherson*, 146 U.S. at 27 (describing the states’ constitutional role as appointing “electors” within the framework established by Article II).

²¹ *See* U.S. CONST. art. II, § 1, cl. 2.

Fourth, the compact is inconsistent with the Constitution’s republican design and the founders’ rejection of direct democracy in choosing the chief executive.²² The framers feared faction, cabal, corruption, and regional domination.²³ They established a republic, not a pure democracy, and they designed presidential selection accordingly.

II. The NPVIC Violates the Compact Clause

The Compact Clause serves an important structural function in the Constitution. It permits interstate cooperation while preventing coalitions of states from combining their sovereign authority in ways that threaten the constitutional balance between the states and the national government.²⁴ The clause provides that “no State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State.”²⁵ The Supreme Court has held that not every interstate arrangement requires congressional consent, but consent is required when the agreement tends “to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States.”²⁶ The inquiry is whether the agreement enhances state power “quoad [or with respect to] the National Government.”²⁷

The NPVIC is plainly such an agreement.²⁸ It is not merely a set of parallel statutes enacted coincidentally by different states. It is a formal, reciprocal, multistate agreement.²⁹ It contains a common text.³⁰ It establishes a collective trigger threshold of 270 electoral votes.³¹ It imposes ongoing legal obligations on member states.³² It restricts withdrawal during the final six months of a presidential term.³³ And it is expressly designed to permit member states, acting in concert, to determine the outcome of the presidential election.³⁴

This election compact is therefore unlike *Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System*, where the Supreme Court found no compact because there was no joint organization, no reciprocal binding commitment of the kind characteristic of constitutional compacts, and no meaningful surrender of sovereign discretion.³⁵ In the national popular vote

²² U.S. CONST. art. II, § 1, cl. 2; U.S. CONST. art. IV, § 4.

²³ See THE FEDERALIST NO. 10 (James Madison) (warning against the “mischiefs of faction” inherent in pure democracy); THE FEDERALIST NO. 39 (James Madison) (describing the Constitution as “strictly republican”); THE FEDERALIST NO. 68 (Alexander Hamilton) (defending the Electoral College as a safeguard against “tumult and disorder”).

²⁴ U.S. CONST. art. I, § 10, cl. 3.

²⁵ *Id.*

²⁶ *Virginia*, 148 U.S. at 519.

²⁷ *U. S. Steel Corp. v. Multistate Tax Comm’n*, 434 U.S. 452, 473 (1978).

²⁸ Nat’l Popular Vote Interstate Compact arts. I–IV.

²⁹ *Id.*

³⁰ *Id.*

³¹ NAT’L CONF. OF STATE LEGISLATURES, *National Popular Vote* (updated Apr. 16, 2026), <https://www.ncsl.org/elections-and-campaigns/national-popular-vote> (showing the effective threshold condition).

³² Nat’l Popular Vote Interstate Compact arts. III–IV.

³³ *Id.* art. IV.

³⁴ *Id.* art. III.

³⁵ 472 U.S. 159, 175–76 (1985).

cabal, by contrast, the states have not merely adopted similar policies but bound themselves together to function as a single electoral coalition once sufficient numbers are assembled.³⁶

The enhancement of state power is likewise unmistakable. Nothing lies closer to the structure of the national government than the selection of the president. A coalition of states that can guarantee the election of the nation's chief executive has enhanced its political power in direct relation to the federal government. That is the very type of structural encroachment the Compact Clause forbids absent congressional consent.³⁷

Supporters of the NPVIC may argue that any state could independently decide to appoint electors based on the national popular vote and that concerted action therefore adds nothing constitutionally significant. But that misunderstands the point of the Compact Clause.³⁸ The clause exists because coordinated state action can create constitutional dangers that do not arise from isolated state decisions. The relevant question is not whether a state possesses some antecedent discretion in the abstract. The question is whether states have joined together in a way that increases their political power vis-à-vis the national government. The NPVIC plainly has joined states in that unconstitutional manner.³⁹

Because Congress has not consented to the NPVIC, it violates the Compact Clause and cannot stand.⁴⁰

III. The NPVIC Effects a Major Structural Change That May Be Accomplished Only Through the Amendment Process in Article V

The Constitution establishes a state-based mechanism for selecting the President.⁴¹ Article II assigns to each state the appointment of electors.⁴² The Twelfth Amendment preserves that framework while refining the voting process.⁴³ From *McPherson*, “The Constitution does not provide that the appointment of electors shall be by popular vote.”⁴⁴ At every step, the operative constitutional unit is the state, not a single undifferentiated national electorate.⁴⁵

The NPVIC attempts to change that basic design without changing the constitutional text. In operation, the compact would eliminate the meaningful role of state-by-state presidential

³⁶ Nat'l Popular Vote Interstate Compact arts. I–IV; NAT'L CONF. OF STATE LEGISLATURES, *National Popular Vote* (updated Apr. 16, 2026), <https://www.ncsl.org/elections-and-campaigns/national-popular-vote> (showing the effective threshold condition).

³⁷ See *Virginia*, 148 U.S. at 519; *U.S. Steel*, 434 U.S. at 471–78.

³⁸ See U.S. CONST. art. I, § 10, cl. 3.

³⁹ See *Virginia*, 148 U.S. at 519.

⁴⁰ U.S. CONST. art. I, § 10, cl. 3 (showing that states are expressly prohibited from forming interstate compacts without the consent of Congress).

⁴¹ U.S. CONST. art. II, § 1, cl. 2.

⁴² *Id.*

⁴³ U.S. CONST. amend. XII.

⁴⁴ *McPherson*, 146 U.S. at 27.

⁴⁵ *Id.*

selection among member states.⁴⁶ It would instead convert the election into a de facto national popular vote, with electors serving only as ministerial instruments for registering the nationwide tally.⁴⁷

That sort of structural transformation must proceed through the formal amendment process listed in Article V, not through coordinated legislation.⁴⁸ Article V supplies the exclusive mechanism for amending the Constitution.⁴⁹ The Constitution's structure reflects the judgment that major institutional changes require supermajoritarian consensus and not the innovations of temporary political coalitions.⁵⁰ History confirms the point. When the nation wished to revise the presidential-election system after the difficulties exposed by the election of 1800, it adopted the Twelfth Amendment.⁵¹ When the nation wished to provide presidential electors for the District of Columbia, it adopted the Twenty-Third Amendment.⁵² These structural adjustments were accomplished through constitutional amendment because the machinery of presidential selection is part of the constitutional structure itself.

Supporters of the NPVIC would say that Article II already gives the states plenary power over elector appointment.⁵³ But plenary authority within a constitutional framework is not authority to abolish the framework itself.⁵⁴ A state may choose district allocation, winner-take-all, legislative appointment, or other in-state means of selecting electors.⁵⁵ What it may not do, especially in

⁴⁶ Nat'l Popular Vote Interstate Compact arts. III–IV.

⁴⁷ *Id.*

⁴⁸ U.S. CONST. art. V.

⁴⁹ *Id.*

⁵⁰ See *Leser v. Garnett*, 258 U.S. 130, 137 (describing the state legislature's role in ratification as a "federal function derived from the federal Constitution").

⁵¹ U.S. CONST. amend. XII (adopted after the elections of 1796 and 1800 exposed defects in the original Article II system, see U.S. CONST. art. II, § 1, cl. 3, under which electors cast two undifferentiated votes for president, with the highest vote-getter becoming president and the runner-up becoming vice president; that design produced an ideologically divided executive in 1796, with Federalist John Adams as president and Democratic-Republican Thomas Jefferson as vice president, and then nearly deadlocked the election of 1800 when Democratic-Republicans Jefferson and Aaron Burr received the same number of electoral votes).

⁵² U.S. CONST. amend. XXIII (amending the Constitution to grant the District of Columbia participation in presidential elections through the allocation of presidential electors under a modified version of the Article II formula, thereby demonstrating that structural changes to presidential selection occur through formal constitutional amendments only).

⁵³ See *McPherson*, 146 U.S. at 35 (recognizing that "the appointment and mode of appointment of electors belong exclusively to the states under the Constitution of the United States"); *Bush*, 531 U.S. at 104 (describing the state legislature's authority to direct the manner of appointing electors as "plenary").

⁵⁴ *Cf. McPherson*, 146 U.S. at 27 (describing the states' role as appointing electors pursuant to the constitutional framework established by U.S. CONST. art. II, § 1, cl. 3); *Leser*, 258 U.S. at 137 (explaining that powers exercised by state legislatures under the federal Constitution derive from the Constitution itself and therefore remain subject to constitutional limitations); U.S. CONST. art. V.

⁵⁵ See *McPherson*, 146 U.S. at 24–25 (upholding Michigan's district-based allocation of presidential electors and recognizing that states possess authority to determine the manner of elector appointment under U.S. CONST. art. II, § 1); *id.* at 29–36 (discussing the historical practice of statewide general-ticket, or winner-take-all, systems among the states); *Bush*, 531 U.S. at 104 (recognizing that "the State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors" and may vest appointment directly in the

concert with other states, is use its appointment power to nullify the Constitution's state-based design and replace it with an extraconstitutional national plebiscite.⁵⁶

The compact is therefore unconstitutional because it attempts to achieve through legislation what the Constitution reserves to amendment.

IV. Article III Does Not Authorize States to Destroy the Constitutional Framework Within Which Their Appointment Power Exists

The Supreme Court has repeatedly described state legislative power over elector appointment as broad.⁵⁷ But no case has held that the states may use that power collectively to abolish the constitutional logic of presidential election.

McPherson involved Michigan's district-based elector allocation.⁵⁸ *Bush v. Gore* concerned Florida recount procedures.⁵⁹ In each case, the state acted within the Constitution's state-centered structure. No case authorized a coalition of states to transform the presidency into a direct national election in substance if not in name.

The compact exceeds Article II because it turns elector appointment into a ministerial response to out-of-state events and out-of-state legal determinations.⁶⁰ Under the compact, a member state no longer meaningfully appoints electors on the basis of its own voters, laws, or political judgment.⁶¹ Instead, it appoints electors on the basis of a nationwide aggregation of ballots cast and counted under dozens of different legal standards.⁶² That arrangement is fundamentally inconsistent with Article II's delegation to each state legislature. Article II empowers the legislature of each state to direct the manner of appointing that state's electors.⁶³ It does not authorize the legislature to dissolve the state's independent constitutional role into a nationwide vote total assembled elsewhere.

The compact also invites the very sort of arbitrariness and disparity that the Court condemned in *Bush v. Gore*: Once a state grants the franchise in the presidential-election context, equal protection forbids arbitrary and disparate treatment of votes.⁶⁴ Yet the compact would aggregate ballots counted under radically different state rules concerning absentee voting, ballot curing, voter identification, recount thresholds, and adjudication standards. Those disparate procedures

legislature); *McPherson*, 146 U.S. at 34–35 (noting that several states historically appointed electors directly through their legislatures rather than by popular vote).

⁵⁶ See *McPherson*, 146 U.S. at 25, 27, 35.

⁵⁷ *Id.*; see also *Bush*, 531 U.S. at 104.

⁵⁸ 146 U.S. at 24–25.

⁵⁹ 531 U.S. at 104–5.

⁶⁰ Nat'l Popular Vote Interstate Compact art. III.

⁶¹ *Id.*

⁶² *Id.*

⁶³ U.S. CONST. art. II, § 1, cl. 2.

⁶⁴ 531 U.S. at 104–5.

would be nationalized in their effect because they would determine the “national popular vote winner,” who would then receive the electors of all compacting states.⁶⁵

Article II of the U.S. Constitution therefore cannot be read to authorize such a profound distortion of the legal design.

V. The NPVIC Is Inconsistent with the Founders’ Republican Design and Their Deliberate Rejection of Direct Democracy

The Constitution established a republic, not a pure democracy. James Madison explained in *Federalist* no. 10 that pure democracies are marked by “turbulence and contention,” are incapable of controlling faction, and are therefore incompatible with the security of rights and the stability of justice.⁶⁶ A republic, by contrast, refines and enlarges public views through representation.⁶⁷

Federalist no. 39 likewise insists that the Constitution must be “strictly republican.”⁶⁸ And *Federalist* no. 68 specifically defends the presidential-election system because while the people’s sense should operate in the choice, the immediate election would be made through a mechanism designed to reduce “tumult and disorder” and to oppose “cabal, intrigue, and corruption.”⁶⁹

The Constitutional Convention debates reinforce the same point. The Electoral College was a deliberate constitutional compromise forged only after the framers rejected multiple alternative methods of selecting the president, including direct popular election, congressional appointment, and selection by state governors.⁷⁰ The final design balanced democratic participation with federalism, institutional independence, and republican restraint: It permitted the people to influence the choice of the chief executive through the selection of electors while preserving the states as constitutional political societies and preventing the presidency from becoming merely the product of fluctuating national passions or concentrated regional majorities.⁷¹ George Mason warned that direct popular election would mean that a task which ought to be performed by those most capable of judging eminent qualifications would instead be performed by those who know least about the candidates’ true fitness.⁷² The framers feared faction, manipulation, demagoguery, regional domination, and the tendency of pure democracy toward political tumult in an extended republic.⁷³ They therefore did not adopt a direct national vote.

⁶⁵ Nat’l Popular Vote Interstate Compact art. III.

⁶⁶ THE FEDERALIST NO. 10 (James Madison).

⁶⁷ *Id.*

⁶⁸ THE FEDERALIST NO. 39 (James Madison).

⁶⁹ THE FEDERALIST NO. 68 (Alexander Hamilton).

⁷⁰ See NAT’L CONST. CTR., 4.4 *Info Brief: Compromises of the Convention*, <https://constitutioncenter.org/education/classroom-resource-library/classroom/4.4-info-brief-compromises-of-the-convention>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

The NPVIC repudiates those premises. It moves presidential selection toward the very plebiscitary model the framers refused to constitutionalize and treats the nationwide popular vote as the sole criterion of legitimacy.⁷⁴ But the American constitutional order does not reduce the legitimacy of elections to aggregate national numbers. It balances popular rule with federalism. The Constitution's presidential-election structure reflects the founders' judgment that liberty and good government are best preserved in a compound republic where political power is filtered through layered institutions rather than consolidated into an undifferentiated national majority.⁷⁵

The presidential-election system was designed to operate within a federal republic in which states matter as sovereign political communities, local interests retain constitutional significance, and the chief executive is not chosen through a single national vote.⁷⁶ The Electoral College itself was the product of constitutional compromise and was accepted precisely because it reconciled competing concerns about democracy, federalism, legislative dependence, and concentrated factional influence.⁷⁷ The NPVIC is unconstitutional because it attempts to discard those structural protections and fundamentally transform the constitutional design without invoking the amendment procedures required by Article V.⁷⁸

VI. The NPVIC Disadvantages Rural and Less-Dense Communities and Undermines the Federal Balance the Constitution Protects

The Constitution's state-based election structure ensures that presidential candidates must build coalitions across geographically diverse communities.⁷⁹ The NPVIC would alter those incentives by making raw national vote maximization the sole electoral objective.⁸⁰ In practice, that would predictably shift campaign attention toward dense population centers and away from smaller states, rural communities, agricultural regions, and geographically dispersed voters. The objection here is not that rural voters are entitled to prevail despite losing the popular vote. The point is constitutional. The Constitution gives political significance to states as states and in doing so protects the representation of citizens whose interests are rooted in place, local economy, and regional community.⁸¹ The compact would flatten those differences into a single national vote pool and thereby alter who must be heard, persuaded, and represented in order to govern.

⁷⁴ NAT'L CONF. OF STATE LEGISLATURES, *National Popular Vote* (updated Apr. 16, 2026), <https://www.ncsl.org/elections-and-campaigns/national-popular-vote> (showing the effective threshold condition).

⁷⁵ See THE FEDERALIST NO. 51, at 349–53 (James Madison) (describing the Constitution as a “compound republic” in which power is divided between distinct governments and institutions).

⁷⁶ U.S. CONST. art. II, § 1, cl. 2–3; U.S. CONST. amend. XII.

⁷⁷ See NAT'L CONST. CTR., *4.4 Info Brief: Compromises of the Convention*, <https://constitutioncenter.org/education/classroom-resource-library/classroom/4.4-info-brief-compromises-of-the-convention>.

⁷⁸ U.S. CONST. amend. V.

⁷⁹ U.S. CONST. art. II, § 1, cl. 2.

⁸⁰ NAT'L CONF. OF STATE LEGISLATURES, *National Popular Vote* (updated Apr. 16, 2026), <https://www.ncsl.org/elections-and-campaigns/national-popular-vote> (showing the effective threshold condition).

⁸¹ U.S. CONST. art. II, § 1, cl. 2.

The compact evidently works a structural transformation;⁸² the Constitution deliberately refused to make the election of the presidency depend solely on a national popular majority.

VII. The Main Counterarguments Fail

States like Virginia that have signed on to the NPVIC would argue that the compact promotes democracy. But the Constitution does not equate democracy with direct plebiscitary rule. It established a republican order in which democratic participation is filtered through institutions designed to prevent faction, preserve federalism, and protect liberty.⁸³ Supporters would also argue that the compact leaves the Electoral College formally intact. But constitutional analysis does not stop at form. The compact preserves only the shell of the Electoral College while destroying its substance.⁸⁴ Electors would no longer reflect independent state-based political judgments. They would simply register the result of a national tally.⁸⁵ Finally, those who have signed on to the compact may argue that because states have broad authority over elector appointment, the compact is merely a permissible exercise of that discretion. But again, discretion within a structure is not authority to abolish the structure itself just as Congress's power to regulate interstate commerce does not authorize it to abridge the freedom of speech

Article II, Section 1, Clause 2 assigns to "each State" the authority to appoint presidential electors "in such Manner as the Legislature thereof may direct."⁸⁶ The Supreme Court in *McPherson* and *Bush* recognized that this authority is broad and encompasses methods like legislative appointment, district allocation, and statewide popular election.⁸⁷ But each of those cases involved a state's exercise of its own constitutional authority over its own electors. The Court has never considered whether Article II permits a state legislature to make its appointment of electors wholly contingent on election results produced under the laws, procedures, and popular vote of other states. The text of Article II speaks in state-specific terms such as "each State" and "the Legislature thereof," raising a substantial constitutional question whether the Electors Clause authorizes a legislature to relinquish its independent constitutional role in that manner.⁸⁸

VIII. Recommendation on Congressional Consent

Congress need not wait until the NPVIC reaches its 270-electoral-vote threshold before acting. As this paper argues, the NPVIC is an interstate compact requiring congressional consent under the Compact Clause, and Congress can exercise its constitutional authority now by enacting

⁸² Nat'l Popular Vote Interstate Compact art. III.

⁸³ See THE FEDERALIST NO. 10 (James Madison); see also THE FEDERALIST NO. 39 (James Madison).

⁸⁴ Nat'l Popular Vote Interstate Compact art. III.

⁸⁵ NAT'L CONF. OF STATE LEGISLATURES, *National Popular Vote* (updated Apr. 16, 2026), <https://www.ncsl.org/elections-and-campaigns/national-popular-vote> (showing the effective threshold condition).

⁸⁶ U.S. CONST. art. II, § 1, cl. 2.

⁸⁷ *McPherson*, 146 U.S. at 25, 27, 35; *Bush*, 531 U.S. at 104–5.

⁸⁸ U.S. CONST. art. II, § 1, cl. 2.

legislation expressly denying consent to the NPVIC and any substantially similar agreement governing the appointment of presidential electors.⁸⁹ Such legislation may be introduced by any member of the House or Senate, proceed through the ordinary legislative process, and be presented to the president for signature. Enactment would reaffirm that the Electoral College cannot be dismantled through coordinated interstate legislation and that fundamental changes to the Constitution's method of electing the president must occur through Article V and not by interstate compact. The president's signature would mark a decisive reaffirmation of the Constitution's existing presidential-election framework and a significant setback for efforts to effectively abolish the Electoral College without a constitutional amendment.

IX. Conclusion

The NPVIC is not a harmless election reform. It is an attempt to fundamentally rewrite the constitutional structure of presidential elections without going through the constitutional amendment process. The framers deliberately rejected a direct national vote for president because they understood the dangers of consolidating political power into a single undifferentiated mass electorate. They feared faction, regional domination, demagoguery, and the instability that follows when constitutional government is reduced to raw national majoritarianism. The Electoral College was adopted as part of a broader constitutional design intended to preserve federalism, protect the sovereignty of the states, and ensure that the president would be chosen within a republican system of ordered liberty rather than through raw democracy.

The NPVIC repudiates those principles. It preserves the shell of the Electoral College while destroying its substance. It converts electors into ministerial agents of a nationwide vote tally assembled under inconsistent legal standards from dozens of jurisdictions. It transforms the states from sovereign political communities with an independent constitutional role into administrative units feeding a single national election machine. And it attempts to accomplish through interstate coordination what Article V reserves to the people and the states acting through constitutional amendment.

The Constitution established a republic, not a pure democracy. It created a system in which political power is divided, filtered, restrained, and balanced across multiple institutions because liberty is not secured by simple number aggregation alone. The founders understood that durable self-government requires more than counting votes; it requires constitutional structure, federalism, local representation, and institutional safeguards against concentrated political power. The NPVIC cuts against each of those principles by collapsing the presidential election into a single national plebiscite untethered from the federal design of Article II.

⁸⁹ Steve P. Mulligan, *Interstate Compacts: An Overview*, CONG. RSCH. SERV. (June 15, 2023), https://www.congress.gov/crs_external_products/LSB/PDF/LSB10807/LSB10807.5.pdf.

If the American people wish to abolish or fundamentally alter the Electoral College, the Constitution already provides a lawful mechanism for doing so: Article V. What the Constitution does not permit is a multistate cartel using coordinated legislation to circumvent the amendment process and effectively rewrite the structure of presidential elections by compact. *Constitutional compromises cannot be discarded simply because modern political actors find them inconvenient.* The Constitution is law, not merely custom or preference. And because the NPVIC violates the Compact Clause, exceeds the authority granted by Article II, and attempts to alter the constitutional structure outside the amendment process, it is unconstitutional and must be rejected.