

# Voter Choice Ballot (Ballot)

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## Questions and Answers

Mark Bohnhorst, Chair, Presidential Elections Team, Minnesota Citizens for Clean Elections. Copyright September 2020. Use, copy and distribute freely with attribution. I thank Dr. John Koza for direct and email conversations that prompted several of the questions and sharpened thinking about the answers, as well as for his comments on the Ballot at the August 13, 2020 program on presidential election reform. I thank Reed Hundt for careful review of a late draft and numerous comments and suggestions. I thank Jason Harrow for identifying one error a prior “hypothesis” statement. Special thanks to data scientist Vinod Bakthavachalam whose simulations of projected outcomes for the 2020 election tested the “hypothesis” about how actions of individual states could transform the Electoral College System and allowed it to develop into the “thesis” that concludes this Q/A pp. 18-20), to wit:

**Major reform of the Electoral College system by action of only a few key states: Adoption of the Ballot by even one state (Florida), or by various pairings of only two or three other states, can decisively shift the electoral college system and effectively require both parties to compete to win the national popular vote.**

Question 1: As I understand it, each voter is given the chance to vote twice. Doesn't that violate the principle of one person: one vote?

Answer: The Ballot complies fully with the one person: one vote principle. In the state's election for president, a voter votes once. The voter has the choice of voting for a specific candidate or voting for the winner of the national popular vote, but she casts only one vote in the state election.

Under the Ballot system, the winner of the national popular vote becomes relevant. So, the voter also casts a vote that is counted in determining which candidate will win the national popular vote.

Voters cast one and only one vote in the state election. They cast one vote that is used to determine the winner of the national popular vote.

Question 2: Could you explain how that works, using an actual Ballot form?

Answer: Sure. Each state can design its own Ballot, so there is no single, uniform form. The first attached form (Form 1)(p. 15) uses a standard format, similar to what you would see on election day in many states.

On the left side, the ballot looks just like any other ballot for president. You vote for your top choice for president.

On the right side, you vote “yes” or “no” on the question of whether, in the state election, you want to vote for the winner of the national popular vote. It’s that simple.

Form 1 includes two explanations in the right hand column. First, it specifies that the vote for a specific candidate for president (the left hand column vote) will be used to calculate “who has won the national popular vote.” Second, it explains that, if you vote “yes,” your vote for the national vote winner will be counted “for the purpose of appointing electors,” that is, for the purpose of determining who wins the state election.

The voter always votes once for purposes of the national vote tally (left hand column) and has the choice (either the left or right hand column) of how to vote in the state election.

The second attached form (Form 2)(p.16) contains similar explanations. (It assumes the Ballot has been adopted in Minnesota, pursuant to Minnesota Statutes XYZ.) On Form 2, the two columns follow one another; on the actual ballot, they would be side-by-side, as on Form 1.

On Form 2, the first explanation is in the left hand column and explains that this vote will always be used to count the winner of the national popular vote and that, unless the voter votes “yes” in the right-hand column, this vote will also be counted in the state election.

In the right hand column, the voter votes “yes” or “no.” As with Form 1, Form 2 explains that a “yes” vote means the voter is voting for the winner of the national popular vote in the state election.

While the explanations on the two forms are slightly different, they mean the same thing. Each voter votes once for purposes of the national vote tally and has a choice about how to vote in the state election.

Question 3: This is a completely new idea. Is there any evidence that this would work and that voters would use it?

Answer: Form 1 was used in a February 2020 national and Florida poll. A majority of respondents thought the form was easy to understand. In addition, a clear majority—across demographic and party lines—said they wanted to have this option available to them when they voted for president.

Question 4: So this system allows a voter to vote for a second choice for president—the national vote winner—instead of the voter’s first choice. Has consideration of second choices ever been deemed appropriate for elections in the US?

Answer: Currently, both ranked choice voting and approval voting systems allow votes to be cast for second choice candidates.

At the nation’s founding, the Electoral College itself counted what amounted to second choice votes—electors voted for two candidates, who were required to be citizens of different states. In the midst of the convention, on July 25, 1787, James Madison (generally considered the Constitution’s chief architect) discussed how a multiple vote system would have worked if there were a national popular vote for president.

A person from a small state would likely vote for someone from his state, as his first choice, and a more generally known person from another state as his second. Aggregating the votes from all the states would probably result in “the second best man” being the “first in fact.”

At the end of the Convention, in debates about the Electoral College system, Gouverneur Morris made essentially the same point: “½ of the votes will fall on characters eminent & generally known.” The second vote favored election of distinguished individuals of national reputation rather than “favorite sons;” it favored consensus.

Although consideration of second place votes was eliminated in the Twelfth Amendment, as late as 1824 James Madison considered that to have been a mistake. He proposed that a

two vote system be re-instituted with first choice votes considered first and second choice votes considered if there was not a majority among first choice votes.

The two vote system embodied James Madison's broader, philosophical thinking about the nature of the union. In his famous essay, Federalist No. 10, Madison ended by observing that a "factious leader" might "kindle a flame" in "particular states," but the conflagration would be unlikely "to pervade the whole body of the union." "The extent. . .of the Union" was itself one of the remedies for the "diseases most incident to republican governments," chief among which was factionalism, today's hyper-partisanship. The two vote system required voters to look beyond their own states and consider the nation as a whole.

Under the Ballot system, a "yes" voter is a Madison Voter. The voter is casting her vote for the candidate who has earned the most votes in the nation as a whole. The Madison Voter chooses to make the "extent of the Union" relevant in the state election.

It is easy to see analogies to Madison's original description. A third party voter who intensely favors her chosen candidate is the counterpart to Madison's "person from a small state." Such a voter might readily choose to cast a state vote for the national consensus, after first registering her third party preference in the national tally. Intense partisans of either major party might be unlikely to cast a "yes" vote, but many major party voters are not intensely partisan and might consider that casting a "yes" vote is the right thing to do.

Question 5: What happens if a majority (or plurality) of voters does not vote “yes” in the right hand column? Is the national vote relevant? Do you use only the left hand column vote?

Answer: The Ballot system works the same, regardless how many voters vote “yes.” So, no, a plurality is not needed.

The “yes” vote applies to each voter’s individual ballot. The system is about individual liberty, about expanding the choices available to individual voters. No matter how many people vote “yes,” as soon as the Ballot system is adopted, the national popular vote will become relevant in the state’s election—it will matter for the first time in the nation’s history.

Question 6: OK, the national vote will always be “relevant.” But will it make a difference?

Answer: Just “how relevant” will depend on how many individual voters vote “yes.” On one end of the spectrum, if only a few vote “yes,” and the margin between candidates is large, the national vote will not matter very much; it will not make a difference.

On the other end of the spectrum, if the margin is narrow and the number of “yes” votes is large, the “yes” votes could cause the state’s electors to be awarded to the winner of the national vote.

For example, consider a closely divided state election that went 46.5 (major party 1), 45 (major party 2) and 8.5 (third parties). If only 2 of the 8.5 percent of third party voters voted “yes,” no matter which major party candidate won the national popular vote, that candidate would also win the state’s electoral college vote: either 48.5 (party 1) to 45 (party 2), or 47 (party 2) to

46.5 (party 1). These hypothetical numbers are actual results from Minnesota's 2016 presidential election, rounded to the half percent. The attached chart, Voter Choice Ballot: Powerful (p. 17), presents these data along with data from four "battleground states" where citizen initiative is available.

The Ballot system is not only simple. It is powerful.

Question 7: I'll give you powerful. So how does the Ballot system compare to the Interstate Compact to elect the president?

Answer: Both the Ballot and the Compact are pursuing the same goal—to cause the national winner to become president, and by that change of rule make it more likely that the major party candidates campaign (and govern) to represent the plurality or majority of all Americans.

Both reforms are based on the constitutional grant of power to states to make this change happen. There is no need of a constitutional amendment for either reform. As you might expect, strong supporters of the Ballot are also strong supporters of the Compact.

One difference is that the Ballot system is an example of a "state-by-state" approach. As soon as the law is passed by a state, it goes into effect in that state. The Ballot reform does not guarantee that the winner of the national vote will win the electoral college. But it immediately makes the national vote relevant to picking the winner.

The Compact works the other way around. The Compact assures that the winner of the national vote will be elected, but

it does not go into effect until states with 270 Electoral Votes have joined.

Advocates of the Ballot believe the two systems fit together perfectly. One system assures the national popular vote will be relevant as soon as possible—with “how relevant” decided by the voters. The other system assures the winner of the national vote will be elected president once the system is in place.

Question 8: Is the Ballot system possibly “too powerful”? If 15 or even 10 percent of voters vote “yes,” couldn’t “safely red” or “safely blue” states end up casting electoral votes for the opposite party’s candidate, and possibly even make the difference in handing the election to the opposite party? Why would a “safely” blue or red state ever consider such a system?

Answer: This is a variation on the general critique of state-by-state approaches, which asks: why would a blue state (for example) ever commit itself alone (not as part of the Compact) to vote for the national popular vote winner, when that could end up electing the red party’s ticket? A prime example is 2004, where John Kerry came reasonably close to winning Ohio and, with it, 271 Electoral College votes and the presidency, despite having lost the national vote to George W. Bush by some 3 million votes. If Minnesota’s electoral votes (or any other blue state’s electoral votes) had been committed to the national popular vote winner in 2004, even with Ohio Kerry would have had less than 269 Electoral College votes and would have lost the presidency.

For blue state Minnesota, there are a number of answers. One is that the Democratic Party believes it is on the side of historical demographic changes and a growing national consensus on critical priorities—e.g., saving the planet, health



care for all, addressing racial injustice. It sees a Republican Party that in 2009 had a decision to make about whether to become a “big tent” party or a party of white grievance and that made—what even many in the Republican Party believe to have been—the wrong decision. In short, the Democratic Party expects to win the national vote.

A second is that, in good-government Minnesota, political leaders often vote on and lead with their convictions about what is fundamentally right and wrong. Electing the president on the basis of the national popular vote is fundamentally the right thing to do.

A third relates to political advantage—“doing good while doing well.” One big fact is that the majority of voters in almost every state in almost every election tell pollsters that they want the national vote winner to become president. That is the method of choosing the president most people want. They just don’t have a way to express that wish unless the Ballot and/or the Compact is in effect.

A fourth is that in 2017 some leaders of the Democratic Party in Minnesota (the DFL) were asked to endorse the state-by-state approach. A former Speaker of the Minnesota House of Representatives—a strong supporter of the Interstate Compact—did so, as did another Compact supporter, then a Congressman and senior official at the Democratic National Committee and now Attorney General, Keith Ellison.

Thus, it is quite possible that Minnesota, normally a “blue” state, would give the state-by-state Ballot system serious consideration.

Question 9: Why would either party in a battleground state support the Ballot system? In battleground states most of all, the threat that the Ballot system will switch an election result from one party to the other party is very real. And by giving up its special battleground state status, doesn't the state forego all the extra benefits that are showered on these states, both through presidential grant-making and by the parties themselves, as they spend lavishly on campaigns?

Answer: The question in itself explains why citizen initiative is so important in battleground states—both for the Ballot and for other state-by-state proposals. Self-interested political insiders might well block adoption of the Ballot through regular legislation, but the record of recent years is that principled, progressive electoral reform has had great success at the ballot box. In some cases this has involved campaigns that maintained an arms-length relationship from both major political parties, such as the Voters not Politicians effort in Michigan. In some cases it has involved progressive coalitions that included Democrats, Independents, some Republicans and many advocacy groups.

Potential opponents are correct to point out that adoption of the Ballot in battleground states is likely to assure that the state's electoral votes go to the winner of the national popular vote, as is shown on page 17, Voter Choice Ballot: Powerful. Furthermore, because the outcome of elections in battleground states is key to the national election, adoption of the Ballot in battleground states greatly increases the odds that the president will be elected on the basis of the national vote. The decisive factor in any close national election is the "swing states;" in those states, the decisive factor will be who won the national vote.

The battleground states are the core of the problem created by the winner-take-all system. It turns out, they may be one of the best places to fix the broken system.

Question 10: Am I correct in saying that the Ballot system, especially in battleground states, is pretty much the same thing as passing a law (directly or through a citizen initiative) that provides the state will begin casting its votes for the winner of the national vote? If yes, why not simply do that?

Answer: It has the same effect—and direct laws or constitutional amendments are worth considering—but there are several advantages to the Ballot.

For one, the Ballot has an inherent appeal to independent, libertarian or other third party voters. It puts the power to decide whether the national popular vote will be relevant directly into the hands of the people. The people have been saying for decades that they want national popular vote, but the politicians have not delivered. OK, politicians, step aside. Let the people decide. That could be a winning theme in a citizen initiative campaign.

In a somewhat related vein, a direct law diminishes the importance of a battleground state's voters. Currently, such voters, whether they approve of the battleground system or not, have elevated importance in the election. Turnout is higher in these states; citizens know they are playing an important role, whether they like it or not. With a direct law, the importance is diminished. The voter is now 1 in over 150 million, rather than one in whatever the state's typical turnout may be—9+ million in Florida; 3+ million in Ohio; 2.5+ million in Michigan; 2+ million in Arizona.

With the Ballot system, battleground state voters continue to play a key role—the new role of patriots who empower their fellow citizens throughout the nation, patriots who assure that the national vote will decide the election and that everyone’s vote will be equal. The importance of this new role can be helpful in framing a citizen initiative campaign. Voters are playing the patriot role in the initiative campaign itself.

Finally, down in the legal weeds, there are arguments that some types of presidential election reform cannot be accomplished through citizen initiative—that only the legislature can make the changes. The Ballot system—because it does not actually change the state winner-take-all rule—is better positioned to win those arguments than a state law that does change the state winner-take-all rule.

Question 11: Why would a presidential candidate bother to campaign in a battleground state that adopted the Ballot? Wouldn’t the state’s electoral votes be pre-committed to the national popular vote winner? And wouldn’t this mean that neither candidate has any reason at all to campaign in the state, because it no longer matters which candidate wins that battleground state? Wouldn’t the effect of a battleground state enacting the Ballot simply be to unilaterally give up the state’s currently out-sized clout in presidential elections?

Answer: The answer to this set of questions goes back to the fundamental thinking about how a national popular vote election will take place. If the winner of the national popular vote is either guaranteed to win the election, or if the odds are prohibitively high that the national winner will win the Electoral College, then campaigns need to pay attention to all the voters in all the states. Battleground states would lose their “outsized influence,” but they will still be important—of equal importance to every other state.

The question comes down to this: if one major battleground state—such as Florida—or a couple of important battleground states, such as Arizona and Ohio—adopt the Ballot via initiative, will campaigns recognize that, as a practical matter, the only way to win the election is to win the national popular vote? That is a question that politicians, political consultants and political scientists can weigh in on, but common sense says the campaigns would need to wage a national campaign. If that is the case, then the effect of the Ballot on how campaigns are conducted in battleground states will be the same as under the Compact.

The campaigns would have to seek votes in every state and would have to treat each vote as equally important. Every state would be a battleground. Parties would be highly motivated to choose nominees who could win the national vote instead of appealing primarily to factions in a few states that for largely accidental reasons happen to have roughly equal balances of voters leaning to the two major parties. This is the shared vision of proponents of the Compact and proponents of the Ballot.

Question 12: Isn't the Ballot idea naive, magical thinking that is not politically realistic?

Answer: Actually the Ballot is very realistic. It is an example of the “state-by-state” approach that was proposed in 2001 by the original thought leaders of the modern national popular vote movement, law professors William Bennett from Northwestern, Akhil Reed Amar from Yale, and his brother Vikram Amar, now dean of the law school at the U of Illinois.

This strategy contemplates that small groups of states will act together, or “pair up.” Let's look at one scenario, first from a Democratic Party perspective. It is politically realistic to consider 18 states, with 210 Electoral Votes, to be “safe” blue states. Clinton carried each state by at least 5%, and they have all voted blue in the last three elections (15 in the last 5 elections). If only

Minnesota, Michigan (via initiative) and Pennsylvania were to pair up to adopt the Ballot, 256 EVs would be either safely blue or committed to the winner of the national vote. Add either Ohio (via initiative) or North Carolina (if it continues to trend blue) to the pairing, and the Democratic ticket will effectively be assured of winning the election by winning the national popular vote.

Even if citizen initiative elections in Michigan and Ohio are not feasible, if only Minnesota and Pennsylvania pair up, and if Michigan returns to reasonably safely blue (as it was for 4 of the last 5 elections), the Democratic Party would be in an advantageous position. In a close election, it would be difficult for the Republican Party to ignore the votes that are pre-committed to the national popular vote.

For more on this question, see Thesis: Major reform of the Electoral College system by action of only a few key states (pp. 18-20).


## State Sample Ballot

### General Election


November 3, 2020

**Instructions**

**Making selections**




Fill in the oval to the left of the name of your choice. You must blacken the oval completely, and you must not make any marks outside the oval. You do not have to vote in every race.



**!** Do not cross out or erase, or your vote may not count. If you make a mistake or a stray mark, ask for a new ballot from the poll workers.

**Optional write-in**



To add a candidate, fill in the oval to the left of "or write-in" and print the name clearly on the dotted line.

A write in vote for only a vice president **will not be counted**.

**President of the United States**

**Vote for 1**

**Donald Trump**  
Republican

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**Democratic Candidate**  
Democratic

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**or write-in:**  
.....  
For President

**National Choice Voting**

**Vote yes or no**

The STATE will count your vote for president and vice president along with all other votes in this STATE, and add them to all votes cast in all other states and the District of Columbia in order to determine who has won the national popular vote.

**Do you want the candidate who receives the most votes in the nation to become the President? If you do, fill in the oval next to YES.**

**Yes**

**No**

The STATE will count the votes of all those who filled in the YES oval as cast for the winner of the national popular vote for the purpose of appointing electors as otherwise provided by this state law.

Form 2 (would appear side-by-side as on Form 1)

Left Column

Vote for One:

(This vote is always used to calculate the winner of the national popular vote. Unless you vote “yes” in the right-hand column, this vote will be used in the state election for presidential electors.)

Trump

Biden

Third Parties

Write in

Right Column

Vote “yes” or “no” or leave the question blank (which is treated as “no.”)

In the state election for president, do you choose to vote for the winner of the national popular vote? (note, this could differ from the slate you voted for in the left hand column)

Yes

No

*(The national popular vote total is calculated by the Secretary of State in accordance with Minnesota statutes XYZ, and the winner is certified by the State Canvassing Board.)*



## **Voter Choice Ballot: Powerful**

Effect of Voter Choice Ballot, if implemented in 5 states for the 2016 election

State (EVs)	MP %	Other MP %	All TP %	Ballot %
Minnesota (10)	46.5	45	8.5	2.0
Michigan (16)	47.5	47.25	5.25	0.5
Florida (29)	49	48	3	1.5
Arizona (11)	48	44.5	7.5	4.0
Ohio (18)	51.5	43.5	6	8.5

Total EVs: 84

MP is one or the other major party

All TP % is the percentage of the state's popular vote for all third parties combined.

Ballot % is the percent of voters needed to vote "yes" in order to assure that the major party winner of the national vote wins the state's electoral votes. This percentage could come from both third party voters and voters for the major party ticket that lost the national popular vote.

Percentages are rounded to the nearest 0.5 or, in Michigan, to the nearest 0.25.

Except for Ohio, if only a fraction of third party voters voted "yes," the state's electoral votes would have been awarded to the winner of the national vote, regardless which major party won the state's plurality of first choice votes.

**Thesis: Major reform of the Electoral College system by action of only a few key states: Adoption of the Ballot by even one state (Florida), or by various pairings of only two or three other states, can decisively shift the electoral college system and effectively require both parties to compete to win the national popular vote. (rev. 9/24/20)**

Original Hypothesis (lightly edited):

Based on the 2020 electoral map, if the Ballot were adopted legislatively in only 2 states (Minnesota and Pennsylvania), and if Michigan either reverted to its pattern in 4 of the last 5 elections and became a blue state, or adopted the Ballot through citizen initiative, the Republican Party would find itself hard-pressed not to compete to win the national popular vote.

Data: 210 “safely blue” state EVs. (Voted Dem in the last 3 election and carried by Clinton by at least 5% margin. N=18; 15 of 18 voted Dem in last 5 elections)

Michigan: 16 EVs

Minnesota plus Pennsylvania: 30 EVs.

Total: 256 EVs

To assure at least a tie, the Democratic Party ticket would need to win only the following 13 EVs:

Maine (2 of 4) (voted Dem in 5 of last 5 elections)

Maine (1 of 4) (Dem in 4 of last 5 elections)

NH (4) (Dem in last 4 elections)

Nevada (6) (Dem in last 3 elections)

\*Note: Maine’s fourth electoral vote is part of the 210 “safe” votes.

An alternative path to assure at least a tie would be for NH to join the Minnesota/Pennsylvania pairing and for Maine and Nevada to adopt the Ballot through initiative or legislatively, followed by winning a referendum election in 2022, or to adopt the Ballot as a constitutional amendment through legislative referral.

To win the Electoral College vote, the Republican Party would need to do the following;

--win at least one of the above 13 Electoral Votes, **plus,**

--run the table on all of the following

Wisconsin (10)(Dem 4 :5)

Iowa (6) (Dem 3:5)

Florida (29) (Dem 2:5)

Ohio (18) (Dem 2:5)

North Carolina (15) (Dem 1:5)

Arizona (11)

Georgia (16)  
Texas (38)

For the Republican Party, a solely battleground state strategy would be politically challenging, The Democratic Party, on the other hand, can prevail either by winning the national popular vote, or by winning 31 EVs from the above states plus the 13 EVs itemized above.

The likely 2024 electoral map is slightly less dire, but it would still be very challenging.

#### Additional Data—9/22/20.

A recent simulation of the 2020 election by data scientist Vinod Bakthavachalam, based on the status of polling as of September 13, 2020, found that, if only Minnesota, Pennsylvania and Michigan had committed to cast electoral votes for the winner of the nationwide vote, the probability of a “clash” between the winners of the nationwide vote and the electoral college would have been reduced from its current approximately 13.6 percent to only 9.8 percent. Similarly, if Minnesota, Pennsylvania and Ohio were committed to follow the nationwide popular vote, the probability of a clash would be reduced by almost half, from 13.6 percent to 6.9 percent.

If only Florida adopted the Ballot, the probability of a clash would drop to 5.3 percent. If Florida, Ohio and Michigan adopted the Ballot, the probability would be a mere 1.5%.

While these data do not guarantee that the Democratic Party will win the Electoral College vote by winning the national popular vote, action by only a few states can shift the system decisively in that direction. In a close election, therefore, it is difficult to see how either party could ignore the electoral votes that would be pre-committed to the nationwide winner.

#### Consequences.

For the Republican Party, an alternative to a potentially doomed battleground state strategy is to support national popular vote measures to assure that the election is decided on that basis, and then to compete on a level playing field for the national popular vote. Such a strategy would appear to have two parts.

First, the Republican Party would embrace the Interstate Compact. The Compact would easily reach 270 Electoral Votes and come into force. However, it is expected that the Compact will be challenged in the courts, and there is a risk that it might be invalidated.

In addition, neither party has a guarantee that the Compact will remain in force even if it survives judicial challenges. If one party's ticket is doing particularly well in national polls in June of an election year, key states from the other party might withdraw from the Compact prior to its July 19 deadline and prevent it from being in force.

As Plan B, as an effective legal back-up for the Interstate Compact and to assure political stability, both parties could endorse the Ballot and work to implement it broadly. The greatest effectiveness and protections would be provided by adoption of the Ballot in battleground states, in states with divided government, as a state constitutional amendment, or through citizen initiative. With the Ballot in effect in several key states, as a practical matter the winner of the national vote would always win the election;. Thus, there would be no reason for either party to withdraw from the Interstate Compact.

With both parties having supported the Interstate Compact and having committed to the practice and principle of national popular vote for president, serious consideration can be given to amending the constitution on a bi-partisan basis.