

Reaction to the Critique of the Voter Choice Ballot

by Reed Hundt,

CEO and Co-Founder of Making Every Vote Count

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National Popular Vote, the organization spearheading the campaign for the National Popular Vote Interstate Compact (“the Compact”), published a critique of MEVC’s Voter Choice Ballot proposal (“Ballot”). The critique can be found [here](#). MEVC’s Reed Hundt responds to NPV’s critiques:

1. Most important, NPV concedes by silence that there are no constitutional or legal issues raised if a state were to adopt a ballot of the form we have proposed. In other words, none of the serious, perhaps fatal, flaws in the Compact apply to the Ballot. These are: (i) the Compact violated state constitutions that mandate voters of the single state to choose the electors (Colorado); (ii) the Compact would be deemed to require Congressional approval and Presidential signature which in turn requires Democrats to hold both branches and White House, not a prospect in the cards for an uncertain number of years; (iii) if effectuated by a ballot measure, the Compact violates the Roberts’ theory in *Arizona Redistricting* that the word “legislature” in Article II, Section 1 means “only by act of legislature”; (iv) the 12th Amendment specifically requires that the President win electors on a state-by-state basis, as opposed to the Compact, which conceivably enables the majority in California alone to cause the Compact-bound states to select electors who would choose the person California voters alone to have chosen.
2. NPV also concedes by silence that there is no practical avenue for the Compact to obtain 270 electors by 2024 election, whereas the Ballot could conceivably be adopted somewhere in 2021-2024.
3. NPV claims the Ballot would cause a state to give its electoral votes to the national winner. The answer is: yes that is the point. It’s a feature, not a bug.
4. NPV asserts that for this to occur in one state alone, if the Ballot existed in one state, would give the Republican nominee an advantage over the Democratic nominee, would not motivate any candidate to compete nationally, and would not be adopted in a red state. These three assertions are contradictory. If the first were true, Republicans would support the Ballot everywhere; if the first were true, then both candidates would have to compete to win nationally; if the third is true, then the first is unlikely to be true. However, in general all of these assertions go to the following: the Compact is a ploy to advantage the Democrats as against the Republicans, and the Ballot instead is even-handed and encourages both parties to nominate candidates who might win the national vote. That’s the point: that is a feature, not a bug. Folks, we want a Republican party that would nominate candidates who might win the national popular vote.

5. NPV claims that if the Ballot existed in one state it would not “come close” to guaranteeing that the national vote winner wins the presidency or that every vote in the country is counted equally.

As to the first, the assertion is belied by the vehemence of NPV’s diction and the strain in NPV’s reasoning. And besides, it’s mathematically false, as we have previously proved with Vinod’s statistics. In fact, the larger the number of electoral votes in a state that adopts the Ballot, the “closer” the Ballot comes to achieving that guarantee. In any case, if it were adopted in any state, it immediately makes the national popular vote at least relevant for the first time in American history.

The second point is illogical: if the Ballot causes the parties to seek to win the national popular vote, then by definition they are trying to win a contest in which every vote is counted equally. And so they would be treating every vote as equally valuable. That is called mission accomplished.

6. NPV asserts no legislature will support the Ballot. First, NPV is the last person to know the truth here. Second, there’s no evidence anywhere. Third, NPV is silent on the all-important question: are any legislatures likely to adopt the Compact? Fourth, the ideal route for any reform, as we have been saying for now almost two years, is a ballot measure that sidesteps the legislature, except that for the Compact this is a path to SCOTUS repudiation, and for the Ballot it is a path to success.
7. Finally, NPV says the Ballot is “appealingly-worded” but also “opaque” and “confusingly similar to NPV.” It is not likely to be all these things in the eyes of a ballot measure approval board, much less a voter. Whether it is intelligible can be ascertained by focus groups and polling, although the polling we did indicated that it is more popular than the Compact and is understandable, particularly in the context of other ballot measures. Anyone who reviewed the California ballot measures this November will know what I’m thinking about: what did 21 and 22 actually mean? But of course what we have here is a bleating admission that the Ballot might be more likely to be adopted in a swing state than the Compact. At least that’s my reading.

MEVC remains committed to promoting effective electoral reform, and it consistently remains open to collaborating with all of the reform movements.