

Be Prepared: if the national popular vote chooses the president, who decides who won?

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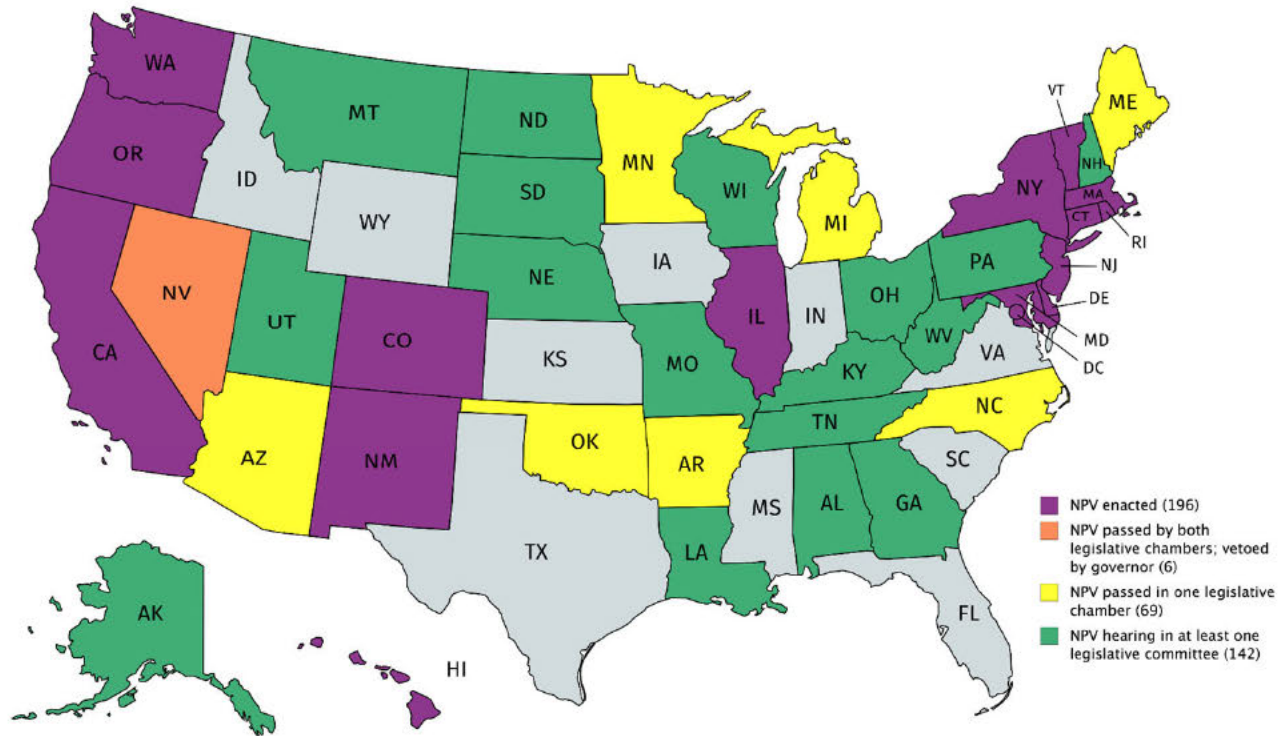
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National Popular Vote Interstate Compact: States appoint electors from slate of party whose nominee wins national vote

- Status: 15 states & D.C., with 196 electors bound.
- If enacted by approximately 6 to 8 states (with 74 electors total) by summer 2020, then effective for 2020 election.
- Making Every Vote Count is one of many nonprofits and local citizens' groups advocating national popular vote as way to choose president
- When effective, every vote in every state weighted equally, plurality winner in country dictates electors state officials in bound states must appoint

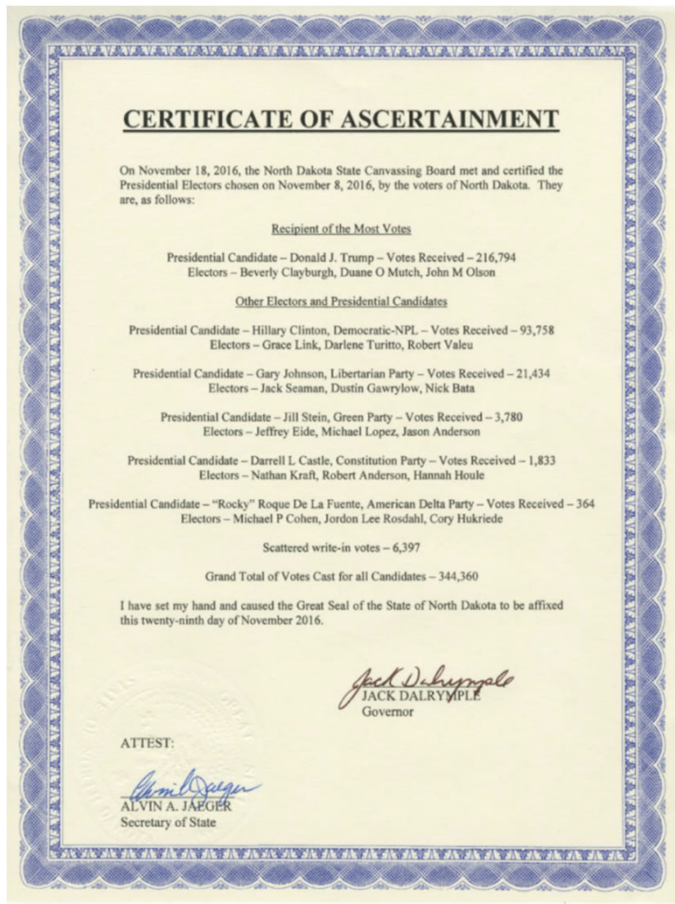
Compact introduced in 25 of 35 unbound states



If Compact Effective, State Officials Must Conduct Count in Parallel

- Votes cast: November 5, 2020 (3 U.S.C. § 1)
- Recounts must be complete in all states by: December 8, 2020 (3 U.S.C. § 5)
- Electors meet on December 14, 2020 (3 U.S.C. § 7)
- Closest modern election popular vote 1960: recounts would not have changed outcome, but . . . be prepared
- Each state must certify appointment of electors “as soon as practicable” after completion of count or recount, but before December 14, 2019 (3 U.S.C. § 6)
- Send total of all votes – runners up matter for first time! – to National Archives (3 U.S.C. § 6)
- But then what?

Current Process: officials send vote totals and appoint electors in same document



Certificate of Ascertainment

To All Whom These Presents Shall Come, Greetings:

Know All Person, That, Whereas, at the General Election of Nevada on the eighth day of November, two thousand sixteen

ROQUE “ROCKY” DE LA FUENTE ELECTORS
ALEXANDRIA EVANS received 2,552 votes,
MATTHEW EVANS received 2,552 votes,
MARCI KNOWLTON received 2,552 votes,
LAZETTE CAMPBELL received 2,552 votes,
SUSAN BANDLEY received 2,552 votes,
THOMAS BANDLEY received 2,552 votes;

INDEPENDENT AMERICAN PARTY ELECTORS
RICHARD ENGEL received 5,268 votes,
RUSSELL JAMES BEST received 5,268 votes,
EILEEN DAVIS received 5,268 votes,
MICHAEL L. SMITH received 5,268 votes,
SYDNEY R. WAGNER received 5,268 votes,
LYNN PAGE CHAPMAN received 5,268 votes;

LIBERTARIAN PARTY ELECTORS
BRETT H. POJUNIS, received 37,384 votes,
DAVID COLBORNE received 37,384 votes,
JASON WEINMAN received 37,384 votes,
JASON G. SMITH received 37,384 votes,
TIM HAGAN received 37,384 votes,
ALEXANDER DIBENEDETTO received 37,384 votes;

REPUBLICAN PARTY ELECTORS
MICHAEL J. McDONALD received 512,058 votes,
JESSE LAW received 512,058 votes,
PATRICIA D. CAFFERATA received 512,058 votes,
CAROLYN SMITH received 512,058 votes,
JUANITA COX received 512,058 votes,
NOEL SEARLES received 512,058 votes;

DEMOCRATIC PARTY ELECTORS
DAYANANDA PRABHU RACHAKONDA, received 539,260 votes,
LARRY JACKSON received 539,260 votes,
JOETTA BROWN received 539,260 votes,
PAUL CATHA II received 539,260 votes,
GREG GARDELLA received 539,260 votes,
THERESA BENITEZ-THOMPSON received 539,260 votes.

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The problem: how to appoint electors in states that use the national popular vote?

- Under current process, officials must certify the state vote and appoint electors simultaneously
- If Compact in effect, states cannot appoint electors until *after* officials determine who won the national popular vote
- Compact requires states to “treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate” (NPVIC, art. III)

Be Prepared: Resolve that all state officials assist with counting the National Popular Vote

1. **Resolve that no later than the Wednesday before the Electoral College meets on the following Monday (Wednesday, December 9, 2020), Secretaries will:**

- a. **Submit first half send first half of certificate showing:**
 - Candidates for President and Vice President
 - The total number of votes cast for each ticket
- b. **Ask Archivist to s all similar Part I submissions from all 50 Secretaries of State and D.C. to allow counting of national popular vote**

2. **Resolve that on or before 5 pm EST the Friday before the Electoral College meets on the following Monday (Friday, December 11, 2020), all Secretaries will:**

- a. **Announce the total votes for all candidates from all 51 vote counts**
- b. **Submit the second half of their certificates to the National Archives.**
 - Compact states appoint electors from slate nominated by party whose presidential nominee has won the most votes cast in all 51 jurisdictions.
 - Other state officials follow their existing practice: no change

Summary of Actions by State Officials

- All Secretaries of State resolve that by regulation, promulgation or any other necessary step they shall each inform the Archivist of United States of the final popular vote count, after recount if any, for each and every presidential candidate by not later than the Wednesday before the electors meet (Wednesday, December 9, 2020); and
- All Compact-bound states shall, on the Friday before the electors meet (Friday, December 11, 2020), review all 51 vote tallies and announce the popular vote totals in parallel, whereupon
 - Each Compact bound state appoints electors from the slate nominated by the party whose presidential candidate has won the largest number of votes cast in total in all 51 jurisdictions, and
- All Secretaries of State shall communicate the appointment of electors immediately to the Archivist of the United States through the certificates of ascertainment
- The Secretaries, not the Archivist, determine the national popular vote total

Questions?



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