

The Electoral College, the NPV and Trojan Horses

IS THE OBJECTIVE REALLY “ONE MAN, ONE VOTE?”

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The National Popular Vote (NPV) Initiative: Direct Election of the President by Interstate Compact

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(Mar. 24, 2019) — As the political landscape grows ever more radioactive – all the more so now that the Mueller Special Counsel “Trump–Russia Collusion” investigation is completed, with a summary of the report’s “principal conclusions” now [released](#) from Attorney General William Barr – faithful P&E readers will likely see a lot more rhetoric swirling around that odd, some would say anachronistic body called the “Electoral College.”

And for those millennials out there who may not be familiar with their nation’s Constitution, the Electoral College (“EC” for short) is not, to clarify it for you, an institution of higher learning where one can buy one’s way in with mom and dad’s money, bribes and [influence](#). Rather, it is a product of the reasoned thinking of the Founders who in 1787 sought, as part of fashioning a constitutional republic – not a majoritarian “democracy” – to bring stability and order to the otherwise “spirited” political event taking place quadrennially called “electing a president.”

The goal of this post will not be to resolve the myriad issues surrounding the creation of the Electoral College in the first place or whether it has “outlived” its usefulness. That task will be left to yet another body wisely created by the Founders: the U.S. Supreme Court. Rather, the objective will be to pique the reader’s interest in learning more about why, in your humble servant’s view, not only has the Electoral College *not* exceeded its

shelf-life, it remains as one of the few remaining bulwarks against the majoritarian tyranny sought by those – chiefly Democrats, progressives and/or socialists – who seek to morph this constitutional republic into a chaotic “democracy.”

To begin with, it is assumed that readers, being erudite P&E devotees, already possess a modest understanding of how the EC works. If not, it is suggested that before going further, a brief examination of a “primer” on the topic – taking the form of a 2018 Congressional Research Service (“CRS”) Report [entitled](#) “The National Popular Vote (NPV) Initiative: Direct Election of the President by Interstate Compact” – be first undertaken. I will wait.

Back so soon? OK, let us begin.

First, unlike numerous other Congressional Research Service memoranda and reports which have been roundly criticized by yours truly [here](#), [here](#) and [here](#) on the still-smoldering issue of presidential eligibility (no..., Virginia..., it is not “settled”...), the CRS Report on the “National Popular Vote Initiative” issue presents a relatively straightforward and objective explanation of both the Electoral College as well as the “end-around run” on the EC proposed in the form of the “National Popular Vote” interstate “compact” (“NPV”) among various states.

As noted in the CRS Report, suffice it to say for present purposes that the goal of the NPV effort is to secure the participation by the requisite number of states (and the District of Columbia) to aggregate among them a total of 270 “electoral votes” in presidential general elections. Under existing EC protocols, the winner of the popular vote for president on a *state-by-state* basis is awarded all of that particular state’s presidential electors. This is known as the “winner-take-all” principle. The number of electors for each state is determined by taking the number of senators for that state (all possess two senators) and adding the number of House members representing that state. Those electors, in turn, actually cast their own ballots in December of each year following the November “popular” election to officially “elect” the president.

The NPV compact, however, would pledge the votes of the compact member states’ electors *not* to the winner of the popular vote in their *own* state, but to the winner of the popular vote of *all* states combined nationwide. Under current protocols, it takes 270 electoral votes to “win” the presidency. The NPV seeks to marginalize the EC’s goal (confirmed by the Founders’ intent) of balancing the interests of smaller-populated states against larger-populated states. If the requisite number of participating states joined to achieve the 270 electoral vote threshold, *all* of those votes would be pledged to elect the candidate who received the largest number of “popular” votes on a *nationwide* aggregated basis rather than, as now, on a *state-by-state* basis.

Stated otherwise, an argument can be made that the NPV initiative is analogous to a [Trojan Horse](#), a subterfuge to allow entry onto the political battleground by centralizing the power of more populous, urbanized states at the expense of the smaller, less-urbanized rural states. For example, if the NPV were implemented, if Iowa or South

Dakota did not like how the popular vote went in California..., too bad, so sad. Get over it, rubes.

In your humble servant's opinion, this would be a very bad thing. Supporters of the NPV argue that the "small state/big state" dichotomy which motivated the Founders in 1787 is now an undemocratic relic of the past. They argue that under the NPV initiative, the nation will finally achieve the elusive goal of securing the "one man, one vote" objective of the federal Voting Rights Act ("VRA") Never mind that, if, say, a whole bunch of liberals repopulated California, New York and, say Florida, with enough people to aggregate the necessary 270 electoral votes in those three states, they alone would be able to "run the table." The proponents would claim that it is democracy at work, the political sentiments and desires of "flyover" country aside.

Ummm... that is why the Founders created a constitutional republic, rather than a direct democracy or, worse, a monarchy. To quote Benjamin Franklin when asked by a woman when he left the Constitutional Convention in Philadelphia in 1787 as to whether the Founders had created a republic or a monarchy, he [responded](#): "A republic, if you can keep it." Recall as well that the NPV compact approach, seeking to centralize the power of the EC in fewer than all of the states, would set the nation on a course headed toward a monarchy as opposed to that which presently exists, a constitutional republic.

In addition to conceptual impediments – as if conceptual hurdles have ever stopped a committed liberal – the CRS points out that there may be some big problems with the NPV compact, quite apart from its end-around run gambit to circumvent the EC. Specifically, the CRS cites (CRS 2018 Report at 26) a Columbia Law Review article entitled "Why the National Popular Vote Plan is the Wrong Way to Abolish the Electoral College."

While the article posits that the EC may well need to be abolished, if that is the goal, then the proper way to do it is as envisioned by the Founders and provided for in Art. V of the Constitution: a formal amendment abolishing it rather than the "end-around run" envisioned by the NPV compact approach. As for the abstract argument that abolishing the EC is a good idea, even John F. Kennedy, as a senator before being elected President, thought it was a [bad one](#).

Moreover, the Columbia Law Review article (and the CRS Report through incorporation of the article) postulates that under the federal Voting Rights Act, "moving from a state-based [vote] to a national popular vote dilutes the voting strength of a given state's minority population by reducing its ability [voting power] to influence the outcome of presidential elections." If that potential existed, then the "preclearance" mechanisms of the VRA – implemented and enforced by the U.S. Department of Justice – could be triggered, resulting in years of uncertain litigation.

And this is where it gets interesting. After discussing the potential problems with the NPV compact under the Voting Rights Act, the CRS Report states (2018 CRS Report at 27): "It should, however, be noted that in 2012, the Justice Department's Civil Rights

Division *specifically declined to challenge California's accession to the NPV compact on VRA grounds.*" (Emphasis added). That statement is backed up by a citation (*id.* at fn. 175) to "U.S. Department of Justice, Civil Rights Division, Letter of T. Christian Herren, Jr., Chief, Voting Rights Section, at <http://www.fairvote.org/assets/NewFolder/Chapter-188-approval-letter-from-DOJ.pdf>." Do not bother, faithful P&E reader, trying to locate that letter online, as the attempt will lead to an "Error 404" message explaining that it can no longer be found on the Internet as being removed or an "Error 403" message informing that access is "forbidden."

Against this backdrop, there are three important things to note: (1) California signed onto the [NPV compact](#) in 2011 over the signature of Democrat Governor Jerry ("Moonbeam") Brown; (2) California's 55 electoral votes – nearly twice the number of second-place New York (29) – thus supplied over one-fifth of the 270-vote NPV target and became pledged to the nationwide popular-vote winner; and (3) the U.S. Department of Justice was, in 2012, headed up by Attorney General Eric Holder, appointed by one Barack Hussein Obama II.

Does anyone else out there see a pattern? Twelve of the 13 present state signatories to the NPV compact – now totaling, as of the date of this post, 181 electoral votes from both large and small states – signed onto the agreement under Democrat governors. Only the State of Hawaii (purported birthplace of Monsieur Obama) joined via a legislative override by the Democrat-controlled Hawaii legislature of Republican Linda Lingle's veto of the enabling legislation. Frankly, this seems more like a Democrat EC-"packing" effort than one designed to ensure VRA compliance and adherence to the principles of "one man, one vote."

The fact that a little over half (7) of the smaller states, with ten or fewer electoral votes as well a little under half (6) of the larger states with more than ten votes would seem to cut against the conclusion that the "large state/small state" dichotomy situated at the core of the original (1787) EC thesis has any continuing relevance... until one realizes that 100% of the signatory states are headed up by Democrat governors. In all candor, your humble servant was "on the fence" regarding concerns about the Trojan Horse potential of the NPV initiative... until reading the CRS Report noting that the Obama regime's Justice Department, headed up by Eric Holder, decided to give California a "pass" on any VRA concerns. Machiavelli would be proud.

Sooo..., the next time someone tells you that the EC is on life-support or that a short-cut, end-around alternative to the EC or a constitutional amendment formally abolishing it is an acceptable mechanism to accomplish by indirect means that which is too difficult to achieve directly, show this post to them.

Finally, as to the non-EC-related teaser at the beginning of this post regarding the Robert ("there-seems-to-be-no-evidence-of-Russia/Trump-collusion") Mueller investigation, the Democrats are beyond apoplectic. Their wails and gnashing of teeth are presenting almost as much entertainment as was seen on the evening of general election day in

2016. However, one of their knee-jerk reactions presents some interesting “food for thought.”

That “food” is this: If certain Democrats followed through on their threat to issue a subpoena to Special Counsel Robert Mueller, and he agreed to appear before, say, the House Permanent Select Committee on Intelligence, chaired by Cong. Adam (“Bug-Eyes”) Schiff (D-CA), consider this hypothetical exchange when Republican Devin Nunes (R-CA), the Ranking Member on the Committee, gets to ask questions:

Cong. Nunes: “Mr. Mueller, in your prior testimony today, you stated that you have concluded that there was no collusion between President Trump, Russia and/or any Russian operatives in the lead-up to the 2016 general election... correct?”

Mr. Mueller: “That is correct, zero evidence of collusion between or among *those* entities or persons was found.”

(Pregnant pause)

Cong. Nunes: “In your response to my last question, you emphasized the word ‘those.’”

Mr. Mueller: “That is correct.”

Cong. Nunes: “Why did you do that?”

Mr. Mueller: “Because we discovered *abundant* evidence of collusion between Russia and Russian operatives and *other* persons, organizations and law firms in this country in the lead-up to the 2016 general election.”

(Audible gasps from the audience and Adam Schiff)

Cong. Nunes: “And who were those persons, organizations and law firms?”

Mr. Mueller: “Congressman Nunes, I’d be happy to reveal those names in a closed session..., but I am certain you would recognize them.”

Juicy, no? Just sayin’....