

WHO CAME UP WITH THE IDEA FOR A NATIONAL POPULAR VOTE COMPACT AND WHAT DO THEY SAY ABOUT IT TODAY?

The idea behind National Popular Vote was developed by three law professors who remain supportive of the concept but are critical of the compact's serious defects.

PROFESSOR VIKRAM DAVID AMAR, UC-DAVIS SCHOOL OF LAW

- "...[S]ubstantial nonuniformity among the states in the national vote count on the questions of who votes, how the votes are cast, and how they are counted and recounted... raises the specter of **electoral crises**."¹
- "...[A] nationwide recount done under different rules in each state would – if and when it occurs – run a huge risk of becoming an **historic debacle**."²
- "...[A] partial national recount – conducted in some but not all the states – in the event of a close national race would generate a **true crisis**..."³
- "...[T]he issue on which thoughtful analysts ought to be focused... is how Congress... might fill in the **dangerous gaps** in the NPV design."⁴

PROFESSOR AKHIL REED AMAR, YALE LAW SCHOOL

- "[NPV is] a bit of a **harebrained scheme**... it does have **some problems**."
- "The **fundamental problem** with [NPV], which I did help invent, is... it would be the first time you tried to count votes from different state baskets in the same system."
- "California could say: 'Now that we have [NPV]... we're going to **let seventeen-year olds** vote.' Texas might then say: 'Ah, that's very interesting, now California is going to play a little bigger role because more Californians are going to vote, so we're going to **let sixteen-year olds vote**.' Then Arkansas comes along and says: 'Well, actually, **we're going to let dogs vote**.'"
- "I don't think I... thought everything through as completely as... [the people who] got the Twenty-Fifth Amendment through, which I don't think has as many **glitches** in it as the National Popular Vote Interstate Compact does."

PROFESSOR ROBERT BENNET, NORTHWESTERN SCHOOL OF LAW

- “[NPV] would **raise difficulties** in calculating the nationwide vote in a close contest, because non-participating states would have little incentive to count the vote in their states with great care...”
- “There are, however, **problems** with [NPV], some of which are **ignored** or **insufficiently acknowledged...**”
- “The most **glaring defect...** is the **failure to take seriously** the possibility of a nationwide vote close enough that recounts in non-participating states might matter...”
- “[NPV’s] authors **blithely claim** that a recount... could be handled... [asserting] that ‘every state is always prepared to conduct a statewide recount after every election...’ But the typical trigger for a recount under state laws is a close statewide vote, and there need be no such recount justification when the nationwide vote is made determinative...[A] **real solution to this problem** [should be] offered in place of the **authors’ bravado...**”
- “[There will be] **counting problems** if the nationwide popular vote tally is a close one.”

1 Vikram Amar, “Overcoming Partisan Objections to Electoral College Reform: How Red States Could (and Should) Adopt the National Popular Vote Interstate Compact But Defer Implementation Until 2032,” April 2019 at Justia.com. Available at: <https://verdict.justia.com/2019/04/18/overcoming-partisan-objections-to-electoral-college-reform>.

2 Vikram David Amar, “The Case for Reforming Presidential Elections by Subconstitutional Means: The Electoral College, The National Popular Vote Compact, and Congressional Power,” p. 11, footnote 59, October 2011, UC Davis Legal Studies Research Paper Series. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1936374.

3 *Ibid*, p. 13.

4 Vikram Amar, “Overcoming Partisan Objections to Electoral College Reform,” *supra*.

5 Akhil Amar, “Remarks by Akhil Reed Amar,” *Fordham Law Review* 89, no. 1, October 2020, pp. 9-10.

6 *Ibid*, p. 10.

7 *Ibid*.

8 *Ibid*.

9 Robert W. Bennett, “For California voters, a cure worse than ill,” Sept. 23, 2007, *Chicago Tribune*. Available at: <https://www.chicagotribune.com/2007/09/23/for-california-voters-a-cure-worse-than-ill/>.

10 Robert W. Bennett, “Possibilities and Problems in the National Popular Vote Movement,” p. 183, *Election Law Journal* 7, No. 3, Sep. 2008.

11 *Ibid*, pp. 183-184.

12 *Ibid*, p. 184.

13 “Robert Bennett, “Electoral College reform at the state level is in the air,” May 2009, *San Diego Union-Tribune*, available at: <https://www.sandiegouniontribune.com/sdut-1e17bennett1131928-2009may17-htmlstory.html>.