

Count on Chaos—NPV's Recount Problems

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Introduction

The National Popular Vote interstate compact (NPV) attempts to mimic a direct, nationwide election for president. Member states agree to award their presidential electors to the candidate deemed to have received the most popular votes nationally,¹ regardless of which candidate won in individual member states.

One critical issue is what happens if the results are close enough to justify a recount? Although NPV creates the illusion of a nationwide election with a national electorate, each of the fifty states and Washington, DC will still run their own elections under their own election codes and policies. The compact itself is silent on the issue of recounts. This means that each individual state, whether in the compact or not, would have to decide on its own whether and how to apply its recount laws.

This memo summarizes the issue of recounts under NPV and then lays out three scenarios that illustrate the challenges a close election would pose if the compact was in effect. These scenarios show that a nationwide recount would be impossible, and that between twenty-five percent and sixty-one percent of all ballots would not be recounted even in an election where the candidates were separated nationally by just 0.07 percent after the initial count.

Recount Laws: The Basics²

Every state except Mississippi provides for either an automatic recount if the margin between leading candidates is less than a specified threshold, or provides candidates, voters, or election officials with the ability to request a recount. Many states provide for both an automatic recount and the ability to request a recount.

In an automatic recount, once the initial vote count is determined to be below the threshold then officials must authorize a recount. This threshold varies by state – in most it is between 0.5 and 1 percent, though in a few it is lower (Hawaii and Ohio both have a 0.25 percent threshold; Oregon's is 0.2 percent). In a handful of states the threshold is a specific vote total – in New York the top candidates must be within 5,000 votes to trigger an automatic recount, while Michigan requires a margin of 2,000 votes or less.

¹ Technically the compact will only count popular votes cast in a “statewide popular election” and will ignore states holding popular elections that do not comply with the compact’s requirements. For the purposes of this brief memo, we assume all states hold elections that meet the compact’s requirements.

² Information on state recount laws is drawn from two sources: The National Conference of State Legislatures, available at <https://www.ncsl.org/elections-and-campaigns/election-recounts>, and: Ballotpedia, available at https://ballotpedia.org/Election_recount_laws_and_procedures_in_the_50_states

The process for requesting recounts also varies by state. In some, such as California, any candidate or voter may request a recount regardless of the margin. Other states' laws are more restrictive in terms of the margin and who can request a recount. In Minnesota there is no threshold requirement, but only the losing candidate may request a recount. Alabama requires the candidates to be within 0.5 percent to request a recount, but any candidate or voter may make the request. Utah requires the candidates to be within 0.25 percent and only the losing candidate may request a recount.

Problem 1: State or National Margin?

The first and most significant problem is that state recount laws were written with only the in-state margin in mind, not the margin of a synthesized "national popular vote." In an election where the national margin is very close, the margin in most states is unlikely to be close at all.

For example in the 1960 election, in which either John Kennedy won the popular vote by between roughly 112,000 and 119,000 votes or Richard Nixon won the popular vote by about 60,000 votes,³ the national margin was between 0.17 and 0.09 percent. But the margin between Kennedy and Nixon was below 0.5 percent in only two states (Hawaii and Illinois).

If the in-state margin is what triggers an automatic recount, or allows a recount to be requested, then even with a very close national margin under NPV, relatively few states could conduct recounts under their current laws.

Problem 2: Who's the Loser?

An additional complication is that many states allow a recount to be requested only by the losing candidate. Just as it is unclear whether the national or in-state margin should be used to determine whether a recount is triggered or can be requested, it is unclear whether it would be the in-state loser or the national loser who can request a recount.

For example, both Illinois and Texas only permit the losing candidate to request a recount. If the national margin was close with the Democrats narrowly ahead after the initial count, and both Illinois and Texas intended to use the national margin to determine whether a recount could be requested, the Republicans would be the "losers" with the power to decide whether either state would conduct a recount. Republicans might reasonably believe that a recount in Texas would be to their advantage, turning up more votes for them than their opponent, while a recount in Illinois would benefit their opponent. In this case, the Republicans are likely to request a recount in Texas but not Illinois, and because the Democrats are the "winners" after the initial count they cannot request a recount in Illinois.

Who Recounts? Three Scenario

The following three scenarios show how states could interpret their recount laws in relation to a close national election if NPV is in effect. Each scenario is based on the same hypothetical election, which assumes a Republican candidate with the same number of votes in each state as Donald Trump received

³ Historians and political scientists disagree over how to allocate the popular votes cast in Alabama, where six of eleven Democratic electors were not pledged to Kennedy and ultimately voted for Sen. Harry Byrd.

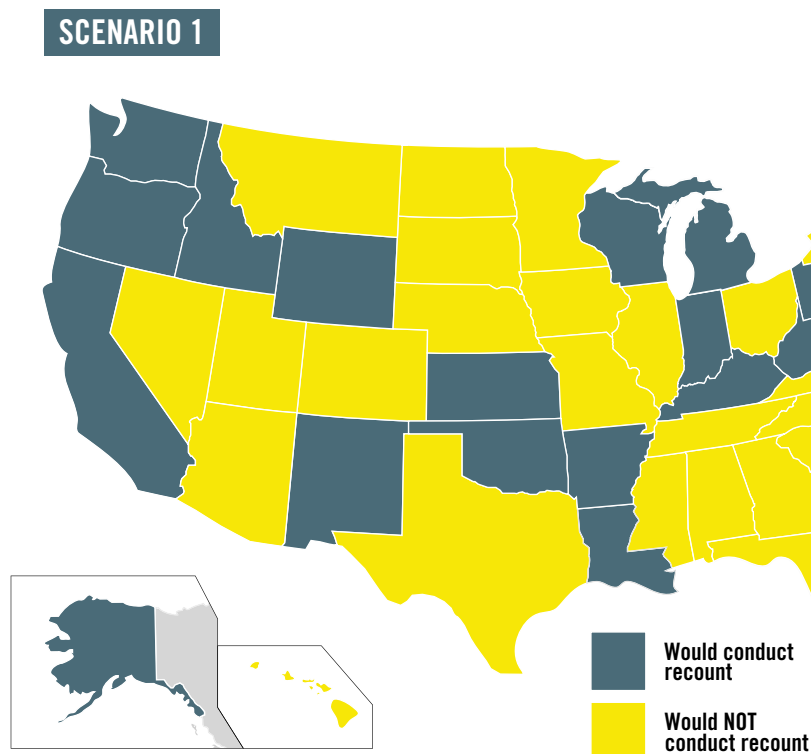
in 2024, and a Democratic candidate with 2.9 percent more votes in each state than Kamala Harris received in 2024. In such a case, the Republicans would have a national lead of roughly 109,000 votes, or a 0.07 percent national margin.

Each scenario assumes that unless the margin is within 1 percent a candidate will not request a recount in a state they have lost, and also assumes that recounts will be conducted in all states where voters can request a recount.

SCENARIO 1 – STRICT INTERPRETATION

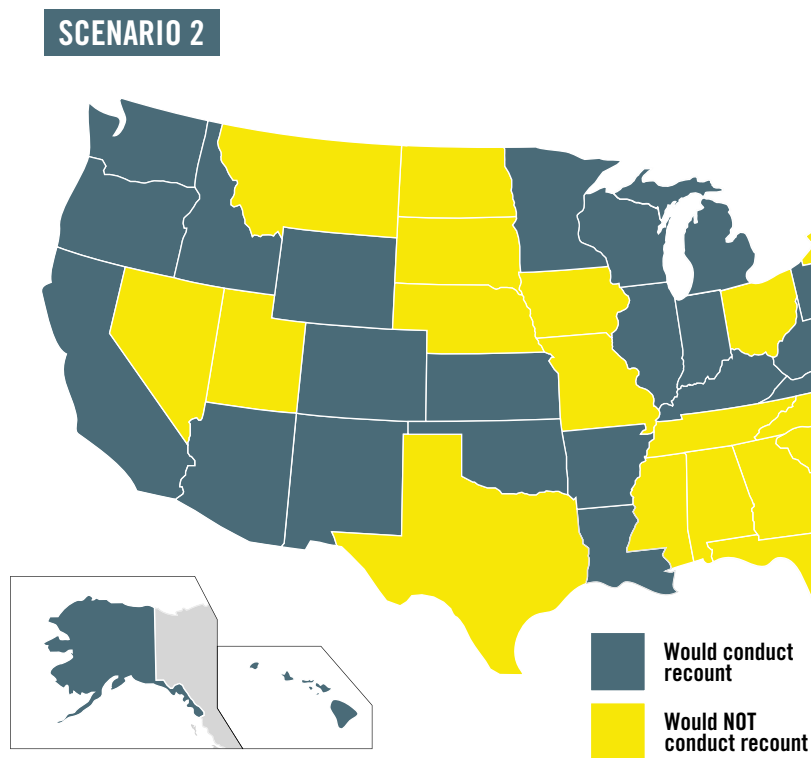
Under this scenario, all state recount laws are interpreted to consider only in-state results. State officials thus ignore the initial national margin and outcome for the purposes of recounts. Only twenty-one states (including Washington, DC) conduct recounts in this scenario. This includes two states (Michigan and Pennsylvania) where the in-state margin is close enough to trigger an automatic recount. A recount would be requested in Wisconsin because the in-state margin between the two candidates is 0.56 percent, under the state's one percent threshold to request a recount. In the remaining eighteen states conducting recounts, there is no threshold requirement and recounts may be requested by either candidate or a voter.

In the other thirty states either the in-state margin was above the threshold to trigger or request a recount, or only the losing candidate can request a recount and would not opt to do so. As a result, roughly sixty-one percent of the ballots nationally are not recounted.



SCENARIO 2 – SPLIT INTERPRETATION

Under this scenario, states that are members of the compact interpret their recount laws to apply the national margin and determination of winners and losers.⁴ States that are not in the compact continue to interpret their recounts laws to only apply the in-state margin and results. Thirty states (including Washington, DC) conduct recounts in this scenario, including 19 of the 23 compact member states.⁵ The four compacting states that do not recount (Connecticut, Delaware, New York, and Rhode Island) have thresholds that are tied to a specific number of votes (2,000, 1,000, 5,000, and 1,500, respectively) that would not be met by the roughly 109,000 vote national margin. The twenty-one states that do not conduct recounts account for approximately forty-five percent of all ballots cast.



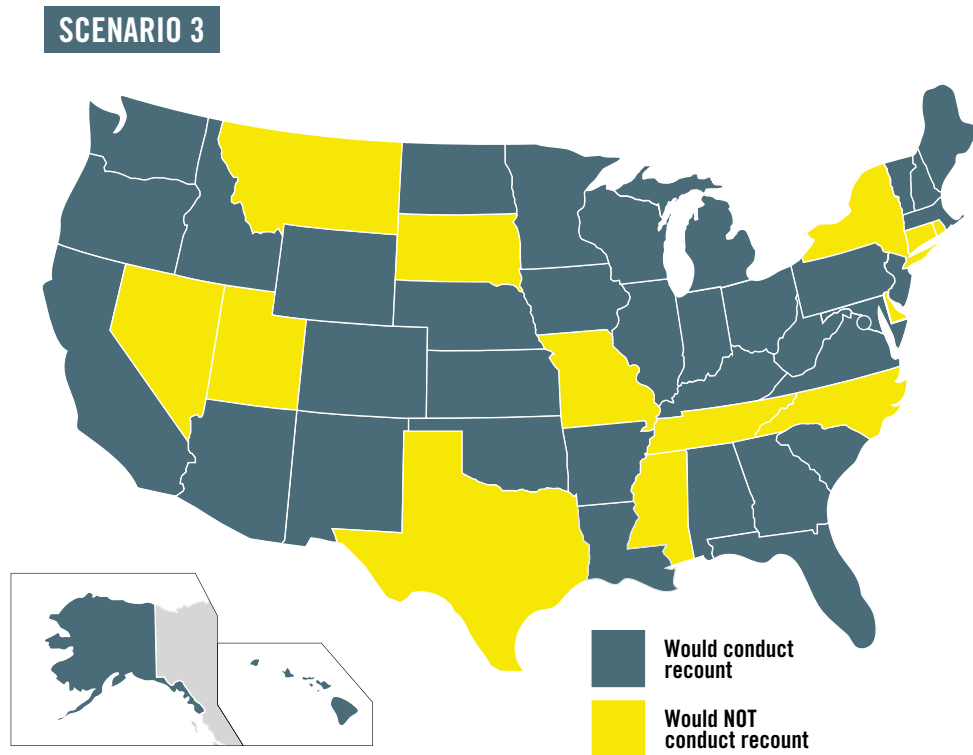
SCENARIO 3 – GENEROUS INTERPRETATION

In this scenario every state, regardless of membership in the compact, interprets its recount law to apply the initial national margin and determination of the winning and losing candidates. Thirty-eight states conduct recounts in this scenario, with the increase over Scenario 2 attributable to automatic recounts being triggered in several non-compacting states. Thirteen states still do not conduct recounts,

⁴ This scenario assumes that the following additional states have joined the compact in order to put it into effect: Arizona, New Hampshire, Nevada, Pennsylvania, Virginia, and Wisconsin.

⁵ Ibid.

either because their margin for triggering or allowing recounts is a set number of votes rather than a percentage, or because the candidate deemed the loser after the initial national count would not request recounts in states they lost. The states that would not conduct a recount would represent about twenty-five percent of all ballots cast.



Conclusion

Recounts are a critical part of the election process and serve two purposes. Most obviously, recounts are used to ensure that the correct candidate wins. Perhaps as important, recounts can reassure the public that the process was fair and accurate.

Unfortunately, the National Popular Vote interstate compact cannot deliver on either purpose. Although it purports to create a nationwide election and national electorate, each state must continue to run its own elections under its own election code. The compact does not even attempt to solve the problem of recounts. Instead, it leaves it to each state—including states not in the compact—to figure out as best they can how their recount laws should operate with regard to NPV.

This means a true nationwide recount could not be conducted even if it were needed. Instead, a close national election would lead to a situation where some states conduct recounts while others do not, stirring confusion and distrust among the broader public, and possibly handing the presidency to a candidate that did not actually receive the most popular votes. This critical defect in the NPV compact warrants its rejection.