

Testimony of Sean Parnell

to the

**Rhode Island House of Representatives
State Government and Elections Committee**

March 25, 2025

Re: H 5519 (Repeal of the National Popular Vote interstate compact)

Chairman Shanley, Members of the Committee, thank you for allowing me to testify. I am Sean Parnell and I represent Save Our States Action, an organization focused on defending the Electoral College and educating legislators and the public on the dangers of the National Popular Vote interstate compact (NPV).

I am here today to testify in favor of H 5519, a bill that would repeal Rhode Island's membership in NPV. As you may recall, Rhode Island joined the compact in 2013. If the compact were to ever go into effect, Rhode Island would appoint presidential electors pledged to the candidate determined to have received the most popular votes nationally, even if Rhode Island's voters overwhelmingly favored a different candidate. In 2024, this would have meant Rhode Island's four electoral votes going to Donald Trump, in opposition to the 55 percent of the state's voters that supported Vice President Kamala Harris.

My testimony today focuses largely on the numerous technical defects in this compact that will, in the words of one of the law professors who originally developed the concept of NPV, lead to "electoral crises" and an "historic debacle" if the compact is implemented as it is currently written. Many of these defects were not identified or well understood when this legislature approved the compact in 2013, and I hope the new information and concerns will prompt a reconsideration of whether NPV is the right path for Rhode Island.

I'll address these defects in a minute, but first I'd like to point out the biggest problem with this compact – if it were ever to go into effect, it would silence the voice of Rhode Island. Just as you all were elected to represent your districts, each state's presidential electors are intended to represent each state's people in the presidential election process. Under NPV, that vital link between the elected and whom they represent is severed. As mentioned earlier, in 2024 Rhode

Island's voice in the presidential election process would have been in favor of Donald Trump despite Rhode Island's voters choosing Kamala Harris.

I would also note that NPV is not a straightforward way to address the problems associated with "winner take all," which causes some in states like Rhode Island to feel left out during the presidential election process. The truth is it is unclear if NPV will ever go into effect, and it's very unlikely to do so within the next decade. To the extent any members of the committee are in favor of dealing with the shortcomings of "winner take all," which was a major selling point by the compact's advocates in the past, a better approach would be to adopt legislation that is entirely within your control and can take effect before the next presidential election, such as H 5520 offered by Representative Newberry. As I believe I suggested to this committee in 2013, if you want to address "winner take all," then address "winner take all" and do so in a way that doesn't depend on the hope that, at some distant time in the future, enough other states have signed on as well for the compact to go into effect.

As for the technical defects in this compact, they are numerous and serious. In most cases, these defects stem from the same basic problem: there is no official, timely, accurate, and conclusive national vote count that can be used for this compact. No federal agency, commission, or official will prepare an official vote total for every candidate that will then be used by member states to determine the outcome, nor does the compact create or empower such an agency, commission, or official.

Instead, the chief election official of each member state is responsible, independently from one another, for obtaining vote totals from other states and aggregating them in order to produce national vote totals that are only applicable in their own state. Lobbyists for NPV insist this is an uncomplicated task – as one said a few years ago in a hearing, "We can all do the math." But election controversies do not usually come from an inability to do math, instead they come from disputes over which ballots should and should not be counted and similar issues.

The simplistic sloganeering by NPV's lobbyists ignores the fact that votes in every state are cast, counted, recounted, and reported in different ways, some of which cause serious problems for NPV and will lead to confusion, controversy, chaos, crisis, and a lack of a conclusive determination of the winner if the national vote is close, as three of the last seventeen presidential elections have been.

Some of the most significant problems and defects in the compact include:

- NPV requires member states to accept vote totals from other states if they are on an “official statement,” which would include either a Certificate of Ascertainment or a statewide canvas. But these documents can contain significant errors. For example, New York has left tens or hundreds of thousands of votes off its Certificate of Ascertainment as well as its statewide canvas – it simply had not completed counting all the votes by the time it submitted these “official statements.” In 2008 New York left 131,418 votes off, in 2012 it was missing 424,775 votes, in 2016 there were 101,762 votes missing, and in 2020 it left 28,881 votes off of its “official statements.”¹ If New York or another state were to submit an “official statement” that was in error by tens or hundreds of thousands of votes, Rhode Island must accept those totals with no opportunity to challenge or correct them.
- Ranked choice voting (RCV), which both Alaska and Maine use, poses a challenge because the compact expects only a single vote total for every candidate, but RCV produces at least two: an initial and a final total,² with no guidance in the compact on which vote totals are to be used in tabulating the national vote. Because initial and final vote totals can differ by tens or even hundreds of thousands of votes, the choice of which totals are used could determine the outcome under NPV in a close election. And because each member state will make its own determination of which vote totals to use, there is no guarantee that every member state will make the same choice, potentially leading to a split among member states in which candidate is determined to have won.
- Vote totals can be estimated by the chief election officials of member states in the national vote count if for some reason there is not an “official statement” available from a state by the time the compact needs them. For example, in 2024 West Virginia had not certified its vote totals by the date the compact would have needed them, and the state’s Certificate of Ascertainment had been submitted to the Archivist of the United States but not yet made public. In this situation, according to the testimony of two NPV lobbyists in North Dakota in 2021, the chief election official in NPV member states has the power to estimate vote totals for that state using any methodology they think

¹ Final, certified state totals for New York in four recent presidential elections are available on the web site of the New York State Board of Elections, <https://www.elections.ny.gov/>. The Certificate of Ascertainment are available online for 2016 (<https://www.archives.gov/files/electoral-college/2016/ascertainment-new-york.pdf>) and 2020 (<https://www.archives.gov/files/electoral-college/2020/ascertainment-new-york.pdf>) and the certificates for 2008 and 2012 are available upon request.

² See: RCV Detailed Report, U.S. House of Representatives, Alaska Division of Elections, 2022, available at: <https://www.elections.alaska.gov/results/22GENR/US%20REP.pdf>

appropriate.³ Some of the suggestions made by those lobbyists for how vote totals could be estimated would have been in error by tens or even hundreds of thousands of votes. Because there is no coordination required between member states to ensure that chief election official all use the exact same methodology to estimate vote totals, in a close election the different methods chosen could cause compact member states to split in which candidate is declared the winner.

- There could not be a national recount if the national vote is relatively close, as three of the last seventeen have been. Every state would decide for itself, based on its own laws that were written and based on a close in-state margin, whether a close national margin triggers a recount or allows for one to be requested. Those states that decide to conduct a recount will then have to decide (likely through litigation) whether to only recount the same ballots that were initially counted or whether new ballots, such as absentee ballots or provisional ballots that were initially excluded, should be added in. States conducting recounts will also come to different conclusions regarding the standards for determining “voter intent” – essentially, a repeat of the “hanging chads” vs. “pregnant chads” issue from Florida 2000.

Instead of a national recount capable of producing an accurate national vote total, only a partial, inconsistent recount in some but not all states could be conducted, sowing further chaos and distrust in the outcome.

- State laws and election processes can sometimes operate in ways that do not affect the outcome under the current system but would lead to odd results and pose a serious problem for the compact. For example, California permits what is known as “dual labeling” for presidential elections, meaning that more than a single party can endorse the same candidate. This happened in 2016 when the American Independent Party endorsed the Trump/Pence ticket. That ticket appeared on the ballot on a single line with both the Republican and American Independent designations, although the American Independent Party nominated a different slate of presidential electors than the Republican Party. Because there was no way for California election officials to differentiate between a voter supporting the Republican slate or the American Independent slate, they treated and reported every Trump/Pence voter as having cast two votes, one for the Republican slate and a second vote for the American Independent slate.

³ See: “Missed it by that much, Part I,” March 2021, Save Our States blog. Available at: <https://saveourstates.com/blog/missed-it-by-that-much-part-1>

This did not change the outcome in California, where electors for the Clinton/Kaine ticket received 8,753,788 votes while the Republican and American Independent slates tied for second place with 4,483,810 votes each. But because 4,483,810 votes are reported on the state's Certificate of Ascertainment for the Republican slate of electors and another 4,483,810 votes are reported separately for the American Independent slate, both pledged to the Trump/Pence ticket, for NPV's purposes California effectively doubles the vote totals for the Trump/Pence ticket, crediting it with an extra 4,483,810 votes. These extra votes on California's 2016 certificate of Ascertainment would have been enough to overcome the Clinton/Kaine ticket's real-world national margin of roughly 2.8 million votes and meant naming the Trump/Pence ticket the winner of the National Popular Vote if the compact had been in effect.⁴

- The compact stipulates that votes will only be included from states that hold a "statewide popular election." As explained in the book *Every Vote Equal*, published by National Popular Vote, this doesn't actually mean every state where people vote for presidential electors, it means every state where people vote for presidential electors according to National Popular Vote's definition of a "statewide popular vote."⁵

There is a very real possibility that some states may in the future adopt alternatives to the "winner take all" system currently used by most states, but that these reforms would cause their popular votes to be ignored under NPV. For example, a few years ago legislation was introduced in Arizona that would adopt a congressional method system like Maine and Nebraska have, in which voters would pick presidential electors by congressional districts, but the legislature would chose the last two electors.⁶ Even though under this system millions of Arizonans would be going to the polls to cast their votes, NPV would reject them because the system wouldn't meet the compact's definition of a "statewide popular election," which would surely cause national outrage and cast doubt on the legitimacy of the election.

⁴ See: "2016 'National Popular Vote' winner – Donald Trump?" November 2022, Save Our States blog. Available at: <https://saveourstates.com/blog/2016-national-popular-vote-winner-donald-trump>

⁵ Article III, Section 1 of NPV stipulates that votes will be included in the national vote count if they have been cast in a "statewide popular election" and defines that term in Article V, Section 8 in such a way to exclude elections in which, for example, voters can vote for individual presidential electors or votes are not tabulated "on a statewide basis."

⁶ HB 2476, available at: <https://apps.azleg.gov/BillStatus/BillOverview/76974>

- The compact can be easily gamed or manipulated. One fairly simple way for a state to increase its influence in the final outcome would be to expand voting rights to those under 18, or allowing parents to cast votes on behalf of their minor children. California could add an additional million eligible voters simply by allowing 16- and 17-year-olds to vote, while Utah could add nearly as many by giving parents the power to cast votes for their minor children. Another option would be for a state to report on its “official statement” each voter as having cast as many votes as the state has presidential electors. If Wyoming reported each voter as casting three votes, it would add nearly a quarter-million net votes to the Republican’s national vote totals, and more populous states that tend to vote strongly for one party’s candidate can easily add millions of net votes to the national vote count. The chief election officials in NPV member states would be required to accept these inflated vote totals.

I’d note that it is not only opponents of NPV finding these defects in the compact. For example, former Rhode Island Secretary of State Nellie Gorbea in October 2019 explained to supporters of the compact that she and her colleagues in other states were still trying to figure out how it would be implemented and how the votes would be counted. She specifically pointed to the problems that ranked-choice voting creates for the compact as well as the possibility that non-member states might not cooperate and make their vote totals available in time for the compact to operate.⁷

Others who have identified problems with the compact include Professor Robert Bennet of Northwestern University’s law school, who has characterized the compact’s inability to deal with the need for a nationwide recount as its “most glaring defect.”⁸ Bennet also dings NPV’s lobbyists for “blithely” claiming that existing state laws are sufficient to handle any recount issues and he further argues that a “real solution” to this problem is needed rather than the “bravado” offered by the compact’s backers.⁹

Professor Bennet is one of the three law-professors who initially developed the idea in 2001 of an interstate compact along the lines of NPV.

⁷ “Watch Rhode Island Secretary of State Nellie Gorbea on the National Popular Vote,” October 19, 2019. Available at: <https://www.makingeveryvotecount.com/mevc/2019/10/15/watch-rhode-island-secretary-of-state-nellie-gorbea-on-the-national-popular-vote>

⁸ Robert W. Bennett, “Possibilities and Problems in the National Popular Vote Movement,” p. 183-184, *Election Law Journal* 7, No. 3. Sep. 2008

⁹ *Ibid*, p. 184

Another law professor in the past few years has referred to NPV as “a bit of a harebrained scheme” that “has some problems.”¹⁰ Regarding the issue of states inflating their share of the national vote count, he wrote: “...California could say: ‘Now that we have the National Popular Vote Interstate Compact and we’re going to look at the national popular vote, 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.’”¹¹

Those are the comments of Professor Akhil Amar at Yale’s law school, the second of the three professors who initially developed the NPV concept back in 2001.

Akhil Amar’s brother is Professor Vikram Amar at the University California – Davis law school, and he is the third of the three law professors who initially developed the NPV concept. He has concluded that this compact has “dangerous gaps” that could lead to “electoral crises”¹² and an “historic debacle.” He specifically pointed to the compact’s problems with states expanding voter eligibility to minors as well as the impossibility of conducting a needed recount if the national margin was close.¹³ He urges states considering adopting NPV to include a 10-year delay in its effective date, which he hopes will give Congress time to pass legislation fixing the many defects in this compact.

The law professors who first dreamed this compact up are not the only people who are supportive of the concept but highly critical of this particular compact and its defects. Several experts in the alternative voting community, which includes not just ranked choice voting but also things like approval voting, range voting, and STAR voting, have concluded that NPV can only work with traditional plurality voting.

For example, Dr. Warren D. Smith of the Center for Range Voting warns that there will be a “train wreck” if NPV and RCV are used together and says that “Different kinds of voting systems

¹⁰ Akhil Amar, “Remarks by Akhil Reed Amar,” *Fordham Law Review* 89, no. 1, October 2020, pp. 9-12

¹¹ *Ibid*

¹² ¹² 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](https://verdict.justia.com/2019/04/18/overcoming-partisan-objections-to-electoral-college-reform). Available at: <https://verdict.justia.com/2019/04/18/overcoming-partisan-objections-to-electoral-college-reform>

¹³ Vikram Amar, “The Case for Reforming Presidential Elections by Subconstitutional Means: The Electoral College, The National Popular Vote Compact, and Congressional Power,” p. 11, October 2011, UC Davis Legal Studies Research Paper Series. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1936374

in different states simply were not designed to be agglomerated to yield one overall popular vote winner."¹⁴

Aaron Hamlin, president of the Center for Election Science which advocates for approval voting, explained in a 2013 interview that NPV "would still just be [plurality voting]," and that the compact would need to be "adapted for Approval Voting"¹⁵ while Steve Cobb of Unsplit the Vote observed that "...[NPV] was unfortunately written assuming the current [plurality voting] method, with no regard for alternative voting methods..."¹⁶

The website for the organization promoting STAR Voting explained that "When the National Popular Vote Interstate Compact (NPVIC) was drafted, no provisions were made and no clause was included which specifies how the popular vote would be counted in states which use alternative voting methods for the presidential general election. Because the NPVIC has already been signed by a number of states, it's too late to add this clause to the original compact."¹⁷

Dr. Jameson Quinn, an elections scholar and board member of the Equal Vote Coalition, supports NPV but has also stated that "NPV is not, and will never be, compatible with a non-summable method like [RCV]."¹⁸ In order to address this defect, the Equal Vote Coalition promotes on its web site a proposed "Alternative Voting Interstate Compact" designed to allow vote totals from states using alternatives to plurality voting to be "consistently and accurately" reported for use with NPV.¹⁹

Another fan of the compact who recognizes some of its flaws is Professor Alex Keyssar, a history professor at Harvard and author of the book *Why Do We Still Have the Electoral College?* He's described NPV as "inherently unstable."²⁰ He has also shared that some backers of NPV see the compact's defects and instability as leverage to force Congress to push through a Constitutional amendment abolishing the Electoral College. "There is a political scenario here, which is talked

¹⁴ "Warning! Voting reform trainwreck approaching – need to act now to avoid the problem," available at: <https://www.rangevoting.org/NPVtrainwreck.html>

¹⁵ Adrian Tawfik, "Interview with the president of the Center for Election Science," March 2013, *Democracy Chronicles*, available at: <https://democracychronicles.org/interview-with-president-of-center-for-election-science/>

¹⁶ "The NPVIC and Approval Voting," available at: <https://unsplitthevote.org/the-npvc-and-approval-voting/>

¹⁷ "How Would STAR Voting work with the National Popular Vote Interstate Compact?" https://www.starvoting.org/presidential_elections

¹⁸ Google Groups message, February 2018. Available at: <https://groups.google.com/g/electionscience/c/OLkt-G2ilTo/m/Rw5gHTk6AgAJ>

¹⁹ "Alternative Voting Interstate Compact," available at: https://www.equal.vote/interstate_compact

²⁰ Chris Maisano, interview with Professor Alexandar Keyssar, "We Still Need to Abolish the Electoral College," October 2020, *Jacobin*. Available at: <https://jacobin.com/2020/10/electoral-college-abolish-keyssar-trump-election>

about quietly, which is get the compact somewhere close to 270, which will threaten chaos and then compel Congress to turn its attention to an amendment,” he explained in a 2020 interview.²¹

Finally, and perhaps most tellingly, is the testimony of former Connecticut State Representative Brian Becker, a Democrat who seems to favor the idea of NPV but was concerned enough about its defects that he testified against it in a 2014 hearing, calling it “procedurally flawed.” He continued: “The procedural flaws could create great uncertainty for the chief election officials of member states who are charged with certifying the results of the presidential election. Even more troubling, the bill’s defects could disenfranchise the voters in those states who join the compact.”²²

Becker described the response off NPV’s lobbyists when he shared his concerns with them and suggested changes that could correct the compact’s defects: “Advocates for the National Popular Vote have told me that we cannot change the bill because 9 or 10 states have already passed it “as is” and it would be too hard to get them to change it... Those same advocates also have told me the courts would have to resolve the issues set forth herein.”²³

Becker concluded his testimony by declaring “I do not think we should pass legislation that we know in advance is defective in the hopes that a court will later be able to solve a problem that we could not.”²⁴

The National Popular Vote compact would not only silence the voice of Rhode Island’s people in the presidential election process, it would lead the nation to “electoral crises” and “historic debacle” as a result of its numerous defects, as even many of those inclined to favor it have admitted. I urge you to support H 5519 and ensure that Rhode Island is heard in presidential elections.

²¹ Lily Fowler, “Electoral College is new target of BLM activists,” November 2020, *Crosscut*. Available at:

<https://crosscut.com/equity/2020/11/electoral-college-new-target-seattle-blm-activists>

²² Brian Becker, “Statement of Brian S. Becker, State Representative for the 19th Assembly District before the Committee on Government Administration and Elections of the Connecticut General Assembly... in opposition to HB 5126, An Act Concerning An Agreement Among the States to Elect the President of the United States by National Popular Vote,” February 2014.

²³ *Ibid*

²⁴ *Ibid*