

EVERY VOTE EQUAL

**A State-Based Plan for Electing the President
by National Popular Vote**

**John R. Koza Barry Fadem
Mark Grueskin Michael S. Mandell
Rob Richie Joseph F. Zimmerman**

FOREWORD BY BIRCH BAYH

***With Answers to 175 Myths
about the National Popular Vote Compact***



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ROADMAP FOR THIS BOOK

Chapter 1 discusses the shortcomings of the current system of electing the President of the United States, including the Electoral College and the prevailing winner-take-all method of awarding electoral votes.

Chapter 2 discusses the history of the Electoral College.

Chapter 3 describes how the Electoral College works.

Chapter 4 examines seven proposed presidential election reforms that have received widespread attention in the past. Each of these proposed approaches is examined in light of three criteria:

- whether the proposed approach accurately reflects the nationwide popular vote,
- whether every vote is equal, and
- whether the proposed approach gives presidential candidates a reason to campaign in every state.

Chapter 5 provides background on interstate compacts—a contractual arrangement authorized in the Constitution by which states can act together to address an issue that cannot be readily solved by unilateral action.

Chapter 6 presents a section-by-section description of the proposed interstate compact entitled the “Agreement Among the States to Elect the President by National Popular Vote” (also called the “National Popular Vote Compact”).

Chapter 7 outlines the political and legal strategy for enacting the National Popular Vote Compact, including the Compact’s current status and a discussion of the role of state legislatures and the potential role of the citizen-initiative process in the adoption of the Compact.

Chapter 8 discusses how general-election campaigns for President are currently run and how they would likely be run under a national popular vote.

Chapter 9 contains responses to 175 myths about the National Popular Vote Compact.

Chapter 10 is the epilogue.

This book may be read or downloaded for free at www.Every-Vote-Equal.com. The reader may find the electronic version of this book convenient for following web links and for searching the book.

In this book, we have retained links to a small number of expired web pages in the expectation that the original link may aid researchers using archive services in locating the original web page.

FOREWORD

Birch Bayh

On January 10, 1977, I introduced Senate Joint Resolution 1 entitled “a proposed Amendment to the Constitution to abolish the Electoral College and provide for direct election of the President and Vice President of the United States.” As Chairman of the Senate Subcommittee on Constitutional Amendments, I held five days of hearings on this and related proposals that year, receiving testimony from 38 witnesses and hundreds of pages of additional statements and academic studies. This series of hearings was not the first time the Subcommittee on Constitutional Amendments undertook a review of the workings and implications of the Electoral College. In fact, my Subcommittee held its first hearing on the process of electing the President on February 28, 1966, and had amassed a record on the need for electoral reform of nearly 2,600 pages prior to the 1977 hearings.

At the end of this process, I was even more firmly convinced that the Electoral College had outlived whatever positive role it once played as a choice of convenience and compromise. The President and Vice President should be chosen by the same method every other elective office in this country is filled—by citizen voters of the United States in a system that counts each vote equally. In 1979 we came close to getting Senate Joint Resolution 1 through the Senate but in the end we could not get enough votes to end the filibuster blocking the Resolution. Our effort, like many before it, was relegated to the Congressional history books.

Unfortunately, Congress has continued to block this basic reform that has long-standing, overwhelming public support. Gallup polls have shown strong public support for nationwide popular election of the President for over five decades. Numerous other polls have confirmed a high level of public support for this reform. Polls consistently show 60%–80% of Americans believe they should be able to cast votes in the direct election of the President. That is why I unequivocally support this new strategy to provide for the direct election of the President and Vice President. This new approach is consistent with the Constitution but does not rely on the arduous process of a Constitutional Amendment.

Today, more than ever, the Electoral College system is a disservice to the voters. With the number of battleground states steadily shrinking, we see candidates and their campaigns focused on fewer and fewer states. While running for the nation’s highest office, candidates in 2004 completely ignored three-quarters of the states, including California, Texas, and New York, our three biggest states. Why should our

national leaders be elected by only reaching out to one-fourth of our states? It seems inherently illogical, and it is.

Opponents of direct election often point to the wisdom of the Founding Fathers in drafting the Constitution. No question, the Founders had incredible wisdom and foresight, but they were dealing with a much different society and the Electoral College was designed for the realities of the 18th century. The landmass of the country was huge; travel and communication were arduous and primitive; and education was limited at best. Lack of information about possible presidential candidates among the general public was a very real consideration. Also, there were issues involving slavery. At the time, 90% of the slave population lived in the South. Since the slaves could not vote, without the weighted vote of the Electoral College, the South faced electoral domination from northern states. While not the first choice of any Founder, the Electoral College system solved these tricky considerations with a compromise that allowed them to complete the monumental task of creating our country's Constitution.

However, it soon became apparent that the Electoral College process devised by the Founders was flawed. In 1804, the initial Electoral College system was changed through the adoption of the 12th Amendment. Additional weaknesses became apparent. In the 1800s, there were three instances when the popular vote winner lost the presidency. In 1824, John Quincy Adams was a minority vote winner over Andrew Jackson, as were Rutherford B. Hayes over Samuel J. Tilden (1876), and Benjamin Harrison over Grover Cleveland (1888). This anomaly is not that rare in the Electoral College system. In fact, a small shift of votes in one or two states would have thrown the election to the second-place vote winner five additional times in the last 60 years.

For example, in 1976, Jimmy Carter won the nationwide popular vote by 1.7 million votes. However, a change of only 25,579 votes in the states of Ohio and Mississippi would have reelected President Gerald Ford in the Electoral College. With a switch of 18,488 votes in the states of Ohio and Hawaii, the Electoral College normally would have produced a Ford victory. However, because a renegade elector from Washington State cast his vote for non-candidate Ronald Reagan, the final electoral vote count would have been Carter-268, Ford-269, and Reagan-1. Under this scenario, with no candidate receiving the necessary 270 electoral votes, the President would have been chosen by the House of Representatives.

In recent history, we all remember the 2000 election, which awarded the presidency to the candidate who came in second in the popular vote. In 2004, President Bush defeated Senator Kerry by more than 3 million votes nationwide. However, it is easy to overlook that a change of less than 60,000 votes would have put Ohio in the Kerry column under the Electoral College system and would have elected him President.

In the final analysis, the most compelling reason for directly electing our President and Vice President is one of principle. In the United States every vote must count equally. One person, one vote is more than a clever phrase, it's the cornerstone of

justice and equality. We can and must see that our electoral system awards victory to the candidates chosen by the most voters. In this day and age of computers, television, rapidly available news, and a nationwide public school system, we don't need nameless electors to cast our votes for president. The voters should cast them directly themselves. Direct election is the only system that counts every vote equally and where the voters cast their ballots directly for the candidates of their choice. It has the additional virtue of operating in the way most Americans think the electoral process operates—and is expected to operate.

It is heartening to see the *Every Vote Equal* strategy described in this book that will correct the flawed system we maintain for electing our top two leaders. Our federation of states must band together to solve this long-standing, vexatious problem. Since Congress has repeatedly refused to act, it's refreshing to know states have the ability under the Constitution to step up and create the sensible solution Americans have long been supporting. I hope you will join me in supporting this important effort.

The election of President of the United States should not be a contest between red states and blue states. The President should be chosen by a majority of our citizens, wherever they may live. Direct popular election would substitute clarity for confusion, decisiveness for danger, and popular choice for political chance.

Additional forewords to the 4th edition to this book by John B. Anderson, John Buchanan, Tom Campbell, Gregory G. Aghazarian, Saul Anuzis, Laura Brod, James L. Brulte, B. Thomas Golisano, Joseph Griffo, Ray Haynes, Robert A. Holmes, Dean Murray, Thomas L. Pearce, Christopher Pearson, and Jake Garn may be found at <https://www.every-vote-equal.com/4th-edition>.

BIOGRAPHIES



BIRCH BAYH (1928–2019) sponsored and led the efforts to adopt a federal constitutional amendment on direct nationwide election of the President in the 1960s and 1970s. He was an Indiana State Representative from 1955 to 1963, Speaker of the Indiana House of Representatives from 1961 to 1962, and U.S. Senator from Indiana from 1963 to 1980. Senator Bayh authored two amendments to the U.S. Constitution—the 25th Amendment on presidential and vice-presidential succession and the 26th Amendment lowering the voting age to 18. Starting in 2005, he worked with the authors of this book as a co-author of the National Popular Vote Compact described in this book and with the National Popular Vote organization in helping to get the Compact adopted by state legislatures.



BARRY FADEM is a partner in the law firm of Fadem & Associates in Lafayette, California. He specializes in all aspects of campaign and election law and provides expert consultation in the area of initiatives and referendums. He is President of National Popular Vote.



MARK GRUESKIN is a shareholder in the Denver law firm of Recht Kornfeld P.C. He regularly litigates matters of federal and state constitutional law. *Campaigns & Elections* magazine has called him “Colorado’s best election lawyer, bar none.” Formerly, he served as legal counsel to Colorado Governor Richard Lamm.



DR. JOHN R. KOZA, originator of the plan described in this book, received his Ph.D. in computer science from the University of Michigan in 1972. He published a board game involving Electoral College strategy in 1966. From 1973 through 1987, he was co-founder, chairman, and CEO of Scientific Games, where he co-invented the rub-off instant lottery ticket used by state lotteries. In the 1980s, he and attorney Barry Fadem (see above) were active in promoting the adoption of lotteries by various states through the citizen-initiative process and state legislative action. He taught a course on genetic algorithms and genetic programming

between 1988 and 2003 at Stanford University, where he has been consulting professor in the Department of Computer Science, Department of Electrical Engineering, and Department of Medicine. He is Chair of National Popular Vote.



MICHAEL S. MANDELL is currently a Judge on the Maricopa County Superior Court, where he has served as both a Judge and a Court Commissioner since 2013. Before being appointed to the Trial Court by Governor Ducey, Michael was an associate with the law firm of Perkins Coie in Phoenix and the general counsel in both the Arizona State Senate and Arizona State House of Representatives. Michael received his J.D. with honors (Order of the Coif) from Arizona State

University, where he was an editor of the *Arizona State Law Journal*.



ROB RICHIE is Senior Advisor of FairVote, an organization where, as its founding CEO from 1992–2023, he helped win and implement state and local electoral reforms. He is a frequent lecturer and media source, including on CBS, NBC, CNBC, CNN and NPR. His writings regularly appear in national publications, and he has contributed to 11 books. He is a graduate of Haverford College, where he serves on its Corporation. He and his wife Cynthia Terrell have three children.



JOSEPH F. ZIMMERMAN (1928–2022) was a Professor of Political Science at the State University of New York at Albany. He was author of numerous books, including *Interstate Cooperation: Compacts and Administrative Agreements* (2012), *Interstate Relations: The Neglected Dimension of Federalism* (1996), *Contemporary American Federalism: The Growth of National Power* (1992), *The Initiative: Citizen Law-Making* (1997), *The Referendum: The People Decide*

Public Policy (1997), *The Recall: Tribunal of the People* (1997), *Interstate Economic Relations* (2004), *Interstate Disputes: The Supreme Court's Original Jurisdiction* (2006), *Horizontal Federalism: Interstate Relations* (2011), and *Interstate Water Compacts: Intergovernmental Efforts to Manage America's Water Resources* (2012). See <https://www.albany.edu/rockefeller/news/2022-remembering-joseph-f-zimmerman>

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