



Analysis of the Voter Choice Ballot Proposal

April 12, 2021

Making Every Vote Count (MEVC) is advocating that states enact the Voter Choice Ballot (VCB) to award their state's electoral votes to the national popular vote winner—without the requirement (contained in the National Popular Vote Compact) that states possessing a majority of the electoral votes (270 of 538) also agreed to award their electoral votes to the national winner.

Under VCB, a voter would first vote for President and then vote on the Yes-No question below:

“Do you want the candidate who receives the most votes in the nation to become the President? If you do, fill in the oval next to YES.”

The vote that the voter just cast for President will be subtracted from the voter's preferred candidate and added to the candidate that the voter just voted against—if (1) the voter's preferred choice is ahead in the voter's own state, and (2) the opposing candidate is ahead nationally.

The Voter Choice Ballot (VCB) has the following flaws:

- 1) VCB is confusing and highly restrictive. Even though the Yes-No question appears to be an ordinary referendum that would take effect if it gets a majority, a mere 6% YES vote in Virginia, 4% in Minnesota, 2% in Michigan, and 1% in Pennsylvania could trigger VCB. Moreover, in order to express support for a national popular vote for President, a voter must be willing to have his or her vote for President transferred to the candidate the voter just voted against.
- 2) Enactment of VCB in any state that usually votes Democratic in presidential elections would put Democratic electoral votes at risk, while putting no Republican electoral votes at risk.
- 3) MEVC simultaneously advocates two contradictory versions of VCB. MEVC's response to flaws of the “single-state” version of VCB is to advocate the “paired-state” version. VCB's *raison d'être* is MEVC's pessimistic prediction that no Republican state will support a national popular vote before 2024, and that the Democrats won't win any newly *redistricted* state legislatures in 2022. But, according to MEVC's own pessimistic prediction, no Republican state exists for such “pairing” and, therefore, there is no possibility that VCB can take effect by 2024.
- 4) VCB is based on MEVC's unsupported behavioral prediction that presidential candidates will campaign beyond the dozen or so closely divided battleground states. However, VCB would fizzle in any election (such as 2020 and perhaps 2024) where one candidate adopts a strategy aimed at only pursuing a win in the Electoral College.
- 5) The most efficient way for a candidate to win electoral votes under VCB is to redouble efforts to win *popular* votes in *existing* battleground states—not to campaign in spectator states.
- 6) MEVC's poll was not constructed so as to accurately measure voter sentiment on VCB.
- 7) If a battleground state enacted VCB, it would be exchanging its current high level of attention from candidates for less attention than its population warrants.
- 8) VCB would not come close to making every vote equal.
- 9) VCB would not come close to guaranteeing the Presidency to the national popular vote winner.
- 10) Enacting VCB in a politically balanced pair of states would be exquisitely difficult to execute.
- 11) VCB would not enlarge the universe of supporters of a national popular vote for President. VCB would hinder enactment of NPV by shifting the debate from the shortcomings of the current system to the differences between NPV and a confusingly similar alternative. The numerous valid arguments against VCB will inevitably be remembered and inappropriately attributed to NPV.
- 12) MEVC's unjustified attacks on the constitutionality of the National Popular Vote Compact are not only false, but, if true, would apply equally to VCB.
- 13) MEVC has refused to debate VCB, except under constraints that prohibit criticism of VCB.

A detailed discussion of VCB's flaws appears on the following pages.

1) VCB is confusing and highly restrictive. Even though the Yes-No question appears to be an ordinary referendum that would take effect if it gets a majority, a mere 6% YES vote in Virginia, 4% in Minnesota, 2% in Michigan, and 1% in Pennsylvania could trigger VCB. Moreover, in order to express support for a national popular vote for President, a voter must be willing to have his or her vote for President transferred to the candidate the voter just voted against.

The proposed Voter Choice Ballot (VCB) is shown below.¹

President of the United States	National Choice Voting
Vote for 1	Vote yes or no
<input type="radio"/> Donald Trump Republican	The STATE will count your vote for president and vice president along with all other votes in this STATE, and add them to all votes cast in all other states and the District of Columbia in order to determine who has won the national popular vote.
<input type="radio"/> Joe Biden Democratic	Do you want the candidate who receives the most votes in the nation to become the President? If you do, fill in the oval next to YES.
<input type="radio"/> or write-in: For President	<input type="radio"/> Yes <input type="radio"/> No
	The STATE will count the votes of all those who filled in the YES oval as cast for the winner of the national popular vote for the purpose of appointing electors as otherwise provided by this state law.

Under MEVC’s proposed “Voter Choice Ballot” (VCB), a voter would first cast their vote for President in the usual way (seen here on the left side of the ballot), and then vote on the following Yes-No question:

“Do you want the candidate who receives the most votes in the nation to become the President? If you do, fill in the oval next to YES.”

The following explanation follows the Yes-No question:

“The state will count the votes for all those who filled in the YES oval as cast for the winner of the national popular vote for the purpose of appointing electors as otherwise provided by this state’s law.”

The meaning of the opaque phrase “as otherwise provided by this state’s law” is that the vote that the voter just cast for President will be subtracted from the voter’s preferred candidate and added to the candidate that the voter just voted against—if (1) the voter’s preferred choice is ahead in the voter’s own state, but (2) the opposing candidate is ahead in the national popular vote.

The Yes-No question creates the misimpression that the voter can freely vote in favor of VCB. However, VCB allows a voter to express support for a national popular vote for President **only if** the voter is willing to have the vote he or she just cast for President transferred to the candidate the voter just voted against. No ordinary referendum question requires a voter to surrender his or her vote for their chosen candidate in order to cast a vote on the referendum question.

Another misimpression created by the VCB ballot is that this Yes-No question is an ordinary referendum on a policy that would take effect **only if** it receives a majority vote. In fact, an

¹ Making Every Vote Count. *Voter Choice Ballot: Summary And Coordinated Strategy To Achieve National Popular Vote For President Reform*. July 1, 2020. Accessed July 21, 2020. <https://www.makeeveryvotecount.com/mevc/2020/7/1/voter-choice-ballot-summary-and-coordinated-strategy-to-achieve-national-popular-vote-for-president-reform>

insignificant percentage of a state's voters would be sufficient to trigger the shift of the state's electoral votes from one presidential candidate to another. For example, the percentage in 2020 would have been less than 1% in Pennsylvania, 2% in Michigan, 4% in Minnesota, and 6% in Virginia.

To see how VCB actually works, consider what would have happened if it had been in effect in Michigan in 2020.

- Democrat Joe Biden got 2,804,040 (51%) of the state's popular votes, and the Republican Donald Trump got 2,649,852 (49%).²
- Now suppose that **77,095 of Michigan's 2,804,040 Biden voters** (1.4% of the state's voters) voted YES on the Yes-No question.
- And, suppose that Republican Donald Trump won the national popular vote.

Under VCB, 77,095 Democratic votes would be subtracted from Biden—leaving Biden with only 2,726,945. Those 77,095 Biden votes would then be added to Trump's vote—putting Trump in the lead in Michigan with 2,726,946 votes. The result would be that Trump would receive all 16 of Michigan's electoral votes.

MEVC Director Mark Bohnhorst acknowledged that an insignificant percentage of a state's vote for President would be sufficient to trigger the shift of the state's electoral votes from one presidential candidate to another. Speaking at an August 13, 2020 conference, Bohnhorst said:

“The percentage of the yes votes that you would need in order to assure that one of the major-party candidates that won the national popular vote will win the state's electors ... **are not particularly high and, in some cases, they are vanishingly small.**”³

Indeed, MEVC's own polling shows that the appealingly worded Yes-No question would, almost inevitably, receive the small percentage of votes required to trigger VCB.

Indeed, **the triggering percentage is so small that the Yes-No question on the VCB ballot is essentially a superfluous distraction designed to obscure the way that VCB would actually operate.** In actual practice, VCB would operate in a virtually equivalent way without the Yes-No question.

The table below shows the percentage of each state's vote for President in 2020 needed to trigger the shift of the state's electoral votes from one candidate to another. As can be seen from the table below, the percentage is less than 10% in two-thirds of the states.

² To simplify the example, we discuss just the two-party vote for President in Michigan in 2020.

³ Bohnhorst, Mark. Slide 2 at timestamp 2:07 of video of Presidential Election Reform 2020 & Beyond Conference on August 13, 2020. <https://www.crowdcast.io/e/electoralcollegereform2020>

Percent of 2020 Vote Needed to Trigger VCB and Switch a State's Electoral Votes

Columns 2 through 4 of this table show the 2020 presidential vote for each state. Column 6 shows the number of votes needed to trigger VCB and switch the state's electoral votes from the candidate winning the state to the national popular vote winner. Column 7 shows the percent of the state's votes needed to trigger VCB. The table is sorted by the percentages in column 7.

State	Biden	Trump	Others	Total Vote	Votes to trigger VCB	Percent to trigger VCB
Georgia	2,473,633	2,461,854	62,229	4,997,716	5,890	0.1%
Arizona	1,672,143	1,661,686	53,497	3,387,326	5,229	0.2%
Wisconsin	1,630,866	1,610,184	56,991	3,298,041	10,342	0.3%
Pennsylvania	3,458,229	3,377,674	79,380	6,915,283	40,278	0.6%
North Carolina	2,684,292	2,758,775	68,422	5,511,489	37,242	0.7%
Nevada	703,486	669,890	17,921	1,391,297	16,799	1.2%
Michigan	2,804,040	2,649,852	85,392	5,539,284	77,095	1.4%
Florida	5,297,045	5,668,731	101,680	11,067,456	185,844	1.7%
Texas	5,259,126	5,890,347	165,583	11,315,056	315,611	2.8%
Minnesota	1,717,077	1,484,065	67,308	3,268,450	116,507	3.6%
New Hampshire	424,937	365,660	13,236	803,833	29,639	3.7%
Ohio	2,679,165	3,154,834	88,203	5,922,202	237,835	4.0%
Iowa	759,061	897,672	29,801	1,686,534	69,306	4.1%
Maine	435,072	360,737	23,565	819,374	37,168	4.5%
Alaska	153,778	189,951	13,840	357,569	18,087	5.1%
Virginia	2,413,568	1,962,430	64,761	4,440,759	225,570	5.1%
New Mexico	501,614	401,894	20,457	923,965	49,861	5.4%
South Carolina	1,091,541	1,385,103	36,685	2,513,329	146,782	5.8%
Colorado	1,804,352	1,364,607	88,021	3,256,980	219,873	6.8%
Kansas	570,323	771,406	30,574	1,372,303	100,542	7.3%
Missouri	1,253,014	1,718,736	54,212	3,025,962	232,862	7.7%
New Jersey	2,608,335	1,883,274	57,744	4,549,353	362,531	8.0%
Indiana	1,242,413	1,729,516	61,183	3,033,112	243,552	8.0%
Oregon	1,340,383	958,448	58,401	2,357,232	190,968	8.1%
Montana	244,786	343,602	15,252	603,640	49,409	8.2%
Mississippi	539,398	756,764	17,597	1,313,759	108,684	8.3%
Illinois	3,471,915	2,446,891	114,632	6,033,438	512,513	8.5%
Louisiana	856,034	1,255,776	36,252	2,148,062	199,872	9.3%
Delaware	295,933	200,327	7,421	503,681	47,804	9.5%
Nebraska	374,583	556,846	20,283	951,712	91,132	9.6%
Washington	2,369,612	1,584,651	106,116	4,060,379	392,481	9.7%
Connecticut	1,080,831	714,717	28,309	1,823,857	183,058	10.0%
Utah	560,282	865,140	62,867	1,488,289	152,430	10.2%
Rhode Island	307,486	199,922	10,349	517,757	53,783	10.4%
New York	5,230,985	3,244,798	115,574	8,591,357	993,094	11.6%
Tennessee	1,143,711	1,852,475	57,665	3,053,851	354,383	11.6%
Alabama	849,624	1,441,170	32,488	2,323,282	295,774	12.7%
Kentucky	772,474	1,326,646	37,608	2,136,728	277,087	13.0%
South Dakota	150,471	261,043	11,095	422,609	55,287	13.1%
Arkansas	423,932	760,647	34,490	1,219,069	168,358	13.8%
California	11,110,250	6,006,429	384,192	17,500,871	2,551,911	14.6%
Hawaii	366,130	196,864	11,475	574,469	84,634	14.7%
Idaho	287,021	554,119	26,091	867,231	133,550	15.4%
Oklahoma	503,890	1,020,280	36,529	1,560,699	258,196	16.5%
North Dakota	114,902	235,595	11,322	361,819	60,347	16.7%
Maryland	1,985,023	976,414	56,482	3,017,919	504,305	16.7%
Massachusetts	2,382,202	1,167,202	65,671	3,615,075	607,501	16.8%
Vermont	242,820	112,704	11,904	367,428	65,059	17.7%
West Virginia	235,984	545,382	13,365	794,731	154,700	19.5%
Wyoming	73,491	193,559	7,976	275,026	60,035	21.8%
D.C.	317,323	18,586	8,447	344,356	149,369	43.4%
Total	81,268,586	74,215,875	2,740,538	158,224,999		

2) Enactment of VCB in any state that usually votes Democratic in presidential elections would put Democratic electoral votes at risk, while putting no Republican electoral votes at risk.

MEVC advocates that VCB be implemented unilaterally by states. In fact, MEVC lists this as “Advantage #2” in its list of “10 Advantages of the Voter Choice Ballot Proposal.

“The reform can go into effect immediately without any other state taking action”⁴

However, unilateral enactment of VCB in Michigan, Minnesota, Virginia, Pennsylvania, or any other state that usually votes Democratic in presidential elections would put Democratic electoral votes at risk, while putting no Republican electoral votes at risk. It would give the Republican candidate a one-sided partisan advantage, while not giving the Democrat an equivalent benefit.

For example, if VCB were unilaterally enacted by, say, Michigan (which has voted Democratic in 7 of the 8 presidential elections between 1992 and 2020), it would **not** protect both parties from losing the Electoral College while winning the national popular vote. It would only confer this benefit on the Republican presidential candidate.

As detailed in section 1 above, if the Republican presidential candidate won the national popular vote, Michigan’s 16 electoral votes would go to the Republican candidate, thereby giving the Republican candidate 16 electoral votes worth of protection against losing the White House.⁵ This would be a desirable and virtuous outcome **provided** VCB conferred an equivalent benefit on the Democratic candidate. However, it does not.

Enactment of VCB in Michigan (or any other state that usually votes Democratic in presidential elections) cannot give the Democratic presidential candidate any protection against losing the Presidency while winning the national popular vote. The reason is that the Democrat **was going to win the state’s electoral votes anyway**.

It is important to note a key difference between VCB and the National Popular Vote Compact. It is an essential feature of the National Popular Vote Compact that it gives both parties **equal** protection against the possibility of losing the Presidency while winning the national popular vote. The National Popular Vote Compact operates in this bipartisan fashion because it contains the vital condition that it does not take effect until it is enacted by states possessing a majority of the electoral votes—that is, 270 out of 538. When the National Popular Vote Compact comes into effect, it results in the appointment of at least 270 presidential electors nominated by the party whose presidential candidate won the most popular votes in all 50 states and the District of Columbia. Thus, the National Popular Vote Compact guarantees the national popular vote winner enough electoral votes to become President. The result is that the National Popular Vote Compact treats both parties equally. Both parties receive equal protection against losing the Electoral College, while winning the national popular vote.

⁴ This is Advantage #2 on MEVC’s list of “10 Advantages Of The Voter Choice Ballot Proposal.” Making Every Vote Count blog. 2020. Ten Advantages Of The Voter Choice Ballot Proposal To Achieve Urgently Needed Presidential Election Reform. August 31, 2020. <https://www.makeeveryvotecount.com/mevc/2020/8/31/ten-advantages-of-the-voter-choice-ballot-proposal-to-achieve-urgently-needed-presidential-election-reform>

⁵ These 16 electoral votes of protection could be decisive in a presidential election. For example, in 2004, Republican President George W. Bush won the national popular vote by about 3 million votes. A shift of less than 60,000 popular votes in Ohio would have given John Kerry Ohio’s 20 electoral votes and a 272–266 victory in the Electoral College—even though Bush would still have been ahead by about 3 million votes nationwide. If VCB had been in effect in Michigan in 2004, VCB would have given Bush the electoral votes that would have kept him in the White House. However, if Kerry had won the national popular vote in 2004, VCB would not have delivered an equivalent benefit to Kerry. If Kerry had won the national popular vote, but lost the popular vote in Ohio, Kerry would have ended up with only 252 electoral votes to Bush’s 286. That is, VCB would not have provided Kerry with 16 electoral votes worth of protection against losing the Presidency. The reason for the lack of symmetry is that Kerry was going to win Michigan’s 16 electoral votes anyway.

Unilateral enactment of VCB in a state that usually votes Republican in presidential elections would similarly put Republican electoral votes at risk, while putting no Democratic electoral votes at risk.

For the same reasons as discussed above, it would also be politically preposterous for Republicans to support VCB in a state that regularly votes Republican in presidential elections.

For example, consider a reliably red state such as South Carolina.

As shown in the table at the end of this document, if more than 6% of those who voted Republican for President voted YES on the Yes-No question in South Carolina and the Democratic candidate wins the national popular vote, the Democrat would get all nine of South Carolina’s electoral votes,. That is, the Democratic candidate winning the national popular vote would get nine electoral votes worth of protection against losing the Electoral College while winning the nationwide vote.

However, a Republican candidate who wins the national popular vote would get 0 electoral votes of protection from VCB in South Carolina, because the Republican candidate was going to win the state’s electoral votes anyway. That is, enactment of VCB would boomerang against the party that usually wins presidential elections in South Carolina (i.e., the Republicans).

As shown in the table below, 36 states have voted for the same party in the six presidential elections between 2000 and 2020.⁶ They are shown in the far left and far right columns of the table below. An additional nine states voted for the same party in all but one election.

In summary, unilateral enactment of VCB makes no sense in any of the 36 states that reliably vote for the same party in presidential elections.

6 times Democratic	5 times Democratic	4 times Democratic	3 times Democratic	2 times Democratic	1 time Democratic	0 times Democratic
16 states	5 states	3 states	1 state	2 states	4 states	20 states
CA (55)	MI (16)	CO (9)	IA (6)	FL (29)	AZ (11)	AL (9)
CT (7)	NH (4)	NV (6)		OH (18)	GA (16)	AK (3)
DE (3)	NM (5)	VA (13)		NE-CD2 (1)	IN (11)	AR (6)
DC (3)	PA (20)	ME-CD2 (1)			NC (15)	ID (4)
HI (4)	WI (10)					KS (6)
IL (20)						KY (8)
MA (11)						LA (8)
ME (3)						MO (10)
MD (10)						MS (6)
MN (10)						MT (3)
NJ (14)						NE (4)
NY (29)						ND (3)
OR (7)						OK (7)
RI (4)						SC (9)
VT (3)						SD (3)
WA (12)						TN (11)
						TX (38)
						UT (6)
						WY (3)
						WV (5)
195 EV	55 EV	29 EV	6 EV	48 EV	53 EV	152 EV

⁶ The number of electoral votes shown in the table are for 2012, 2016, and 2020 elections. DC is counted as a state for purposes of this table. Note that Maine’s 2nd congressional district and Nebraska’s 2nd congressional district are shown as if they were separate states in this table, because Maine and Nebraska award electoral votes by congressional district, and those districts have each recently voted differently than the state as a whole.

3) MEVC simultaneously advocates two contradictory versions of VCB. MEVC's response to flaws of the "single-state" version of VCB is to advocate the "paired-state" version. VCB's *raison d'être* is MEVC's pessimistic prediction that no Republican state will support a national popular vote before 2024, and that the Democrats won't win any newly *redistricted* state legislatures in 2022. But, according to MEVC's own pessimistic prediction, no Republican state exists for such "pairing" and, therefore, there is no possibility that VCB can take effect by 2024.

MEVC simultaneously advocates two contradictory versions of VCB. MEVC attempts to counter valid criticisms of VCB by oscillating from one version to the other. The two versions are:

- **single state**—that is, VCB gets enacted and immediately takes effect in a single state;
- **politically balanced pair of states**—that is, VCB takes effect when enacted by two states having equally intense, but opposite, political orientation (and an equal number of electoral votes).

The main justification for VCB is MEVC's pessimistic political prediction that no Republican state will support a national popular vote before 2024; that no existing Democratic trifecta state will enact the National Popular Vote Compact before; and that Democrats will not pick up any newly *redistricted* state legislatures in the November 2022 elections.

Reed Hundt, MEVC's CEO, said on December 5, 2020:

"There is no practical avenue for the [National Popular Vote] Compact to obtain 270 electors by 2024 election."⁷

Advantage #2 in MEVC's list of "10 Advantages Of The Voter Choice Ballot Proposal" applies to the "single-state" version of VCB.

"The reform can **go into effect immediately without any other state taking action**"⁸ [Emphasis added]

However, as demonstrated in section 2, enactment of the "single-state" version of VCB by a Democratic state would give the Republican candidate a one-sided partisan advantage, while not giving the Democrat an equivalent benefit (and vice versa for a Republican state).

To counter this fatal criticism of the "single-state" version of VCB, MEVC shifts to advocating the "paired-state" version of VCB. Advantage #3 in MEVC's same list of "10 Advantages" is

"States can also adopt the voter choice ballot in contingent legislation, which would **go into effect when another state that voted for the candidate of a different party in the previous election** adopts reciprocal legislation (the "paired" approach)."⁹ [Emphasis added]

However, if MEVC believes its own prediction that no Republican state will enact a national popular vote before 2024, no Republican state is available to create this politically balanced pair of

⁷ Hundt, Reed. 2020. Reaction to the Critique of the Voter Choice Ballot. December 5, 2020. <https://www.makeeveryvotecount.com/research-whitepapers-library> Accessed December 28, 2020.

⁸ Making Every Vote Count blog. 2020. Ten Advantages Of The Voter Choice Ballot Proposal To Achieve Urgently Needed Presidential Election Reform. August 31, 2020. <https://www.makeeveryvotecount.com/mevc/2020/8/31/ten-advantages-of-the-voter-choice-ballot-proposal-to-achieve-urgently-needed-presidential-election-reform>

⁹ Making Every Vote Count blog. 2020. Ten Advantages Of The Voter Choice Ballot Proposal To Achieve Urgently Needed Presidential Election Reform. August 31, 2020. <https://www.makeeveryvotecount.com/mevc/2020/8/31/ten-advantages-of-the-voter-choice-ballot-proposal-to-achieve-urgently-needed-presidential-election-reform>

states before 2024.¹⁰ In other words, the only version of VCB that could possibly be seriously considered (namely, the “paired-state” version) cannot go into effect by 2024.

On the other hand, if there were a Republican state that was receptive to a national popular vote for President before 2024, there is no need for VCB, because that state could simply enact the National Popular Vote Compact.

In section 10, we discuss the practical difficulties associated with the “paired-state” version, and in section 12 we rebut more of MEVC’s claimed “Advantages” of VCB.

4) VCB is based on MEVC’s unsupported behavioral prediction that presidential candidates will campaign beyond the dozen or so closely divided battleground states. However, VCB would fizzle in any election (such as 2020 and perhaps 2024) where one candidate adopts a strategy aimed at only pursuing a win in the Electoral College.

Everyone is aware that a major shortcoming of the **current** state-by-state winner-take-all method of awarding electoral votes is that presidential candidates focus their campaign visits, campaign expenditures, and policy positions on a dozen or so closely divided battleground states. In 2012, 2016, and 2020, virtually all (100%, 94%, and 96%, respectively) of the nation’s general-election campaign events were concentrated in a dozen or so closely divided battleground states (with about 95 million people). The 215 million people in the 38 spectator states (and the District of Columbia) are politically irrelevant spectators in the choice of President.¹¹

VCB is based on MEVC’s unsupported behavioral prediction that presidential candidates will be compelled to conduct a 50-state campaign because of the enactment of VCB by one state, or a few states, with a tiny number of electoral votes.

This behavioral prediction sounds too good to be true—and it is.

Let’s start by clarifying what VCB actually does.

If VCB were enacted in a state (say, Michigan with 16 electoral votes), the political effect would be to create a new “virtual” electoral district with 310,000,000 people and 16 electoral votes. It would be like adding a new state to the Union. Winning these particular 16 electoral votes would require campaigning amongst a vast constituency of 310,000,000 people.

Presidential campaigns are not going to drop everything to win these particular 16 electoral votes. Instead, the campaigns will carefully evaluate the opportunity to win these 16 electoral votes created by VCB alongside the existing opportunity to win 153 electoral votes from 12 battleground states with 95 million people.

Neither the Trump campaign nor the Biden campaign thought, for a minute, that Trump could win, would win, or even wanted to win the national popular vote in 2020.

In 2020, Trump conducted a presidential campaign patterned after the way he won in 2016 and based on the way he governed for four years—that is, the 2020 Trump campaign was aimed at only pursuing a win in the Electoral College.

Thus, if VCB had been in effect in 2020, both campaigns would have quickly concluded that the new virtual nationwide electoral district created by VCB was, in effect, a “spectator” state—not a “battleground” state. Presidential candidates do not campaign in “spectator” states for the simple reason that they have nothing to gain or lose by doing so. Therefore, the new virtual electoral district created by VCB would have been just another place in which one candidate (Biden, in this case) was

¹⁰ Moreover, if a Republican state decided to support a national popular vote for President before 2024, there would be no need for VCB, because that state could simply enact the National Popular Vote Compact.

¹¹ Depending on the election, a “battleground state” is one where the two-party vote is in the 46%–54% or 47%–53% range. The battleground states and spectator states and the number of general-election campaign events that each received in 2016 are listed in tables at the end of this document. Out of 1,164 general-election campaign events in the four presidential elections between 2008 and 2020, 22 states received 0 events, and nine more states received just one. <https://www.nationalpopularvote.com/out-1164-general-election-campaign-events-past-4-presidential-elections-22-states-received-0-visits>

safely ahead, and the other (Trump) was hopelessly behind. Biden would have won VCB's 16 electoral votes as effortlessly as he won Illinois's 20 electoral votes.

In short, VCB would have totally fizzled in 2020 in terms of motivating candidates to run a 50-state campaign.¹² VCB can lead a horse to water, but it can't make him drink.

Similarly, VCB will fizzle in 2024 if the Republican Party again runs a presidential campaign aimed at winning the Electoral College, while conceding the national popular vote.

5) The most efficient way for a candidate to win electoral votes under VCB is to redouble efforts to win *popular* votes in *existing* battleground states—not to campaign in spectator states.

VCB is based on MEVC's unsupported behavioral prediction that presidential candidates will be compelled to conduct a 50-state campaign merely because of the enactment of VCB by one state, or a few states, with a tiny number of electoral votes.

The reason why VCB would not motivate presidential candidates to campaign outside of the dozen battleground states is that **it is not necessary to campaign in 38 spectator states (and DC) in order to increase a candidate's national popular vote total.**

Instead of bothering to campaign in the 38 spectator states (and DC), candidates can increase their national popular vote total simply by winning additional **popular** votes in the 12 battleground states.

Spending money and campaign time trying to win additional popular votes in the battleground states would give a candidate **a bite at two apples**. Winning popular votes in a battleground state would count towards winning **both** the battleground state's electoral votes and would **simultaneously count** towards winning the electoral votes tethered to the national popular vote by VCB.

In contrast, campaigning among the 215,000,000 people in the 38 spectator states (and DC) would give a candidate **a bite at only one apple**, namely the possibility of winning the tiny number of electoral votes tethered to the national popular vote by VCB.¹³

In fact, VCB would actually increase the already excessive political clout of the dozen closely divided battleground states. Each battleground state would retain 100% control over its own electoral votes—while **acquiring** partial control over the electoral votes of the state(s) enacting VCB. This transfer of political power is a one-way street, because voters in the VCB state(s) would not acquire any compensating influence over the electoral votes of battleground states.

Note the difference between VCB and the National Popular Vote Compact. The National Popular Vote Compact contains the vital condition that it only goes into effect when enacted by states with a majority of the electoral votes (270 of 538). As a result, the National Popular Vote Compact does not

¹² Trump's 2020 goal of winning a majority in the Electoral College, while losing the national popular vote almost worked. If 21,847 voters had changed their minds (5,229 in Arizona, 5,890 in Georgia, and 10,342 in Wisconsin), Trump would have won the 37 electoral votes from these states, and there would have been a 269-269 tie in the Electoral College. Trump would have been re-elected, because, when there is a tie in the Electoral College, the newly elected U.S. House of Representatives picks the President on a one-state-one-vote basis, and the Republicans have a majority of the *delegations* in the 2021 House of Representatives.

¹³ The argument for ignoring the spectator states is especially clear in the special case of a sitting President seeking re-election (or a retiring President desiring to aid his preferred successor). Sitting Presidents have unique additional tools at their disposal, namely the ability to award vote-getting government contracts, highway improvements, waivers, exemptions, or distribution of medical supplies to particular states. Under VCB, a sitting president would continue to focus this "presidential pork" on battleground states because every vote gained in those states would help him win the battleground state's electoral votes and simultaneously help him win the electoral votes tethered to the national popular vote by VCB. Given a choice between awarding a job-creating and vote-getting tank contract to a factory in Lima, Ohio versus a factory in a spectator state such as Democratic Illinois or Republican Indiana, a sitting President would (as President Trump did) award the contract to the battleground state of Ohio. He would have no reason to give that contract to Illinois because a few more popular votes in Illinois would not get him the safely Democratic electoral votes of Illinois, and failing to get a few more popular votes in Indiana would not cause him to lose the safely Republican electoral votes of Indiana. Indeed, campaigning in spectator states cannot help a candidate win any additional electoral votes from those states, because these states, by definition, are states whose electoral votes are red or blue by large margins.

have VCB's undesirable asymmetric transfer of power in favor of the battleground states. Instead, voters in every compacting state are compensated by **acquiring** a direct voice in the disposition of the electoral votes of **every other** compacting state. In fact, voters in every state acquire a direct voice in the disposition of a bloc of 270 or more electoral votes—and hence acquire a direct voice in electing the President. Under the National Popular Vote Compact, no state is asked to unilaterally become a selfless donor, while getting nothing in return.

Even under overly generous hypothetical assumptions, VCB's maximum impact would be negligible.

As just explained, VCB would be unlikely to create any motivation for presidential candidates to expand their campaigns into the spectator states.

However, **purely for sake of argument**, let us assume that the above argument is incorrect, and that VCB actually motivated presidential candidates to conduct a 50-state campaign.

That is, suppose that presidential candidates made the illogical decision to expand their campaign into the spectator states—as opposed to the rational decision to simply redouble efforts to win *popular* votes in the battleground states.

If candidates decided to expand their campaigns into spectator states, the obvious question would be to quantify **how much** campaigning effort would or should a candidate spend in order to win the 16 electoral votes that would be available if, say, Michigan enacted VCB?

Clearly candidates are not going to drop everything in order to win 16 electoral votes.

The opportunity to win the 16 electoral votes from the new virtual nationwide electoral district with 310 million people and 16 electoral votes would be evaluated along with the opportunity to win the 153 or so electoral votes available from the dozen battleground states with 95 million people.

We don't have to speculate as to how valuable these 16 electoral votes are to a presidential campaign, because there is factual evidence from the real-world.

Michigan received 22 general-election campaign events in 2016 (out of 399 events nationally).¹⁴

Therefore, 22 campaign events (and the customary millions of dollars of accompanying advertising and the customary supporting ground game and other activity) is a factually based measure of approximately what it is worth to win the virtual nationwide electoral district created if Michigan enacted VCB.

We know how candidates campaign when every vote is equal, and the candidate receiving the most votes wins. Candidates distribute their campaign events very close in proportion to population.

A 22-event campaign distributed among 310,000,000 people means one campaign event for every 14,090,000 people. It would look something like the following among the 38 spectator states:

- California (population 37 million) would probably get 3 of the 22 events.
- Texas (population 25 million) would probably get 2 events.
- New York (population 19 million) would probably get one event.
- Illinois (population 13 million) would probably get one event.
- New Jersey (population 9 million) and Maryland (population 6 million) together would probably share one event.
- Virginia (population 8 million) and Tennessee (population 6 million) together would probably share one event.
- The remaining 13 campaign events would be distributed in a similar manner among the remaining spectator states.

In short, in the context of a general-election campaign involving 399 campaign events, the 22-event VCB-induced campaign would be barely noticeable.

The 377 events concentrated in the dozen or so closely divided battleground states (with 153 or so electoral votes) will still constitute the bulk of the campaign.

¹⁴ In 2020, Michigan received 21 general-election campaign events in the covid-constrained 2020 campaign (out of a smaller-than-usual total of 212 events).

VCB is based on magical thinking that asserts that a tiny number of electoral votes will somehow cause presidential candidates to drop everything in pursuit of the tiny number of electoral votes tethered to the nationwide vote by VCB. However, the above calculation, as well as common sense, suggests that the real-world effect of a small number of electoral votes would, at most, be small.

The bottom line is that there is no quick shortcut, involving state(s) with a tiny number of electoral votes that can create a nationwide presidential campaign in which every vote is equal, and in which **every** voter in **every** state is politically relevant in **every** presidential election. Candidates will campaign nationally only if winning the national popular vote actually yields the White House.

6) MEVC's poll was not constructed so as to accurately measure voter sentiment on VCB.

"Americans Want the National Choice Ballot" is the title of MEVC's description of its poll on VCB.¹⁵

However, an examination of MEVC's actual poll indicates that the poll was not constructed so as to accurately measure what "Americans Want."

The key question in the MEVC poll was

"Some people want the person who wins the **national popular vote** to become president. One way to make that likely is to be able to cast your vote as you normally would and then **choose**, if you select this **option**, to have the **national vote winner** counted as your **choice** for president in your state. Do you want to have that **choice** on the ballot?" [Emphasis added]

As can be seen, MEVC's poll question is loaded with

- three occurrences of the word "choice,"
- one occurrence of the word "option," and
- two references to "national popular vote."

Of course, most people are in favor of "choice." Most people are in favor of "options." And, most people are in favor of a national popular vote for President.

MEVC's poll question was not the only loaded question that was shown to poll respondents. The following Yes-No question appeared on the Voter Choice Ballot that was shown to poll respondents:

"Do you want the candidate who receives the most votes in the nation to become the President? If you do, fill in the oval next to YES."¹⁶

The consequences of voting YES on this appealingly worded question are only hinted at by the opaque wording "for the purpose of appointing electors as otherwise provided by this state's law" that appears after the voter has voted on the yes-no question:

"The state will count the votes for all those who filled in the YES oval as cast for the winner of the national popular vote **for the purpose of appointing electors as otherwise provided by this state's law.**"¹⁷ [Emphasis added]

It is unlikely that many participants in MEVC's poll realized that if the voter voted "yes," the vote that the voter just cast for President will be subtracted from the voter's preferred presidential candidate

¹⁵ Cohen, Thea. 2020. New MEVC Poll: Americans Want the National Choice Ballot. March 6, 2020. Accessed July 21, 2020. <https://www.makeeveryvotecount.com/mevc/2019/11/21/listen-to-mevc-board-member-james-glassman-discuss-the-national-popular-vote-bmxxk-d-smmyt-59jcw-zxcc2>

¹⁶ Making Every Vote Count. *Voter Choice Ballot: Summary And Coordinated Strategy To Achieve National Popular Vote For President Reform*. July 1, 2020. Accessed July 21, 2020. <https://www.makeeveryvotecount.com/mevc/2020/7/1/voter-choice-ballot-summary-and-coordinated-strategy-to-achieve-national-popular-vote-for-president-reform>

¹⁷ Making Every Vote Count's web site. See *Voter Choice Ballot: Summary And Coordinated Strategy To Achieve National Popular Vote For President Reform*. July 1, 2020. Accessed July 21, 2020. <https://www.makeeveryvotecount.com/mevc/2020/7/1/voter-choice-ballot-summary-and-coordinated-strategy-to-achieve-national-popular-vote-for-president-reform>

and added to the opposing candidate that the voter just voted against—if (1) the voter’s preferred choice for President is ahead in the voter’s own state, and (2) the opposing candidate is ahead nationally.

This Yes-No question appears to be a referendum on a general question of public policy that will take effect if it gets a majority vote. However, it is unlikely that many participants in MEVC’s poll realized that a YES vote could immediately authorize the state to count the vote that the *individual* voter just cast for President in favor of the candidate that that individual voter just voted against.

In summary, MEVC’s poll provided no convincing evidence that “Americans Want the National Choice Ballot.”

7) If a battleground state enacted VCB, it would be exchanging its current high level of attention from candidates for less attention than its population warrants.

MEVC claims that closely divided battleground states will find VCB attractive.

Let’s consider Michigan—a state with 16 electoral votes.¹⁸

What, specifically would happen to Michigan if it enacted VCB?

The effect of enacting VCB would be that Michigan would become a very small part—just 3%—of a new virtual nationwide electoral district with 310,000,000 people and 16 electoral votes.

As previously discussed, we know the value of 16 electoral votes to presidential campaigns. Michigan received 22 general-election campaign events in 2016 (out of a nationwide total of 399).¹⁹

A 22-event campaign in this new virtual nationwide electoral district with 310,000,000 people would mean one campaign event for every 14,090,000 people.

With 10,000,000 people, Michigan does not have sufficient population to be absolutely guaranteed that it would receive even one campaign event. However, for sake of argument, let’s say that Michigan would receive one.

Thus, if Michigan enacted VCB, it would be exchanging its current excessive amount of attention (22 events) for a very small amount of attention (one event).²⁰

Even more egregious is the fact that one campaign event out of 399 is far less than the amount of attention that Michigan’s population warrants.

In a nationwide campaign in which every vote is equal, 399 events would correspond to one event for every 777,000 people. That means that Michigan would warrant about 13 campaign events in a nationwide campaign in which every voter in the country is treated equally. Thirteen events for Michigan is almost exactly one event per congressional district.

Thus, if Michigan enacted VCB, Michigan would be exchanging more attention than its population warrants (22 events) for considerably less attention than its population warrants (1 event), when the state’s population, in fact, warrants 13 events.

In summary, no battleground state is likely to enact VCB.²¹

¹⁸ Michigan was a closely divided battleground state in 2016 and 2020 (although it was almost totally ignored in the 2012 general-election campaign and 2008 campaign).

¹⁹ In 2020, Michigan received 21 general-election campaign events in the covid-constrained 2020 campaign (out of a smaller-than-usual total of 212 events).

²⁰ The calculation that Michigan would receive one campaign event under VCB is overly generous. In practice, candidates would double-down on their efforts to win the **non-VCB battleground** states. Winning popular votes in a non-VCB battleground state would count towards winning both that state’s electoral votes and simultaneously count towards winning the electoral votes of states tethered to the national popular vote by VCB. Thus, spending money and campaign time trying to win additional popular votes in a non-VCB battleground state would give a candidate a bite at two apples. Thus, if Michigan enacted VCB, it would be all but pointless for a presidential candidate to spend any time, money, or effort in Michigan.

²¹ Battleground states admittedly have not been the most fertile ground for changing the state-by-state winner-take-all method of awarding electoral votes. However, experience shows that battleground states can be receptive to the idea of National Popular Vote based on the fairness principle and (to be a little more political) because battleground status is fleeting and fickle. The fleeting nature of battleground status is demonstrated by Michigan and Pennsylvania, which

8) VCB would not come close to making every vote equal.

VCB is based on the claim that its enactment by a few states, with a small number of electoral votes, will somehow make every vote equal in voting for President.

Advantage #4 in MEVC's list of "10 Advantages Of The Voter Choice Ballot Proposal" is "By becoming effective in only a few states by 2024, **every vote across the country would count and count equally.**"²² [Emphasis added]

This statement is totally misleading.

Enactment of VCB in a state, say Michigan with 16 electoral votes, would make every vote equal in terms of deciding that tiny clump of 16 electoral votes, but it certainly would not make every vote equal in the presidential election.

In section 4, we did a hypothetical calculation of the maximum amount of effort that presidential candidates might make to win Michigan's electoral votes if Michigan enacted VCB and candidates made the illogical decision to expand their campaign into the spectator states—as opposed to the rational decision to double-down on the battleground states. That maximum effort was one general-election campaign event for every 14,090,000 people in the country.

In section 7, we noted that, under the National Popular Vote Compact, there would be one general-election campaign event for every 777,000 people.²³

In other words, enactment of VCB would not even come close to achieving one of the most important benefits guaranteed by the National Popular Vote Compact, namely that every vote throughout the United States would be equally important in presidential elections.

The reason why the National Popular Vote Compact can deliver this benefit is that it contains the vital condition that it only goes into effect when enacted by states with a majority of the electoral votes (270 of 538). Once candidates know that the national popular vote is actually going to determine which candidate is going to become President, then every voter throughout the United States becomes equally valuable. The National Popular Vote Compact would make **every** voter in **every** state equally valuable in **every** presidential election.

9) VCB would not come close to guaranteeing the Presidency to the national popular vote winner.

Another example of the flawed thinking on which VCB is based concerns VCB's ability to prevent the election of a President who did not win the national popular vote.

Biden's margin of victory in the Electoral College in 2020 was **74 electoral votes**.

Trump's margin in 2016 was **74 electoral votes**.

Obama's margin in 2012 was **126 electoral votes**.

The average margin of victory in the Electoral College in the nine presidential elections from 1988 to 2020 was **138 electoral votes**.

Manifestly, enactment of VCB by say, Michigan (with 16 electoral votes) would not come close to accomplishing the goal of protecting against the possibility of electing a President who did not win the national popular vote.

were both almost totally ignored in 2012 (when they only received one and five general-election campaign events, respectively). In contrast, under the National Popular Vote Compact, each state can rely on always getting the attention that its population warrants—regardless of whether candidate support in the state is in the narrow 46%–54% to 47%–53% range that makes a state worthwhile. The National Popular Vote Compact guarantees that every voter in every state will be politically relevant in every presidential election.

²² Making Every Vote Count blog. 2020. Ten Advantages Of The Voter Choice Ballot Proposal To Achieve Urgently Needed Presidential Election Reform. August 31, 2020. <https://www.makeeveryvotecount.com/mevc/2020/8/31/ten-advantages-of-the-voter-choice-ballot-proposal-to-achieve-urgently-needed-presidential-election-reform>

²³ See "How Nationwide Presidential Campaigns Would Be Run" document at <https://www.nationalpopularvote.com/how-nationwide-campaign-president-would-be-conducted>

This goal can be achieved by the National Popular Vote Compact because it contains the vital condition that it does not take effect until it is enacted by states possessing a majority of the electoral votes—that is, 270 out of 538.

The simple reality is that there is no quick shortcut, involving a tiny number of electoral votes, that can achieve the goal of guaranteeing the Presidency to the candidate who receives the most popular votes in all 50 states and DC.

10) Enacting VCB in a politically balanced pair of states would be exquisitely difficult to execute.

MEVC tries to respond to criticisms of VCB by oscillating between the single state version of VCB and the “paired state” version of VCB.

In section 1, we showed that VCB’s Yes-No question is superfluous window-dressing that obscures the fact that the VCB proposal is equivalent to a proposal to unilaterally award the state’s electoral votes to the nationwide winner—that is, the so-called “single-state” version of VCB.

In section 2, we showed that it would be politically preposterous for Democrats in a state that usually votes Democratic in presidential elections (or Republicans in a state that usually votes Republican) to unilaterally enact the “single-state” version of VCB, because it would perversely punish the party that enacts it.

The particular flaw of VCB discussed in section 2 can theoretically be corrected by “pairing”—that is, simultaneously enacting VCB in a politically balanced pair of states.

“Pairing” of states would be exquisitely difficult to execute in practice because of the difficulty of finding appropriate partners, and then getting legislative and gubernatorial support to enact VCB simultaneously in both states.

- First, “pairing” only makes sense between states with an **equal** number of electoral votes. For any given number of electoral votes, there are only a few states (and sometimes **no** states) with the same number of electoral votes. For example, Georgia and Michigan are the only states with 16 electoral votes. Maryland, Missouri, and Minnesota are the only states with 10 electoral votes. Virginia is the only state with 13 electoral votes.
- Second, “pairing” only makes sense between states whose **partisanship is opposite**. Thus, it would make no sense for Maryland and Minnesota to enter into a “pairing” arrangement, because both regularly vote Democratic in presidential elections
- Third, “pairing” only makes sense between states whose partisanship is not merely opposite, but whose **partisanship is of equal intensity**. It would also make no sense for Michigan and Georgia to enter into a “pairing” arrangement because, as noted in the *Ballenger Report* in January 2021, Republicans hold a 7.9% edge in base party strength in Georgia compared to a Democratic edge of 1.8% in Michigan.²⁴
- Fourth, “pairing” only makes sense between states whose equal and opposite partisanship is **stable**. Unless VCB were enacted for just one specific upcoming election, it would make no sense for a state with relatively stable demographics (e.g., Michigan) and politics to pair itself with a state with rapidly changing demographics and politics (e.g., Georgia).

In any case, MEVC ignores the obvious problems of “pairing” and simply asserts:

“If only Minnesota and Pennsylvania, for example, paired up in adopting the ballot, both parties would be forced to campaign to win the national popular vote.”²⁵

²⁴ Ballenger, Bill. 2021. Georgia is still way more Republican than most states. *The Ballenger Report*. January 20, 2021. <https://www.theballengerreport.com/georgia-republicans-never-should-have-lost-those-two-u-s-senate-seats-georgiais-still-way-more-republican-than-most-states/>

²⁵ Making Every Vote Count blog. 2020. Ten Advantages Of The Voter Choice Ballot Proposal To Achieve Urgently Needed Presidential Election Reform. August 31, 2020.

However, Pennsylvania has 20 electoral votes, while Minnesota has only 10. Moreover, Pennsylvania has voted Democratic in eight of the presidential elections between 1992 and 2020, and Minnesota has voted Democratic in all nine elections. MEVC’s suggested “pairing” of Minnesota would put 30 Democratic electoral votes at risk, while the Republican presidential candidate would risk nothing.

The academic originators of the idea of unilateral state legislation and “pairing” long ago recognized that it would require careful “pairing.” In 2006, Northwestern University Law School Dean Robert Bennett made the behavioral prediction:

“If states with 100 to 125 electoral votes—**more or less evenly balanced in partisan terms**—were to bind themselves initially, the dynamics of campaigning would shift dramatically toward concern with the nationwide vote.”²⁶

In 1971, Dale Read (the attorney who originated the idea of states unilaterally passing legislation tying their electoral votes to the national popular vote in his Duke University paper²⁷ and in his 1976 *Washington Law Review* article²⁸) estimated that between 108 to 135 electoral votes would be needed to make his idea work.

There is no way to know what particular number of carefully paired electoral votes (100, 108, 126, or 135) would be sufficient to actually impact the future behavior of presidential candidates. Neither Bennett nor Read offer any justification for these numbers; however, it is worth noting that their numbers are in the same neighborhood as the average margin of victory in the Electoral College—namely 138 electoral votes—in the nine presidential elections from 1988 to 2020.

In any event, a tiny number of electoral votes (such as 16 from Michigan) cannot possibly deliver what Read visualized in 1971 and 1976, and Bennett discussed between 2001^{29,30} and 2006.

Detailed scrutiny of VCB will remain impossible until MEVC provides actual proposed statutory language to examine. In 2019, MEVC introduced a “paired-state” bill in the Maryland Senate. That bill died so quickly in committee that its numerous legal problems were never explored.³¹ Moreover, the Maryland bill was nowhere as complex as VCB. In 2020, MEVC first announced VCB. Now, two years after MEVC’s Maryland bill, and a year after MEVC announcement of VCB,³² MEVC has yet to present actual proposed statutory language for VCB.

<https://www.makeeveryvotecount.com/mevc/2020/8/31/ten-advantages-of-the-voter-choice-ballot-proposal-to-achieve-urgently-needed-presidential-election-reform>

²⁶ Bennett, Robert W. 2006. Electoral College Reform is Heating Up And Posing Some Tough Choices. *Northwestern University School of Law Public Law and Legal Theory Papers*. Paper No. 45. <http://law.bepress.com/nwwps/plltp/art45> Page 15.

²⁷ Read, Dale Jr. 1971. Electoral College Reform: Direct Popular Vote Without a Constitutional Amendment. Independent Research Paper. Duke Law School. 105 pages.

²⁸ Read, Dale Jr. 1976. Direct election of the president without a constitutional amendment: A call for state action. *Washington Law Review*. Volume 51. Pages 321–349.

²⁹ Bennett, Robert W. 2001. Popular election of the president without a constitutional amendment. 4 *Green Bag*. Volume 4. Number 2. Posted on April 19, 2001. Pages 241–245. http://www.greenbag.org/v4n3/v4n3_articles_bennett.pdf

³⁰ Bennett, Robert W. 2006. *Taming the Electoral College*. Stanford, CA: Stanford University Press.

³¹ <https://www.nationalpopularvote.com/state/md>

³² Cohen, Thea. 2020. New MEVC Poll: Americans Want the National Choice Ballot. March 6, 2020. Accessed July 21, 2020. <https://www.makeeveryvotecount.com/mevc/2019/11/21/listen-to-mevc-board-member-james-glassman-discuss-the-national-popular-vote-bmxkd-smmyt-59jcw-zxcc2>

11) VCB would not enlarge the universe of supporters of a national popular vote for President. VCB would hinder enactment of NPV by shifting the debate from the shortcomings of the current system to the differences between NPV and a confusingly similar alternative. The numerous valid arguments against VCB will inevitably be remembered and inappropriately attributed to NPV.

People who are philosophically and politically opposed to a national popular vote for President are not seeking a quicker way to implement it. Opponents are not going to support something that is aimed at building public support for the idea of a national popular vote for President.

In short, VCB does not expand support for the concept of a national popular vote for President.

It is unlikely that there is any pool of state legislators who would support VCB beyond those who would already support the National Popular Vote Compact. If a state legislator supports the concept of national popular vote, the simplest and most direct way to achieve that objective is to vote for the National Popular Vote Compact.

Legislative lobbyists and political operatives recognize that one of the best ways to defeat any proposal is to introduce a confusingly similar alternative into the debate.

The immediate effect is to shift the debate away from the real-world problems that the original proposal was designed to address toward discussion of the differences between the original proposal and the alternative proposal. This secondary debate creates doubt about the original proposal, divides the support for the original proposal, and delays or defeats the original proposal.

A confusingly similar alternative proposal that is fatally flawed can be especially effective in hindering the original proposal, because, in the real world, the alternative proposal's flaws are inevitably remembered and attributed to the original proposal.

VCB would hinder enactment of the National Popular Vote Compact because it would shift the debate among legislators away from the flaws of the current system to the differences between VCB and NPV. Many of the valid arguments against the fatally flawed VCB proposal will inevitably be remembered and inappropriately attributed to National Popular Vote.

As of mid-2020, the National Popular Vote Compact has been enacted by 15 states and the District of Columbia (together possessing 196 electoral votes), including 4 small states (Delaware, Hawaii, Rhode Island, Vermont), 8 medium-sized states (Colorado, Connecticut, Maryland, Massachusetts, New Jersey, New Mexico, Oregon, Washington), 3 big states (California, Illinois, New York), and the District of Columbia.

The National Popular Vote Compact is poised to take effect when enacted by states with 74 more electoral votes (for a total of 270).

The National Popular Vote Compact has passed at least one legislative chamber in 9 additional states with 88 electoral votes (Arkansas, Arizona, Maine, Michigan, Minnesota, North Carolina, Nevada, Oklahoma, Virginia). 3,512 state legislators have endorsed it.

The National Popular Vote Compact has the benefits that most supporters of a nationwide vote for President want, but that VCB cannot deliver. The National Popular Vote Compact will make every vote equal throughout the United States; it will make every voter in every state politically relevant in every presidential election, and it will guarantee the Presidency to the winner of the most votes in all 50 states and the District of Columbia. VCB will do none of these things.

12) **MEVC’s unjustified attacks on the constitutionality of the National Popular Vote Compact are not only false, but, if true, would apply equally to VCB.**

MEVC strenuously asserts that it supports the National Popular Vote Compact, and that VCB (and several earlier competing approaches that it advocated) are all “consistent” and “compatible” with NPV.

As will be seen below, MEVC’s attacks on the constitutionality and other aspects of the National Popular Vote Compact use arguments that apply equally to VCB—its own proposal.

Readers can reach their own conclusion as to why MEVC is criticizing NPV with arguments that also apply to VCB.

MEVC falsely claims that the NPV Compact is unconstitutional under the 12th Amendment.

Hundt asserted on December 5, 2020:

“None of the serious, perhaps fatal, flaws in the [National Popular Vote] Compact apply to the [Voter Choice] Ballot. ... **The 12th Amendment specifically requires that the President win electors on a state-by-state basis**, as opposed to the Compact, which conceivably enables the majority in California alone to cause the Compact-bound states to select electors who would choose the person California voters alone to have chosen.”³³

After over 500 state legislative hearings, no opponent has ever uttered Hundt’s false claim that “the 12th Amendment specifically requires that the President win electors on a state-by-state basis”—for the simple reason that nothing in the 12th Amendment even mentions anything about the manner of selection of presidential electors.

[Check out the 398 words of the 12th Amendment for yourself.](#)

Moreover, if MEVC’s false claim about the 12th Amendment were true, it would be equally true for VCB—because NPV and VCB would award the electoral votes of enacting states in accordance with the national popular vote total.

MEVC falsely claims that California would dominate the choice of President under NPV.

Hundt asserted on December 5, 2020 that the National Popular Vote Compact

“enables **the majority in California alone** to cause the Compact-bound states to select electors who would choose the person California voters **alone** to have chosen.”³⁴

This false claim about California is routinely made by NPV opponents.

[Click here for reasons why this claim about California is false](#)

However, if Hundt’s claim were true, it would be equally true for VCB—because votes from California are the same fraction of the national popular vote—under both NPV and VCB.

MEVC falsely claims that NPV cannot be enacted by initiative, but somehow VCB can be.

Hundt has asserted:

“None of the serious, perhaps fatal, flaws in the [National Popular Vote] Compact apply to the [Voter Choice] Ballot. ... If effectuated by a ballot measure, the [National Popular Vote] Compact violates the Roberts’ theory in *Arizona Redistricting* that the word “legislature” in Article II, Section 1 means “only by act of legislature.”³⁵

³³ Hundt, Reed. 2020. Reaction to the Critique of the Voter Choice Ballot. December 5, 2020. <https://www.makeeveryvotecount.com/research-whitepapers-library> Accessed December 28, 2020.

³⁴ Hundt, Reed. 2020. Reaction to the Critique of the Voter Choice Ballot. December 5, 2020. <https://www.makeeveryvotecount.com/research-whitepapers-library> Accessed December 28, 2020.

³⁵ Hundt, Reed. 2020. Reaction to the Critique of the Voter Choice Ballot. December 5, 2020. <https://www.makeeveryvotecount.com/research-whitepapers-library> Accessed December 28, 2020.

It is widely recognized that, because of Chief Justice Roberts' well-known dissent in the *Arizona Redistricting* case, the Supreme Court could rule that the initiative process cannot be used to enact a state law under Article II, section 1. However, the constitutional authority for enacting VCB is identical to that of the National Popular Vote Compact, namely Article II, section 1 of the U.S. Constitution. Thus, if the Supreme Court rules that NPV cannot be enacted using the initiative process, neither can VCB.

MEVC falsely claims that NPV might require congressional consent, but VCB would not.

Hundt has asserted on December 5, 2020:

“None of the serious, perhaps fatal, flaws in the [National Popular Vote] Compact apply to the [Voter Choice] Ballot. ... **The Compact would be deemed to require Congressional approval** and Presidential signature which in turn requires Democrats to hold both branches and White House, not a prospect in the cards for an uncertain number of years.”³⁶

Hundt's statement is contrary to long-standing U.S. Supreme Court rulings that congressional consent is only necessary for interstate compacts that “encroach upon or interfere with the just supremacy of the United States.” Because the choice of method of appointing presidential electors is an “exclusive” and “plenary” state power, there is no encroachment on federal authority. That is, congressional consent would not be necessary for the National Popular Vote compact to become effective.

[Click here for detailed discussion of the cases](#)

As discussed in section 2, the only version of VCB that could possibly be enacted is the “paired-state” version of VCB. “Pairing” involves passing legislation in one state that takes effect if and only if companion legislation is passed in a second state.

As MEVC states (Advantage #3):

“States can also adopt the voter choice ballot in **contingent legislation**, which would go into effect when another state that voted for the candidate of a different party in the previous election adopts **reciprocal legislation** (the “paired” approach).”³⁷

A state law that takes effect contingent on specified action by another state is, definitionally, an interstate compact.

Indeed, both NPV and the “paired-state” version of VCB have all three basic attributes of a contract, namely an

- offer (the first state enacting a law that will come into effect only if a second state executes a specific desired action),
- acceptance (the second state enacting a law taking the specified desired action), and
- consideration (the fact that each state commits to doing something it would not unilaterally do on its own, but is willing to do if the other state takes the specified desired action).

It is certainly possible that the Supreme Court could alter long-standing precedents concerning interstate compacts. However, such a ruling would apply equally to NPV and the “paired-state” version of VCB.

By the way, note that Hundt's prediction that Democratic control of both houses of Congress and the White House is “not a prospect in the cards for an uncertain number of years” was made on December 5, 2020—exactly one month before it happened.

³⁶ Hundt, Reed. 2020. Reaction to the Critique of the Voter Choice Ballot. December 5, 2020. <https://www.makingeveryvotecount.com/research-whitepapers-library> Accessed December 28, 2020.

³⁷ Making Every Vote Count blog. 2020. Ten Advantages Of The Voter Choice Ballot Proposal To Achieve Urgently Needed Presidential Election Reform. August 31, 2020. <https://www.makingeveryvotecount.com/mevc/2020/8/31/ten-advantages-of-the-voter-choice-ballot-proposal-to-achieve-urgently-needed-presidential-election-reform>

MEVC absurdly claims that NPV is subject to litigation risks, but VCB isn't.

According to MEVC, Advantage #9 of VCB over the National Popular Vote Compact is:

“There are no constitutional or other litigation risks. ... Section II, Article 1 of the Constitution gives full responsibility to the states to conduct presidential elections as they desire.”³⁸

Despite MEVC's sweeping claim that “There are no constitutional or other litigation risks” associated with VCB, the fact is that almost any legal challenge to the National Popular Vote Compact would apply equally to VCB, because both rely on the use of a vote count (the national popular vote total) that is external to the state involved, and because the constitutional basis for both VCB and NPV is Article II, section 1 of the U.S. Constitution.

13) MEVC has refused to debate VCB, except under constraints that prohibit criticism of VCB.

National Popular Vote has repeatedly challenged MEVC to publicly debate the merits and demerits of VCB; however, MEVC has been willing to discuss VCB only in carefully orchestrated and tightly controlled settings.

We believe that VCB cannot withstand scrutiny. MEVC concedes as much by being unwilling to debate it.

³⁸ Making Every Vote Count blog. 2020. Ten Advantages Of The Voter Choice Ballot Proposal To Achieve Urgently Needed Presidential Election Reform. August 31, 2020. <https://www.makeeveryvotecount.com/mevc/2020/8/31/ten-advantages-of-the-voter-choice-ballot-proposal-to-achieve-urgently-needed-presidential-election-reform>

Battleground and Spectator States in the 2016 Presidential Election

The tables show the number of general-election campaign events for the 2016 presidential election.

12 battleground states accounted for 94% of general-election campaign events (375 of 399)

Trump %	Events	State	Trump	Clinton	R-Margin	D-Margin	R-EV	D-EV	Population
55%	21	Iowa	800,983	653,669	147,314		6		3,053,787
54%	48	Ohio	2,841,006	2,394,169	446,837		18		11,568,495
52%	55	North Carolina	2,362,631	2,189,316	173,315		15		9,565,781
52%	10	Arizona	1,252,401	1,161,167	91,234		11		6,412,700
51%	71	Florida	4,617,886	4,504,975	112,911		29		18,900,773
50%	14	Wisconsin	1,405,284	1,382,536	22,748		10		5,698,230
50%	54	Pennsylvania	2,970,733	2,926,441	44,292		20		12,734,905
50%	22	Michigan	2,279,543	2,268,839	10,704		16		9,911,626
49.8%	21	New Hampshire	345,790	348,526		2,736		4	1,321,445
49%	17	Nevada	512,058	539,260		27,202		6	2,709,432
47%	19	Colorado	1,202,484	1,338,870		136,386		9	5,044,930
47%	23	Virginia	1,769,443	1,981,473		212,030		13	8,037,736
51%	375		22,360,242	21,689,241			125	32	94,959,840

NOTE: Trump percentage is of the two-party vote.

39 spectator jurisdictions accounted for 6% of general-election campaign events (24 of 399)

Trump %	Events	State	Trump	Clinton	R-Margin	D-Margin	R-EV	D-EV	Population
76%	0	Wyoming	174,419	55,973	118,446		3		568,300
72%	0	West Virginia	489,371	188,794	300,577		5		1,859,815
70%	0	North Dakota	216,794	93,758	123,036		3		675,905
69%	0	Oklahoma	949,136	420,375	528,761		7		3,764,882
68%	0	Idaho	409,055	189,765	219,290		4		1,573,499
66%	0	South Dakota	227,721	117,458	110,263		3		819,761
66%	0	Kentucky	1,202,971	628,854	574,117		8		4,350,606
64%	0	Alabama	1,318,255	729,547	588,708		9		4,802,982
64%	0	Arkansas	684,872	380,494	304,378		6		2,926,229
64%	0	Tennessee	1,522,925	870,695	652,230		11		6,375,431
64%	2	Nebraska	495,961	284,494	211,467		5		1,831,825
62%	1	Utah	515,231	310,676	204,555		6		2,770,765
61%	0	Kansas	671,018	427,005	244,013		6		2,863,813
61%	0	Montana	279,240	177,709	101,531		3		994,416
60%	0	Louisiana	1,178,638	780,154	398,484		8		4,553,962
60%	2	Indiana	1,557,286	1,033,126	524,160		11		6,501,582
60%	2	Missouri	1,594,511	1,071,068	523,443		10		6,011,478
59%	1	Mississippi	700,714	485,131	215,583		6		2,978,240
58%	0	Alaska	163,387	116,454	46,933		3		721,523
57%	0	South Carolina	1,155,389	855,373	300,016		9		4,645,975
55%	1	Texas	4,685,047	3,877,868	807,179		38		25,268,418
53%	3	Georgia	2,089,104	1,877,963	211,141		16		9,727,566
49%	2	Minnesota	1,323,232	1,367,825		44,593		10	5,314,879
48%	3	Maine	335,593	357,735		22,142	1	3	1,333,074
45%	3	New Mexico	319,667	385,234		65,567		5	2,067,273
44%	0	Delaware	185,127	235,603		50,476		3	900,877
44%	0	Oregon	782,403	1,002,106		219,703		7	3,848,606
43%	1	Connecticut	673,215	897,572		224,357		7	3,581,628
43%	0	New Jersey	1,601,933	2,148,278		546,345		14	8,807,501
42%	0	Rhode Island	180,543	252,525		71,982		4	1,055,247
41%	1	Washington	1,221,747	1,742,718		520,971		12	6,753,369
41%	1	Illinois	2,146,015	3,090,729		944,714		20	12,864,380
38%	0	New York	2,819,557	4,556,142		1,736,585		29	19,421,055
36%	0	Maryland	943,169	1,677,928		734,759		10	5,789,929
35%	0	Massachusetts	1,090,893	1,995,196		904,303		11	6,559,644
35%	0	Vermont	95,369	178,573		83,204		3	630,337
34%	1	California	4,483,814	8,753,792		4,269,978		55	37,341,989
33%	0	Hawaii	128,847	266,891		138,044		4	1,366,862
4%	0	D.C.	12,723	282,830		270,107		3	601,723
48%	24		40,624,892	44,164,411			181	200	214,825,346