

Testimony of Jasper Hendricks, Director of Democrats for the Electoral College

Before the Colorado General Assembly Committee on State, Civic, Military, and Veterans Affairs

In Support of House Bill 25-1102

February 10, 2025

Chairperson Willford, Vice Chairperson Clifford, and Members of the State, Civic, Military, and Veterans Affairs Committee,

Good afternoon, and thank you for the opportunity to provide testimony to you today. My name is Jasper Hendricks, and I serve as the Director of Democrats for the Electoral College. I'm writing to express my support for House Bill 25-1102, which would repeal Colorado's participation in the National Popular Vote Interstate Compact.

I want to begin by recognizing that the National Popular Vote movement was driven by a desire to make every vote count—that's an important conversation to have. But the approach taken by this compact raises serious concerns about how we ensure that Colorado voters continue to have a direct and meaningful say in how your state's electoral votes are cast.

The Electoral College was designed to ensure that states, regardless of size, play an important role in electing the president. This system has been in place for over two centuries, and while no system is perfect, it has provided a stable and fair way to balance representation between urban, suburban, and rural communities.

The National Popular Vote Compact changes that dynamic. If Colorado remains in the compact, your state's electoral votes could go to a candidate who does not win the most votes here in Colorado—effectively overriding the will of your own voters. That's not a hypothetical; it's exactly how the compact is designed to work. And that raises an important question: Shouldn't Colorado voters decide how Colorado's electoral votes are allocated?

Beyond that, there are other concerns with the compact:

- It creates uncertainty in how your elections are managed. Right now, election disputes are handled at the state level, which allows for quick resolution. If we move to a national popular vote system, a close election could lead to nationwide recounts, legal battles, and prolonged delays in determining a winner.
- The Electoral College ensures that candidates must engage with voters in many different regions. Under a national popular vote system, campaigns would likely focus their efforts on large population centers, which could diminish the role of states like yours in the presidential election process.
- It opens the door to ongoing partisan maneuvering in how electoral votes are allocated. We've already seen efforts in Nebraska and Maine to change their electoral vote distribution based on short-term political calculations. If we want a system that is stable

and predictable, we should resist these types of changes and maintain a system that has served us well for generations.

At the end of the day, this is about ensuring that Colorado voters' voices are heard in the way they intended. The Electoral College may not be perfect, but it was designed to ensure that states retain control over their own electoral process. The National Popular Vote Compact takes that control away from Colorado and places it in the hands of voters in other states. That's why I urge this committee to support House Bill 25-1102 and restore Colorado's role in presidential elections.

I appreciate the opportunity to provide this testimony with you today and thank you for your time. I'm happy to take any questions.

Respectfully,

Jasper Hendricks  
Director, Democrats for the Electoral College  
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**THE STATE OF COLORADO**  
**HOUSE STATE, CIVIC, MILITARY, & VETERANS AFFAIRS COMMITTEE**  
*HB25-1102: Repeal National Popular Vote Compact*  
February 10, 2025

Submitted By: Tara Ross  
Author of *Enlightened Democracy: The Case for the Electoral College* and  
*Why We Need the Electoral College*

**Overview**

I urge you to vote for HB25-1102, removing Colorado from the National Popular Vote interstate compact. That compact was sold to Coloradoans in 2020 based on a wave of anti-Electoral College sentiment, but NPV proponents said very little about the problems inherent in the compact itself. Many voters are likely unaware of the legal and logistical problems created by the compact. Such problems are unavoidable because of NPV's attempt to bypass the constitutional amendment process. The Electoral College should be preserved, but if it is to be eliminated, a constitutional amendment is the only sound manner in which to do it.

**Legal problems with NPV's compact**

- *Equal Protection.* NPV attempts to combine 51 different state (and D.C.) election processes into a single national outcome. This will create chaos, litigation, and confusion. It will also create claims that Colorado has violated the Equal Protection Clause of the United States Constitution.
- *Article V.* Colorado has great discretion in how it allocates its electors. It may not, however, violate another portion of the Constitution in the process. NPV's compact looks like an impermissible end run around Article V of the Constitution.
- *Other States.* NPV cannot force non-signatory states to cooperate with the NPV compact. Multiple states have already considered proposals enabling them to disrupt NPV's attempts to obtain a national popular vote total.

**Modern Benefits of the Electoral College**

- *The Benefits of Federalism.* Presidential candidates must build national coalitions of voters. Historically speaking, the candidate who builds the broadest coalition of support will win. The process discourages presidential candidates from focusing too exclusively on one region, state, or special interest group.
- *Moderation and Compromise.* As a matter of history, the Electoral College has encouraged Americans to work together, across state lines. A direct election system, by contrast, would result in multi-party presidential races, a fractured electorate, increasingly extremist third-party candidates, and constant recounts.
- *Stability and Certainty in Elections.* The Electoral College typically produces quick and undisputed outcomes. Any problems are isolated to one or a handful of states. Fraud is minimized because it is hard to predict where stolen votes will matter.

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**Full Testimony**

The National Popular Vote interstate compact should be rejected, even by those who dislike the Electoral College. While many states have signed NPV's compact because legislators prefer a national popular vote, few realize that the compact does more than effectively eliminate the Electoral College: The compact's attempt to bypass the constitutional amendment process will create chaos, litigation, and confusion each and every presidential election year that it is in effect. These problems will make Florida 2000 and the 2020 election look like picnics.

The Electoral College provides stability in our political system in ways that are generally underappreciated. It rewards the party that does the best job of reaching out to a diverse cross section of Americans, and it penalizes parties and candidates that takes voters for granted. These are healthy incentives in a large, diverse republic such as our own. The Electoral College should be preserved, but if it is to be eliminated, a constitutional amendment is the only sound manner in which to do it.

First, I will discuss the special legal and constitutional difficulties created by NPV's compact. Next, I will discuss the benefits of the Electoral College.

***Legal Problems Created by NPV***

The current presidential election process blends federalist and democratic principles. America holds 51 completely separate, purely democratic elections every presidential election year (each state, plus D.C.). Each state is responsible for its own election. Differences among states' laws are irrelevant because votes cast in one state do not affect the outcome in another state. In short: 51 elections are held; 51 sets of state election laws govern these elections; 51 outcomes are achieved. Everyone is treated fairly.

NPV would change this. America would still hold 51 state-level elections, governed by 51 sets of election laws. But NPV would attempt to derive only one outcome from these 51 processes. Suddenly, variances among states' laws—previously irrelevant—would matter a great deal. **Now these varying laws ensure unequal treatment of voters.**

Colorado would have been required to give its 10 electors to Donald Trump last year, even though Kamala Harris won the state by more than 10 percentage points. It's hard to imagine that

voters would just let these Equal Protection violations go. Lawsuits would be filed, creating more chaos and uncertainty.

Consider the issue of early voting. Voters in Colorado have their own laws for this process, but other states might have different provisions regarding when early voting starts, how long it lasts, or who may early vote and how. If Colorado's voters are competing only against other Colorado voters in a contest to determine the identity of Colorado's electors, then they have no reason to care about other state's laws. Ballots cast elsewhere do not affect the identity of a Colorado elector. However, once NPV throws voters of all states into the same election pool, then many problems arise. **With NPV in place, the identity of a Colorado elector could be dictated by a vote cast in Arizona or Texas or any other state.** How can Colorado's voters be equal with those in Arizona if they have less time to vote? Or if it is harder to obtain an absentee ballot?

There are other differences among states' laws: States differ in whether they allow felons to vote. They differ in their requirements for ballot qualification. States have different criteria for what triggers recounts within their borders—and how to count a hanging chad once that recount begins. Absentee ballots may be more or less difficult to obtain in various states.

One well-respected constitutional lawyer, Prof. Vikram David Amar, has acknowledged the real dangers created by these issues. Amar's opinion is important: NPV is based upon an idea that he and two other professors proposed in 2001. Yet Amar notes that a "problem I see in the current National Popular Vote bill is that it does not guarantee a true national election with uniform voter qualification, voter mechanics, and vote-counting standards. Absent such uniformity, some states might have incentives to obstruct or manipulate vote counts."

If NPV goes into effect, **Colorado had better brace itself for the Equal Protection lawsuits that will follow.** The Supreme Court has held that a state may not by "arbitrary and disparate treatment, value one person's vote over that of another." By participating in NPV, Colorado chooses to place its voters in a situation that guarantees unequal treatment, each and every presidential election year. Such a decision flies in the face of basic democratic principles.

Lawsuits claiming Equal Protection violations are just the tip of the iceberg.

States that have rejected NPV will ask the Supreme Court to rule upon the constitutionality of NPV's compact. **The Supreme Court has already struck down statutes that were said to upset the compromises struck and the delicate balances achieved during the Constitutional Convention.** Writing for the majority in *Clinton v. New York*, Justice Stevens emphasized the "great debates and compromises that produced the Constitution itself." He found that the Line Item Veto Act could not stand because it disrupted "the 'finely wrought' procedure that the Framers designed."

In the same way, NPV's compact upsets the delicate balances and great compromises achieved in the presidential election process. NPV pretends that it can implement a direct national election of the President, without a constitutional amendment, even though the delegates to the

Constitutional Convention explicitly rejected that very method. The move is too clever by half, and the Supreme Court can be expected to see through the ruse.

Finally, states that choose not to participate in NPV's compact can be expected to work against its implementation. The Constitution gives each state responsibility for itself in presidential elections. Non-signatory states have many tools with which they can make their voices heard.

**States such as New Hampshire and North Dakota have already considered legislation that could complicate NPV's efforts to generate a reliable national popular vote total.** The legislation proposed in those states would withhold popular vote totals until after the meetings of the Electoral College. Other states have similar options available to them: They could release vote totals for the winner, but not the loser, in their states. Or they could grant each of their voters two or three ballots to cast for President, thus inflating the vote totals from their states. Some states might choose to revert to an older form of ballot in which presidential electors, not presidential candidates, are listed on a ballot. (A coherent vote total for national *candidates* is impossible to tabulate when the only ballots cast are for individual *electors*.)

Formally eliminating the Electoral College through a constitutional amendment would be unhealthy for the country. But NPV's attempt to skirt the constitutional amendment process creates added difficulties. These logistical and legal nightmares could haunt the country each and every presidential election year.

### ***The Benefits of the Electoral College***

The Constitution seeks to reconcile two seemingly irreconcilable goals: The Founders wanted the people to govern themselves, but they also wanted to protect minority interests. A simple democracy would not accomplish this objective: Bare or emotional majorities can too easily outvote and tyrannize minority groups—even very large, reasonable ones. An old analogy notes that a simple democracy is like two wolves and a sheep voting on what's for dinner.

The sheep doesn't feel good about being eaten just because it got a chance to vote.

The Founders sought to create something better. They created a Constitution with many safeguards: We have separation of powers, presidential vetoes, a bicameral Congress, and supermajority requirements to do things like amend the Constitution. The Electoral College is just one of these safeguards, intended to protect our liberty from unreasonable rule.

The Electoral College continues to help our country in many ways: **It encourages coalition-building and motivates candidates to reach out to a wide variety of voters.** It penalizes those who rely upon isolated pockets of support in one region, one state, or among voters in one special interest group. It encourages moderation and compromise. Finally, the state-by-state process isolates voting problems to one or a handful of states, making it harder to steal elections.

If this is true, then what has been happening lately? We are experiencing a series of close, contested, and angry elections because both parties are overly focused on their own bases. No

one seems very interested in reaching out to voters and building diverse coalitions, as the Electoral College requires.

**We've been here before.** The country has been divided and angry. We've had series of close presidential elections in which it seemed that coalition-building was a thing of the past. In the years after the Civil War, the Electoral College proved its ability to heal just this sort of division.

Consider the political landscape as it existed back then: Democrats were strong in the South, but they didn't have enough electoral votes in those states to win a presidential election. Thus, they had to reach out to some non-southerners. In the meantime, Republicans were in the opposite situation: Their strength in the North and Northwest gave them enough electoral votes to win without southern support, but just barely. It was safer to seek out some southern votes, too. In other words, both political parties were forced to reach a hand across the political aisle—whether they wanted to or not. Both parties had incentives to earn the support of new voters. Over time, the incentives inherent in the presidential election process helped to heal some of the divide between North and South. Such coalition-building and inclusiveness is healthy for our country.

The incentives today are the same. The first party to realize its mistakes and to once again focus on coalition-building will also begin winning presidential elections in landslides. In a country as large and diverse as our own, such incentives are healthy and necessary if we are to regain our footing and to thrive. Eliminating the Electoral College will simply undermine our ability to heal.

One last benefit of the Electoral College deserves a special mention in the wake of the 2020 election: **The Electoral College encourages stability and certainty in our political system.** Events such as those that occurred in 2020 are rare.

The Electoral College typically produces quick and undisputed election outcomes for two reasons: First, the system (along with the winner-take-all rule) tends to magnify the margin of victory, giving the victor a certain and demonstrable election outcome. Such certainty can't be provided by a direct popular election. Popular votes are often close, and these close votes can result in constant litigation and recounts.

Second, the system controls the impact of fraud and error. Regardless of your thoughts about the allegations of fraud in 2020, the Electoral College provided one indisputable benefit that year: **It isolated problems to a handful of states.** The country was given a clear set of problems to resolve one way or another before moving on to a definitive election outcome. In a national popular vote system, we would not have had such a clear process for arriving at a final total.

### ***Conclusion***

The National Popular Vote interstate compact will create chaos and uncertainty, whereas the Electoral College serves as an important safeguard in our constitutional system of checks and balances. I urge you to vote for HB25-1102.

**House State, Civic, Military, & Veterans Affairs**

**02/10/2025 01:30 PM**

**HB25-1102 Repeal National Popular Vote Compact**

**Typed Text of Testimony Submitted**

| <b>Name, Position, Representing</b> | <b>Typed Text of Testimony</b>  |
|-------------------------------------|---|
| Jeany Rush<br>For<br>themselves     | TO: HOUSE STATE, CIVIC, MILITARY & VETERANS AFFAIRS COMMITTEE<br><br>RE: HB25-1102 Repeal National Popular Vote Compact<br><br>Sponsor: Ken DeGraaf 2-10-25<br><br>FROM: Jeany Rush, Colorado Springs Constituent<br><br>VOTE: YES<br><br>This bill follows the intentions of our Founding Fathers. A true Representative Constitutional Republic. The proposed compact would actually take away our voice by allowing a few higher populated states to literally run over the other states, or smaller in population. This is why the electoral college system is so very important to protect our voice and votes.<br><br>Preserving a voice for each state, as to how the state voters cast their ballots is very important, and should not be overshadowed, or over-ridden.<br><br>Governments non-stop over reaching into our rights and usurping freedom must stop, so maintaining a balance is really important. |