

*Draft Outline of Constitutional and Fairness Issues related to the NPVC (LWV)*  
*March 2, 2009*

**Constitutional Issues**

Legal

CON: There could be a legal challenge to an interstate compact for the selection of electors, especially if it enlarges the political power of the compacting states at the expense of the other states. Political compacts that shift political power require congressional approval.

PRO: The U S Constitution gives state legislatures the authority to determine how electors are chosen. A constitutional amendment is one of the ways to change the way electors are selected. An interstate compact is another. Interstate compacts are sanctioned by the Constitution and have been upheld by the courts.

NPVC backers plan to secure congressional approval after many states have adopted the proposal.

Process

CON: Some believe that a change as fundamental as how the president and vice president are elected should be accomplished only through a constitutional amendment and the Compact is a way to “work around” the Constitution.

PRO: It may be more efficient to change the meaning of the Constitution through the Compact than through a constitutional amendment. It requires the approval of 37 (3/4) states to ratify a constitutional amendment. The 11 largest states together have the 270 electoral votes necessary to enact the Compact.

PRO: Many changes in the meaning of the Constitution began as state actions, including the right to vote for president, which many states did not initially allow. States took the lead in granting suffrage to women, African Americans, and 18-20 year olds and in establishing elections for U S Senators

PRO: Approval of the Compact by sufficient states could either change the presidential election process through the Compact or encourage a more general movement to amend the Constitution.

**Fairness Issues**

CON: The states that secure the 270 electoral votes necessary to enact the Compact will diminish the influence of the other states on the presidential election process. For example, it is possible for the 11 largest states to achieve a national popular vote through the Compact while as many as 39 other states oppose any change in the Electoral College. Opponents of the Compact believe that the interests of states that do not sign the Compact would be diminished through this shift of political power.

CON: Candidates currently focus their time and money and tailor their positions to the critical swing states. In 2008, 98% of candidates’ time and money was spent in just 15 states. Under the Compact, it is logical to believe that their focus will remain on densely populated areas. Some believe that the Electoral College helps protect the interests of the more rural states, although arguments can be made in either direction.

PRO: 70 % of the population supports a national popular vote for the president and vice president. The Compact could secure the “will of the people” sooner than a constitutional amendment