I. Provide at least three day notice of bills scheduled for a public hearing

To help maximize public involvement in their governance, state lawmakers should amend their rules to require at least three day public notice of the bills to be heard at public hearings.

Providing advance notice of bills scheduled for public hearings is a standard practice among states. This will help provide busy citizens with the time needed to adjust schedules if they wish to provide comments on pending legislation.

VIDEO: The need for a rule of three

Examples from Washington and Montana

Here are examples of legislative rules requiring advance notice of bills scheduled for public hearings.

- Washington five day notice: "1. At least five days' notice shall be given of all public hearings held by any committee other than the rules committee. Such notice shall contain the date, time and place of such hearing together with the title and number of each bill, or identification of the subject matter, to be considered at such hearing. By a majority vote of the committee members present at any committee meeting such notice may be dispensed with. The reason for such action shall be set forth in a written statement preserved in the records of the meeting. 2. No committee may hold a public hearing during a regular or extraordinary session on a proposal identified as a draft unless the draft

has been made available to the public at least twenty-four hours prior to the hearing. This rule does not apply during the five days prior to any cutoff established by concurrent resolution, nor does it apply to any measure exempted from the resolution."[1]

- Montana three day notice: "Notice of a committee hearing must be made by posting the date, time, and subject of the hearing online and in a conspicuous public place not less than three legislative days in advance of the hearing."[2]

Several state constitutions also require the text of bills to be publicly available for several days to avoid quick passage at the end of session without the opportunity for public involvement. Examples include:

- Michigan constitution: "No bill shall be passed or become a law at any regular session of the legislature until it has been printed or reproduced and in the possession of each house for at least five days."[3]

- Washington constitution: "No bill shall be considered in either house unless the time of its introduction shall have been at least ten days before the final adjournment of the legislature, unless the legislature shall otherwise direct by a vote of two-thirds of all the members elected to each house, said vote to be taken by yeas and nays and

[1] "2023-24 Legislative Manual," Washington State Legislature, accessed on May 21, 2024, available at https://leg.wa.gov/LIC/Documents/EducationAndInformation/39834_Legislative%20Manual%20-%20Red%20Book%202023_WEB.pdf
[2] "Rules of the Montana Legislature," Montanan Legislature, adopted January 2023, available at https://leg.mt.gov/content/Sessions/68th/2023-Rules.pdf
[3] "Michigan Constitution," Michigan Legislature, accessed on May 21, 2024, available at https://www.legislature.mi.gov/Publications/MIConstitution.pdf

> entered upon the journal, or unless the same be at a special session."[4]

Whether we are entrepreneurs, parents, students, members of a trade group, or even a lawmaker, it is important to have meaningful public notice of when a bill is going to be available for a public hearing and what the actual text of that proposal is. Only then can we rearrange our schedules, review, and prepare to provide the testimony lawmakers need to help advance good policy for the state.

Requiring at least a three day notice of bills scheduled for a public hearing will help improve the information available not only for citizens but also lawmakers, as bills advance through the legislative process.

II. Provide details of policies under consideration

An engaged citizenry should be the pursuit not the torment of democracy. Adopting policies favoring government transparency at all levels of government is of utmost importance to the progression of free market ideals. Providing citizens with notice of public meetings and meaningful details of the topics on agendas is the first step towards more government transparency.

In a survey by CivicsPlus of 16,000 people, 82% wanted more government transparency at the local level.[5] The same survey also found that individuals engaging with city websites more than once a month were five times more trusting of their city council. As local governments share information, engage with constituents, and increase dialogue, more trust in government is built.

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[4] "Constitution of the State of Washington," Washington State Legislature, accessed on May 21, 2024, available at https://leg.wa.gov/CodeReviser/pages/waconstitution.aspx

[5] "CivicPlus Releases National Survey: The Link Between Technology, Government Transparency, and Resident Trust," CivicPlus, October 20, 2023, available at https://www.civicplus.com/news/nn/civicplus-releases-national-survey-results-showing-the-impact-of-technology-on-resident-trust-and-satisfaction-in-local-government/

This trust is a time-saving effort. Government officials spend less time on dispersing information when a framework already exists. Also, an informed citizenry needs less time spent on history and background information and can move forward to solutions. These benefits of transparent government can be realized when:

1. **Public meetings are announced and available:** Public meetings should be announced on a regular platform, where it is easy for citizens to find and attend. Meetings should take advantage of the digital age and allow attendance through online meeting platforms – this includes remote testimony. Meetings should also be recorded for citizens to have access to and review previous material.

2. **Five days public notice of agenda:** It is difficult for citizens to come prepared to government meetings without knowing the agenda items before the meeting. Local government, including all councils, commissions, and boards should provide agenda items with at least five-day notice.

3. **Policy changes and proposals included in packet:** All policy changes and proposals included on a public meeting agenda for any level of government should have related documents and information publicly available before the meeting. If the item is included in the agenda and up for discussion, information should be included before the meeting explaining the issue. This includes the actual text of ordinances (etc.) to be considered.

Efforts towards more open public meetings are ongoing throughout the country. For example, the Transparent Idaho website has already taken a great step towards open and transparent government finances by providing

spending information for the cities and school boards.[6] The Town Hall Idaho website also provides a list of all upcoming public meetings and links to virtual platforms when available.[7] The natural next step is for the documents and proposed measures under consideration to also be available when notice of a public meeting is made.

One of the few benefits of the pandemic was increased government transparency. All levels of government adopted virtual meetings and had electronic notice of meetings (at least to the board).[8] Pandemic angst and frustrations increased public participation in government meetings. Unfortunately, among state and local authorities, some entities are ending live streaming and remote participation. There is no good reason for this reduction in public access.

State and local governments should embrace increased transparency and provide access to the same details provided to public officials when issuing a public notice of a meeting and agenda. Citizens will benefit when government meetings are public for everyone (online and in-person), a five-day notice is provided, and relevant information is publicly included in the agenda notice before the meeting.

III. Authorize an open government ombudsman

To ensure public accountability and maintain control over the actions of government officials, state laws across the country authorize access to public records and require open public meetings. Though these rights exist on paper, they are not self-executing and often can result in costly litigation as the people attempt to enforce open government laws. One reform that could help serve as an

[6] "Transparent Idaho," accessed on May 21, 2024, available at https://localtransparency.idaho.gov/
[7] "Townhall Idaho," accessed on May 21, 2024, available at https://townhall.idaho.gov/
[8] "Pandemic forced Idaho government agencies to livestream meetings. No reason to stop now," by Scott McIntosh, Idaho Stateman, September 22, 2022, available at https://www.idahostatesman.com/opinion/from-the-opinion-editor/article266041746.html

advocate for the people's right to know would be the authorization of an official open government ombudsman.

This type of citizen-focused open government expert would help reduce the possibility of litigation when a public records dispute occurs. A similar concept is currently used in Connecticut. That state uses a Freedom of Information Commission to help mediate access to public records. Under Connecticut state law:[9]

> "Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission."

Another example is New Jersey's Government Records Council:[10]

"The Government Records Council:

- Responds to inquiries and complaints about the law from the public and public agency records custodians
- Issues public information about the law and services provided by the Council
- Maintains a toll-free helpline and website to assist the public and records custodians

[9] "Connecticut Freedom of Information Commission," accessed on May 21, 2024, available at https://portal.ct.gov/foi/common-elements/template-v4/how-do-i_b#AppealCommission
[10] "State of New Jersey Government Records Council," accessed on May 21, 2024, available at https://www.nj.gov/grc/about/

- Issues advisory opinions on the accessibility of government records
- Delivers training on the law
- Provides mediation of disputes about access to government records
- Resolves disputes regarding access to government records"

State constitutions generally start with a strong acknowledgment of the power of the people. For example, Idaho's constitution proclaims: "All political power is inherent in the people." Idaho's Public Records Law Manual also clearly explains: "Open government is the cornerstone of a free society."[11]

The foundations for an accountable government can be found in strong citizen oversight, and one of the most critical tools to achieve this is open government laws. Authorizing an open government ombudsman would provide a helpful resource for citizens and potentially reduce the possibility of litigation relating to the enforcement of state public records and open meeting laws.

IV. Require legislative oversight of emergency powers

Though time is said to heal all wounds, the scars from the pandemic lockdowns remain fresh as the nation experienced executive overreach at the federal and state levels. It is important going forward for a proper check and balance to exist. The legislative branch must remain firmly in control of policy, even during times of an emergency.

[11] "Idaho Public Records Law Manual," Idaho Attorney General, January 2023, available at https://www.ag.idaho.gov/content/uploads/2018/04/PublicRecordsLaw.pdf

There's no question that in a real emergency, governors need broad powers to act fast. Legislative bodies take time to assemble, so they can temporarily transfer their powers to the executive in an emergency.

But when problems do last for extended periods, it is the responsibility of legislators to debate risks, benefits, and trade-offs of various long-term approaches. Lawmakers may end up passing the very policies a governor would prefer, but they do it after deliberation as representatives of the people and do it in a public process.

It's the legislature, not the executive branch, that should make the laws we live under, and the executive – no matter the state or the person – is supposed to implement only laws passed by the legislature.

State examples of legislative oversight for emergency declarations

No emergency declaration should be indefinite or remain in place without legislative approval. There are many examples across the country of states ensuring this proper balance of power occurs.

In Wisconsin, for example, a state of emergency cannot exceed 60 days unless it is extended by the Legislature, and in Minnesota, a governor must call a special session if a "peace time" emergency lasts longer than 30 days.

To allow a governor to quickly respond to an emergency while still requiring appropriate legislative oversight, lawmakers could adopt this type of compromise for emergency powers:

> "No emergency order issued by the Governor may continue for longer than 30 days unless extended by the legislature through concurrent resolution. If

the legislature is not in session, the emergency order may be extended in writing by the leadership of the senate and the house of representatives for 30 days or until the legislature can extend the emergency order by concurrent resolution. For purposes of this section, 'leadership of the senate and the house of representatives' means the majority and minority leaders of the senate and the speaker and the minority leader of the house of representatives. An emergency order narrowly written solely to qualify for federal funds is exempt from the requirement to receive legislative extension."

Policymaking should never be done by one person behind closed doors, even during an emergency. The number of days an emergency declaration remains in effect is less important than the requirement that the policies imposed be subject to legislative review and consent. Lawmakers must ensure that emergency powers statutes have this proper balance of power before the next emergency is declared.

V. Prohibit secret negotiations with public sector unions

Collective bargaining in government is controversial, but it should never be a secret.

Collective bargaining talks are the negotiations government unions have with government officials over salaries, benefits and working conditions. Because they involve millions of dollars of taxpayer money, they should be open and transparent. This doesn't mean the public participates in the negotiations, but the public should be allowed to observe the process.

This kind of process is not only good for taxpayers, but also for union members who are able to see how their union leadership is representing them at the bargaining table.

Idaho law prevents cities and unions from negotiation any contracts in secret. Democrats and Republicans passed the law unanimously and it was signed into law by former Governor Butch Otter in 2015.

Washington state, however, is a different story. While numerous attempts have been made to bring sunshine to the secretive process, government unions have resisted every step of the way.

The latest saga comes from Spokane, where unions sued the citizens who overwhelmingly approved a 2019 charter change that would have required sunlight on the process. The city didn't seem interested in the oversight, and because of its weak defense, the courts tossed the voter-approved change.

But various forms of open, transparent negotiations continue in more than half the states – including Idaho - and taxpayers and union members are better for it.

In Montana, Article II, Section 9 of the Montana State Constitution contains a sweeping government transparency requirement[12]:

> "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

[12] Montana State Constitution, Article II, Section 9, available at https://leg.mt.gov/bills/mca/title_0000/article_0020/part_0010/section_0090/0000-0020-0010-0090.html

Ideally, contract negotiations should be fully open to the public. But at a minimum, government officials should adopt an openness process like the one used by the City of Costa Mesa, California, to keep the public informed. The city's policy is called Civic Openness in Negotiations, or COIN.

Under COIN, all contract proposals and documents to be discussed in closed- door negotiations are made publicly available before and after the meetings, with fiscal analysis showing the potential costs. While not full-fledged open meetings, access to all of the documents better informs the public about promises and tradeoffs being proposed with their tax dollars before an agreement is reached.

This openness also makes clear whether one side or the other is being unreason- able in its demands, and quickly reveals whether anyone is acting in bad faith. It's a hybrid solution that could be adopted by local officials if full open meetings are not allowed.[13]

VI. Consider open primaries without imposing controversial Ranked Choice Voting (RCV)

There is a debate occurring in several states about whether to move from a closed primary to an open primary for elections. Unfortunately, this policy debate has sometimes also been intertwined with imposing Ranked Choice Voting (RCV).

Ranked choice voting continues to be controversial across the country.

In 2020, 50.55% of voters in Alaska adopted a Top Four and RCV ballot measure. The new process has been so

[13] Collective Bargaining Transparency, by Jason Mercier and F. Vincent Vernuccio, Better Cities.org, available at https://better-cities.org/wp-content/uploads/2020/11/BCP-collective-bargaining-transparency.pdf

unpopular, however, that Alaska voters will have the opportunity in 2024 to repeal it with the certification of a new ballot measure. Polling in Alaska has consistently shown that voters want to repeal ranked-choice voting.

Example of ranked-choice voting repeal in Washington

Washington State has had experience both with an open primary and with local voters in Pierce County adopting and then quickly repealing RCV.

Here are details on the state's voter approved Top Two open primary:[14]

VIDEO: Why ranked choice voting is bad public policy

> "The Top Two Primary was passed by the people in 2004 as an initiative. Initiative 872 passed by almost 60%. In 2005, before the new law was implemented, the Washington state Democratic, Republican, and Libertarian Parties sued in federal court. The lower courts imposed an injunction prohibiting the state from implementing the new Primary, but in March 2008, the U.S. Supreme Court upheld the new law. Washington state used the new Primary for the first time in the 2008 Primary and General Elections."

As for RCV, this is from a 2009 blog post by the Washington Secretary of State's Office discussing why 71% of Pierce County voters repealed ranked-choice voting after using the system only once:[15]

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[14] "Top 2 Primary: FAQs for Voters," Washington Secretary of State, accessed on May 21, 2024, available at https://www.sos.wa.gov/elections/voters/helpful-information/top-2-primary-faqs-voters

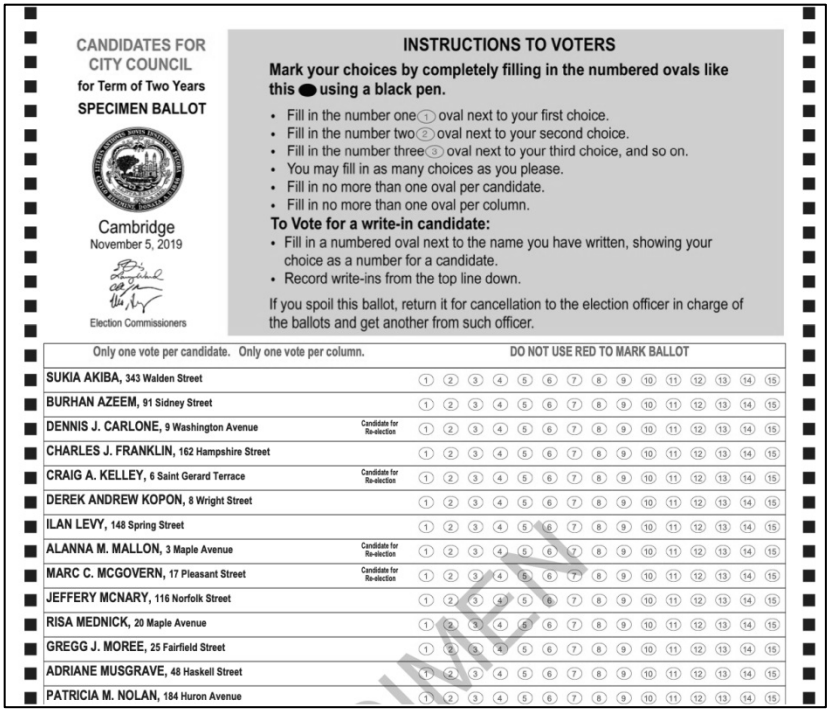
[15] "Pierce Voters Nix 'Ranked-Choice Voting'," Washington Secretary of State, November 10, 2009, available at https://blogs.sos.wa.gov/fromourcorner/index.php/2009/11/pierce-voters-nix-ranked-choice-voting/

> "It has always been kind of confusing to explain, but advocates believed it would be extremely popular and then possibly catch on elsewhere. Its biggest usage was last year when a new County Executive and other offices were filled this way, running in tandem with the regular state primary and general elections. It went downhill from there. Voters participating in an auditor's survey said by a 2-to-1 margin that they didn't like the system. And this year, it was back on the ballot –and voters have thrown it out by a 71-29 margin."

Washington's current Secretary of State Steve Hobbs remains opposed to ranked-choice voting:[16]

> "Ranked-choice voting adds a layer of complexity to voting that threatens to disenfranchise people who aren't experts at the process. This includes people living with developmental disabilities – such as my son – for whom choosing one candidate is more straightforward than figuring out how to rank a list of them. Additionally, it can be a challenge for newly naturalized citizens to adapt to American elections. Converting some elections to ranked-choice voting would increase the obstacles to exercising their rights as Americans. Top-two primaries present none of these challenges. You pick your favorite, then you send in your ballot. That's something people can easily grasp. I stand firmly behind Top Two and encourage other states to learn from our usage of it."

[16] "Open Primaries and Ranked Choice Voting: A Conversation with WA's Secretary of State," by Jason Mercier, Mountain States Policy Center, September 15, 2023, available at https://www.mountainstatespolicy.org/open-primaries-and-ranked-choice-voting-a-conversation-with-wa-s-secretary-of-state



CANDIDATES FOR CITY COUNCIL
for Term of Two Years
SPECIMEN BALLOT

Cambridge
November 5, 2019

Election Commissioners

INSTRUCTIONS TO VOTERS

Mark your choices by completely filling in the numbered ovals like this ● using a black pen.

- Fill in the number one (1) oval next to your first choice.
- Fill in the number two (2) oval next to your second choice.
- Fill in the number three (3) oval next to your third choice, and so on.
- You may fill in as many choices as you please.
- Fill in no more than one oval per candidate.
- Fill in no more than one oval per column.

To Vote for a write-in candidate:

- Fill in a numbered oval next to the name you have written, showing your choice as a number for a candidate.
- Record write-ins from the top line down.

If you spoil this ballot, return it for cancellation to the election officer in charge of the ballots and get another from such officer.

Only one vote per candidate. Only one vote per column. DO NOT USE RED TO MARK BALLOT

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
SUKIA AKIBA, 343 Walden Street																
BURHAN AZEEM, 91 Sidney Street																
DENNIS J. CARLONE, 9 Washington Avenue	Candidate for Re-election															
CHARLES J. FRANKLIN, 162 Hampshire Street																
CRAIG A. KELLEY, 6 Saint Gerard Terrace	Candidate for Re-election															
DEREK ANDREW KOPON, 8 Wright Street																
ILAN LEVY, 148 Spring Street																
ALANNA M. MALLON, 3 Maple Avenue	Candidate for Re-election															
MARC C. MCGOVERN, 17 Pleasant Street	Candidate for Re-election															
JEFFERY MCNARY, 116 Norfolk Street																
RISA MEDNICK, 20 Maple Avenue																
GREGG J. MOREE, 25 Fairfield Street																
ADRIANE MUSGRAVE, 48 Haskell Street																
PATRICIA M. NOLAN, 184 Huron Avenue																

In 2024, Princeton University professor Nolan McCarty conducted a study of ranked-choice elections in New York City and Alaska and found that minority voters are disproportionately impacted by this type of election process. Professor McCarty noted:

> "In recent years, ranked-choice voting has been hyped as a solution to many perceived problems in American elections. Unfortunately, the hype has often outpaced the evidence. My research raises major concerns about whether RCV may work to further reduce the electoral influence of racial and ethnic minority communities."[17]

[17] "Ranked-Choice Voting Hurts Minorities: Study," Center for Election Confidence, January 11, 2024, available at https://electionconfidence.org/2024/01/11/ranked-choice-voting-hurts-minorities-study/

Former California Governor Jerry Brown may have said it best when vetoing a RCV bill in 2016:

> "In a time when we want to encourage voter participation, we need to keep voting simple. Ranked choice voting is overly complicated and confusing. I believe it deprives voters of genuinely informed choice."[18]

There is a big difference between open primaries and ranked-choice voting. Moving to a clean open primary is a debate worth having (preferably a Top Two). Adopting open primaries, however, need not be limited to a take-it-or-leave-it proposition tied to the controversy of ranked-choice voting.

VII. Authorize a statewide voters' guide

Voting is one of the most important responsibilities and rights that we have as citizens. It can be difficult at times, however, to find the needed information about those running for office who want to represent us. This is why several states authorize their Secretary of State to provide a statewide voters' guide to help provide these important details.

According to the National Association of Secretaries of States (NASS), several states currently provide a voters' guide including Alabama, Alaska, California, Florida, Oregon, and Washington.

Here is how the Alaska Secretary of State explains this resource:

[18] "Brown vetoes bill to broaden ranked-choice voting in California," San Francisco Gate, September 30, 2016, available at https://www.sfgate.com/politics/article/Brown-vetoes-bill-to-broaden-ranked-choice-voting-9518031.php

> "During a Primary and General election year the Division of Elections publishes two official pamphlets designed to help Alaskan voters make informed choices. Pamphlets are available in printed, digital, and audio formats; and made available to the public no later than 22 days prior to Election Day. Printed versions are mailed to every voter household and digital versions are posted to this page. Digital versions of the pamphlets are also available in select languages."

Along with a traditional printed and online voters' guide, another resource worth considering is a Video Voters' Guide. This would allow voters to go to one place to see and hear candidates in their own words about why they are running for office.

A voters' guide usually provides basic demographic and background information about candidates, generally in their own words, to help voters have a standardized reference for learning more about those seeking office. Providing a statewide voter guide is not only popular amongst voters, but it is also a best practice that all states should consider to help provide citizens access information they need to make informed decisions about those wishing to represent them.

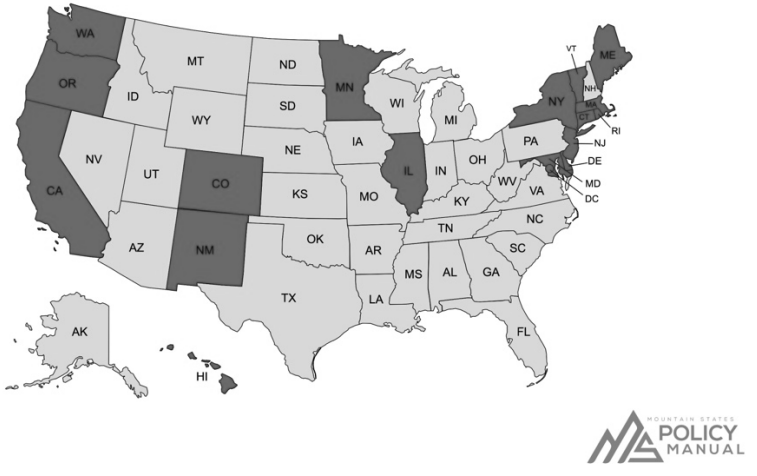
VIII. Do not join the National Popular Vote compact

Seventeen states and the District of Columbia have joined in an agreement to award their Electoral College votes in a U.S. election to the winner of the national popular vote.

The National Popular Vote compact (NPV), as it is called, has gained steam over the past 25 years, lead mostly by liberal leaning states eager to work around the Electoral College.

The legislation, which is identical in each state, requires the state to award its electoral votes to the candidate who receives the most popular votes nationwide. This could mean a candidate that doesn't win a particular state could still receive the state's electoral votes.

States that have joined the National Popular Vote compact



It is not unusual for a state to decide to allocate electoral votes differently. Two states, for example, allocate electoral votes based on the winner in each of the state's Congressional districts. Other states have a winner take all system.

But the NPV is problematic for several reasons. First, arguments about who won a close election would never end. Instead of being confined to one state or another based on the number of electoral votes a candidate may need, disputes would go national and parties could pick and choose areas to contest based on how many supporters the area may have.

Second, there are serious Constitutional questions, specifically regarding whether states can create a compact such as this without Congressional approval, and perhaps more importantly, whether the NPV violates the 14th Amendment, which says:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

The NPV compact specifically nullifies a citizen's vote if the state's electoral votes are simply transferred to the winner of the national popular vote.

Analysts at the Cato Institute have noticed another trend now appearing in more conservative states to counteract any implementation of the NPV compact[19]:

> "In North Dakota, the Republican-controlled state senate passed a bill saying their state will withhold its popular vote totals for president until after the Electoral College has voted in December. Instead, the state would only publish the rough percentages. This is deliberately aimed at making it impossible to properly calculate the national popular vote total in time to award electors on that basis. Similar bills have been introduced in other states."

As of 2024, Washington state has joined the NPV compact, but Idaho, Montana and Wyoming have not. To protect the legitimacy of elections and to preserve a voice in the Electoral College, they should avoid doing so.

[19] The fatally flawed national popular vote plan, by Andy Craig, Cato Institute, November 2021, available at https://www.cato.org/blog/fatally-flawed-national-popular-vote-plan