

## RALPH NADER RADIO HOUR EP 392 TRANSCRIPT

**Steve Skrovan:** Welcome to the *Ralph Nader Radio Hour*. My name is Steve Skrovan along with my co-host, David Feldman. Hello, David.

**David Feldman:** Hello. Great show today.

**Steve Skrovan:** It's gonna be a fantastic show. And joining us as always is the man of the hour, Ralph Nader. Hello, Ralph.

**Ralph Nader:** Hello, everybody.

**Steve Skrovan:** And on this program we have spoken about and decried that peculiar institution written into the United States Constitution known as the Electoral College. Actually, it's not in the Constitution. It was in the Constitutional Convention. Listeners of this program are familiar with arguments against. Both of our guests will be tackling this subject with us.

First up is Professor Alex [Alexander] Keyssar whose latest book asked the simple question, his book is entitled *Why Do We Still Have the Electoral College?* Professor Keyssar will explain why such an obviously undemocratic mechanism has survived ever since it was conceived at the Constitutional Convention in 1787. And this century is not the first time it has come under fire. We look forward to hearing about the efforts to reform it and why those have all ultimately failed.

Now that's the first half of the show. Then when we come back, Steve [Stephen] Silberstein, who is at the forefront of the latest efforts to if not get rid of the Electoral College, at least neutralize it, will be joining us. Mr. Silberstein, as many of our regular listeners know, serves on the board of directors of National Popular Vote, the Interstate Compact, where state legislatures promise their electoral votes to the winner of the national popular vote. We'll get an update from him on the progress of that effort in the second half of the show.

Then if we have time, we're gonna have a brief discussion about baseball and about how you cannot listen to a game these days without being inundated with product advertising. Baseball teams have not quite gone the way of NASCAR with corporate logos all over their uniforms, but corporations and local businesses sponsor just about every aspect of the actual calling of the game. We've concocted a fictional play by play parody of that taken to its extreme, so stick around for that. And as always, somewhere in the middle, we'll check in with our Corporate Crime Reporter, Russell Mokhiber. But first, I have a simple question, David, why do we still have the Electoral College?

**David Feldman:** Alex Keyssar is professor of history and social policy at Harvard's [University] Kennedy School of Government and is the author of *The Right to Vote: The Contested History of*

*Democracy in the United States*. His latest book is *Why Do We Still Have the Electoral College?* Welcome to the *Ralph Nader Radio Hour*, Professor Alex Keyssar.

**Alexander Keyssar:** Well, thank you for inviting me to the show.

**Ralph Nader:** Welcome indeed, Professor Keyssar. Before we get into your historical knowledge that is very relevant today politically about the struggles over the Electoral College, I think our listeners would be very intrigued by your response to the following. In 2000, Al Gore got 500,000 more popular votes than George W. Bush and lost the Electoral College and the presidency with the help of the [US] Supreme Court's 5-4 decision. In 2016, Hillary Clinton received almost 3 million more popular votes than Donald Trump and lost the electoral vote count and the presidency.

The consequences on Congress on the judiciary, not to mention the executive branch, were quite portentous as a result of the continual maintenance of the Electoral College, which most people around the world who study democracy are very puzzled by. Why do you think - and I know you're not a psychoanalyst by profession - but why do you think the Democratic Party like the Democratic National Committee and the leaders of the party in Congress are not pushing for change since they've lost two presidencies in just 16 years?

**Alexander Keyssar:** Well, you're right that I'm not a psychoanalyst. My impression is that there are people within and even factions within the Democratic Party that are pushing for change. There are many members of Congress who do support the National Popular Vote Interstate Compact, and I think even more who support some kind of constitutional change. I think there are two other factors at work.

One is the burden or the pessimism that comes from knowing how difficult it would be to actually amend the Constitution, which is the only way to find a really durable solution to the problems posed by the Electoral College. The other factor is that there is a kind of inbuilt conservatism among many politicians. I know this will shock you, Ralph, but there is a conservatism. They know how things are, how things have always been, and they really don't want to rock that boat. I mean, you know, the one political leader in public life today who actually voted in Congress on a resolution to replace the Electoral College with the national popular vote was Joe Biden in the late 1970s. And he voted against it and he was joined by a number of other figures within the Democratic Party.

**Ralph Nader:** Well, what's surprising. I know there are people, as you say, who are in the party and don't like the Electoral College, but the leadership has not made a point of this. It isn't an issue in their campaigns against Republicans at the state and national level. You think they'd wanna at least educate the public about it. And even if they think the practical possibilities are low, everything starts low in terms of major reform, and you have to start somewhere. You can't hit home runs all the time. That's what's so puzzling. I mean, the silence of the Democratic National Committee on this. Imagine losing the federal government to this antiquated, vestigial Electoral College with all that's involved and you actually stay silent about it. You don't make it a major educational reform campaign. So let's start with just the public education aspect. Why don't they at least do that?

**Alexander Keyssar:** I don't have an answer to that. And I completely agree with you. I think that it should have been front and center after the 2016 election and after the 2000 election as well. But there is a reluctance to engage in efforts that will be difficult and that will certainly have to endure over years and where you may not see results for a while. But the public education on the issue is absolutely essential. It's not that hard to do; it just takes work.

**Ralph Nader:** Because it has a worldwide effect. It gives new meaning to the word “trimtab factor”. I mean, it has a planetary effect on climate disruption, empire military operations, and so on. What do you know up the polls? What are the recent polls? What do the American people think in the polls on the Electoral College?

**Alexander Keyssar:** Well, it's an interesting phenomenon. Polls started in the 1940s, reliable polls. And from the 1940s until about 2000, something between about 60% and 75% of the population thought that we should abolish the Electoral College—very, very substantial majorities. In the late 1960s when we almost did abolish the Electoral College, the polling figures were around 80%, 82%. Since then, there has been a decline in overall support and it's been pretty clearly partisan. And one feature of that, one expression of that was that immediately after the 2016 election, for the first time and only momentarily, but for the first time, there was not a clear majority in favor of Electoral College abolition. In effect, the Republicans and the Trumpists had convinced their supporters that the Electoral College was a good thing because it had elected their candidate. More recently, what we see is that a definite majority, 55%, 60%, maybe a little more, of the electorate thinks that we should get rid of the Electoral College, but there's a very severe partisan split in those figures.

**Ralph Nader:** Well before he was selected by the Electoral College, Donald J. Trump actually denounced it, called it farcical, and then of course, he benefited from it and didn't attack it after that. You made your scholarly mark on the politics of race and geographical region, figuring in with the sustained support for the Electoral College in Congress, if not in the public opinion polls throughout history. So do you wanna give us a summary of the historical work you've done and how it continues to have an impact today in Washington [DC] politics.

**Alexander Keyssar:** Sure. I'm happy to do that. I should state at the outset that I don't argue in the book that race is the only factor or race and region are the only factors. There are other things such as partisan conflict, et cetera. But the story that emerged most vividly in the book was the way in which considerations of white supremacy were absolutely decisive in keeping the Electoral College in place for most of our history. Let me start out with the basic fact that what the Electoral College does [is] a dimension of it that we don't often think about. What it does is that it gives a state electoral votes and thus power in presidential elections in proportion to its population, not in proportion to the number of people who show up at the polls. And what that means among other things is that if a state disenfranchises a significant percentage of its population, it is not in any way punished in presidential elections. It still gets the same number of electoral votes. We start during the period of slavery when the dynamics are fairly obvious, [i.e.,] the southern states are getting members of Congress and electoral votes equivalent to all whites and three fifths of “all others”, which meant basically Black people. So white southerners are getting a significant boost in their political power by the presence of slavery.

What's new, I think, or the one other story that I've really brought to the fore, is that that doesn't end with the [American] Civil War and it doesn't end with the end of slavery. Within two decades after the end of the Civil War, African Americans are, once again, disenfranchised wholesale throughout the south. But at this point, in terms of they're counting towards representation in the Electoral College and in Congress, they count 100%. In other words, the three-fifths clause is gone. And when you're doing a census of Alabama, you count everybody. And that counts towards seats in Congress and its electoral votes. But of course not everybody can vote. And what that means is that white Alabamans are benefiting after the Civil War by what you could call the five-fifths clause, not the three-fifths clause. They are getting power from the entire Black population with the Black population not voting.

Now, let me take this just the last step in the logic about this. What this means is that in states, which had this, which basically maintained white supremacy and maintained segregation, there was tremendous resistance among whites to any reform that would produce a national popular vote. Because if you switched to a system that had a national popular vote, rather than the Electoral College, then your state's influence would be measured entirely by the number of people who showed up to vote, not by the population, which means that if they maintain the disenfranchisement of Black people their states would lose very significant political power.

**Ralph Nader:** How do these southern politicians now plausibly argue for it because a lot of them do respond to Black voters, especially in primaries if they think they're gonna lose without some Black voters. How do they plausibly respond? Politicians always try to be plausible.

**Alexander Keyssar:** Well, you're right that they do try to be plausible, but in general, I think within the south, they don't respond very much. They sort of treat this as well, the great wisdom of the founding fathers; this is the way we've always done it. And this is a particular American version of democracy. But I think for the most part, they really don't engage the arguments against the Electoral College. That said, and as someone who has spent too many years looking at the long survey of switches on these issues, things might change in that regard. If I were a politician in Georgia right now, I might start thinking that winner-take-all doesn't necessarily look like the best thing for presidential elections for folks in Georgia since that ended up giving all of Georgia's electoral votes to Joe Biden. And Texas could end up in a similar situation, although since Texas seems intent on shrinking its electorate as much as possible, that may be delayed.

**Ralph Nader:** Well, before we get to what couple states have done is split the electoral vote tally according to congressional district, describe for our listeners what happened in 1969, 1970, which is the last major challenge in Congress to change the Electoral College by constitutional amendment.

**Alexander Keyssar:** Right. The events of 1969, 1970 were dramatic and were really building on what had gone on for a decade. In effect, there is a tidal wave, a shift in interest that is coming from a several different sources in the 1960s, but a concern about the malfunctions of the Electoral College of various sorts, including a rise in the number of rogue electors at the time. But I think there was also a kind of ideological commitment to democracy. And we had also feeding into this decisions by the Supreme Court about districting that emphasized the principle

of one person, one vote. And the court decisions tried to suggest, that doesn't have to apply to presidential elections. But once you decide that that principle is sacrosanct, it's pretty hard to then turn around and say, "Well, it shouldn't apply to the most important election."

In effect, a movement got going within Congress, led by Democrats but with ample Republican support and a constitutional amendment calling for the replacement of the Electoral College with a national popular vote. And then there were details about what would happen if no one quite got a majority, but it was passed by the [US] House of Representatives by an 82% vote in 1969. Just think about that kind of consensus, which I think is desirable for constitutional change.

It then went to the Senate. And in the Senate, despite the heroic efforts of Senator Birch Bayh of Indiana, who had pushed this along for several years, in the Senate, it got stalled by procedural delays led by southern senators, Strom Thurmond, James Eastland of Alabama, and the Watergate Kleagle Sam Irvin of North Carolina. They with others just tried to slow things down best they could. The House had voted in September of 1969. They managed to delay things until September of 1970 when it comes to the floor of the Senate. And in effect, they defeated it with a filibuster. They were joined by a few midwestern Republicans, but it was senators from the south who filibustered the bill in the Senate. It had a significant majority vote, but not quite close enough to the margins needed to override a filibuster.

**Ralph Nader:** And I think at that time it required 66 votes, not 60 votes.

**Alexander Keyssar:** That's right. That's right. That's just before they changed it.

**Ralph Nader:** So in the "world's greatest democracy", I put that in quotes, a minority mechanism in the Senate called the filibuster preserved the minority mechanism in our constitutional tradition, the Electoral College. So basically, in this country, we have minority rule entrenched. Is that correct?

**Alexander Keyssar:** Yes, absolutely. I don't remember the exact figures, but I think they're somewhere in my book. The senators who blocked passage of the Bayh amendment represented less than 40% of the nation's population.

**Ralph Nader:** Now you would think this would infuriate people because most people are dedicated to proposition that majority rules. They have their town meetings, their zoning commission meetings, and they're pretty used to majority rules. And we grow up to the extent we learn about our civics institution, majority rules. I don't understand why formal political movements, parties, political committees, don't make a big issue of this. They all think that someday they may be in the minority and it's like an insurance policy.

**Alexander Keyssar:** I think that people have been slow to recognize how systemic and pervasive this pattern of minority rule is. People tend to see things as a one-off or as an accident. One of the remarkable little bits in the story that I tell in the book is that there was remarkable consensus among pundits and politicians in the 1990s that if we ever had a "wrong winner election", if it ever happened that the person who won the popular vote did not win the electoral vote, then of course, there would immediately be change. Because the mentality in the 1990s was

this hasn't happened since 1888. Eh, it's unlikely to happen; why bother changing it? But if it ever happens, we'll do it. Well, it did happen. And as you point out, there was remarkably little protest. People issued statements. Some members introduced legislation or introduced the texts of constitutional amendments, but there's not a lot of follow up,

**Ralph Nader:** You know, for all his contributions to establishing our republic, James Madison was always worried about what he called the rabble. If he was here today, I think he would be astonished at the extent to which these institutions have been so entrenched against majority rule. What do you think of the tiptoe approach with what couple states now divide the Electoral College tally by congressional district? Can you describe that for our listeners?

**Alexander Keyssar:** Sure. A couple of states do use districting systems and there's a fairly long ancient history of this. In the first half of the 19th century, the first third of the 19th century, lots of states basically assigned electoral votes by congressional district or by some other districting system. And right now, there is a use of districting mechanisms in Maine and Nebraska; I think it's better than a winner-take-all [system]. My concern about districting systems is that until we solve the problem of gerrymandering, I'd rather not import the problem of gerrymandering into presidential elections as well. I would prefer an alternative, but similar mechanism if we can't get a national popular vote. But my choice then would be to have the electoral votes divided proportionally. If you get 40% of the popular vote in Pennsylvania, you get 40% of the electoral votes. And that would eliminate the gerrymandering problem, and like a districting system, also greatly improve upon the system that we have now with winner take all. By the way, just to emphasize to your listeners, winner take all is not in the Constitution and there is abundant historical evidence that that was not what the framers of the Constitution had in mind. In fact, Madison, whom you mentioned, writing twenty years later, indicates his disappointment and his support for a district system through to allocate electors.

**Ralph Nader:** Yeah. They feared what was later called the Jacksonian Age with the appeal to mass movements regardless of what you think of Andrew Jackson. They were horrified by the way he flung open the doors of the White House and anybody could come in for the celebration during this inauguration. Let's move to the National Popular Vote movement. I've always been intrigued by this. Steve Silberstein thought Electoral College had outworn its usefulness if it ever had any. And he hired half a dozen or so advocates who went around persuading state legislatures to engage in an interstate compact where they pledge to each other that any presidential candidate who gets the national popular vote majority will get their electoral vote majority. And California, Illinois, New York, Maryland, Connecticut, and others have now signed that compact through legislative majorities, I might add. And they're up to a little over 200 electoral votes and they need to break 270 in order to get a majority. Now, some would say this is never gonna happen because it's getting very, very tough now. They're gonna have to get southern states for example, but you never know. What do you think of that? What do you think of that effort? First, its intent and then you have pronounced views on its consequences.

**Alexander Keyssar:** Right. I should say that when the National Popular Vote Interstate Compact program was first announced, I was a supporter of it. Although my support was grounded largely, and I was public about this with the creators of the compact, that I thought that the

National Popular Vote Interstate Compact was a good way to build political support for Electoral College reform, but that it wasn't in itself the solution to the problem. The compact is born/founded around 2006. And it was a response to the fact that people saying, "The Electoral College doesn't work; it's terrible; it's undemocratic, but we can't imagine getting enough votes to amend the Constitution, so let's try this workaround," which is really what it is. It's a workaround.

My concerns about it are several. One, and here I rely on the knowledge of friends of mine who are constitutional law professors, is that it is by no means certain that if the National Popular Vote Interstate Compact were ever instituted, if it got the requisite number of votes, whether it would survive constitutional and legal challenges, which would be plentiful and which would also be likely to arise in the context of an actual election. Because some of these issues can't be tested until you have facts that permit them to be tested. So, you know, I think that the constitutionality of it is at best questionable. And certainly, I have some friends who think that it frankly is not constitutional. And then the second fact is that I think it's gonna be very tough to make much more progress as you mentioned.

But my own, perhaps idiosyncratic concern with this is that I think that the compact is unstable. And let me explain what I mean about that. Suppose you got the 270 electoral votes and the compact was enforced and the court said it was okay and you held an election according to the rules of the interstate compact. And suppose six months later, two states or three states that belonged to the compact withdrew from the compact, which they are allowed to do under the terms of the compact. They cannot withdraw within six months of an election, but can at any other time. If they withdrew and stayed withdrawn, then the next election cycle would be run according to traditional Electoral College rules. And you could go back and forth between the two systems with political parties trying to game during each election cycle which type of election would be better for them. I think that that would be delegitimizing of outcomes. It would be chaotic. I think that electoral systems have to be clear, understandable to the public, and you put them in place and you keep the rules the same. And that is of course why I think an actual national popular vote, not a mechanism through the Electoral College, is among other reasons desirable. We all understand what it wins to win a popular election.

**Ralph Nader:** Well, one argument contrary to what you just said, is they would have prevented one electoral atrocity, assuming some states withdrew later. But I want to ask you a question under the compact itself. Let's say X candidate wins, and because of the compact, s/he won the popular vote. Between the election day and the meeting of the Electoral College, could a state assemble its legislative members and withdraw and deep six the whole equation?

**Alexander Keyssar:** According to the terms of the compact, it cannot. But I think you're right to look at that kind of scenario because almost certainly it would arise and almost certainly it would go to the courts. And this notion that you can't withdraw during a certain window would be challenged. And then you could even imagine, especially as we reflect on the 2020 election, you could even imagine electors refusing to cast their ballots as the compact told them to.

**Ralph Nader:** Well, the Supreme Court has ruled, I think, recently, that they can't refuse. Is that correct?

**Alexander Keyssar:** No, it has ruled that they can be sanctioned for refusing.

**Ralph Nader:** I see. Well, as far as the constitutionality of it, there are some very prominent constitutional law people who think it's perfectly constitutional to do an interstate compact. We're gonna hear from Steve Silberstein about that because he remains very aware of constitutional objections to it. So he has sought out constitutional law experts in the field, but you're looking at the political issues here. However, it does have one benefit that you recognize. It certainly will raise the profile of the issue sky high and might reverberate back on Congress, wouldn't you say?

**Alexander Keyssar:** It's possible. I mean, that's why my comment at the beginning of this segment was that I supported the compact largely as a way to build support. My own sense of a strategy would be if you can get the compact close, if you can get up to 240 or 250 electoral votes and then people start staring in the face all the legal cases, all the challenges, then you might want to have it segue into a movement for an amendment for a real national popular vote.

**Ralph Nader:** And since constitutional amendments have to move through state legislatures, I think the National Popular Vote movement is educating and persuading a lot of state lawmakers, because a lot of them did vote for the interstate compact. So it does have that benefit at the state level. We're talking with Professor Alexander Keyssar, Harvard University professor of history and social policy, and author of the book, *Why Do We Still Have the Electoral College?* Very plainly stated and argued with deep historical documentation. He also wrote an op-ed in August of last year for the *New York Times* called "*How Has the Electoral College Survived for This Long?*" Resistance to eliminating it has long been connected to the idea of white supremacy. In the last few minutes we have, I want to bring in Steve and David.

**David Feldman:** Yes. Thank you. I'm a leftist, and I'm concerned about out of touch elitists who run the Democratic Party. And I'm concerned that getting rid of the Electoral College sounds like a lot of pampered millennials who say, if I can't win the game so let's change the rules. I'm worried that we have all these smart people from Harvard [University], Yale [University] and Princeton [University] who won't dirty their hands in Wisconsin and the rural Rust Belt. They'd rather stay on Martha's Vineyard and get rid of the Electoral College than meet the American people. Aren't you worried that that if we get rid of the Electoral College, wouldn't that just make the Democrats even more out of touch with the 99%?

**Alexander Keyssar:** I share your concern about elitism despite the university with which I'm affiliated, but I think I'm not as concerned as you are about that mechanism. Part of what opening it up to a national popular vote would do would be provide an incentive for people to go out and meet folks in their own states. I live in Massachusetts, and everybody thinks, okay, Massachusetts, Boston, Cambridge, liberal state. Well, we are by and large a liberal state, but still 35% of the population of Massachusetts voted for Donald Trump. There are large conservative segments. There are quasi rural areas. And it would mean in a presidential election, it doesn't matter where you get the votes as long as you can increase the number of votes. And I think that would produce different and perhaps richer forms of engagement.



**Ralph Nader:** You wouldn't write off certain states, David; red state, blue state. You'd have an incentive to campaign in all states. I know that from personal experience. Listen, we're out of time. Thank you very much. We've been speaking with Professor Alexander Keyssar, Harvard University, the author of the book, *Why Do We Still Have the Electoral College?* Thank you very much, Professor Keyssar.

**Alexander Keyssar:** Thank you, Ralph. It's been a pleasure to be part of this conversation.

**Steve Skrovan:** We've been speaking with Alex Keyssar. We will link to his book, *Why Do We Still Have the Electoral College?* at [ralphnaderradiohour.com](http://ralphnaderradiohour.com). Let's take a quick break. When we come back, we'll continue our discussion about this wacky new idea for American democracy--one person, one vote--with Steve Silberstein, board member of the organization, National Popular Vote. But first, let's check in with our corporate crime reporter, Russell Mokhiber.

**Russell Mokhiber:** From the National Press Building in Washington, D.C.; this is your *Corporate Crime Reporter* "Morning Minute" for Friday, September 10, 2021; I'm Russell Mokhiber. For years, utility consumers have been unknowingly funding corporate lobbying groups like the Edison Electric Institute and the American Gas Association. Now, the Maryland Office of the People's Counsel wants it to stop. "Under current accounting rules, customers may unknowingly and unjustifiably pay for utility trade association political efforts," said Maryland People's Counsel David Lapp. "In the past, trade associations have funded efforts to deny climate change and thwart policies to reduce greenhouse gas emissions, and customers have paid for those efforts. That has to stop," Lapp said. For the *Corporate Crime Reporter*, I'm Russell Mokhiber.

**Steve Skrovan:** Thank you, Russel. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan along with David Feldman and Ralph. Now continuing our discussion of the Electoral College, our next guest is part of a movement that pushes this crazy idea that the presidency should go to the candidate who gets the most votes. Steven Silberstein serves on the board of directors of National Popular Vote. Welcome back to the *Ralph Nader Radio Hour*, Steven Silberstein.

**Steven Silberstein:** Thank you. It's a pleasure to be here.

**Ralph Nader:** Thank you again, Steve. Why don't you bring us up to date because you've been on the show before, how many states have joined by legislation the interstate compact pressed forward by the National Popular Vote movement, which you started? What are we up to, and in terms of electoral votes to get to the 270 magic number?

**Stephen Silberstein:** So we have 15 states plus the District of Columbia, which has three Electoral College votes. Those 15 states and the District of Columbia have enacted the National Popular Vote law. And those states have 195 Electoral College votes. So we're close to the 270 that we need. We're about two thirds of the way there.

**Ralph Nader:** For listeners who don't know much about the effort here, this is an interstate compact where the states like California, New York, Illinois, Maryland, Connecticut, and others,

that have already passed laws, say that they will give their Electoral College votes to any presidential candidate who wins the national popular vote. And National Popular Vote drive is pushing to reach 270, which would give it the majority needed to make this system work without the necessity of a constitutional amendment. What states are getting close now, Steve?

**Stephen Silberstein:** So states that have not yet enacted in law but it has passed one legislative body in the state include Virginia, Maine, Arizona, Oklahoma, and a whole bunch of other states.

**Ralph Nader:** Colorado?

**Stephen Silberstein:** Colorado has enacted into law. So it has passed both bodies and the governor has signed it. So we're moving along in a whole bunch of other states.

**Ralph Nader:** And what's the main obstacle that you have to face? What is the pressure not to enact these interstate compact laws?

**Stephen Silberstein:** So the pressure now comes from people who somehow think that the founding fathers did not intend that the person who gets the most votes should become president. They somehow think that a couple of states should make the choice. So that's where the pressure comes from. There's a certain fear that if the person who got the most votes won then bad things would happen.

**Ralph Nader:** Well, since the Republican Party has been the beneficiary of the Electoral College, winning the presidency in 2000 and 2016, even though they lost the national popular vote to Al Gore and Hillary Clinton, isn't it also coming from the Republican Party, politically?

**Stephen Silberstein:** It is true a lot of the opposition comes from Republicans, but there is support from Republicans as well. The Republicans are very much aware that in 2004, when George W. Bush was running for reelection against John Kerry, George W. Bush was way ahead in the popular vote. He had about 3 million more votes than John Kerry, but he came within a hair's breadth of losing Ohio. And if lost Ohio, then John Kerry would have become president. About 50,000 votes in Ohio would have awarded the presidency in 2004 to John Kerry. So some Republicans know that although they have benefited a couple of times here, it's very, very precarious as it is, and it could go against them again.

**Ralph Nader:** And when you get these laws proposed in these legislatures, do they have public hearings and does the press cover it? Or it just is viewed as a procedural vote that doesn't require legislative hearings in either body of the legislature?

**Stephen Silberstein:** Like any bill in the legislature, there are hearings. It has to go through different committees in both houses of the legislature. So it's a very, very public process.

**Ralph Nader:** And what would you say the three most likely new states can be in the next legislative session next year?

**Stephen Silberstein:** Well, Virginia would be one. As I said, we passed one body already in Virginia. It could be Nevada. It could be Minnesota. It could be Maine. There are lots of possibilities.

**Ralph Nader:** The front runner for the governorship of Virginia is Terry McAuliffe. Would he be likely to support this?

**Stephen Silberstein:** Absolutely. He is totally in support of this.

**Ralph Nader:** So those states that you mentioned, Steve, they bring you pretty close to 270, wouldn't you say?

**Stephen Silberstein:** Yes, we are very, very close. We need just about five or six more states and we'll get the 270 electoral votes we need.

**Ralph Nader:** Now, if it does come down to one state, let's say in 2024, could that state suddenly, if it was desirous of someone winning other than the likely winner, repeal the law?

**Stephen Silberstein:** Of course any law can be repealed by the legislature at any time. Of course, it would have to pass both bodies of the legislature and the governor would have to sign it. However, [with] this law, it's the state entering into an interstate compact or contract between it and other states. So as a contract, it does have a withdrawal provision, which says, "If you want to withdraw, that's fine, but you have to do it six months before the election." So they would have to withdraw it before June of 2024 in order to change the way they're going to do it in the Electoral College in 2024.

**Ralph Nader:** What if they choose to ignore that? And right at election time, they freak out and they just pass the bill. What's to stop them from doing that?

**Stephen Silberstein:** Well, when you sign any contract, let's say, you're going to buy an automobile and they give you the car and you just agree to pay them \$50 a month or whatever it is for the next 50 years. What happens if you decide to stop making your payments? They take you to court. And it's adjudicated in a court of law because you're violating the contract. So that's the same thing here. So if a state attempted to do something that was in violation of a clear contract, it would be taken to court and the courts would enforce the contract.

**Ralph Nader:** We've interviewed on this show Professor Alexander Keyssar at Harvard, who has written a very powerful book called *Why Do We Still Have the Electoral College?* He has also written op-eds in the *New York Times* and other publications. He raises two questions. He said originally he was all for the National Popular Vote compact. And then he found some constitutional law professors who raised questions, and on his own, he figured that it would lead to political instability, he said. So let's take one at a time. What's your constitutional law support then?

**Stephen Silberstein:** Most 99% of constitutional law professors agree that this is totally constitutional. The constitution is very, very clear that each state legislature has total power to

decide how that state's votes are going to be awarded in the Electoral College. And so this is just a law indicating how that state is going to award its votes, which the state legislature passes and the Constitution gives them the power to do that. There is absolutely no doubt that this is constitutional.

**Ralph Nader:** What's interesting about your point, Steve, is that given the present configuration of the US Supreme Court, a majority actually leans in the direction of what you've just described, letting the state legislature and the state government decide. Isn't that correct?

**Stephen Silberstein:** Yes. And the law, the Constitution is just so clear on this. It's hard to imagine them doing anything else.

**Ralph Nader:** Let's go to the political stability, that he thinks that later, after the first election, the politicians will start gaming this and it will lead to instability. What do you think he meant by that? I couldn't quite understand what he meant by that.

**Stephen Silberstein:** I don't know what he meant by it, but there's nothing more unstable than the present system as we know where everything depends on a couple of votes and a couple of states. We've seen the shenanigans and the instability in the present system when the popular vote is overwhelmingly clear. Every single other election in this country is on the basis of whoever gets the most votes wins.

**Ralph Nader:** My guess is he thinks that the politicians in the states that were part of the interstate compact will start pushing, one way or another, depending on their reading the tea leaves of who is likely to be ahead or behind. And does that six-month period apply or just apply to beginnings? Is that a continuing application every four years?

**Stephen Silberstein:** So they can withdraw any time except the six months before the election. So six months before the election is in June for an election that is in November. In June, we're usually not completely sure who the candidates are going to be. Remember, the candidates are decided at the conventions, which usually take place in July or August. So anybody who can predict how the election is going to come out when the candidates aren't known six months before the election has got more power than I do.

**Ralph Nader:** Interesting that the way he thought this out, he figured that depending on what they are predicting, they'll start fooling around with getting out of the compact. But by then, don't you expect to get more states? In other words, once this gets underway with 270, do you think it's going to be a little easier to get more states on board, [to] take it beyond 300 Electoral College votes?

**Stephen Silberstein:** Oh, absolutely. Once this takes effect, there will be more states joining in because everyone will see how this is a much, much better system. It's a better system because not only does the winner win, but the candidates will campaign all over the country. Right now, as you know, the candidates only campaign in the so-called battleground or swing states. They confine their presidential campaign to just five or six states at the most and the rest of the states are totally ignored. So if you live in Delaware or Wyoming or Maine or California or Texas, you

are ignored because the campaign is all about winning Florida and the one or two other battleground states. So people will relish the attention of the candidates coming to talk to them about their issues and paying attention to them, which does not happen under the present system.

**Ralph Nader:** That's very true. The last major presidential candidate who went to all 50 states was Richard Nixon. Now they're lucky if they go to 38 states because obviously the Democrats aren't going to waste time and money in Texas and Republicans aren't going to waste time and money in New York or Massachusetts. So this would expand the necessity of presidential candidates to meet people and talk about issues in states that are now in effect red lined because of this Electoral College impact.

I know you get quite a lot of support, obviously from Democratic legislators at the state level along with some Republicans. Why do you think the national Democratic Party, having lost two elections to the Electoral College after their candidate won the popular vote in 2000, 2016, are not making this a big issue--making it a campaign issue with the Democratic National Committee [that] should have this front and center? The branches of Congress, the House and Senate now are under Democratic control. So they could have hearings on this. Or they could have in 2009, 2010. What do you think the reluctance is at the national level?

**Stephen Silberstein:** I really don't know. Individually, most of the Democratic politicians and leaders are for this. So we talked about Terry McAuliffe who is running for governor. He was the chair of the Democratic National Committee for a while, and he's for this. All the leaders of the Democratic Party are almost universally for this. The governors and the 15 states that have enacted it are for it. So I don't know why the party itself has not taken a stand on it.

**Ralph Nader:** One would think it's a popular issue to basically say they want presidents only to be elected who get a majority of the national popular vote, right? I suppose the polls come in very strongly for that. Can you tell us about that?

**Stephen Silberstein:** Yes. The polling is very, very clear on this. The overwhelming majority of the people in both parties agree that the president should be the person who gets the most votes in the country nationwide.

**Ralph Nader:** Have you had any feedback from state and local Democratic leaders about why the national Democratic Party and the leaders in Congress are not taking the lead here and supporting them?

**Stephen Silberstein:** I think they are supportive of it. The question is which issue do they want to focus on the most--raising the minimum wage, climate issues, trade issues? There are so many issues that they're dealing with. They're dealing right now with voter suppression efforts and so on. So there's just lots and lots of issues there that they're dealing on. But when you ask them and you talk to them, they're all supportive of this.

**Ralph Nader:** It is interesting because being politicians, the very prominent issue should be not losing any more presidential elections as they did in 2000, 2016 to the antiquated Electoral College. And I haven't been able to get any answer to that question as why they don't make it a

top burner issue. After all, when they lost the Electoral College to George W. Bush in 2000 and Donald Trump in 2016, they also lost the control of a lot of federal courts. They also lost a lot of issues, some of which you've just mentioned, not being able to go through Congress and be signed by the president. So, well, this is a puzzle that remains, but I think we should all try to address it, regardless of whether you're a Republican, Democrat or independent.

**Stephen Silberstein:** Let me make a suggestion here.

**Ralph Nader:** Go ahead.

**Stephen Silberstein:** And that is to get them to pay more attention to this issue and move it more to the front burner, it would help if people would write or call their legislators. When people go to our website, [nationalpopularvote.com](http://nationalpopularvote.com), they'll see that there is a place on the web page there where they can write their legislators. So they put in their ZIP code and the system will then come up with the names and addresses of their legislators and facilitate them writing. And the more that their legislators hears from them about this, the more that they will then elevate this as an issue.

**Ralph Nader:** And it's a very useful website. Would you say it again, Steve? And also list the leaning states, so listeners in those leaning states can even be more motivated to contact their senators, representatives and White House.

**Stephen Silberstein:** Yes. So the website is [nationalpopularvote.com](http://nationalpopularvote.com) and people from any state can do it. But states like Virginia, Michigan, Minnesota, and Nevada are all states that are in play here.

**Ralph Nader:** Has any state tried to do it by initiative or referendum? A popular vote supporting the presidential popular vote the way Michigan passed a referendum a couple years ago was quite a remarkable achievement led by a young woman who hadn't even reached her 30th birthday; we had her on her program some months ago to replace gerrymandering from the hands of the politicians in Lansing and put it in a non-partisan commission. Has any effort in the states which have balked, any effort to do it by initiative?

**Stephen Silberstein:** So far there has not been an attempt by initiative. However, in the state of Colorado where the legislature passed the law and the governor signed it, there was an attempt to recall the law, that is to say to have a referendum undoing the work of the legislature. So there was a ballot initiative in Colorado in the last election in 2020, to undo the law of where Colorado was part of this interstate compact. So that the citizens of Colorado, every voter voted on this, and it was voted to keep Colorado **in** the National Popular Vote Interstate Compact. So that was the first statewide vote by the people. In this case, not an initiative to enact, but an initiative to un-enact and the un-enact failed. There is a possibility, of course, of it being an initiative in some other states. Not every state has an initiative process. I think it's only like 17 or 18 states that have initiatives, but it's possible that we could do an initiative in a state.

**Ralph Nader:** I think on your website you do have a map of the country demarked which states have joined the interstate compact and other information that's graphically useful to people.

**Stephen Silberstein:** Yes. Yes.

**Ralph Nader:** Well, this is all very up-to-date/current. Before we close, we've been talking to Steve Silberstein, who is a member of the board of the National Popular Vote. I think this has all been done with less than ten full-time people, isn't it, going to various state legislatures? Is that correct?

**Stephen Silberstein:** Yes. Yes. We have a very small staff and they're very hardworking and they're traveling and talking to people all over the country.

**Ralph Nader:** I've always said it just takes a few people to turn large status quo situations around. And you're showing that. Before we close, Steve, I'd like to have Steve Skrovan pitch in here with a comment or question.

**Steve Skrovan:** Ah, yeah. Thanks, Ralph. I just wanted to circle back to Professor Keyssar, who earlier in the show, had some reservations about it. And he had reservations not about the movement itself. He was for the movement, but he saw it as a workaround and that a workaround could then be worked around. But the ultimate solution is a constitutional amendment. And I just want to quote him from earlier in the show and have you respond to that about his worry about instability. This is what he said exactly.

He said, "If the states withdrew and stayed withdrawn, then the next election cycle would be run according to traditional Electoral College rules. And you could go back and forth between the two systems with political parties trying to game this during each election cycle which type of election would be better for them." He says, "I think that that would be delegitimizing of outcomes. It would be chaotic. I think that electoral systems have to be clear, understandable to the public, and you put them in place and you keep the rules the same." That's exactly what he said. How would you respond to that?

**Stephen Silberstein:** Well, first of all, this is...the Constitution delegates the power of choosing the president to the state legislatures, and that's what we're doing as the constitutional way. The individual state legislatures are getting together, and they are deciding in this process here that the person who gets the most votes in the country should be president. There's no need to change the Constitution in this. The Constitution is clear that the state legislatures have that power. Now you want to take that power away from the state legislatures; that's a heavy lift. You're going to have to get the approval of three quarters of the states and so on. And I don't think you're going to get that approval from the state legislatures to have their powers diminished. So this is the way to do it. And once it takes effect, it's just like giving women the right to vote or anything like that; people will realize it's the right way to do it and the system will continue in place and there won't be any constitutional amendments to change it.

**Steve Skrovan:** So you're not worried about states being in and out in and out? And I think that was the chaos that he was worried about.

**Stephen Silberstein:** Yeah. No, I'm not worried about that because the withdrawal provisions are very, very clear--number one. And number two, as you indicated, there would probably be

more than enough states in the interstate compact, so even if one or two of them decide to withdraw, it wouldn't affect the result.

**Ralph Nader:** And it's also very popular in the polls.

**Stephen Silberstein:** Exactly. So when you have an election where the candidates come to your state and then you should decide to change the rules where they're not going to come to your state, they're going to spend all their time in Florida and Ohio or wherever the battleground is, it's not going to be popular.

**Ralph Nader:** Yeah. And it has a sense of trying to pull a fast one. I mean, I can see a lot of people, regardless of their political labels, saying, "No, these two states, they're trying to pull a fast one." I don't see where the support would come for this.

**Stephen Silberstein:** And they have to do it six months before the election.

**Ralph Nader:** Yeah. That's the key. That's the key point right there. Not to mention that in due time, not very long, you'll be at 330, 350, 380 electoral votes. So one state will have great difficulty pulling the plug on the other states in terms of numbers.

**Stephen Silberstein:** Exactly. Exactly.

**Ralph Nader:** Well, we're out of time. Thank you very much. We've been talking with Steve Silberstein who is a member of the board of the National Popular Vote movement. And with his stalwart advocates going around the country, trying to get rid of the only electoral position in the federal government where the winner can come in second and still occupy the White House because of the electoral vote shift. Thank you very much, Steve. And before we conclude, can you give that website once more? So our listeners can weigh in here.

**Stephen Silberstein:** Yeah. Thank you, Ralph. It's been a pleasure to talk with you. So the website is [nationalpopularvote.com](http://nationalpopularvote.com).

**Ralph Nader:** We hope to get another update when the next legislative session starts in 2022. Thank you very much, Steve.

**Stephen Silberstein:** Thank you. It's a pleasure to be here with you, and everyone, check out the website, [nationalpopularvote.com](http://nationalpopularvote.com).

**Ralph Nader:** Indeed.

**Steve Skrovan:** We've been speaking with Steve Silberstein on the board of directors of National Popular Vote. We will link to [nationalpopularvote.com](http://nationalpopularvote.com) at [ralphnaderradiohour.com](http://ralphnaderradiohour.com). I want to thank our guests again, Professor Alex Keyssar and Steven Silberstein. For those of you listening on the radio, that's our show. For you, podcasts listeners, stay tuned for some bonus material we call "The Wrap Up." A transcript of this show will appear on the *Ralph Nader Radio Hour* website soon after the episode is posted.



**David Feldman:** Ralph wants you to join the Congress Club. Go to the *Ralph Nader Radio Hour* website, and in the top right margin, click on the button labeled Congress Club to get more information. We've also added a button right below that with specific instructions about what to include in your letters to Congress. The producers of the *Ralph Nader Radio Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

**Steve Skrovan:** Our theme music "Stand Up, Rise Up" was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our associate producer is Hannah Feldman. Our social media manager is Steven Wendt.

**David Feldman:** Join us next week on the *Ralph Nader Radio Hour* when we'll welcome Eyal Press to discuss his new book, *Dirty Work [Essential Jobs and the Hidden Toll of Inequality in America]*. Thank you, Ralph.

**Ralph Nader:** Thank you, everybody. [The] Boeing [Company] is in deeper trouble. The Ryanair [DAC] in Europe has just canceled tens of billions of dollars in orders for the [Boeing] 737 Max and the Delaware Court judge, in a hundred-page opinion denied Boeing's motion to dismiss a shareholder suit brought by the controller of New York pension funds shareholders. More to come in the future.