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[Senator Bettye Davis@legis.state.ak.us](mailto:Senator_Bettye_Davis@legis.state.ak.us)
<http://www.aksenate.org>

Senate Judiciary Committee: March 12, 2010

SB 92: The National Popular Vote is Good For Alaska

1. The National Popular Vote is Not Only Constitutional, but Employs the Historically Precedented Way of Changing the Method of Electing the President

The U.S. Constitution says “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors....”

The U.S. Supreme Court has repeatedly referred to this unqualified grant of state power as “exclusive” and “plenary.”

The winner-take-all rule (namely, awarding all of a state’s electoral votes to the candidate who receives the most popular votes in each individual state) is not contained in the U.S. Constitution. Only three states used it in the nation’s first presidential election in 1789.

Nearly all major changes U.S. presidential elections have been initiated and implemented at the state level — not by action at the federal level.

For example, there is nothing in the Constitution that says that the people may vote for President. In 1789, only five states

let the people vote for President (while the state legislature or the governor and his cabinet cast the state's electoral votes in the other states). The states changed this, one-by-one, until, by 1880, the people in every state were able to vote for President.

Permitting the people to vote for President was not an "end run" around the Constitution, but, instead, an exercise of a power that the Constitution explicitly gave to state legislatures. We have not encountered a single person who argues that the state legislatures did anything improper, inappropriate, or unconstitutional when they made this most fundamental change in the way the President is elected.

Similarly, elimination of wealth qualifications to vote (which limited voting to about 3% of the population in 1789) was accomplished on a state-by-state basis.

Woman acquired the right to vote on a state-by-state basis over a 50-year period beginning in 1869. After 30 of the 48 states had already given women the right to vote, a federal constitutional amendment extended that policy to the remainder of the country.

For additional information, see section 10.1 of the book, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*.

2. National Popular Vote is Especially Advantageous for Low-Population States Such as Alaska

Low-population states (such as Alaska) are the most disadvantaged group of states under the current system of electing the President.

The reason is that small states tend to be politically homogeneous, so 12 of the 13 smallest states are one-party

states in presidential elections. In the six presidential elections since 1988, six of the 13 states with three or four electoral votes have regularly gone Republican (Alaska, Idaho, Montana, Wyoming, North Dakota, and South Dakota). Six others have regularly gone Democratic (Hawaii, Vermont, Maine, Rhode Island, Delaware, and the District of Columbia).

Under the winner-take-all rule (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each state), candidates have no reason to poll, visit, advertise, organize, or pay attention to issues concerning states where they are comfortably ahead or hopelessly behind. Instead, candidates concentrate their attention on a small handful of closely divided battleground states. In 2008, candidates concentrated over two-thirds of their campaign events and advertising money in just states, and 98% in just 15 states.

Alaska and the other small states are ignored in presidential elections not because they are small, but because the winner-take-all rule makes them irrelevant.

The 12 smallest non-competitive states have a combined population of 11.4 million. Coincidentally, Ohio has 11.4 million people. Because of the bonus of two electoral votes that every state receives, the 12 small states have 40 electoral votes. Ohio has 20 electoral votes. However, political power does not arise from the number of electoral votes that a state possesses, but, instead, from whether the state is a closely divided battleground state. In 2008, Ohio received 62 of the 300 post-convention visits (and corresponding amounts of money) whereas the 12 small states together received only 2 visits. The National Popular Vote bill would make a vote cast in Alaska as important as a vote cast in Ohio.

The winner-take-all rule is an especially bad deal for small red states. In 2004, John Kerry won 21 electoral votes from his 444,115-vote lead in the six non-competitive Democratic small states, whereas George W. Bush won only 19 electoral votes from his 650,421-vote lead in the six non-competitive Republican small states. The reason is that the small red states are redder than the blue states are blue. In 2004, the six small red states averaged 65% Republican whereas the Democrats carried three of their six small states with a slender 54% margin, and two more with only 60%.

The National Popular Vote bill is law in Hawaii. It has passed six state legislative chambers in Delaware, Maine, Rhode Island, and Vermont.

For additional information, see section 10.2 of the book, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*.

3. The National Popular Vote Bill Does Not Stifle Alaska's Voice, But Instead Would Give Alaska Voters their Rightful Voice in Presidential Elections

The purpose of a presidential election is to elect someone to serve for four years as the nation's chief executive — not to send a group of unknown loyal party activists to a half-hour meeting in Juneau in mid-December for the ceremonial purpose of casting the state's electoral votes.

At the present time, presidential candidates ignore Alaska voters and Alaska issues Alaska because of the winner-take-all rule (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each state). Under the current winner-take-all system, candidates only pay attention to issues concerning states where they are able to win

or lose electoral votes. Neither party currently has anything to gain or lose in Alaska in a presidential campaign.

The National Popular Vote bill provides a way to make a vote in Alaska as valuable as a vote in a closely divided battleground state such as Ohio or New Hampshire. Tiny New Hampshire, for example, received 12 of the 300 post-convention visits from the 2008 candidates, while 12 other non-competitive small states received virtually no attention.

The bill accomplishes this goal by guaranteeing enough votes in the Electoral College (at least 270 of 538) to the candidate who receives the most popular votes in all 50 states (and DC).

The essence of a nationwide popular vote for President is that the winner would be determined by the popular vote of the people in all 50 states — not by the separate state-by-state outcomes.

Ultimately, the choice is whether it is more important for the winner in a particular state to receive the state's electoral votes or for the winner of the entire country to win the White House.

70% of Alaska voters in a 2010 poll agreed that that the President of the United States should be the candidate who receives the most popular votes in all 50 states. In Utah (where support was also 70%), we asked an additional question, namely

“Do you think it more important that a state's electoral votes be cast for the presidential candidate who receives the most popular votes in that state, or is it more important to guarantee that the candidate who receives the most popular votes in all 50 states becomes president?”

When asked this question, 66% Utah voters supported a national popular vote.

When a voter watches presidential election returns on election night, they are, first and foremost, interested in finding out their candidate won the Presidency. The question of whether their candidate won their state, county, city, or precinct is a secondary concern.

A McCain voter would certainly prefer to see John McCain in the White House, as opposed to seeing three Republican party activists travel to Juneau in mid-December to perform the ceremonial function of casting Alaska's three electoral votes for McCain.

4. There is No Evidence that Ordinary Plurality Voting Creates a Proliferation of Candidates or Permits Candidates to Win with Small Percentages (Such as 15%) of the Vote

Based on actual historical evidence, there is far more fragmentation of the vote under the current state-by-state winner-take-all system of electing the President than in ordinary elections in which the winner is the candidate who receives the most popular votes.

Under the current state-by-state winner-take-all system of electing the President (in which the candidate who receives a plurality of the popular vote wins all of the state's electoral votes), minor-party candidates have significantly affected the outcome in 40% (6 out of 15) of the presidential elections in the past 60 years. Specifically, minor-party candidates affected the outcome in the 1948, 1968, 1980, 1992, 1996, and 2000 presidential elections. Segregationists such as Strom Thurmond (1948) and George Wallace (1968) won 39 and 46 electoral votes, respectively. Candidates such as John Anderson (1980), Ross Perot (1992 and 1996), and Ralph Nader (2000) managed to affect the national outcome by switching electoral votes in

numerous individual states. The reason that the current system has so frequently encouraged minor-party candidacies is that a third-party candidate has 51 separate opportunities to shop around for a particular state that he might shift from one major party to another or win outright.

In contrast, the winning candidate in 91% of the 905 gubernatorial elections in the same 60-year period received an absolute majority of the votes. The winning candidate received less than 45% of the popular vote in only 2% of the elections and received less than 40% in only 1% of the elections. No winning candidate received less than 35% of the popular vote.

Ordinary plurality voting rewards the formation of broad coalitions in which various groups and interests join together in order to win the most votes. The reason is that a vote cast for a splinter candidate generally produces the politically counter-productive effect of helping the major-party candidate whose views are diametrically opposite to those of the voter. For example, votes cast for Bob Barr (the Libertarian Party candidate) in 2008 made it easier for Barack Obama to win North Carolina, and votes cast for Ralph Nader (the Green Party candidate) in 2000 made it easier for George W. Bush to win Florida and New Hampshire.

It should be noted that, under the current system, no state requires that a presidential candidate receive an absolute majority of the popular votes in order to receive all of its electoral votes. Moreover, there is no requirement, under the current system, that a candidate receive an absolute majority of the popular vote nationwide in order to become President. For example, Truman (1948), Kennedy (1960), Nixon (1968), or Clinton (1992 and 1996) were elected with less than an absolute majority of the popular votes.

5. Candidates Would Campaign in Alaska Under a National Popular Vote Because Every Vote Would Matter

It is sometimes argued that some states are too small to attract the attention of presidential candidates. However, the reality is that candidates always go after every vote that matters.

For example, even though the 2nd congressional district of Nebraska contains a tiny percentage of the nation's population, both parties paid attention to the 2nd district because Nebraska awards electoral votes by congressional district, and the 2nd district was closely divided. Sarah Palin visited the 2nd district. Meanwhile, neither campaign paid any attention to Nebraska's 1st and 3rd congressional districts (or to the adjacent states of Kansas, Wyoming, and South Dakota). When votes matter, candidates vigorously solicit them.

It is sometimes argued that big cities would control a national popular election, using examples such as Los Angeles and Chicago. The fact is that a candidate cannot even win California by concentrating on Los Angeles. Ronald Reagan, George Deukmejian, Pete Wilson, and Arnold Schwarzenegger never came close to carrying Los Angeles (or San Francisco, San Jose, or Oakland). If big cities controlled elections, John Kerry (who carried Cleveland) would have won the White House by carrying Ohio in 2004 and Martha Coakley (who carried Boston) would have been elected Senator from Massachusetts.

It is also sometimes argued that candidates would find it more efficient to concentrate on big cities.

However, the facts are that candidates can get considerably more "bang for the buck" by campaigning in low-population areas because TV advertising (the biggest component of

campaign costs) is premium-priced in high-population areas. It is, for example, considerably more expensive to buy television or radio time to reach Ohio's 11 million people than to buy television or radio time to reach the 11 million people who live in the 12 smallest non-competitive states, namely the six "red" states of Alaska, Montana, Idaho, Wyoming, North Dakota, and South Dakota and the six "blue" states of Hawaii, Maine, Vermont, Rhode Island, Delaware, and the District of Columbia.

It should be noted that the populations of the 50 largest cities together constitute only 19% of the nation's population. Arlington, Texas is the nation's 50th largest city (with a population of about 350,000).

Further evidence of the way a nationwide presidential campaign would be run comes from the way that national advertisers conduct nationwide sales campaigns. National advertisers seek out customers in small, medium-sized, and large towns of every small, medium-sized, and large state. National advertisers do not advertise only in big cities. Instead, they go after every potential customer, regardless of where the customer is located.

People are left out of presidential campaigns, under the current system, because of the state-by-state winner-take-all rule. Candidates have no reason to pay any attention to voters who do not live in closely divided battleground states. Under a national popular vote, every vote would be equal, and every vote would matter.

6. Myths about Recounts

Recounts would be far less likely to occur under a national popular vote system than under the current state-by-state

winner-take-all system (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each separate state).

The reason is that, under the current winner-take-all system, there are 51 separate opportunities for recounts in every presidential election. Thus, our nation's 56 presidential elections have really been 2,084 separate state-level elections. There have been five litigated counts in the nation's 56 presidential elections. The current system has repeatedly created artificial crises in which the vote has been extremely close in particular states, while not close on a nationwide basis.

The 2000 presidential election was an artificial crisis created because of Bush's lead of 537 popular votes in Florida. Given the miniscule number of votes that are changed by a typical recount (averaging only 274 votes), no one would have requested a recount in 2000 if Gore's 537,179-vote nationwide margin had controlled the outcome.

There was a recount, a court case, and a reversal of the original outcome in Hawaii in 1960. There were disputed statewide counts in the 19th Century in Louisiana, South Carolina, and Florida.

Based on a recent study, the probability of a recount is 1 in 332 elections (23 recounts in 7,645 elections). The average change in the margin of victory as a result of a recount was a mere 274 votes. The original outcome remained unchanged in over 90% of the recounts.

A national popular vote would reduce the probability of a recount from five instances in 56 presidential elections to one instance in 332 elections (that is, once in 1,328 years). In fact, the reduction would be even greater because a close result is less likely to occur as the size of the jurisdiction increases.

If anyone is genuinely concerned about minimizing the possibility of recounts, then a single national pool of votes provides a way to drastically reduce the likelihood of recounts and eliminate the artificial crises that are regularly produced by the current state-level winner-take-all system.

In terms of logistics, all states routinely make arrangements for a recount in advance of every election. A recount is a recognized contingency that is occasionally required in the course of conducting elections, and recounts do indeed occur about once in every 332 elections. The personnel and resources necessary to conduct a recount are indigenous to each state. A state's ability to conduct a recount inside its own borders is unrelated to whether a recount is occurring in another state.

In terms of certainty, existing federal law specifies that each state's own "final determination" of its presidential election returns is "conclusive" (if done in a timely manner and in accordance with laws in existence prior to Election Day). The National Popular Vote compact is directly patterned after this existing federal law and requires each state to treat as "conclusive" each other state's "final determination" of its vote for President. No state will get involved in judging the election returns of another state.

Of course, the possibility of recounts should not even be a consideration in debating the merits of a national popular vote. No one has ever suggested that the possibility of a recount constitutes a valid reason why state governors or U.S. Senators, for example, should not be elected by a popular vote.

For additional information, see section 10.3 of the book, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*.

Cindy Smith

From: Hardaway, Robert [rhardawa@law.du.edu]
Sent: Thursday, February 18, 2010 4:07 PM
To: Sen. Hollis French
Subject: Professor Hardaway's 10 questions for Koza supporters
Attachments: SKMBT_60110021816530.pdf

To: Senator Hollis

From: Robert Hardaway, Professor of Law, University of Denver Sturm College of Law, and author of "The Electoral College and the Constitution: The Case for Preserving Federalism (Praeger Press)

Re: Senate Bill 92 imposing the Koze electoral scheme

Attached please find my remarks in opposition to the Senate Bill 92 which would impose the Koza electoral scheme on the current American electoral process.

In addition, I would ask that the following **10 questions** be posed to those who support the Koza scheme and that **their answers be recorded for the record.**

Under the Koza scheme:

1. How would Alaska cast it's electoral votes in an election in which the popular vote as tabulated by the media differed from the popular vote as tabulated by the Congressional Quarterly? [For example, in 1960 the Alabama Democratic electoral college slate included five electors pledged to Byrd and eleven to Kennedy. The media allocated all the popular votes cast in Alabama for that electoral slate to Kennedy, thereby concluding the Kennedy won the national popular vote; the Congressional Quarterly, however, allocated only five elevenths of the popular vote for the Democratic electoral slate to Kennedy, thereby concluding that Nixon won the national popular vote.]

2. Would Alaska be bound to accept the popular vote tallies from states whose voting standards violated the public policy of Alaska (such as allowing felons or illegal aliens to vote, or inhibiting voting by members of minority groups)?

3. Does the Koza scheme create an national office or officer which would tabulate a final tally of the national popular vote? If not, would that task be delegated to the media? If so, to which particular newspapers or television stations would that task be delegated? Would a tabulation by selected organs of the media confer any legitimacy on whomever the media chose to designate as the popular vote winner, particularly if federal entities such as

the Congressional Quarterly disagreed with the manner in which the popular votes reported by each state were tabulated (as they did in 1960)?

4. If the voters of Alaska were to overwhelmingly cast its votes in favor of the electors pledged to a Democratic candidate, which officer in Alaska would be empowered to overrule the will of the people of Alaska and dictate that Alaska cast its electoral votes instead to the popular vote loser in Alaska?

5. If Alaska state joined in a Koza conspiracy with other states but later decided to withdraw from that conspiracy, what national organ, if any, would be empowered to enforce the original terms of that conspiracy, and what sanctions would that organ be empowered to administer upon a state which wished to withdraw on public policy grounds?

6. If political parties proliferate (as they inevitably do under plebiscite schemes currently imposed in Russia and a number of South American countries) resulting in no one candidate receiving a substantial plurality, what provision is there in the Koza scheme for a run-off? If none, would supporters of the Koza scheme support the election of a candidate receiving only, say, as little as 15% of the popular vote? Would they maintain that such an election was "democratic"?

7. If Koza scheme supporters are willing are willing to abrogate the "Grand Compromise" that brought the nation together at the Constitutional Convention and establish the fundamental foundation of federalism (by guaranteeing all states representation in the Electoral College based on equal representation in the Senate) why do they not also, in the name of "one man one vote" take the more logical first step in dismantling federalism by proposing to abolish the U.S. Senate, surely the more violative of the "one man one vote" principle?

8. When in 1974 the Labor party lost the "popular vote" but nevertheless elected more members to parliament (the British version of the Electoral College) and were thereby able to form the government, would Koza supporters claim that the British election was "undemocratic"?

9. If a popular vote tally was very close (as it was in 1960), would a "recount" be limited to just one state (as it was in 2000), or would recounts be required in every state in over 248,000 voting districts? If such recounts in 50 different states generated lawsuits in all 50 states, thus delaying a final national recount by up to a year (the length of time a recount it has been estimate that a national recount would have taken in 1960), would that be an acceptable outcome under the Koza scheme?

10. What if close popular vote tallies in some states triggered recounts in those states under those states' law, but did not trigger recounts in many other states where the popular vote in those states was not close, how could a national recount even be administered under the Koza scheme with only a few states participating in the recount? What provisions are there in the Koza scheme for one state to force another state to conduct a recount in violation of the other states' recount laws?

From: law_407@law.du.edu [mailto:law_407@law.du.edu]

Sent: Thursday, February 18, 2010 4:54 PM

To: Hardaway, Robert

Subject: Message from KMBT_601

The proposed Compact among states to establish direct election of the President does:

1. Violate Section 10 of Article I of the U.S. Constitution which specifically states that *"no state shall, without the consent of Congress...enter into any Agreement or Compact with another state..."*
2. Undermine American federalism, and constitute a cynical scheme to illegally subvert Section I, Article II of the "U.S. Constitution which guarantees to every state, not just a favored eleven, a number of electors *"equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress:..."*
3. Cynically by-pass the established amending process set forth in Article V, including the approval of *"two thirds of both houses...and the Legislatures of three fourths of the several states..."* of any proposed amendment.
4. Diminish the political influence of racial and ethnic minorities in the United States in presidential elections [Ref: testimony of Vernon Jordan, president of the National Urban League at 1979 Congressional Hearings: *"Take away the Electoral College and the importance of being black melts away. Blacks, instead of being crucial to victory in major states, simply become 10% of the electorate, with reduced impact"*]
5. Subvert the "Grand Compromise" entered into by the Founding Fathers at the Constitutional Convention as the basis for federalism and our national union, the two prongs of which were: 1) the equal representation of each state in the Senate along with popular representation in the House, and 2) a number of presidential electors based on the number of representatives to which they were entitled in both the Senate and the House [Ref: statement of Senator John F. Kennedy in 1956 in opposition to a Republican proposal to abolish the Electoral College: *"It is not only the unit vote for the presidency we are talking about, but a whole solar system of governmental power. If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to consider the others."* (In other words, abolishing the U.S. Senate).]
6. Result in the chronic election of candidates who are supported by only a minority of the popular electorate by weakening the two party system and encouraging encourage splinter parties, eventually generating into a prolonged run-off system under which two minor party candidates enjoying little overall popular support can win the presidency despite being opposed by the vast majority of the electorate. [Ref: note the 1993 Russian multi-party "popular" vote election in which the electorate came within a whisker of being presented with a "runoff" choice between Fascists and Communists, despite the fact that 80% of the electoral opposed both].
7. Compromise the intention of the Founding Fathers that national support for a presidential candidate be broad as well as deep. The need to create concurrent pluralities throughout the United States would be eliminated and replaced by a myopic focus on population centers largely found in coastal areas.
8. Doom the United States to a destabilizing electoral crisis in every election in which the popular vote is close. When the electoral vote is close, as in 2000 (but which occurs only once every hundred years), the recount is isolated to one state. In a so-called "popular vote" election, a recount would be required in every one of 170,000 voting precincts and hamlets nationwide, enormously magnifying crises such as that endured in 2000. After the inevitable multiple lawsuits were filed, every recount would doubtlessly show a different result.

9. Wipe out the influence of "swing" states such as Colorado in the presidential election contest, as well as require Colorado to cast its electoral votes in direct opposition to the will expressed by the Colorado voters when the national popular vote plurality was different from that in Colorado.
10. Violate the Colorado Constitution (Schedule Provisions, Sec. 20) which mandates that "The general assembly shall provide that after the year eighteen hundred and seventy-six the electors of the electoral college shall be chosen by direct vote of the people."

TOP SEVEN MYTHS UPON WHICH THE KOZA SCHEME IS BASED

Myth 1. *The Koza scheme is constitutionally sound.*

Facts: The Art I, Section 10(3), specifically forbids any from entering "into any agreement or compact with another state" without the consent of Congress. Although the Supreme Court has upheld narrowly drawn agreements resolving *actual disputes* between states, such as over water rights, etc., it has NEVER upheld any scheme, compact, or agreement or conspiracy between the states which would reformulate federalism, the structure of the federal government, or the constitutional process for electing a president.

Myth 2: Without a constitutional amendment or federal legislation appointing a national officer with responsibility for conducting a tally of popular votes cast nationwide, it would be possible for a "chief election officer" to conduct a national tally of popular votes by delegating the task to newspapers or other state election officials.

FACTS: Without a constitutional amendment or federal legislation it would be impossible for any given state election official to conduct a "national tally" of popular votes, particular the popular votes in states which only offer electoral slates including electors pledged to more than one candidate (as was the case in Alabama in 1960).

MYTH 3. *In the case of a presidential election in which the popular vote is very close and a recount were demanded, there is a way that a Koza state could force a non-Koza state to conduct a recount, even if such a recount were contrary to the law in the non-Koza state.*

FACTS: There exists no provision in the U.S. Constitution whereby one state can force another state to violate its own election laws or to otherwise enforce any agreement, compact, or conspiracy.

MYTH 4. *The two party system would continue under a Koza Scheme.*

FACTS: One need only look at elections in countries which have neither an Electoral College of parliamentary (the functional equivalent of an Electoral College) to see that parties proliferate in their absence. (See, e.g. the 'popular vote' elections in Russia, Mexico, etc.) As a socialist testified at the 1977 congressional hearings on abolishing the Electoral College: "We thing we "(splinter) parties had in common was an absolute detestation of the Electoral College... We always started with 5 to 6 per cent who said they were for Norman Thomas.. By election day was that there was no chance for victory in any state."

MYTH 5. *Under a Koza scheme, presidential campaigns would be more likely to campaign in under populated states.*

FACTS: Under the Electoral College, candidates have an incentive to visit small states since, as in 2000, even the smallest states have electoral votes which can determine the winner in an election. Under the Koza scheme, the incentive would be to campaign only in the areas of the greatest concentration of population in order to win the most popular votes.

MYTH 6. *Elections in which the popular vote is close occur on average only once in "362" years, so there need be no concern about recounts would be conducted under Koza (which has no provision at all for a nationwide recount). In 1960, Kennedy "won" the popular vote by 118,000 votes.*

FACTS: Kennedy's popular vote margin was reported by the media based on counting all of the popular votes cast in Alabama for both unpledged electors and electors pledged in to Byrd. According to the Congressional Quarterly, however, only five elevenths of the popular votes cast for Democratic electors in Alabama should have been allocated to Kennedy. Under the CQ tally, Nixon won the national popular vote by a handful of popular votes. As Pierce and Longley's massive study of American elections observed: "It is impossible to determine what Kennedy's voter plurality—if it existed at all—really was." (Emphasis added).

MYTH 7. *Under the Electoral College, the "wrong winner" was elected 7% of the time. ("Wrong" being defined as a candidate who won the electoral vote, but not the popular vote).*

FACTS: In any parliamentary or Republican democracy, it is possible that the popular vote does not tally precisely with the parliamentary or electoral vote. In 1974 in England, for example, Labor lost the popular vote but gained three more seats in parliament and was able to form the government. Was the labor election "wrong"? A much better example of a "wrong" winner would be in countries such as Russian and Mexico, where the proliferation of parties results in run-off elections between minority candidates who are opposed by the vast majority of the people.

The only elections in which the popular vote did not match the electoral vote were in 1888 and 2000. (The election of 1876 was decided by a "bi-partisan electoral commission" compromise without regard to either the electoral or the popular vote). (Perhaps the Koza myth makers are counting the election of 1960, though this seems unlikely given that they have chosen to adopt the media's tally of popular votes instead of the tally conducted by the Congressional Quarterly.)

STATE OF ALASKA
SENATE JUDICIARY COMMITTEE

*Hearing on SB 92:
An Act ratifying an interstate compact to elect the
President and Vice-President of the United States by national popular vote
February 19, 2010*

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

Full Testimony

The bill before you, SB 92, represents the latest attempt to eliminate America's unique and successful presidential system. Abolishing the Electoral College would be unhealthy for the country and especially detrimental to small states such as Alaska. But eliminating the Electoral College through this roundabout manner, without going through a formal constitutional amendment process, carries its own special dangers.

Proponents claim the National Popular Vote plan outlined in SB 92 will ensure that all voters receive equal attention because each vote will be weighted equally. But the truth is the precise opposite. NPV will lessen the need of presidential candidates to obtain the support of voters in rural areas and in less densely populated states such as Alaska.

Problems Created by NPV

The plan proposed by NPV is fraught with difficulties—some logistical, some philosophical. I will discuss these latter issues—arguments “for” and “against” the Electoral College—in a moment. But the logistical difficulties of changing the presidential election process without a constitutional amendment need to be fully explored.

The compact contemplated by SB 92 would give the presidency to the candidate winning the “largest national popular vote total.” Note that it says the “*largest*” total. It is not looking for a majority winner. It is not even looking for a minimum plurality. Thus, a candidate could win with only 15 percent of votes nationwide. But it gets worse. Under this scheme, Alaska could be forced to award its entire slate of electors to a candidate who was not on its own ballot. What if voters in New York and Massachusetts throw all their weight behind one regional candidate? That person may not be on the ballot in a state like Alaska, but all 3 electors from Alaska would be given to that Northeastern regional candidate if that candidate obtains any winning (albeit small) plurality.

Alaska probably did not nominate a slate of electors for the third-party candidate in this example. But don't worry. NPV's compact allows the winning candidate to select his own

slate. Perhaps he would select three New Yorkers to represent Alaska in the Electoral College vote. He'd hate to be undermined by a "faithless" Alaska elector, determined to vote for the choice of Alaskan voters.

There are other inconsistencies among states' ballots that would skew the election results. Some states allow felons to vote. States such as Alaska do not. States differ in their requirements for ballot qualification. Inevitably, Alaska would have to abide by national election results derived from policies with which it disagrees.

I wish I were done, but I am not. It gets even worse. States have different criteria for what does (or does not) trigger recounts within their borders. These differences could cause a whole host of problems. What if the national total is close—close enough to warrant a recount—but a recount can't be conducted because the margins in individual states were not close? Or perhaps recounts are conducted, but only in two or three states, each with a different idea of how to count a hanging chad. Perhaps a fourth state would see what is going on and choose to conduct a recount that its statutes previously deemed optional. Maybe this fourth state has a different definition of "hanging chad," and its sole goal is to counteract the efforts of the other states.

Such a state of affairs invites chaos, litigation, and confusion each and every election year. Some voters will be disenfranchised by the widely differing ideas of how to count a vote.

What if such problems caused one state to pull out of the compact in violation of its terms? How would compliance be enforced? How much litigation would ensue before the presidential election could be resolved?

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

The Benefits of the Electoral College

I do not mean to imply that the only problem with NPV is its logistical difficulties. Eliminating the Electoral College would do serious harm to a country as diverse as our own. The system provides our country with many great benefits that tend to remain unnoticed and thus unappreciated by most Americans.

The history of the Electoral College must be understood if its benefits are to be appreciated. The delegates to the Constitutional Convention had to reconcile two seemingly irreconcilable goals: They wanted the people to govern themselves, but they also wanted to ensure that minority interests could not be completely ignored by the majority. A pure democracy would not accomplish their objective. In a pure democracy, 51 percent of the

people rule the other 49 percent all the time, without exception. If we lived in a pure democracy, imagine what could happen in the wake of an event like 9/11. A bare majority could enact any law it desired, even if that law was tyrannical, racist, or penalized some people for their religious beliefs.

The Founders decided not to create a pure democracy. Instead, they created a Constitution that tempered its democratic aspects with republican and federalist characteristics. Constitutional safeguards such as the Senate (with its one state, one vote representation), the presidential veto, supermajority requirements to amend the Constitution, and the Electoral College allow the majority to rule, but only while they act reasonably. Minority political interests, particularly the small states, are protected.

The Electoral College provides three benefits that still protect Americans today.

The Benefits of Federalism

Electoral College opponents argue that presidential elections are undemocratic. They are wrong. America holds 51 purely democratic elections each presidential election year (one in each state and one in D.C.). Such a process combines democracy and federalism into one process. The result is that candidates can't win unless they build nationwide support.

Obama can't rely solely on big cities in California. Republicans can't rely solely on Texas. They must win simultaneous, concurrent majorities nationwide. They can't achieve those victories unless they reach out to a wide variety of voters. They will fail if they rely upon isolated pockets of support in one region or among voters in one special interest group.

Many dispute that our system creates national coalition-building, arguing that it instead causes a disproportionate focus on mid-sized "swing" states. These arguments appear true if we focus on one or a handful of election years in isolation. But if we look at the states' full histories of voting, we see that the identity of "swing" and "safe" states changes all the time. West Virginia, for example, was considered a safe Democrat state for years. Since 2000, however, it has been voting Republican. Likewise, California is often viewed as irreversibly Democrat, but it voted for Republican candidate George H.W. Bush as recently as 1988. Texas used to be as undeniably Democrat as it is Republican today. States such as Georgia, Kentucky, and Louisiana all voted for Bill Clinton in the 1990s, but they were considered very safe Republican states in 2008.

Ultimately, the Electoral College ensures that the political parties must reach out to all the states. As a matter of history, no political party has ever been able to ignore any state for too long without feeling the ramifications at the polls.

Moderation and Compromise

The most likely consequence of a change to a direct popular vote is the breakdown of the two-party system. Today, third-party candidates do not receive much support. In a direct

popular election, everything changes. A vote for Ross Perot or Ralph Nader is no longer “wasted,” and the number of presidential candidates would increase drastically. Voters would fracture their votes across many candidates. The result will be lower vote totals per candidate and an increased likelihood that two or more candidates will have close popular vote totals. Recounts would proliferate. Worse, extremist candidates could more easily sway an election, because no candidate is required to obtain majority support. This problem is exacerbated by the fact that SB 92 does not include a run-off provision. Electoral votes are given to the winner of any plurality—even a very small one.

NPV proponents argue that the President should have the support of most Americans. But in real life, “most” Americans will never agree on their ideal candidate. Individuals’ opinions differ too greatly. Given the general inability to obtain majority consensus (or even the consensus of a large plurality), the Electoral College provides the country with the next best alternative. Electing Presidents by states’ electoral votes, rather than individuals’ votes, creates a method of electing a President who is a good compromise candidate for most Americans, as represented by their states. The Electoral College requires moderation, compromise, and coalition-building from any candidate before he can be successful.

Stability and Certainty in Elections.

The Electoral College encourages stability and certainty in our political system. Events such as those that occurred in 2000 are rare. The Electoral College typically produces quick and undisputed election outcomes for two reasons: First, the system (in combination with the winner-take-all rule) tends to magnify the margin of victory, giving the victor a certain and demonstrable election outcome. Such certainty couldn’t be provided by a direct popular election. Popular votes are often close, and these close votes would result in constant litigation and recounts. Second, the system controls the impact of fraud and error. In part, this is because it is difficult to predict where stolen votes will make a difference to the national outcome. But if one person can identify a problematic state (think Ohio in 2004), then, in all likelihood, everyone knows and that area is closely watched. It becomes harder to steal votes. To the degree that fraud and errors do occur, the Electoral College makes it possible to isolate the problem to one or a handful of states. The country is given a clear set of problems to resolve one way or another before moving on to a definitive election outcome.

Conclusion

The Electoral College is an important safeguard in our constitutional system of checks and balances, and it is critical to the success of our nation’s republican democracy. I urge you to protect the Electoral College by voting “no” on SB 92.

Cindy Smith

From: Sen. Hollis French
Sent: Friday, February 19, 2010 11:33 AM
To: Cindy Smith
Subject: FW: SB 92

-KP

—Original Message—

From: Deborah Brollini [mailto:deb_brollini@yahoo.com]
Sent: Friday, February 19, 2010 4:11 AM
To: Sen. Lesil McGuire
Cc: Sen. Hollis French; Sen. Bettye Davis
Subject: SB 92

Senator McGuire,

I am writing to ask you to support the National Popular Vote bill (SB92), currently under consideration by the Senate Judiciary Committee.

It is plainly obvious that the candidate who gets the most votes should become President.

This is not only fairer than the current way, but it would make candidates more likely to visit Alaska during the election cycle.

Deborah Brollini
209 Dailey Avenue, #10
Anchorage, AK 99515
(907) 345-3320

Cindy Smith

From: Sen. Hollis French
Sent: Friday, February 19, 2010 11:34 AM
To: Cindy Smith
Subject: FW: Current Bill

Importance: High

-KP

From: Jennifer Stackhouse [mailto:jstackhouse@acsalaska.net]
Sent: Thursday, February 18, 2010 4:48 PM
To: Sen. Hollis French
Cc: Sen. Bettye Davis
Subject: Current Bill
Importance: High

Hollis,

I've read about the plan to elect the President by a nationwide popular vote (SB92), and I think it is an idea that has demonstrated its necessity since the 2000 election cycle. This is the way we fill other offices. The Electoral College method is a thing of the past.

I'm pleased to know that you support this bill and look forward to moving this bill moving out of committee.

Thank you for considering my opinion.

Jennifer Stackhouse

Cindy Smith

From: Sen. Hollis French
Sent: Friday, February 19, 2010 11:35 AM
To: Cindy Smith
Subject: FW: NO ELECTORAL COLLEGE

-KP

From: Kaye Laughlin [mailto:laughlin.kaye11@gmail.com]
Sent: Thursday, February 18, 2010 3:07 PM
To: Sen. Hollis French
Subject: NO ELECTORAL COLLEGE

Dear Senator French,

I agree with you that the person with the most votes gets to be president of the U.S. I was copied on an email to you from Grant Hunter (don't know who he is). I disagree with him and **I SUPPORT YOUR INTENT**. We are a literate society and do not need and do not want the electoral college casting determining votes for us.

--

Kaye Laughlin
10719 Tradition Avenue
Eagle River, AK 99577

Cindy Smith

From: Sen. Hollis French
Sent: Friday, February 19, 2010 11:36 AM
To: Cindy Smith
Subject: FW: Senate Bill 92

-KP

From: Erma Doggett [mailto:edoggett@gci.net]
Sent: Wednesday, February 17, 2010 8:04 PM
To: Sen. Hollis French
Cc: Sen. Bill Wielechowski; Sen. John Coghill; Sen. Lesil McGuire
Subject: Senate Bill 92

The brief discussion I heard regarding SB 92 causes me to wonder why anyone would even consider wasting time on such legislation. Can anyone explain to me how Alaskans could possibly benefit from something like this? I'm listening.

Thank you

Erma Doggett

District P

Cindy Smith

From: Sen. Hollis French
Sent: Friday, February 19, 2010 11:36 AM
To: Cindy Smith
Subject: FW: SB92

-KP

From: Lora Reinbold [mailto:lorareinbold@yahoo.com]
Sent: Tuesday, February 16, 2010 4:19 PM
To: Sen. Hollis French
Subject: SB92

Please vote NO on SB 92 we want Alaskans to have the same voice they have had in the past. Please don't change a system that is working.

thank you Hollis!

National Popular Election of the President
National Popular Vote!

www.NationalPopularVote.com

February 19, 2010

Recounts in Presidential Elections in Connection with the National Popular Vote Bill

(SB 92)

Hon. Hollis French, Chair
Senate Judiciary Committee
Alaska State Senate
State Capitol
Juneau, AK 99801

Dear Senator French,

This letter comments on recounts in presidential elections in connection with the National Popular Vote bill.

- Recounts would be far less likely under a National Popular Vote than under the current state-by-state winner-take-all system (section 1).
- The current state-by-state winner-take-all system is not a firewall that helpfully isolates recounts to particular states, but, instead, is the repeated cause of unnecessary artificial crises (section 2).
- Resolution of all disputes relating to a presidential election must, under current federal law, be completed prior to the meeting of the Electoral College in mid-December, which is constitutionally required to be held on the same day in all 50 states (section 3).
- A recount is conducted by personnel indigenous to each state, and no state needs the help of any other state in order to conduct its own recount (section 4).
- No state is put in the position of judging election returns from other states under the National Popular Vote bill (section 5).
- Under a national popular vote, there would be less incentive for fraud and mischief, and less drastic consequences for whatever fraud and mischief does occur (section 6).
- The currently existing schedule for the "final determination" of presidential election results (established by current federal law) and the triggers for recounts should be improved; however, these changes are far more urgently needed for the current state-by-state winner-take-all system than for the National Popular Vote system (section 7).

1. Recounts would be far less likely under a National Popular Vote than under the current state-by-state winner-take-all system.

Recounts in presidential elections would be far less likely to occur under a national popular vote system than under the current state-by-state winner-take-all system (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each separate state).

In fact, if the President were elected from a single nationwide pool of votes, one would expect a recount once in 332 elections, or once in 1,328 years.

Based on a recent study of 7,645 statewide elections in the 26-year period from 1980 through 2006 by FairVote,¹ the probability of a recount is 1 in 332 elections (23 recounts in 7,645 elections). Thus, with 420 statewide races on the ballot in 2006, there was one statewide recount (the Vermont State Auditor's race). Similarly, there was one recount in 2004 (the Washington state governor) and one in 2008 (the U.S. Senate race in Minnesota).

Under the current state-by-state winner-take-all system, there are 51 separate opportunities for recounts in every presidential election. Thus, our nation's 56 presidential elections have really been 2,084 separate state-level elections. In this group of 2,084 separate elections, there have been five seriously disputed counts. The current system has repeatedly created artificial crises in which the vote has been extremely close in particular states, while not close on a nationwide basis. Note that five seriously disputed counts out of the 2,084 separate state-level elections is closely in line with the historically observed probability of 1 in 332.

A national popular vote would reduce the probability of a recount from five instances in 56 presidential elections to one instance in 332 elections (that is, once in 1,328 years).

A good way to visualize this is to think of the chance of a recount as loading one bullet into a 332-chamber gun. Under a national popular vote, the gun is fired once every 4 years. We can therefore expect a recount once in 332 elections, or once in 1,328 years. In contrast, under the current system, the gun is fired 51 times every 4 years. Therefore, we should not be surprised to have had five seriously disputed counts out of the 2,084 separate state-level elections.

The 2000 presidential election was an artificial crisis created because of Bush's lead of 537 popular votes in Florida. Gore's nationwide lead was 537,179 popular votes (1,000 times larger). Given the miniscule number of votes that are changed by a typical statewide recount (averaging only 274 votes), no one would have requested a recount or disputed the results in 2000 if the national popular vote had controlled the outcome. Indeed, no one (except perhaps almanac writers and trivia buffs) would have cared that one of the candidates happened to have a 537-vote margin in Florida.

There was a recount, a court case, and a reversal of the original outcome in Hawaii in 1960. Kennedy ended up with a 115-vote margin in Hawaii in an election in which his nationwide margin was 118,574.

¹ Fair Vote. 2007. *Survey and Analysis of Statewide Election Recounts 1980-2006* available at <http://www.fairvote.org/reports/?page=1786&articlemode=showspecific&showarticle=2736>.

Samuel Tilden's 3% lead in 1876 was a solid victory in terms of the national popular vote (equal to Bush's solid percentage lead in the 2004 election). However, an artificial crisis was created because of the razor-thin margin of 889 votes in South Carolina, 922 in Florida, and 4,807 in Louisiana. No one would have cared who received more votes in these closely divided states if the President had been elected by a nationwide popular vote.

In fact, the reduction of the chance of a presidential recount would be even greater than stated above because a close result is less likely to occur as the size of the jurisdiction increases. Indeed, only two of the 23 recounts among the 7,645 statewide elections in the 26-year period from 1980 through 2006 were in big states.

Critics of a national popular vote have argued that there could be an extremely close nationwide count in the future (and historical data indeed indicate that there would be one such extremely close election every 1,328 years). However, because about a third of the 50 states are closely divided battleground states even in that rare situation, there would also be, almost inevitably, one or more states with razor-thin popular vote margins. Thus, such an election would also be controversial under the current system.

The average change in the margin of victory as a result of a recount was a mere 274 votes. The original outcome remained unchanged in over 90% of the recounts.

It is important to note that the question of recounts comes to mind in connection with presidential elections only because the current system so frequently creates artificial crises and unnecessary disputes.

More importantly, the possibility of a recount should not even be a consideration in debating the merits of a national popular vote. No one has ever suggested that the possibility of a recount constitutes a valid reason why state governors or U.S. Senators, for example, should not be elected by a popular vote.

2. The current state-by-state winner-take-all system is not a firewall that helpfully isolates recounts to particular states, but, instead, is the repeated cause of unnecessary artificial crises.

It is sometimes argued that the current state-by-state winner-take-all rule acts as a helpful firewall that helpfully isolates post-election disputes to individual close states. In fact, the state-by-state winner-take-all system is not a helpful firewall, but instead the cause of unnecessary fires.

Under the current state-by-state winner-take-all system, there are 51 separate vote pools in every presidential election that matter. Thus, our nation's 56 presidential elections have really been 2,084 separate state-level elections. These 51 separate pools regularly create artificial crises in elections in which the vote is not at all close on a nationwide basis, but close in particular states. This is the reason why there have been five seriously disputed counts in only 56 presidential elections (as listed in section 1).

If anyone is genuinely concerned about minimizing the possibility of recounts, then a single national pool of votes provides a way to drastically reduce the likelihood of recounts and eliminate the artificial crises that are regularly produced by the current state-level winner-take-all system.

3. Resolution of all disputes relating to a presidential election must, under current federal law, be completed prior to the meeting of the Electoral College in mid-December, which is constitutionally required to be held on the same day in all 50 states.

The laws governing the finalization of the count (and completion of any recount) for a presidential election are entirely different than those governing, say, a disputed race for, say, one of the 100 seats in the U.S. Senate (e.g., the 2008 Senate race in Minnesota).

The U.S. Constitution establishes a strict overall national schedule for finalizing the results of a presidential election. These existing provisions would apply to elections conducted under the proposed National Popular Vote legislation in the same way that they apply to elections conducted under the current system.

The U.S. Constitution provides:

“The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”² [Spelling as per original]

Congress has exercised this constitutional power to set the uniform nationwide date for meeting of the Electoral College.

“The electors of President and Vice President of each State shall meet and give their votes on the first Monday after the second Wednesday in December next following their appointment at such place in each State as the legislature of such State shall direct.”³

Under both the current system and the National Popular Vote approach, all counting, recounting, and judicial proceedings must be conducted so as to reach a “final determination” prior to the uniform nationwide date for the meeting of the Electoral College in mid-December.

The U.S. Supreme Court has made it clear that the states are expected to make their “final determination” six days before the Electoral College meets (the so-called “safe harbor” date established by section 5 of title 3 of the United States Code).

In 2008, the “safe harbor” date was December 8, and the Electoral College meeting date was December 15.

It may be argued that the schedule established by the U.S. Constitution, existing federal statutes, and existing state statutes may sometimes rush the count (and may possibly even create injustice). However, there can be no argument that this schedule exists in the U.S. Constitution, federal statutes, and state statutes and that this existing schedule guarantees “finality” prior to the meeting of the Electoral College in mid-December. The existing constitutional and statutory schedule would govern the National Popular Vote compact in exactly the same way that it governs elections under the current system.

² U.S. Constitution. Article II, section 1, clause 4.

³ United States Code. Title 3, chapter 1, section 7.

4. A recount is conducted by personnel indigenous to each state, and no state needs the help of any other state in order to conduct its own recount.

A recount is not an unimaginable horror or a logistical impossibility. All Secretaries of State routinely have plans in place for a recount in advance of every election. A recount is a recognized contingency that is occasionally required in the course of conducting elections, and recounts do indeed occur about once in every 332 statewide elections.

No state needs the help of any other state in order to conduct its own recount. The personnel and resources necessary to conduct a recount are indigenous to each state. Thus, a state's ability to conduct a recount inside its own borders is unrelated to whether a recount is being conducted in another state.

Under both the current system and the National Popular Vote approach, all counting, recounting, and judicial proceedings must be conducted so as to reach a "final determination" prior to the uniform nationwide date for the meeting of the Electoral College in mid-December.

In fact, the U.S. Supreme Court has made it clear that the states are expected to make their "final determination" six days before the Electoral College meets (the so-called "safe harbor" date established by section 5 of title 3 of the United States Code).

Because all states must finalize their count (or finish their recount) by the "safe harbor" date in early December, and because the only remaining step required by the National Popular Vote bill is adding up the vote totals from all 50 states and the District of Columbia, the final national vote totals will be available six days before the Electoral College meets.

5. No state is put in the position of judging election returns from other states under the National Popular Vote bill.

Existing federal law specifies that each state's own "final determination" of its presidential election returns is "conclusive" (if done in a timely manner and in accordance with laws in existence prior to Election Day). The wording of the National Popular Vote compact is directly patterned after this existing federal law and requires each state to treat as "conclusive" each other state's "final determination" of its presidential vote.

The "safe harbor" provision of federal law specifies the conditions under which a state's "final determination" is considered "conclusive."

"If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned."⁴

The fifth clause of article III of the National Popular Vote compact provides:

⁴ United States Code. Section 5 of title 3, chapter 1.

“The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state’s final determination conclusive as to the counting of electoral votes by Congress.”

In short, no state has any power to judge the presidential election returns of any other state under either the National Popular Vote compact or the current system.

6. Under a national popular vote, there would be less incentive for fraud and mischief, and less drastic consequences for whatever fraud and mischief does occur.

The potential for political fraud and mischief is not uniquely associated with either the current system or a national popular vote. In fact, the current state-by-state winner-take-all system magnifies the incentive for fraud and mischief because all of a state’s electoral votes are awarded to the candidate who receives a bare plurality of the votes in each state.

Under the current system, the national outcome can be affected by mischief in one of the closely divided battleground states (e.g., by placing insufficient or defective voting equipment into the other party’s precincts, by selectively and overzealously purging voter rolls). The ill-advised use of the butterfly ballot by a Democratic election official in one county in Florida cost Gore an estimated 6,000 votes — far more than the 537 popular votes that he needed to carry Florida and win the White House in 2000. However, an incident involving 6,000 votes would have been a mere footnote if the nationwide count had governed the presidential election (where Gore’s margin was 537,179).

Senator Birch Bayh (D–Indiana) summed up the concerns about possible fraud in a 1979 Senate speech by saying:

“One of the things we can do to limit fraud is to limit the benefits to be gained by fraud. Under a direct popular vote system, one fraudulent vote wins one vote in the return. In the electoral college system, one fraudulent vote could mean 45 electoral votes.”⁵

In the 1950s and 1960s, accusations of voter fraud by both political parties were commonplace in Illinois and various other states. In 1960, a switch of 4,430 votes in Illinois and a switch of 4,782 votes in South Carolina would have given Nixon a majority of the electoral votes. However, 4,430 votes in Illinois were only a focus of controversy in 1960 because of the statewide winner-take-all rule. John F. Kennedy led Richard M. Nixon by 118,574 popular votes nationwide. So, four thousand votes in two states would not have been decisive in 1960 in terms of changing the national popular vote. If Nixon had carried Illinois and South Carolina in 1960, he would have won a majority of the votes in the Electoral College without receiving a majority of the popular votes nationwide.

⁵ *Congressional Record*. March 14, 1979. Page 5000.

7. **The currently existing schedule for the “final determination” of presidential election results (established by current federal law) and the triggers for recounts should be improved; however, these changes are far more urgently needed for the current state-by-state winner-take-all system than for the National Popular Vote system.**

As discussed in section 1, recounts in presidential elections would be far less likely to occur under a national popular vote system than under the current state-by-state winner-take-all system (i.e., awarding all of a state’s electoral votes to the candidate who receives the most popular votes in each separate state). Under a national popular vote, one can expect a recount once in 332 elections, or once in 1,328 years.

Having said that, the current schedule for the “final determination” of the results of a presidential election (established by current federal law) and the triggers for recounts should be improved in the following five ways.

First, Congressman David Price of North Carolina has filed bills in Congress in recent years (e.g., J.R. 1579 in 2005) to move the meeting of the Electoral College from the first Monday after the second Wednesday in December to January 2 (or January 3 if January 2 is a Sunday). This change would add 17 (or 18) days to the period available to the states to make their “final determination” of presidential election results.

Second, we believe that federal law should be amended to say that a state must complete its initial count of votes for President no later than two weeks after election day (i.e., the schedule already required by Minnesota and some other states).

Third, we believe that federal law should be amended to give the presidential candidate himself (or herself) the unconditional right to initiate a recount immediately after the initial count, with such a recount being paid for by the presidential candidate. According to Election Line,⁶ a candidate already has an unconditional right to initiate a recount in 25 states and a conditional right to do so in 14 additional states.

Fourth, because time is of the essence in resolving disputes involving presidential elections, no time should be sacrificed by perfunctory (and often cosmetic) “automatic recounts” (unless they can be directed at the specific issues that must be decided in a particular race).

Fifth, because time is of the essence in resolving disputes involving presidential elections, we believe that federal law should be amended to give the presidential candidate the right to initiate the “contest” phase of the dispute, without any delay.

Note that the above changes are more urgently needed under the current winner-take-all system than they would be under the National Popular Vote compact, because there are 51 separate opportunities for a recount in every presidential election under the current winner-take-all system, whereas there is only one pool of votes under a national popular vote.

⁶ ElectionLine.Org Briefing. *Recounts: From Punch Cards to Paper Trails*.
Briefing No. 12. October 2005.
<http://www.pewcenteronthestates.org/uploadedFiles/ERIPBrief12.SB370updated.pdf>.

8. **Additional Information**

For additional information about the details of operation of the National Popular Vote bill and the issue of recounts, see chapter 6 and sections 10.3 and 9.2 of the book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*.

Our web site is www.NationalPopularVote.com.

Yours truly,



Dr. John R. Koza, Chair
National Popular Vote
Phone: 650-941-0336
Email: koza@NationalPopularVote.com

cc: Senator Bill Wielechowski, Vice-Chair
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

3/4/2010

Senate Judiciary Committee

State Capitol, #417

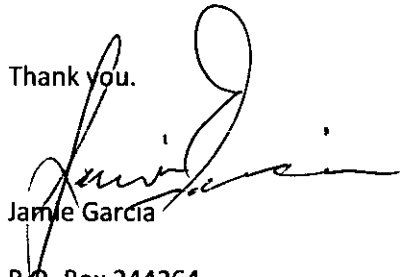
Juneau, Alaska 99801

Dear Members of the Senate Judiciary Committee:

I have become aware thru several news reports that SB 92, Popular National Vote is being considered in the Alaska Legislature. There is no doubt that the presidential election process needs revision as many, myself included continue to be baffled that we as Americans elect the president thru just a handful of states instead of a direct national vote.

Please consider carefully as you deliberate on this legislation, as passing SB 92 is the right thing to do.

Thank you.



Jamie Garcia

P.O. Box 244264

Anchorage, AK 99524

March 4, 2010

Senator Hollis French

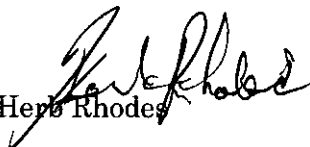
State Capitol

Juneau, Alaska 99801

Dear Senator,

Very glad to see that finally there is a remedy (SB 92, Popular Vote of President) to the current system of electing the President of the United States. The election of the most powerful position should no longer be any different of how we choose other elected officials. Every vote needs to be counted.

Sincerely,



Herb Rhodes

2219 Lord Baranof Dr

Anchorage AK, 99509

3/1/10

Senator Hollis French, Chairman

Senate Judiciary Committee

Room 417

State Capitol

Juneau, Alaska 99801

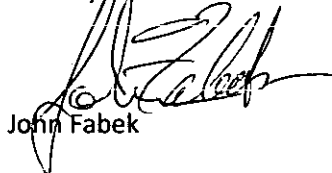
Dear Senator French:

I would like to thank you for supporting SB 92, National Popular Vote.

As you know, Alaska has never been a player in presidential elections. But, that could change under SB 92, National Popular Vote legislation in Alaska. With electoral reform like SB 92, Alaska cannot be ignored as candidates will need to visit all the states, not just battleground types that have decided too many elections.

Thanks again for giving Alaska the opportunity to have a voice in presidential politics.

Thank you



John Fabek

3831 Crosson Circle

Anchorage, AK 99517

3 / 1 / 1 0

Senator Hollis French

Chairman, Senate Judiciary Committee

Capitol Room 417

State Capitol

Juneau, Ak 99801

Dear Senator Hollis French,

I recently heard a discussion, this past Saturday on the KBYR AM program, "Citizen's Soap Box" on the National Popular Vote. After a little research, the concept of a popular vote makes a lot of sense.

You don't have to go back very much in our presidential election history to see why the system is broken, i.e. a simple shift of just 60,000 votes in Ohio in 2004 would have defeated Bush, despite the fact that he had a nationwide lead of 3.5 million votes.

Please pass SB 92, as it's about time the electoral system is fixed.

Sincerely,



Bernadette Kuchinsky
101 W. Benson Blvd. Ste 503
Anchorage, Ak 99503

2-28-10

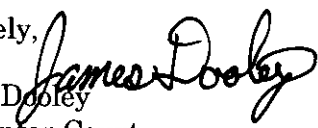
Senate Judiciary Committee
Beltz 105
Juneau, Ak 99801

Dear Committee,

The National Popular Vote is an issue that has been a topic of discussion this past week on several radio talk shows. The following points makes sense, 1/ the President of the United States should be elected by a national popular vote instead of a winner take all system. 2/the bill in Alaska, SB 92, would according to the nationalpopularvote.com, "enact the proposed interstate compact entitled the "Agreement among the States to Elect the President by National Popular Vote." The compact would take effect only when enacted, in identical form, by states possessing a majority of the membership of the Electoral College (that is 270 of 538 electoral votes)."

So, please support SB 92, as it will finally help reform the Electoral College.

Sincerely,


James Dooley
230 Center Court
Anchorage, Alaska 99518

STATE OF ALASKA
SENATE JUDICIARY COMMITTEE
BELTZ 105
JUNEAU, ALASKA 99801

RE: SB 92

FOR INFORMATION AND RECORD OF THE SENATE JUDICIARY COMMITTEE

March 3, 2010

Senate Judiciary Committee
Beltz Room, 105
State Capitol
Juneau, Alaska 99801

Dear Senate Judiciary:

I recently read at the national popular vote web site (nationalpopularvote.com) that 70% of Alaskans support the idea that the president of the United States should be the candidate that receives the most popular votes in all 50 states. Another important point of the poll is that support comes from a wide range of political thought, Democrats(78%) , Republicans(66%), Non Partisan(70%), Alaska Independent Party (82%), and among others @ 69%.

Please join the majority of Alaskans and support the National Popular Vote, which is currently being considered in Senate Judiciary as SB 92.

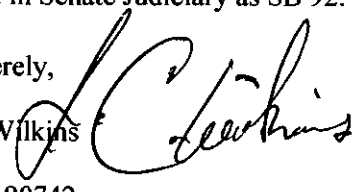
Most sincerely,

James C. Wilkins

P.O. Box 190742

Anchorage, AK 99519

Chairman French



Senator Hollis French
Capitol, 417
Juneau, Alaska 99801

Dear Senator French,

I would like to ask your consideration in supporting the proposal to elect the President by a national popular vote in all 50 states (SB92). When we vote for other offices, ie. legislative, mayor, senator, etc....., the candidate who receives the most votes wins and so, it should be for president as well!

Thank you.

Evangelina J. Lee
EVANGELINE J. LEE

Alaska State Legislature



Senate
Health & Social
Services
Committee
Chair
•
Senate
Education Committee
Vice - Chair

Legislative Council
Vice - Chair
•
Senate
Transportation
Committee
•
Senate
Labor & Commerce
Committee

Senator [Bettye Davis@legis.state.ak.us](mailto:Bettye_Davis@legis.state.ak.us)
<http://www.aksenate.org>

Session: (Jan. - May)
State Capitol, Suite 30, Juneau, AK 99801-1182 Phone: (907) 465-3822 • Fax: (907) 465-3756 • Toll free: (800) 770-3822
Interim: (May - Dec.)
716 W. 4th Ave, Suite 400, Anchorage, AK 99501 Phone: (907) 269-0144 • Fax: (907) 269-0148

SPONSOR STATEMENT: SB 92

Under the National Popular Vote interstate compact, electoral votes which are based on the number of U.S. Representatives and U.S. Senators in each state, would be awarded to the national winner, not the state winner. The U.S. Constitution gives the states exclusive and plenary control over the manner of awarding their electoral votes. The winner-take-all rule is not in the Constitution. The fact that Maine and Nebraska award electoral votes by Congressional district, is a reminder that an amendment to the U.S. Constitution is not required to change the way the President is elected.

As of January 2010, this interstate compact has been joined by Hawaii, Illinois, Maryland, New Jersey, and Washington. Their 61 electoral votes amount to 23% of the 270 votes needed for the compact to take effect. The bill has also passed in one or both houses in many states and has continued to gain support nationally.

Because of the current winner-take-all rule, a candidate can, and has won the Presidency Without winning the Most popular votes nationwide. This has occurred in 4 of the nation's 56 presidential elections (and 1 in 7 of the non-landslide elections). In 2004, A shift of fewer than 60,000 votes in Ohio would have defeated President Bush despite his nationwide lead of 3,500,000 votes.

Another shortcoming of the winner-take-all rule is that presidential candidates have no reason to poll, visit, advertise, or organize in states where they are comfortably ahead or hopelessly behind. In 2008, candidates concentrated over two-thirds of their campaign visits and ad money in just six closely divided "battleground" states. A total of 98% went to just 15 states. In other words, voters in two thirds of the states were essentially spectators to the election.

Under the National Popular Vote Interstate Compact bill, all the electoral votes from the enacting states would be awarded, as a bloc, to the presidential candidate who receives the most popular votes in all 50 states (and DC). The bill would take effect only when enacted by states possessing a majority of the electoral votes — that is, enough electoral votes to elect a President (270 of 538).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 2, 2009

SUBJECT: Sectional summary of SB 92 (Work Order No. 26-LS0441/A)

TO: Senator Bettye Davis
Attn: Thomas Obermeyer

FROM: Alpheus Bullard
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Ratifies an interstate compact to elect the President and Vice- President of the United States by national popular vote. Under the compact and the bill, the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia will win the presidency. Under the compact, all of the state's electoral votes would be awarded to the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia. This compact would take effect only when enacted by states possessing a majority of the electoral votes, that is, enough electoral votes to elect a President, which is 270 of 538 electoral votes.

Sections 2 -5. Conform statutes to the changes made by section one of the bill.

TLAB:ljw
09-055.ljw

12th Amendment

Amendment 12 - Choosing the President, Vice-President. Ratified 6/15/1804.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;



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"The appointment, and mode of appointment, of electors belong exclusively to the states" - U.S. Supreme Court

Endorsed by 1,777 State Legislators

News on Reforming Electoral College to Reflect Nationwide Vote

Read the Book

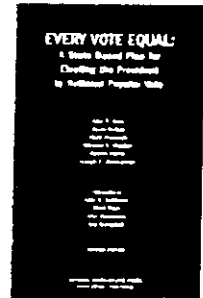


Massachusetts Rep. Charles A. Murphy

In addition to 829 state legislative sponsors (shown above), 948 other legislators have cast recorded votes in favor of the National Popular Vote bill.

- Delaware House Passes National Popular Vote Bill by a 23-12 Vote
Hawaii, Illinois, Maryland, New Jersey and Washington Enact Bill
Washington joins Hawaii, Illinois, Maryland, New Jersey
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Editorial Support

- New York Times
Chicago Sun-Times
Minneapolis Star Tribune
Los Angeles Times
Sacramento Bee
The Columbian
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Anderson Herald Bulletin
Fayetteville Observer
Boston Globe
Hartford Courant
The Tennessean
Daily Astorian
Sarasota Herald Tribune
Miami Herald
Connecticut Post
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State Progress on Reforming Electoral College

Interactive map showing state progress on reforming the electoral college with a legend for 50 states with bills and their progress stages.

Advisory Board

- John Anderson (R-I-IL)
Birch Bayh (D-IN)
John Buchanan (R-AL)
Tom Campbell (R-CA)
Tom Downey (D-NY)
D. Durenberger (R-MN)
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Kentucky - 80%
Idaho - 77%
Iowa - 75%
Maine - 77%
Maine - 71%
Massachusetts - 73%
Michigan - 70%
Michigan - 73%
Minnesota - 75%
Mississippi - 77%
Missouri - 66%
Missouri - 70%
Nebraska - 74%
Nevada - 72%
New Hampshire - 69%
New Mexico - 76%
New York - 79%
North Carolina - 74%
Ohio - 70%
Oklahoma - 81%
Oregon - 76%
Pennsylvania - 78%
Rhode Island - 74%
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Utah - 70%
Vermont - 75%
Virginia - 74%
Washington state - 77%

Short Explanation

The National Popular Vote bill would guarantee a majority of the Electoral College to the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia. The bill would reform the Electoral College so that the electoral vote in the Electoral College reflects the choice of the nation's voters for President of the United States. more

5 Enactments

- Hawaii - 4 votes
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Sarasota Florida Herald Tribune Editorial

"The most compelling and practical alternative is promoted by a bipartisan group called National Popular Vote. The NPV proposal calls for legislatures to pass bills committing their state's electoral votes to the candidate who receives the most popular votes nationwide; the bill would take effect only when enacted by states that together have enough electoral votes to elect a president. more

Additional Topics

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Congressional District Proposal Is Worse Than Current System
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FairVote
[more endorsements](#)

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What Do You Think

How should we elect the President?

- The candidate who gets the most votes in all 50 states.
- The current Electoral College system.

[Add this poll to your web site](#)

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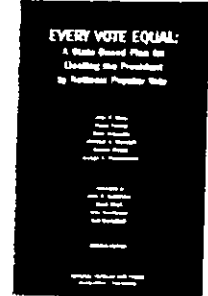


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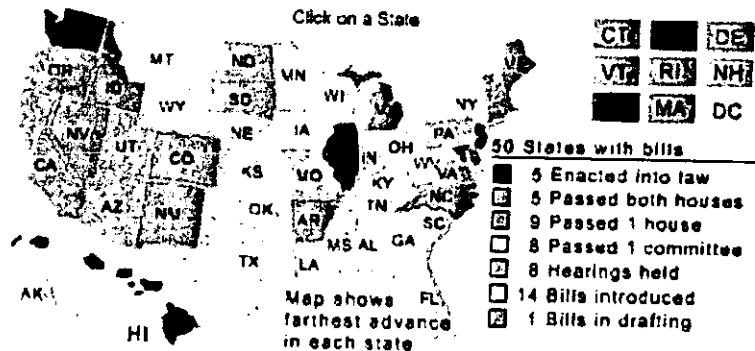


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State Progress on Reforming Electoral College



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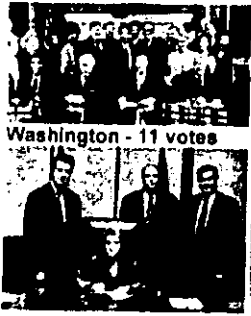
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[Cast Your Vote](#)

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[Add this poll to your web site](#)

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 State Legislators

The Electoral College



South Carolina Rep.
 Cathy B. Harvin

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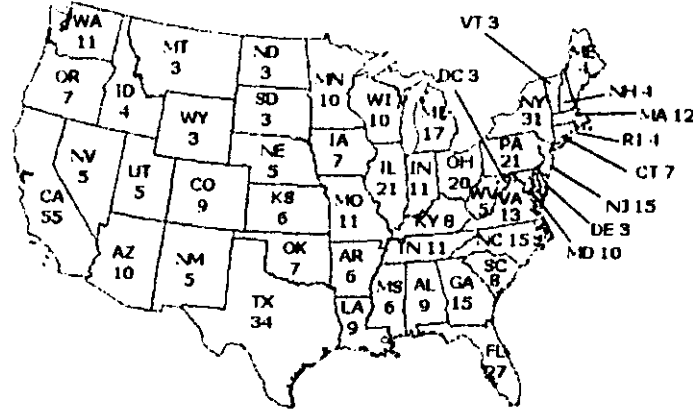
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- Hawaii - 4 votes
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The U.S. Constitution specifies that the President and Vice President of the United States are to be chosen every four years by a small group of people who are individually referred to as "presidential electors." The electors are collectively referred to as the "Electoral College."



The Constitution specifies that each state is entitled to one member of the Electoral College for each

of its U.S. Representatives and U.S. Senators. Today, there are a total of 538 electoral votes in the Electoral College. This total corresponds to the 435 U.S. Representatives from the 50 states plus the 100 U.S. Senators from the 50 states plus the three members of the Electoral College to which the District of Columbia became entitled under the 23rd Amendment (ratified in 1961). Every 10 years, the 435 U.S. Representatives are reapportioned among the states in accordance with the latest federal census, thereby automatically reapportioning the membership of the Electoral College among the states.

Members of the Electoral College are chosen by each state and the District of Columbia on the Tuesday after the first Monday in November in presidential election years. Each political party nominates its own candidates (typically long-standing party activists) for the position of presidential elector.

The 538 members of the Electoral College cast their votes for President and Vice President in meetings held in the 50 state capitals and the District of Columbia in mid-December of presidential election years. If all 538 electors are appointed, 270 electoral votes (i.e., a majority of 538 members of the Electoral College) are required to elect the President and the Vice President.



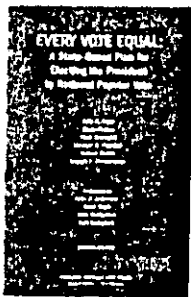
The three North Dakota members of the Electoral College met on December 15, 2000, in Bismarck to cast their votes for the Bush-Cheney ticket. Gov. John Hoeven (left) observes former Gov. Ed Schafer put his signature to ballot for Electoral College. The other two electors are former state Senator Bryce Streibel of Fressenden and former Lieutenant Governor Rosemarie Myrdal. [more](#)



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- Michigan - 70%
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- Minnesota - 75%
- Mississippi - 77%
- Missouri - 66%
- Missouri - 70%
- Nebraska - 74%
- Nevada - 72%
- New Hampshire - 69%
- New Mexico - 76%



The three Wyoming members of the Electoral College met in December 1996 in Cheyenne to cast their votes for the Robert Dole for President and Jack Kemp for Vice President.

The table below shows the distribution of electoral votes among the 51 jurisdictions that appoint members of the Electoral College. Because each state has two Senators and at least one Representative, no state has fewer than three members of the Electoral College. The states with the most members of the Electoral College are California (55), Texas (34), and New York (31). There are 13 low-population states with three or four members of the Electoral College. The average number of members of the Electoral College per state is about 11.

Distribution of electoral votes

Jurisdiction	Representatives	Senators	Total Members of the Electoral College
Alabama	7	2	9
Alaska	1	2	3
Arizona	8	2	10
Arkansas	4	2	6
California	53	2	55
Colorado	7	2	9
Connecticut	5	2	7
Delaware	1	2	3
DC	0	0	3
Florida	25	2	27
Georgia	13	2	15
Hawaii	2	2	4
Idaho	2	2	4
Illinois	19	2	21
Indiana	9	2	11
Iowa	5	2	7
Kansas	4	2	6
Kentucky	6	2	8
Louisiana	7	2	9
Maine	2	2	4
Maryland	8	2	10
Massachusetts	10	2	12
Michigan	15	2	17
Minnesota	8	2	10
Mississippi	4	2	6
Missouri	9	2	11
Montana	1	2	3
Nebraska	3	2	5
Nevada	3	2	5
New Hampshire	2	2	4
New Jersey	13	2	15
New Mexico	3	2	5
New York	29	2	31
North Carolina	13	2	15
North Dakota	1	2	3
Ohio	18	2	20

- New York - 79%
- North Carolina - 74%
- Ohio - 70%
- Oklahoma - 81%
- Oregon - 76%
- Pennsylvania - 78%
- Rhode Island - 74%
- South Dakota - 75%
- Utah - 70%
- Vermont - 75%
- Virginia - 74%
- Washington state - 77%
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- Wisconsin - 71%

Oklahoma	5	2	7
Oregon	5	2	7
Pennsylvania	19	2	21
Rhode Island	2	2	4
South Carolina	6	2	8
South Dakota	1	2	3
Tennessee	9	2	11
Texas	32	2	34
Utah	3	2	5
Vermont	1	2	3
Virginia	11	2	13
Washington	9	2	11
West Virginia	3	2	5
Wisconsin	8	2	10
Wyoming	1	2	3
Total	435	100	538

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- Vermont House
- Vermont Senate
- Washington House
- Washington Senate

The date for the meeting of the Electoral College is established by federal election law (United States Code, Title 3, chapter 1, section 7). In 2004, the designated day for the meeting of the Electoral College was Monday, December 13. This statute was enacted in 1934 after the 20th Amendment changed the date for the presidential inauguration from March 4 to January 20.

The people have the right, under the U.S. Constitution, to vote for U.S. Representatives. The 17th Amendment (ratified in 1913) gave the people the right to vote for U.S. Senators (who were elected by state legislatures under the original Constitution). The people, however, have no federal constitutional right to vote for President or Vice President or for their state's members of the Electoral College. Instead, the Constitution (Article II, section 1, clause 2) provides:

"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress...."

As the U.S. Supreme Court observed in the 1892 case of *McPherson v. Blacker*:

"The constitution does not provide that the appointment of electors shall be by popular vote, nor that the electors shall be voted for upon a general ticket, nor that the majority of those who exercise the elective franchise can alone choose the electors." ...

"In short, the appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States."

In 2000, the U.S. Supreme Court in *Bush v. Gore* reiterated the principle that the people have no federal constitutional right to vote for President or Vice President or for their state's members of the Electoral College..

"The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the Electoral College."

The Constitution's delegation of power to the states to choose the manner of selecting their members of the Electoral College is unusually unconstrained. It contrasts significantly with the limitations contained in the Constitution on state power over the manner of conducting congressional elections (Article II, section 4, clause 1).

"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations...."

In a 1919 case involving a state statute entitled "An act granting to women the right to vote for presidential electors," the Maine Supreme Judicial Court wrote (*In re Opinion of the Justices*):

"[E]ach state is thereby clothed with the absolute power to appoint electors in such manner as it may see fit, without any interference or control on the part of the federal government, except, of course, in case of attempted discrimination as to race, color, or previous condition of servitude...."

What Do You Think

How should we elect the President?

- The candidate who gets the most votes in all 50 states.
- The current Electoral College system.

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Certificate of Ascertainment showing that Wyoming cast its three electoral votes for the Bush-Cheney ticket because that state received more popular votes in Wyoming than any other state.

Reform the Electoral College so that the electoral vote reflects the nationwide popular vote for President



Home Explanation Answering Myths Polls FAQ News States Electoral College About Take Action Write Legislator Donate
 "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . ." - U.S. Constitution

Endorsed by 1,777
State Legislators



Pennsylvania Rep.
Timothy J. Solobay

In addition to 829 state legislative sponsors (shown above), 948 other legislators have cast recorded votes in favor of the National Popular Vote bill.

Editorial Support

New York Times
Chicago Sun-Times
Minneapolis Star Tribune
Los Angeles Times
Sacramento Bee
The Columbian
Wichita Falls Times
Anderson Herald Bulletin
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Short Explanation

The National Popular Vote bill would guarantee a majority of the Electoral College to the presidential candidate who receives the most popular votes in all 50 states and the District of Columbia. The bill would reform the Electoral College so that the electoral vote in the Electoral College reflects the choice of the nation's voters for President of the United States. [more](#)

5 Enactments

Hawaii - 4 votes
 New Jersey - 15 votes
 Illinois - 20 votes
 Maryland - 10 votes

2. Myths about Small States

[\[back to Main Table of Contents\]](#)

CONTENTS

2 Myths about Small States

- 2.1 MYTH: The small states would be disadvantaged by a national popular vote.
- 2.2 MYTH: The small states oppose a national popular vote.
- 2.3 MYTH: The National Popular Vote bill threatens the equal representation of the states in the U.S. Senate.
- 2.4 MYTH: A national popular vote would undermine a partisan advantage in favor of the Republican Party in the small states.

2.1 MYTH: The small states would be disadvantaged by a national popular vote.

The small states are the most disadvantaged group of states under the current system.

Although the small states theoretically benefit from receiving two extra electoral votes corresponding to their U.S. Senators, this "bonus" does not, in practice, translate into political power. Political power in presidential elections comes from being a closely divided battleground state—not from the two-vote bonus conferred on the small states in the Electoral College.

Under the winner-take-all rule (i.e., awarding all of a state's electoral votes to the candidate who receives the most popular votes in each state), candidates have no reason to poll, visit, advertise, organize, or pay attention to the concerns of states where they are comfortably ahead or hopelessly behind. Instead, candidates concentrate their attention on a small handful of battleground states. This means that voters in the vast majority of the states are ignored in presidential elections. In 2004, candidates concentrated over two-thirds of their money and campaign visits in five states; over 80% in nine states; and over 99% of their money in 16 states. In 2008, candidates concentrated over two-thirds of their campaign events and ad money in just states, and 98% in just 15 states.²⁰

The reason that the small states are the most disadvantaged group of states under the current system is that almost all of them are one-party states in terms of presidential elections. In the last six presidential elections (1988 through 2008), six of the 13 least populous states (i.e., those with three or four electoral votes) have regularly gone Republican (Alaska, Idaho, Montana, Wyoming, North Dakota, and South Dakota). Six others (Hawaii, Vermont, Maine, Rhode Island, Delaware, and the District of Columbia) have regularly gone Democratic.²¹ New Hampshire has been the only battleground state among the 13 smallest states.

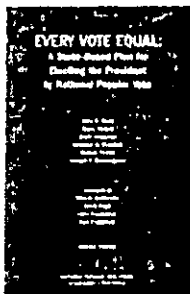
The 12 smallest non-competitive states have a combined population of 11.4 million. Because of the bonus of two electoral votes that every state receives, these 12 small states have 40 electoral votes. Coincidentally, Ohio has 11.4 million people. Ohio has 20 electoral votes. That is, the 11 million people in Ohio have "only" 20 electoral votes, whereas the 11 million people in the 12 smallest non-competitive states have 40 electoral votes. However, political power does not arise from the number of electoral votes that a state possesses, but, instead, from whether the state is a closely divided battleground state. The battleground state of Ohio (with "only" 20 electoral votes) received 62 visits in the 2008 presidential election. However, the 12 non-battleground small states (with their 40 electoral votes) were politically irrelevant. In 2008, the 12 small non-competitive states received no visits, advertising, polling, or policy consideration by presidential candidates because the outcome of the presidential race in those states is generally a foregone conclusion. The winner-take-all rule makes the 11 million people in the closely divided battleground state of Ohio crucial in presidential races, while rendering the 11 million



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National - 72%
Arkansas - 80%
Arkansas - 74%
California - 69%
California - 70%
Colorado - 68%
Connecticut - 73%
Connecticut - 74%
Delaware - 75%
Florida - 78%
Kentucky - 80%
Idaho - 77%
Iowa - 75%
Maine - 77%
Maine - 71%
Massachusetts - 73%
Michigan - 70%
Michigan - 73%
Minnesota - 75%
Mississippi - 77%
Missouri - 66%
Missouri - 70%
Nebraska - 74%
Nevada - 72%
New Hampshire - 69%
New Mexico - 78%

people in the nation's smallest states irrelevant. This is a situation in which 20 is much more than 40. A national popular vote would make every vote equal throughout the United States. A national popular vote would make a vote cast in a small state as important as a vote cast in Ohio.

Most of the states with five or six electoral votes are similarly non-competitive in presidential elections (and therefore similarly disadvantaged). In fact, of the 22 least populous states (i.e. those with between three and six electoral votes), only New Hampshire (four electoral votes), New Mexico (five electoral votes), and Nevada (five electoral votes) have been battleground states in recent elections.

The fact that the small states are disadvantaged by the current system has been recognized by prominent officials from smaller states. In a 1979 Senate speech, Senator Henry Bellmon (R-Oklahoma) described how his views on the Electoral College had changed as a result of serving as National Campaign Director for Richard Nixon and a member of the American Bar Association's commission studying electoral reform.

"While the consideration of the electoral college began—and I am a little embarrassed to admit this—I was convinced, as are many residents of smaller States, that the present system is a considerable advantage to less populous States such as Oklahoma. ... As the deliberations of the American Bar Association Commission proceeded and as more facts became known, I came to the realization that the present electoral system does not give an advantage to the voters from the less populous States. Rather, it works to the disadvantage of small State voters who are largely ignored in the general election for President."²² [Emphasis added]

Senator Robert E. Dole of Kansas, the Republican nominee for President in 1996 and Republican nominee for Vice President in 1976, stated:

"Many persons have the impression that the electoral college benefits those persons living in small states. I feel that this is somewhat of a misconception. Through my experience with the Republican National Committee and as a Vice Presidential candidate in 1976, it became very clear that the populous states with their large blocks of electoral votes were the crucial states. It was in these states that we focused our efforts.

"Were we to switch to a system of direct election, I think we would see a resulting change in the nature of campaigning. While urban areas will still be important campaigning centers, there will be a new emphasis given to smaller states. Candidates will soon realize that all votes are important, and votes from small states carry the same import as votes from large states. That to me is one of the major attractions of direct election. Each vote carries equal importance.

"Direct election would give candidates incentive to campaign in States that are perceived to be single party states."²³ [Emphasis added]

Because so few of the least populous states are battleground states in presidential elections, the current system actually shifts power from voters in the small and medium-sized states to voters in a handful of big states. As early as the spring of 2008, both major political parties acknowledged that there would be at most 14 battleground states (involving only 166 of the 538 electoral votes) in the 2008 presidential election.²⁴ In other words, two-thirds of the states were regarded as irrelevant under the current system. Among this group of 14 battleground states, Michigan (17 electoral votes), Ohio (20), Pennsylvania (21), and Florida (27) contain over half (85) of the 166 electoral votes. Among the 22 least populous states, only three (i.e., New Hampshire, New Mexico, and Nevada) were among this group of 14 battleground states. These three states contain only 14 of the 166 electoral votes. The net result is that the current system shifts power from voters in the least populous states to voters in a handful of closely divided battleground states (almost all of which are big states).

2.2 MYTH: The small states oppose a national popular vote.

New York - 79%
 North Carolina - 74%
 Ohio - 70%
 Oklahoma - 81%
 Oregon - 76%
 Pennsylvania - 78%
 Rhode Island - 74%
 South Dakota - 75%
 Utah - 70%
 Vermont - 75%
 Virginia - 74%
 Washington state - 77%
 Washington state - 77%
 Wisconsin - 71%

29 Houses Pass Bill

Arkansas House
 California Senate
 California Assembly
 Colorado House
 Colorado Senate
 Connecticut House
 Delaware House
 Hawaii House
 Hawaii Senate
 Illinois House
 Illinois Senate
 Maine Senate
 Maryland House
 Maryland Senate
 Massachusetts House
 Massachusetts Senate
 Michigan House
 Nevada Assembly
 New Jersey Assembly
 New Jersey Senate
 New Mexico House
 North Carolina Senate
 Oregon House
 Rhode Island House
 Rhode Island Senate
 Vermont House
 Vermont Senate
 Washington House
 Washington Senate

What Do You Think

How should we elect the President?

- The candidate who gets the most votes in all 50 states.
- The current Electoral College system.

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The facts speak for themselves. Hawaii was the fourth state to enact the National Popular Vote bill. As of 2008, the bill has been approved by a total of seven state legislative chambers in small states, including one house in Maine and both houses in Hawaii, Rhode Island, and Vermont.

The concept of a national popular vote for President is far from being politically "radioactive" in small states. Indeed, the concept of a national popular vote for President is popular in small states. Polls in 2008 showed a high level of support for a nationwide election for President in small states such as Vermont (75%), Maine (71%), New Hampshire (69%), and Rhode Island (74%).²⁵ These results are consistent with the fact that more than 70% of the American people have favored a nationwide election for President since the Gallup poll started asking this question in 1944. The *Washington Post*, Kaiser Family Foundation, and Harvard University poll in 2007 showed 72% support for direct nationwide election of the President. This recent national result is similar to recent statewide polls in Arkansas (74%), California (70%), Connecticut (73%), Massachusetts (73%), Michigan (73%), Missouri (70%), and Washington (77%). In short, there is very little difference in the level of political support for a national popular vote in small, medium-sized, and large states.

The small states are the most disadvantaged group of states under the current system (as discussed in section 10.2.1 of this book). The fact that the bonus of two electoral votes is an illusory benefit to the small states is not a new revelation. This fact has been widely recognized by the small states for some time. In 1966, Delaware led a group of 12 predominantly low-population states (including North Dakota, South Dakota, Wyoming, Utah, Arkansas, Kansas, Oklahoma, and Iowa) in suing New York in the U.S. Supreme Court. These states argued that New York's use of the winner-take-all rule effectively disenfranchised voters in their states.²⁶ The Court declined to hear the case (presumably because of the well-established constitutional provision that the manner of awarding electoral votes is exclusively a state decision). Ironically, the defendant (New York) is no longer an influential battleground state (as it was in the 1960s). Today, New York suffers the very same disenfranchisement as most of the less populous states because it too has become politically non-competitive. Today, a vote in New York is equal to a vote in Wyoming—votes in both are equally irrelevant in presidential elections.

The Electoral College is not the bulwark of influence for the small states in the U.S. Constitution. The 13 smallest states (with 3% of the nation's population) have 25% of the votes in the U.S. Senate—a very significant source of political clout. However, the 13 smallest states (i.e., those with three or four electoral votes) have only 26 extra votes in the Electoral College by virtue of the two-vote bonus—not a large number in relation to the total of 538 electoral votes. Although the 13 smallest states cast 3% of the nation's popular vote while possessing 6% of the electoral votes, the extra 3% is a minor numerical factor in the context of a presidential election. More significantly, this small theoretical advantage is eradicated by the fact that the small states are equally divided between the two major political parties and because the one-party character of the small states makes 12 out of 13 of them irrelevant in presidential elections. In fact, the bulwark of influence for the small states is the equal representation of the states in the U.S. Senate—not the small number of additional electoral votes that they have in the Electoral College.

2.3 MYTH: The National Popular Vote bill threatens the equal representation of the states in the U.S. Senate.

Equal representation of the states in the U.S. Senate is explicitly established in the U.S. Constitution. This feature of the U.S. Constitution cannot be changed by state law. In fact, it may not even be amended by an ordinary federal constitutional amendment. Instead, this feature of the U.S. Constitution may only be changed by unanimous consent of all 50 states.²⁷ In contrast, the U.S. Constitution explicitly assigns the power to choose the manner of electing the President to the state legislatures. The adoption by a state legislature of the National Popular Vote bill is an exercise of a legislature's existing powers under the U.S. Constitution. Such action has no impact or bearing on the constitutional provisions concerning representation in the U.S. Senate.

2.4 MYTH: A national popular vote would undermine a partisan advantage in favor of the Republican Party in the small states.

The small state issue sometimes serves as a surrogate for the unstated political concern (and misconception) that the small states confer a partisan advantage in favor of the Republican Party. However, this belief does not reflect current political reality. In the last six presidential elections (1988 through 2008), six of the 13 least populous states have regularly gone

Republican (Alaska, Idaho, Montana, Wyoming, North Dakota, and South Dakota), while six others (Hawaii, Vermont, Maine, Rhode Island, Delaware, and the District of Columbia) have regularly gone Democratic.²⁸ New Hampshire has been, in recent years, the one closely divided battleground state among the 13 smallest states (having supported the Democrat in 1992 and 1996, the Republican in 2000, and the Democrat in 2004 and 2008).

Interestingly, the 12 smallest non-competitive states actually confer a slight political advantage on the Democratic presidential candidate. For example, in 2004, John Kerry won 21 electoral votes from his 444,115-vote lead in the six non-competitive Democratic small states, whereas George W. Bush won only 19 electoral votes from his 650,421-vote lead in the six non-competitive Republican small states. The reason that the Democrats enjoy a partisan advantage in presidential elections in the smallest states is that the six regularly Republican small states are very heavily Republican (Alaska 64%, Idaho 69%, Montana 61%, Wyoming 70%, North Dakota 64%, and South Dakota 61%). In contrast, the Democrats carried three of their six small states (Delaware, Hawaii, and Maine) with only 54% of the vote. A 54% margin is generally viewed as placing a state safely out of reach for the opposition during a typical presidential campaign;²⁹ however, 54% is considerably less than the Republican Party's margin in their six small states. In two additional states (Vermont and Rhode Island), the Democrats won with 60% of the vote (again a smaller margin than the Republican Party's margin in their six small states). If the boundaries of the small states had been recently drawn, there would be accusations that the boundaries were a Democratic gerrymander.

²⁰ <http://fairvote.org/tracker/?page=27&pressmode=showspecific&showarticle=230>.

²¹ Among the six regularly Republican-leaning small states Clinton carried Montana in 1992 (presumably due to Perot's presence on the ballot). Among the six Democratic-leaning small states, George H. W. Bush carried Delaware, Maine, and Vermont in 1988.

²² *Congressional Record*. July 10, 1979. Page 17748.

²³ *Congressional Record*. January 14, 1979. Page 309.

²⁴ "Already, Obama and McCain Map Fall Strategies." *New York Times*. May 11, 2008.

²⁵ These polls (and many others) are available on National Popular Vote's web site at <http://www.nationalpopularvote.com/pages/polls.php#2007WPKHU>.

²⁶ Information about *State of Delaware v. State of New York* (and links to the pleadings) may be found at http://www.nationalpopularvote.com/pages/misc/de_lawsuit.php.

²⁷ Article V of the U.S. Constitution provides: "No State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

²⁸ Among the six regularly Republican-leaning small states, Clinton carried Montana in 1992 (presumably due to Perot's presence on the ballot). Among the six Democratic-leaning small states, George H. W. Bush carried Delaware, Maine, and Vermont in 1988.

²⁹ Although there is no universally accepted definition of a battleground state, battleground states are, more or less, those in which the spread between the top two candidates is less than 8%.

Reform the Electoral College so that the electoral vote reflects the nationwide popular vote for President

Hartford Courant.

For National Popular Vote

Hartford Courant editorial

March 2, 2008

Connecticut, to everyone's surprise, was in play during the Super Tuesday primaries. Three major candidates visited the state.

But that may not happen in the run-up to the November general election (minus a quick fundraising visit or two to Fairfield County). If, say, the state is considered safe for the Democrats, neither candidate will feel the need to campaign here. The same thing is likely to happen in two-thirds of the other states.

Our system of electing the president and vice president is flawed and archaic. There is a way to change it without amending the U.S. Constitution. The states can simply agree to give their electoral votes — regardless of who wins each state's popular vote — to the winner of the national popular vote. There is a serious proposal to adopt the "National Popular Vote" plan here and across the country. It's worth supporting.

Connecticut Often Ignored

The problem with the present system is the winner-take-all rule used in 48 states. In all states except Maine and Nebraska, the candidate who wins the state's popular vote gets all of the state's electoral votes.

So if a candidate is assured of winning, say, 55 percent of the popular vote, the campaign is over. He or she will get all the electoral votes, and there's no point in trying to get more votes, nor is there any point in the losing candidate losing by fewer votes. Although it's possible that the losing candidate could try to reverse the numbers, what almost always happens is that both candidates put their money and time into battleground states.

According to the FairVote organization, 99 percent of the campaign advertising money in the 2004 presidential election was spent in just 17 states, and 92 percent of the campaign visits were in only 16 states. Issues in those states are thrust to the fore, at the expense of whatever Connecticut and other less-noticed states are concerned about. Federal grants tend to find their way to contested states, especially as elections near.

The way we elect presidents now thwarts the democratic principle of majority rule. Four times in our nation's history, most recently in 2000, a president has won the office while losing the popular vote. It almost happened in a number of other elections. A shift of only 60,000 votes in Ohio would have given the 2004 election to John Kerry, despite President George W. Bush's 3.5 million-vote lead in the popular tally.

Also, the lack of a meaningful campaign depresses voter turnout, which in turn makes things worse for the minority party.

Reformers have been trying to scuttle the Electoral College system for at least 50 years. Twice in the 1970s, a proposed constitutional amendment passed one house of Congress, only to be blocked by beneficiaries of the current system. It is difficult, as it should be, to amend the U.S. Constitution. But because states have the power to allocate their electoral votes, some clever folks have come up with another way around the block.

Change How States Use Votes

The National Popular Vote creates a compact. All of the states that join agree to give their electoral votes to the candidate who receives the most popular votes in all 50 states and the District of Columbia. The compact only kicks in when enacted by states possessing a majority of the electoral votes — 270 of 538, enough to elect a president.

The bill has passed in two states, Maryland and New Jersey, and is in the pipeline in more than 40 other states, including Connecticut. The bill, which failed to pass last year, has been introduced again, and backers say it has a better chance of passage this year.

Support is not universal. Critics such as Gov. Arnold Schwarzenegger, who vetoed the bill after it passed both houses in the California legislature, object to the possibility that a state could give its electoral votes to a candidate it didn't support.

Others in favor of the devil-we-got say the new method could increase the cost of elections and focus campaigning on population centers at the expense of rural areas.

Those points are well-taken, but the positives of National Popular Vote outweigh the negatives. There are no other indirect elections left in government; they are a relic of the past. The Electoral College was supposed to help small-population states (and Southern states where slaves couldn't vote), but most small-population states aren't in play on Election Day. That the 2000 election was hanging on hanging chads was absurd.

If a million votes in Connecticut count as much as a million votes in Ohio, we'll see the candidates again. National Popular Vote is worth a try.

The New York Times

Maryland Takes the Lead

New York Times Editorial

April 14, 2007

As the nation braces for a long and numbing presidential election, the State of Maryland has done voters a favor by rejecting the Electoral College as a fossil in need of a democratic makeover. Gov. Martin O'Malley and the Annapolis legislature made the state the first in the nation to decide that its Electoral College members should someday be required to vote for the presidential candidate chosen by a plurality of the nation's voters, not according to the state's parochial tally.

The change would not take effect until it won final acceptance by enough states to amount to a 270-vote majority in the college. (Maryland has 10 votes.) But it is something all Americans would benefit from, particularly the masses of voters routinely ignored when candidates focus on a few battleground states — just 16 in 2004 — that increasingly settle modern campaigns.

The need to scrap the creaky college machinery was made clear in the angst of the 2000 election. George W. Bush lost the popular election by almost 544,000 votes, yet won in a Supreme Court showdown over Florida's electors that hinged on far fewer disputed state ballots. Four years later, it was Mr. Bush's turn to sweat as he handily won the national vote yet came close to losing Ohio — and the White House — in the college's arcane state-by-state fragmentation of the popular majority.

The reform movement, driven by a bipartisan coalition called National Popular Vote, has a long way to go. But Hawaii is close to approval, and hundreds of legislators are sponsoring the change in more than 40 other states. It is an ingenious way around the fact that the alternative strategy of trying to amend the Constitution would require the approval of three-fourths of the states, leaving veto power in the hands of smaller states over-represented in the college.

The objection that reform would mean that rural interests would be ignored is a canard. The change would require candidates to present positions that galvanized all Americans. This is the truer and more certain path of democracy.

We vote for a fairer way to decide national elections

Chicago Sun-Times editorial

March 1, 2006

Calls to reform or abolish the Electoral College hit a fever pitch after the 2000 presidential election, when Al Gore won the popular tally but didn't have enough votes in the right states to carry the electoral vote. That call quieted somewhat after the 2004 election, when President Bush won the popular vote but still could have lost the election if John Kerry had won Ohio. Despite interest in reform, nothing has happened, mostly due to the difficulty in amending the Constitution.

Now a bipartisan commission, whose members include former Rep. John Anderson (R-Ill.) and former Sen. Birch Bayh (D-Ind.), has proposed an idea to retain the Electoral College while still ensuring it reflects the will of the majority of voters. The Sun-Times News Group backs the concept and applauds the National Popular Vote group for thinking outside the box.

The group's plan is to get enough states to agree to give all their electoral votes to the national vote winner, regardless of the results in their individual states. Under the proposal, each state would pass laws to change the way their electoral votes are awarded, a process the Constitution leaves for the states to set. They would also enter an interstate compact with other states that make the same change, agreeing that the new system won't take effect until states representing 270 electoral votes -- the number needed to carry the Electoral College -- have joined.

In Illinois, the plan is backed by a group that includes state Senators Jacqueline Collins, a Chicago Democrat, and Kirk Dillard, a Hinsdale Republican and chairman of the DuPage County Republican Party.

Using such a system in the last election would have meant Bush won all of Illinois' electoral votes, even though Kerry easily carried the state. If that sounds strange, it's no stranger than Illinois and other populous states being virtually ignored by both parties during the last campaign, since one candidate or the other had them locked so early. That likely hurt the turnout in those noncompetitive states, affecting elections further down the ticket.

What of awarding electoral votes by the top vote-getter in each congressional district, as is currently done in Nebraska and Maine? That would simply set up a situation where candidates concentrate on a small number of battleground districts, because, thanks to gerrymandering, most districts are noncompetitive.

Republicans may be hardest to persuade to support this plan, over fears that large urban centers that tend to vote Democratic will dominate elections. But that wasn't an impediment to Bush's re-election. And polls show most Americans want the president to be elected by the popular vote. It's time to make the change with this innovative plan.

This editorial represents the view of the Sun-Times News Group of 100 newspapers in the Chicago metro area.

States join forces against electoral college

A piecemeal approach may be the only way to kill the anachronistic institution

Los Angeles Times Editorial

June 5, 2006

A PROPOSED EXPERIMENT with majority rule has generated plenty of naysayers who apparently think that some nations are simply too immature to let people directly choose their own leaders. But we say the United States is ready for real democracy.

The experiment is the National Popular Vote campaign, which intends to undermine the Constitution's anachronistic Electoral College. If the campaign succeeds, future presidents will take office only if they win the popular vote nationwide.

The ingenious scheme was developed by John R. Koza, a Stanford professor who also invented the scratch-off lottery ticket. It calls on state legislatures to pass a measure dictating that all the electoral votes from that state go to the winner of the national popular vote. It goes into effect only if enough states approve it to represent a majority of the electoral votes. In other words, if states that represent at least 270 of the 538 electoral votes all approve the measure, the winner of the popular vote nationwide would automatically win the presidency. It thus renders the Electoral College moot without eliminating it.

This kind of end run is necessary because the only way to get rid of the Electoral College entirely is via a constitutional amendment, which would be nearly impossible to pass. Enough small states benefit from the current system to block an amendment. The beauty of this approach is that each state is constitutionally allowed to allot its electoral votes as it sees fit. The measure was approved by California's Assembly on Tuesday and is pending in four other states; backers hope to get it before all 50 states by January.

Anyone wondering why he should care about the Electoral College need look no further than the 2000 election, when George W. Bush won the presidency despite getting about half a million fewer votes than Al Gore. If that makes conservatives think they should be thankful that the majority doesn't always rule in the United States, they should think again. The same thing nearly happened in reverse in 2004. If John Kerry had picked up a mere 60,000 more votes in Ohio, he would have won — even though Bush took in 3 million more votes overall.

The Electoral College doesn't skew just election results; it skews elections. Candidates know they don't have to campaign in states that either clearly favor them or clearly don't; they have to focus only on swing states. In the 2004 campaign, Bush and Kerry spent a great deal of time brushing up on agricultural policy and other issues of vital concern in Iowa, while ignoring matters important to people in states such as California, Texas and New York.

Opponents argue that the current system ensures that smaller states continue to have a say in setting national policy. But the U.S. Senate already gives Delaware every bit as much clout as California. Any method besides majority vote empowers some citizens at the expense of others and makes the president beholden to minority interests.

At its inception, the United States was, well, a union of states. But it is now one nation, and our president should be elected by the citizens of that nation, not by its constituent states. To argue otherwise is to say that some Americans should have more power to elect a president than others simply because of where they live. Remember, all men are created equal. Including Californians and New Yorkers.

<http://www.latimes.com/news/printedition/opinion/la-ed-college05jun05.1.6822980.story>

StarTribune.com

Minneapolis - St. Paul, Minnesota

How to drop out of the Electoral College:

There's a way to ensure top vote-getter becomes president

Editorial—Minneapolis Star Tribune

March 27, 2006

This country could form a more perfect union by accepting a novel idea: that the president of the United States should be elected by the people of the United States.

That's not the way it's done, of course, and, given the Constitution's enshrinement of the Electoral College, things aren't likely to change. To quit the college would take approval of two-thirds of both houses of Congress and three-quarters of state legislatures, so fuggedaboutit.

But now comes a gaggle of bipartisan reformers with a cheeky idea worth considering. What if legislatures, one by one, entered their states into an interstate compact under which members would agree to award their electoral votes to the winner of the national popular vote? The compact would kick in only when enough states had joined it to elect a president—that is, when a majority of the 538 electoral votes were assembled. As few as 11 states could ensure that the candidate with the most popular votes nationally would win the presidency. As a result, the Constitution and the Electoral College would stay intact, but the college's fangs would be removed.

That approach would be more democratic than current practice. Recall that Al Gore lost the 2000 election to George W. Bush despite getting a half-million more popular votes, and that Bush nearly lost the 2004 election despite getting 3 million more popular votes (a shift of only 60,000 votes in Ohio would have thrown the election to John Kerry). So, both parties have reason to fear the college's distortions.

That the Electoral College has "worked" in all but one election since 1888 isn't a good enough reason to stay with the status quo. The college has a perverse impact on campaigns. With no incentive to compete in states that are predictably red or blue, candidates concentrate on the battleground states—only 13 of them in 2004, down from 24 in 1960. That's not the national campaign voters deserve. In the last election, 92 percent of campaign events took place in just 13 states, which also absorbed 97 percent of advertising during the campaign's final month. Three dozen red and blue states as large as California, New York and Texas and as small as Delaware, Utah and Wyoming were mere spectators.

Now that Minnesota is a battleground getting lots of attention, it's a lot to ask the Legislature to do the right thing and endorse the new compact. But it really should. So should other states—both red and blue—join, for the sake of a better democracy.

The Sacramento Bee

Editorial: Rx for U.S. elections

States can assure the popular vote rules

Saturday, June 3, 2006

The election of the U.S. president should reflect the directly expressed will of the American people. But it doesn't.

The current Electoral College system can produce perverse results: A candidate can lose the popular vote and win the Electoral College vote and, thus, the presidency. That has happened several times in American history, most recently in 2000. With the nation so closely divided politically, this is likely to be an ongoing problem, undermining the legitimacy of our presidential elections.

It doesn't have to be that way.

Polls for the last 30 years have shown that Americans overwhelmingly support direct election of the president, but Congress hasn't budged on a constitutional amendment.

A new campaign, "National Popular Vote," spearheaded by several former members of Congress, including California's Tom Campbell (most recently Gov. Arnold Schwarzenegger's finance director), has a creative way to get the same result.

The campaign uses an old mechanism -- an interstate compact -- to achieve the direct election of the president. The idea is modeled on existing interstate compacts, such as the Colorado River Compact, which divides water among seven Western states. The compact depends on states changing their own rules for dividing up their electoral votes.

We'd prefer a constitutional amendment simply abolishing the Electoral College, but this state-by-state reform is an achievable second-best solution to a defective product that even the Founding Fathers regarded wearily and warily.

The strongest arguments at the 1787 Constitutional Convention favored direct election of the president by the people. Proponents wanted the president to be the "guardian of the people" and as independent as possible of Congress and the states. But the delegates were hopelessly divided between direct election by the people and election by Congress.

The Electoral College was a last-minute compromise, reached under what James Madison called the "hurrying influence produced by fatigue and impatience." The Electoral College has been patched many times since.

The interstate compact proposal wouldn't abolish the Electoral College, but at least it would ensure that it reflects the national popular vote.

Election officials in the compact states would award all of their electoral votes to the candidate receiving the greatest number of votes nationally.

Clearly, one state could not do this on its own. So each of the states has the same 888-word bill entering into a binding interstate compact (you can find the text at www.nationalpopularvote.com). States would join the agreement one by one. The compact would take effect only after enough states joined to represent a majority of Americans and electoral votes -- 270 of the 538 electoral votes.

So far, the bill has been introduced in five legislatures -- California, Illinois, Colorado, Missouri and Louisiana. The campaign's goal is 10 states by the end of 2006 and enough states by the end of 2007 to make direct election the governing rule for the 2008 presidential election.

In California, the Assembly approved the bill Tuesday. Because California has such strong influence nationally, the governor and senators can get this process rolling in other states by acting this session. Otherwise, in presidential elections, unhappy Americans are bound to continue paying for the Founding Fathers' fatigue.

The Fayetteville Observer

Our View: Electoral vote change would be good for the state and its people

The Fayette Observer Editorial

May 16, 2007

Four times since the framers met in Philadelphia in 1787, the presidency has gone to the candidate on the losing end of the popular vote. The republic still stands.

That's hardly a compelling argument for leaving things as they are. The Electoral College less than perfectly reflects the will of the people, and the threat of the "faithless elector" who tips an election the way his partisan bias dictates is real, if remote. Both threats would vanish if the election automatically went to the candidate for whom most registered voters pulled the lever.

This is the point at which the conversation normally would turn to amending the federal Constitution to abolish the Electoral College. But the state Senate has just passed a bill that would achieve a comparable effect by simple statute.

The bill provides that, if enough states join in to command a majority in the Electoral College, all of North Carolina's electoral votes will be awarded to the winner of the popular vote — not the statewide winner, but the one who wins nationwide. More than 40 states are already looking at substantially the same bill.

If it works as planned, the problem goes away, with no violence done to the Constitution.

Something else happens, too. North Carolina will less often find itself in political obscurity when the nation chooses its top leader.

During the 2000 election, one analyst noted that the candidates were focusing most of their time and effort on 11 swing states. Ironically, only three of those had more electoral votes than North Carolina, which was not one of the 11. If candidates understand that they have a real shot at our 15 electoral votes right up until the polls close on that fateful Tuesday in November, we are unlikely to be shrugged off or taken for granted again.

The arguments against it are no stronger than those for retaining the Electoral College in all its supreme majesty: (1) it's different; and (2) it means that North Carolina could end up giving its 15 votes to someone not favored by the majority of Tar Heel voters. The first argument lacks heft. The second would make perfect sense, but only if one could ignore the fact that presidential elections are held to enable individual Americans to put someone in the White House, not merely to express each state's collective pique or pleasure.

This is worth a try — for the sake of simplicity and fairness, and in the interest of raising our state's political profile.

Drop Out of the College

New York Times editorial

March 14, 2006

The Electoral College is an antidemocratic relic. Everyone who remembers 2000 knows that it can lead to the election of the candidate who loses the popular vote as president. But the Electoral College's other serious flaws are perhaps even more debilitating for a democracy. It focuses presidential elections on just a handful of battleground states, and pushes the rest of the nation's voters to the sidelines.

There is an innovative new proposal for states to take the lead in undoing the Electoral College. Legislatures across the country should get behind it.

Both parties should have reason to fear the college's perverse effects. In 2000, the Democrats lost out. But in 2004, a shift of 60,000 votes in Ohio would have elected John Kerry, even though he lost the national popular vote decisively.

Just as serious is the way the Electoral College distorts presidential campaigns. Candidates have no incentive to campaign in, or address the concerns of, states that reliably vote for a particular party. In recent years, the battleground in presidential elections has shrunk drastically. In 1960, 24 states, with 327 electoral votes, were battleground states, according to estimates by National Popular Vote, the bipartisan coalition making the new proposal. In 2004, only 13 states, with 159 electoral votes, were. As a result, campaigns and national priorities are stacked in favor of a few strategic states. Ethanol fuel, a pet issue of Iowa farmers, is discussed a lot. But issues of equal concern to states like Alabama, California, New York and Indiana are not.

The Electoral College discourages turnout because voters in two-thirds of the nation know well before Election Day who will win their states. It also discriminates among voters by weighing presidential votes unequally. A Wyoming voter has about four times as much impact on selecting that state's electors as a California voter does on selecting that state's.

The answer to all of these problems is direct election of the president. Past attempts to abolish the Electoral College by amending the Constitution have run into difficulty. But National Popular Vote, which includes several former members of Congress, is offering an ingenious solution that would not require a constitutional amendment. It proposes that states commit to casting their electoral votes for the winner of the national popular vote. These promises would become binding only when states representing a majority of the Electoral College signed on. Then any candidate who won the popular vote would be sure to win the White House.

The coalition is starting out by trying to have laws passed in Illinois and a few other states. Americans are rightly cautious about tinkering with mechanisms established by the Constitution. But throughout the nation's history, there have been a series of reforms affecting how elections are conducted, like the ones that gave blacks and women the vote and provided for the direct election of United States senators. Sidestepping the Electoral

Sen. Bettye Davis

From: Joyce Hilyard [alaskajoyce2003@yahoo.com]
Sent: Sunday, January 31, 2010 7:56 PM
To: Senator_Joe_Paskavan@legis.state.ak.us
Cc: "Senator_Linda_Menard"@legis.state.ak.us; "Senator_Kevin_Meyer"@legis.state.ak.us;
"Senator_Hollis_French"@legis.state.ak.us; Sen. Albert Kookesh; Sen. Bettye Davis
Subject: Fw:

> To the Senate State Affairs
> Committee
> I would like to lend my support to SB 92, US Presidential Election
> Compact.
>
> Currently, the modern machinations of political campaigning, many
> states are essentially "left out" and their results of little concern
> to campaigns, their pollsters, or the news media. How disheartening
> is it for Alaskans to discover the election has already been called
> even before all our votes are cast?
>
> Alaska deserves better.
> Respectfully,
> Joyce G. Hilyard
>
>
>
>

Sen. Bettye Davis

From: lori@motznic.com on behalf of Lori Davey [lori@trentandlori.com]
Sent: Monday, February 01, 2010 5:49 PM
To: Sen. Linda Menard
Cc: Sen. Kevin Meyer; Sen. Hollis French; Sen. Albert Kookesh; Sen. Joe Paskvan; Sen. Bettye Davis
Subject: SB 92 Pular Vote

Sen. Linda Menard, Chair
Members of the State Affairs Committee

I strongly support SB 92, a bill to enter into an interstate compact for a popular vote for Presidential elections.

After looking at a number of sources on this important issue, I have concluded three basic advantages of this type of election; those being:

Nationwide popular election of the President is the only system that:

- (1) makes all states competitive in presidential elections,
- (2) guarantees that the candidate with the most popular votes nationwide wins the Presidency, and most importantly
- (3) makes every vote equal.

I have been following the issue and am very excited to see that Alaska will now have an opportunity to comment in the form of this proposed legislation. This bill will give Alaska an opportunity to gain parity in Presidential elections.

Sincerely,

Lori Davey
17420 Mountainside Village Dr
Anchorage, AK 99516

RECEIVED
FEB 02 2010

Sen. Bettye Davis

From: james gilles [bigchief46@hotmail.com]
Sent: Monday, February 01, 2010 4:27 PM
To: Sen. Linda Menard; Sen. Kevin Meyer; senator_hollis_french@legis.state.ak.su; Sen. Albert Kookesh; Sen. Joe Paskvan; Sen. Bettye Davis
Subject: popular vote

Dear Senator Linda Menard, Chair
& Members of the State Affairs Committee:

Please consider supporting SB 92, in reference to a popular vote for Presidential elections. The current electoral system needs updating, a direct election of the president is just plain common sense as that is the system that's in place for all other elective officials.....

Thank you,

Jim Gilles

HC 52

P.O. Box 8505

Bird Creek, Alaska

99540

907-223-0324

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Senator Bettye Davis@legis.state.ak.us
<http://www.aksenate.org>

Session: (Jan. - May)

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716 W. 4th Ave, Suite 400, Anchorage, AK 99501 Phone: (907) 269-0144 • Fax: (907) 269-0148

Dear Senator French:

I respectfully request a hearing to be scheduled at your earliest convenience for Senate Bill 92: An Act ratifying an interstate compact to elect the President and Vice-President of the United States by national popular vote; and making related changes to statutes applicable to the selection by voters of electors for candidates for President and Vice-President of the United States and to the duties of those electors.

If the Committee requires additional information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Quinn Kendall".

Quinn Kendall

Senator Davis's Intern