

SB

39

<TARGET><BILL>SB 39</BILL><SUBJECT>SB
39</SUBJECT><COMM>SJUD27</COMM></TARGET>



Senator Hollis French

Sponsor Statement

SB 39 – U.S. Presidential Election Compact

If there is one bedrock rule in elections it is this: the person with the most votes is the winner. This legislation would guarantee the Presidency to the candidate who receives the most votes in the United States.

The concept of 'the person with the most votes wins' is simple, but it hasn't always worked out that way in our Presidential elections.

In 1876 Samuel Tilden received 254,000 more votes than Rutherford Hayes; however, Hayes won the Electoral College tally by one vote by having won a number of states by very small margins. In 1888 Grover Cleveland led in the popular vote over Benjamin Harrison, 48.6 percent to 47.8 percent, but Harrison won the Electoral College by a 233-168 margin, largely by virtue of his 1 percent win in Cleveland's home state of New York. In 2000 Al Gore won the popular vote by just over 500,000 votes but lost in the Electoral College to George Bush 266-271. In 2004 a shift of only 60,000 votes in Ohio from George Bush to John Kerry would have resulted in Kerry winning the Electoral College despite losing the popular vote by over 3 million votes.

SB 39 corrects this defect in our Presidential elections not by doing away with the Electoral College but by modifying how each state's electoral votes are cast. Currently the state's Electoral College votes are cast 100% in favor of the popular vote winner in the state. The bill would have Alaska join a compact made up of states that have pledged to cast their electoral votes in favor of the national popular vote winner. The compact would not go into effect until enough states have joined to put a majority of the Electoral College votes in the compact.

The choice of how to allocate our vote within the Electoral College was given to us by Article II, Section I of the US Constitution. The founding fathers of our country left the decision on how to select electors up to each individual state legislature. The US Supreme Court has written that "the appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States." *McPherson v. Blacker*, 146 U.S. 1 at 29 (1892).

Many believe that the current system causes candidates to focus on swing states, and swing state issues, instead of approaching the country as a whole. It is beyond dispute that under the current system candidates spend their campaign funds on just a few states. Here's an example of how this plays out in Alaska. During the final 40 days of the 2008 election, 99% of all media expenditures were made in 17 states. Alaska, needless to say, was not one of them.

In a close presidential election that decides our country's future, all states should be swing states. Every vote should count, and should be sought by every candidate. This bill will promote truly national presidential campaigns, and it will ensure that the person sent to occupy the most powerful office in the world is the one who got the most votes in the election.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number 1
 Bill Version SB 39
 (S) Publish Date 2/11/11

Identifier (file name) SB039OOG-DOE-1-29-11 Dept. Affected OOG
 Title "An Act ratifying an interstate compact to elect the President
and Vice President of the United States by national popular.." Appropriation Elections
 Allocation Elections
 Sponsor Senator French
 Requester Senate State Affairs Committee OMB Component Number 21

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Gail Fenumiai, Director
 Division Division of Elections
 Approved by Linda Perez, Administrative Director
Office of the Governor

Phone 465-2644
 Date/Time 1/29/2011, 4:41pm
 Date 1/29/2011

FISCAL NOTE #2

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

BILL NO. SB 39

Analysis

This legislation has no fiscal impact for the Division of Elections.

LEGAL SERVICES

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

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Mail Stop 3101

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

MEMORANDUM

January 27, 2011

SUBJECT: Sectional summary of SB 39 (Work Order No. 27-LS0372/A)

TO: Senator Hollis French
Attn: Andy Moderow

FROM: Alpheus Bullard *AB*
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
11-051.ljw



March 9, 2010

"Agreement Among the States to Elect the President by National Popular Vote"

The National Popular Vote bill would guarantee the Presidency to the candidate who receives the most popular votes in all 50 states (and the District of Columbia).

The bill has passed 29 legislative chambers in 19 states (AR, CA, CO, CT, DE, HI, IL, ME, MD, MA, MI, NV, NJ, NM, NC, OR, RI, VT, WA) and been endorsed by 1,825 state legislators.

The bill has been enacted by state legislatures representing 61 electoral votes — 23% of the 270 necessary to activate the law (Hawaii, Illinois, Maryland, New Jersey, and Washington).

The shortcomings of the current system stem from 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).

Because of the winner-take-all rule, a candidate can win 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). A shift of fewer than 60,000 votes in Ohio in 2004 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.

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. It was not the Founder's choice and was used by only 3 states in the nation's first presidential election in 1789. Maine and Nebraska currently award electoral votes by congressional district — a reminder that an amendment to the U.S. Constitution is not required to change the way the President is elected.

Under the National Popular Vote 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). The bill would replace the current state-by-state system of awarding electoral votes with a system based on winning the most individual votes in all 50 states (and DC).

The bill has been endorsed by the *New York Times*, *Chicago Sun-Times*, *Minneapolis Star-Tribune*, *Los Angeles Times*, *Boston Globe*, *Sacramento Bee*, *Common Cause*, and *Fair Vote*.

State polls show strong support for a national popular vote (AK-70%, AR-80%, CA-70%, CO-68%, CT-74%, DC-76%, DE-75%, ID-77%, IA-75%, KY-80%, ME-77%, MA-73%, MI-73%, MS-77%, MO-70%, NH-69%, NE-74%, NV-72%, NM-76%, NY-79%, NC-74%, OH-70%, OK-81%, PA-78%, RI-74%, SD-75%, UT-70%, VT-75%, VA-74%, WA-77%, WI-71%, and WV-81%). Support is strong in every partisan and demographic group.

The National Advisory Board of National Popular Vote includes former congressmen John Anderson (R-Illinois and later independent presidential candidate), John Buchanan (R-Alabama), Tom Campbell (R-California), and Tom Downey (D-New York) and former Senators Birch Bayh (D-Indiana), David Durenberger (R-Minnesota), and Jake Garn (R-Utah).

Additional information is available in our book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* and at www.NationalPopularVote.com.

In summary, the National Popular Vote bill will guarantee that every voter in every state will be politically relevant in every presidential election and that every vote will be equal.

The New York Times

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 College would be in this worthy tradition of making American democracy more democratic.

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.



Alaska Survey Results

Q1 How do you think we should elect the President: should it be the candidate who gets the most votes in all 50 states, or the current electoral college system? If you think it should be the candidate who gets the most votes in all 50 states, press 1. If you think it should be the current electoral college system, press 2.

<i>Candidate who gets the most votes in all 50 states</i>	<i>Current electoral college system</i>
70%	30%

Q2 If you are a woman, press 1, if a man, press 2.

<i>Women</i>	<i>Men</i>
54%	46%

Q3 If you are a Democrat, press 1. If a Republican, press 2. If nonpartisan, press 3. If Alaskan Independent Party, press 4. If Republican Moderate Party, press 5. If Green Party, press 6. If other, press 7.

<i>Democrat</i>	18%
<i>Republican</i>	33%
<i>Nonpartisan</i>	44%
<i>Alaskan Independent Party</i>	1%
<i>Other</i>	4%

Q4 If you are white, press 1. If black, press 2. If Alaska native, press 3. If Asian, press 4. If other, press 5.

<i>White</i>	80%	<i>Asian</i>	1%
<i>Black</i>	4%	<i>Other</i>	10%
<i>Alaska Native</i>	5%		

Q5 If you are 18 to 29 years old, press 1 now. If you are 30 to 45, press 2. If you are 46 to 65, press 3. If older than 65, press 4.

<i>18-29</i>	9%	<i>46-65</i>	41%
<i>30-45</i>	34%	<i>Older than 65</i>	15%

Q6 Are you or is someone in your household a member of a labor union? If yes, press 1. If no, press 2.

<i>Yes</i>	28%
<i>No</i>	72%



Lila Hobbs

From: Bill Parker [billparkerak@yahoo.com]
Sent: Monday, February 14, 2011 10:54 PM
To: Sen. Hollis French
Subject: Support SB 39

The electoral college is an anachronism. The one person, one vote principle makes it illogical. The perceived political advantage for small-population states like ours is outweighed by our duty for equality for all Americans in choosing a President. Please share this with the members of your committee.

Thank You.
Bill Parker
Patrice Parker

Sent from my iPhone

Lila Hobbs

From: Nicholes New [nicholesnew@yahoo.com]
Sent: Monday, February 14, 2011 9:23 PM
To: Sen. Hollis French
Subject: Senate Bill 39, US Presidential Election Compact Bill.

Greetings Senator French,

I am an Alaskan resident and registered voter, who would like to commend and support you in any way that I can with regards to your sponsorship of the Senate Bill 39, US Presidential Election Compact Bill.

I have read the bill and fully understand the effects this bill would have on the residents of Alaska. The opportunity for Alaska to join a compact made up of states that have pledged to cast their electoral votes in favor of the national popular vote winner is a commendable step towards making this great state a presence as much as the 17 states that are focused on at this time. In other words, to me, this bill will give way to a fair and balanced system to encourage and persuade Candidates to focus on all the people; rather than an esoteric group that may have all the power.

I feel this bill is a step into a higher rank of democracy and must be carried with the peoples voice as far as it can reach. I can not convey my passion for your support in this bill.

Having met you personally I feel confident in your endorsement of this bill and wish you all the luck in your pursuit of same.

With Best regards, I am

Sincerely,
Nichole Dewey
nicholesnew@yahoo.com

- Post office box 101528
- Anchorage, AK 99502
- (907)350-9324

Lila Hobbs

From: tom biss [tombiss823@gmail.com]
Sent: Monday, February 14, 2011 8:49 PM
To: Sen. Hollis French
Subject: Supporting Senate Bill 39

Senator French,

I support your sponsorship of Senate Bill 39, US Presidential Election Compact and the beneficial modification it brings to our Electoral College. It may even bring a candidate to the State of Alaska for the first time in years.

V/r

Tom Biss

Lila Hobbs

From: Christopher Dewey [kenaidew@yahoo.com]
Sent: Monday, February 14, 2011 8:38 PM
To: Sen. Hollis French
Subject: SB 39 Support!

Good Morning Senator French,

Thank you for sponsoring Senate Bill 39, US Presidential Election Compact. I lend my whole hearted support to return the power of voting back to the people. Alaskans will have more say in determining the US President and it will ensure a more evenly divided campaign effort from the candidates.

Regards,

Christopher D. Dewey
7038-A Arnold Ave
JBER, AK 99506

We won't tell. Get more on [shows you hate to love](#)
(and love to hate): [Yahoo! TV's Guilty Pleasures list](#).

Lila Hobbs

From: heathedward@gmail.com on behalf of Heath Hilyard [Heath@HeathEdward.com]
Sent: Monday, February 14, 2011 4:44 PM
To: Sen. Hollis French
Cc: Sen. Bill Wielechowski; Sen. Joe Paskvan; Sen. Lesil McGuire; Sen. John Coghill
Subject: Support for SB 39 - National Popular Vote

Senator French and Members of the Senate Judiciary Committee:

I would like to take this opportunity to support SB 39 - *U.S. Presidential Election Compact*. As I'm sure you're aware there have been a variety of efforts to reform the U.S. presidential election process in order to address the growing unfairness to states (specifically low population and/or geographically distant states) resulting from pre and post Primary presidential campaign strategies.

These concerns have long led critics to debate the ongoing relevance of the Electoral College. While I recognize that this bill does not ultimately address that larger issue, it does provide a workable alternative to increase parity among states during a presidential campaign.

There are a host of reasons why this legislation is necessary and timely, and I'm certain the committee will have the opportunity to hear from more eloquent speakers with greater expertise than I, so I won't belabor my comments with excessive information you're likely to otherwise be provided.

I appreciate the opportunity to comment on this important legislation.

Respectfully,
Heath E. Hilyard
3105 Eureka, Apt. 5
Anchorage, AK 99503

Lila Hobbs

From: Jack Heesch [akjack@gci.net]
Sent: Monday, February 14, 2011 3:37 PM
To: Sen. Hollis French
Subject: SB39

Senator French:

I want to express my support for SB 39 allowing for a direct vote for the President of the US.

Thank you for introducing and supporting this legislation.

Jack Heesch

Jack R. Heesch, President
The J.R. Heesch Company
P.O. Box 201608
Anchorage, Alaska 99520-1608
(907) 277-7316
(201) 725-0199 cell
akjack@gci.net

Lila Hobbs

From: Jim Babb [jimb66089@gmail.com]
Sent: Monday, February 14, 2011 3:31 PM
To: Sen. Hollis French
Subject: SB-39

Dear Hollis,

Please support SB-39 and ask the committee to do so also

Jim Babb
Anchorage, AK 99503

Cindy Smith

From: Hardaway, Robert [rhardawa@law.du.edu]
Sent: Monday, February 21, 2011 1:24 PM
To: Cindy Smith
Cc: 'Tara Ross'
Subject: FW: Comments of Prof. Hardaway on S.31
Attachments: Statement of Professors Opposing HB 1299.doc; the Case for Preserving Federalism.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

From: Hardaway, Robert
Sent: Monday, February 07, 2011 7:46 PM
To: 'bleber@leg.state.vt.us'
Subject: Comments of Prof. Hardaway on S.31

Re: Hearings on Koza Scheme to cast Alaska's electoral votes in contravention of the vote of the people of Alaska

Dear Ms. Smith,

Although I plan to phone in to give a statement before the Alaska legislative hearing scheduled for 3:30 this Wednesday, I was hoping that you would forward this e-mail, along with its attachments to Senator Hollis French.

My name is Robert Hardaway, Professor of Law at the University of Denver Sturm College of Law. I am the author of a number of articles and books on the Electoral College, including "The Electoral College and the Constitution: The Case for preserving Federalism" (Praeger Press), and "Crisis at the Polls" (Greenwood Press). I have also attached an article I wrote for the Arkansas Democrat Gazette entitled "The Case for Preserving Federalism".

I have also attached a statement of professors who opposed a similar bill in the Colorado legislature, including a list of questions to pose to all those supporting a "Koza" type scheme under which a small minority of states could elect a president and in which a state legislature would be required to ignore the vote of the people in their state in casting its state's electoral votes.

I will leave it to others to lay out the case against undermining the "Grand Compromise" enshrined in the U.S. Constitution to protect the small states, as well as the risks of electing a president with a small minority of the votes case which would occur if the federalist structure of our system of government were to be abolished by circumventing the amendment process.

Instead, I would simply point out that the Koza scheme set forth no national plan for conducting recounts. Instead, recounts would be left to each individual state to conduct under their own laws, with the result that even though the national popular vote might be very close, only some states would conduct a recount, while others not a party to the Koza scheme could be required under their own state laws to opt out of a recount entirely. The result in the case of a close national popular vote would be a catastrophe of unimaginable proportions.

If others are adamant about undermining federalism by abolishing the twin prongs of the Grand Compromise (which include both the Electoral College and the U.S. Senate), they should be encouraged to first work to abolish the Senate, and only then to abolish the second prong to which it is attached.

In order to preserve the separation of powers, the Framers did not want the president to be chosen by (and thereby beholden to) Congress, and thus established a secondary body modeled on a parliament whose only responsibility would be to elect the president. Just as in 1974 in Britain when Labor won the popular vote but did not form the government because it did not elect a majority of members to parliament, once every hundred years or so the electoral vote does not jibe with the popular vote. That result every hundred years neither justifies the abolition of parliament in Great Britain or the abolishment of federalism in the U.S., and sweep away an electoral system that has been the envy of the world.

Nor after all the gains that minorities have won over the past half century should their rights be taken away through the abolition of federalism. As Vernon Jordan, president of the Urban League testified in 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."

Please feel free to call me 24/7 if you have any questions at 303-345-5220.

Respectfully submitted,

Robert Hardaway

Professor of Law

University of Denver Sturm College of Law

2255 E. Evans

Denver, CO, 80208

**PROPOSED QUESTIONS TO BE CONSIDERED AND ANSWERED
BY COLORADO SENATORS PRIOR TO VOTING ON HOUSE BILL
09-1299**

(Submitted by undersigned Professors)

1. Given that the Colorado Constitution specifically provides that “the electors of the electoral college shall be chosen by direct vote of the people” [Section 20, Colorado Constitution, Schedule], will supporters of House Bill 1299 attach a rider to that bill amending the Colorado Constitution to permit the legislature to select electors other than those chosen by direct vote of the people of Colorado?

2. Inasmuch as the House Bill 1299 includes no provision for a national recount in presidential elections, and there currently exists no federal law provision for conducting recounts in close elections, how would the Colorado legislature allocate its electoral votes in close elections in which some, but not necessarily all states are independently conducting recounts according to their own state’s laws and in which the “chief election official” of those states conducting recounts has not certified the popular vote of such state by the First Monday after the second Wednesday in December of an election year due to pending unresolved recounts and court challenges in those states?

Illustration: In 1960, media tabulators of the popular vote gave Kennedy a narrow popular vote margin; however, the Congressional Quarterly declared Nixon the popular vote winner by a relative handful of popular votes. *To this day*, historians can not determine the popular vote winner, since a recount of over 70 million votes in over 42,000 voting districts would have taken years and rendered a different result in each recount. Pierce and Longley’s massive study of Americans elections has concluded that it was “impossible to determine what Kennedy’s vote plurality—if it existed at all—really was. (Emphasis added)

Question 2A: In such a scenario, how would the Colorado legislature cast its electoral votes if it was a Koza member?

3. Inasmuch as federal law [Title 3, Sec. 3] provides that *governor* of each state is required to certify the electoral votes of his state, how should the Colorado legislature cast its electoral votes if the “chief election official” (as provided by the Koza scheme) asserts that

candidate A has a popular vote lead as of the first Monday after the second Wednesday in December, but the governor asserts that candidate B is actually in the lead for the time being, or asserts that the popular vote can not be determined due to pending recounts in some but not necessarily all of the states?

4. If after a presidential election a Koza scheme member state decides to withdraw from the “compact” with other Koza members prior to the time permitted under the Koza scheme (either because it can not determine a popular vote winner in the other states, or its Supreme Court has declared the Koza scheme unconstitutional, or for any other reason), how would the other Koza member states enforce the compact against another state allegedly prematurely withdrawing from the compact?

5. If after a presidential election, members of the Colorado legislature believe that election fraud has occurred in other states, or that the closeness of the national popular vote justifies a national recount, how would Colorado go about forcing other non-Koza states to conduct a recount if such a recount would violate the election laws and provisions of those other states? How would it force Koza states to conduct such recounts?

6. Given that there is presently no national provision for a nationwide recount of popular votes, nor any federal law authorizing such a recount, how would a national recount of the popular vote in all the states be conducted in cases where the closeness of the popular vote justifies such a recount? (Note: some, but not all states provide for an *automatic* recount in elections in which the difference in the popular vote is below a certain percentage)

7. If the popular vote is so fractured that no one candidate has either a majority or plurality above 20% of the popular vote, what would be the procedure under the Koza scheme for a run-off in order to insure that a candidate receives either a majority or at least a substantial plurality of the popular vote?(note: virtually all countries using a popular vote method—such as Russia—at least provide for a run-off)

8. Given that the U.S. Constitution *specifically* and unambiguously prohibits the states from entering into “any agreement, or compact with another state” [ART I, Sec 10(3)], (with only narrowly drawn judicial exclusions relating to settlement of disputes on mundane matters such as water rights, etc.), and that the Supreme Court has NEVER approved compacts or conspiracies among the states to undermine federalism or reformulate the constitutional process for presidential elections, do the supporters of House Bill 1299 intend to attach a rider to that bill proposing an amendment to the U.S. Constitution to abolish the express prohibition of such compacts and conspiracies?

9. How would the legislature best explain to the people of Colorado that the legislature chose to overrule the people’s choice of electors pledged to a particular candidate in elections in which, like in 1960, the popular vote can not be determined—all in violation of the Colorado Constitution?

Professor Jim Riley, Professor of Politics
Regis University

Professor Robert Hardaway, Professor of Law
University of Denver Sturm College of Law

If the above questions can not be adequately answered, the undersigned urge consideration of the following ten reasons to vote against HB 1299:

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

1. Violates 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. Undermines 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-passes 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. Diminishes 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. Subverts 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. Results 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. Compromises 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. Dooms 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. Wipes 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. Violates 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."

For these reasons we urge the defeat of HB 1299.

Signed:

Robert M. Hardaway, Professor of Law, University of Denver Sturm College of Law

Jim L. Riley, Professor of Politics, Regis University

(Note: five additional professors from local colleges and universities signed the above ten grounds for opposing HB 1299 in 2007; their names are not listed here today because of insufficient time to contact them to verify their continued opposition).

The case for preserving federalism

BY ROBERT HARDAWAY
SPECIAL TO THE DEMOCRAT-GAZETTE

As the nation gets ready for another presidential election, there are an increasing number of calls for popular election of the president and the abolition of the Electoral College. Such calls are not new. Since 1787, there have been more than 700 bills and proposed constitutional amendments to reform or abolish the Electoral College. All have failed, and the reasons are both political and practical.

The U.S. Constitution itself almost failed to become the supreme law of the land because the small states adamantly refused to join a union in which the large states would dominate the small states in a national legislature. On the verge of dissolution, the Constitutional Convention of 1787 proposed a two-pronged compromise that ultimately saved the union: First, a lower house of the legislature would be elected based on population, while an upper house would guarantee equal representation of each state regardless of population; second, the president would be elected by electors chosen by each state and equal in number to the number of representatives elected by each state to Congress.

Indeed, so critical was this compromise to the establishment of a federal union that the small states insisted that its primary feature be enshrined as the only provision in the Constitution which could not be amended except by unanimous agreement of all the states. Thus under the Constitution, a single state can veto any proposed constitutional amendment to undermine federalism by calling for representation in the Senate based on "one man, one vote" rather than on equal representation of the states.

Nevertheless, if reformers are truly concerned about the fact that citizens of the smaller states have a disproportionate voice in Congress, the first step would be to abolish the U.S. Senate (the first prong of the grand compromise that united the union). The second step would be to abolish the Electoral College (the second prong of the grand compromise, which is inextricably bound up with the first.).

A young Sen. John Kennedy eloquently made this very point when in 1956 he opposed a Senate bill for popular election of the president, stating that "It is not only the unit vote for the presidency we are talking about, but a whole 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."

At the Constitutional Convention of 1787, only John Hamilton proposed abolishing the states and creating a centralized government rather than a federal system of government based on shared and delegated powers. His proposal was overwhelmingly defeated; as have 700 bills submitted since then to undermine federalism by abolishing the Electoral College.

Advocates of popular election often claim that no other democratic country would tolerate an election in which the popular vote winner is not elected. In fact, this occurs quite frequently in all countries with parliamentary systems. In England, for example, prime ministers are elected by members of Parliament. In 1974, the Labor Party lost the national popular vote by a healthy margin, but nevertheless won three more seats in Parliament, with the result that Labor was able to form the government. As far as can be determined, there was no rioting in the streets or "appeals to the United Nations."

Proposals for "popular election" are often based on an appeal to democratic principles. In fact, so-called "popular" elections rarely produce a leader approved by a majority of the people. Such elections inevitably require "run-offs" in which the two most organized parties often make the cutoff despite lacking widespread support. For example, in the popular election conducted in Russia in 1993, a runoff came within a whisker of presenting the electorate with a choice between a neo-fascist (who blamed the Jews for starting wars and advocated invading Alaska) but who received but 23 percent of the vote, and a hard-core communist who came within a percentage point of finishing second—despite the fact that over two-thirds of the electorate opposed both candidates.

The Founding Fathers understood that the legitimacy of a leader must be based on support of the people that is broad as well as deep. They foresaw the possibility that under a "popular" election system, a regional demagogue might gain overwhelming support in one region of the country, but be strongly opposed by the rest of the country. For example, a segregationist who ran for president in the 1950s might well have succeeded in getting 90 percent of the vote in the deep South and thus win the popular vote, even though he was opposed by majorities of the people in three-quarters of the remaining states. The Electoral College prevents such a result, and insures that a president have broad support across the entire country, not just overwhelming support in one region.

Over the last 200 years, we have

become spoiled by the success of the Electoral College in providing the democratic infrastructure for the peaceful transfer of power. Without it, our two-party system would quickly degenerate into a multiplicity of small parties; with the result that minority presidents elected in "runoffs" would rule. In Italy, for example, governments rise and fall from month to month as contentious small parties ebb and flow.

We have also become accustomed to the definitive and speedy result. In 1960, an election based on the popular vote would have been too close to call for several months as recounts went on interminably in every state. Indeed, it has been estimated that the presidency would have been in limbo for as long as six months during a time of nuclear crisis and the Cold War. Fortunately, the Electoral College provided an instant winner in the form of an overwhelming victory for John Kennedy in the Electoral College despite the incredible closeness of the popular vote—thus saving the country from a destabilizing crisis.

True, once every 100 years on average, the vote in the Electoral College is so close that a recount in a single state can affect the election. Indeed, this occurred in 2000, as it did in 1876. But consider what would have happened in 2000 had the country adopted a popular election system. Instead of isolating the recount to one state (Florida), recounts would have been necessary in all 50 states, thus multiplying the national trauma. The country would have been lucky to have a president within the next year.

Minorities are also sure to oppose the abolition of the Electoral College. As Vernon Jordan, president of the Urban League, observed, "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 percent of the total electorate, with reduced impact."

It is just possible that the founding fathers knew what they were doing when they devised an electoral system that over a period of two centuries has proved to be the envy of the world.

Robert Hardaway is professor of law at the University of Denver College of Law and the author of 14 books on law and public policy. He first debated the issue of the Electoral College with classmate Al Gore in government class at St. Albans High School in Washington, D.C.

Sunday Crossword Puzzle

THE STATE OF ALASKA
SENATE JUDICIARY COMMITTEE

*SB 39: An Act ratifying an interstate compact to elect the
President and Vice-President of the United States by national popular vote*
February 2011

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

Overview

I urge you to vote against SB 39. It would create many new, logistical problems for our presidential election process. It would also essentially eliminate the Electoral College, an institution that protects less densely populated states such as Alaska and is critical to the success of our republican democracy.

Problems Created by SB 39. The National Popular Vote plan proposed by SB 39 contains many hidden problems. NPV awards the presidency to the winner of any plurality—even a very small one. Alaska could be required to cast its electoral votes for a candidate who did not qualify for the ballot in Alaska. Recounts would be controlled by 51 different standards (50 states plus D.C.), rather than one national standard. Chaos, litigation, and confusion would result. Some voters would be disenfranchised because their votes would be counted in different ways, depending on their state of residence.

Applying the Electoral College Today. The Electoral College provides many benefits that still serve Americans:

- **The Benefits of Federalism.** Presidential candidates must build national coalitions of voters. Historically speaking, the candidate who builds the broadest coalition will win. Thus, presidents are good representatives for all Americans; they do not merely represent one region, state, or special interest group.
- **Moderation and Compromise.** The Electoral College encourages Americans to work together, across state lines. A direct election system, by contrast, would result in multi-party presidential races, a fractured electorate, increasingly extremist third-party candidates, and constant recounts.
- **Stability and Certainty in Elections.** The Electoral College typically produces quick and undisputed outcomes. Any problems are isolated to one or a handful of states. Fraud is minimized because it is hard to predict where stolen votes will matter.

Conclusion. We must not allow the Electoral College to be eliminated through legislation such as SB 39. This important aspect of our Constitution continues to protect our freedom, just as it did when it was created in 1787.

**THE STATE OF ALASKA
SENATE JUDICIARY COMMITTEE**

*SB 39: An Act ratifying an interstate compact to elect the
President and Vice-President of the United States by national popular vote*
February 2011

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

Full Testimony

The bill before you, SB 39, 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 less densely populated 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 39 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 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 current presidential election process blends federalist and democratic principles. America holds 51 completely separate, purely democratic elections each presidential election year (one in each state, plus D.C.). Local election laws impact the manner in which each of these elections is held, but any differences among states' election codes don't matter. The unique laws of any particular state impact only voters within that state. The country holds 51 completely separate elections, and it achieves 51 different sets of results. Each state's single goal is to select a slate of electors that will represent it in the later, national election among the states. NPV would change this. America would still hold 51 separate elections, but NPV would attempt to derive one single result from these 51 elections. Suddenly, internal variances among states' processes—previously irrelevant—would matter a great deal. Seeking change through a constitutional amendment would avoid these problems. An amendment would help establish one set of national laws to govern one national election. Instead, consider just a few of the logistical problems that could occur with NPV in place:

First, note that NPV can't force states that have rejected NPV to participate in a run-off. Thus, it gives the presidency to the candidate winning *any* plurality, even a very small one. **NPV is not looking for a majority winner. It is not even looking for a minimum plurality.** As a practical and logistical matter, it can't. Thus, a candidate could win with only 15 or 20 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. Imagine, for instance, that Ron Paul qualifies for the ballot in Texas and obtains a winning plurality solely from Texas voters. Paul did not bother to qualify for the ballot in a place like Alaska. Voters in that state did not have the chance to vote for—or against—him. Yet Alaska would *still* be forced to award its entire slate of electors to the choice of Texas voters. Alaska probably did not nominate a slate of electors for Paul because he was not on its ballot. NPV's compact offers a solution, but it is doubtful that voters in Alaska will like it. Paul would be entitled to personally appoint the three electors who will represent Alaska in the Electoral College vote. In all likelihood, he would select Texans to represent Alaska in the presidential election so that he would not be undermined by a "faithless" elector who was determined to vote for the choice of Alaska's voters.

There are other inconsistencies among states' ballots that would skew the election results. Some states allow felons to vote. Some states 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 Founders sought to reconcile two seemingly irreconcilable goals: They wanted the people to govern themselves, but they also wanted to protect minority interests. A pure democracy would not accomplish this objective because it allows 51 percent of the people to rule the other 49 percent—all the time, without exception. If America were 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 were tyrannical, racist, or penalized some for their religious beliefs. The Founders thus did not create a pure democracy. Instead, their Constitution tempers its democratic aspects with republican and federalist characteristics. Safeguards such as the Senate (one state, one vote representation), supermajority requirements to amend the Constitution, and the Electoral College allow the majority to rule, but only while it acts reasonably. Minority political interests 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 (each state, plus D.C.). Such a process combines democracy and federalism into one process. The result is that candidates can't win without 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. 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. 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.

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 (along with the winner-take-all rule) tends to magnify the margin of victory, giving the victor a certain and demonstrable election outcome. Such certainty can’t be provided by a direct popular election. Popular votes are often close, and these close votes can result in constant litigation and recounts. Second, the system controls the impact of fraud and error. 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 39.

February 22, 2011

The Hon. Hollis French
Chair
Judiciary Committee
Alaska State Legislature
Juneau, Alaska.

Dear Senator:

I respectfully request that you include the enclosed testimony with regard to SB in the record of tomorrow's hearing. I hope to also be able to testify by phone

As my testimony indicates, I am in my professional life the director of an organization that is non-partisan but deeply concerned with the political health and welfare of our democracy. As an individual, I am a liberal. But in both capacities, I believe the prospect of a direct election for president presents a great danger to the broader values underlying our democratic process and it also presents serious practical problems.

I hope you have an opportunity to read this testimony and that you and your colleagues might think twice before moving in this direction.

Thank you for your consideration.

Sincerely Yours,

Curtis Gans

TESTIMONY
of
Curtis Gans, Director
CENTER FOR THE STUDY OF THE AMERICAN ELECTORATE
to
JUDICIARY COMMITTEE
ALASKA STATE SENATE
Re: SB 39
February 8, 2011

My name is Curtis Gans. I am director of the Center for the Study for the American Electorate, a non-partisan, non-profit research and public policy development institution which I co-founded in 1976 and have been its executive director since that time. The primary mission of that institution has been to provide data and analysis about citizen participation in America's political life and to pursue bi-partisanly supported public policy initiatives aimed at enhancing voting and other forms of civic involvement. With respect the issues facing this hearing, I have testified twice before Congress on this issue, have written about it for more than one major publication, have been cited in a variety of publications and now am a mid-wife to a small bi-partisan study committee headed by former Reps. Mickey Edwards and Martin Frost looking for solutions to problems posed by the electoral college, solutions that do not include the direct election of the president.

I am grateful for the opportunity presented to express my considered views on this issue and thank both the elected officials and staff that made this testimony possible.

The question that is being raised by National Popular Vote and the campaign for direct elections for president is not whether our elections should be more democratic but rather what kind of democracy should the United States be.

The proponents of direct elections for president want to ensure: 1. That each citizen's vote to be equal to every other citizen's vote; 2. That the person who gets the greatest number of votes nationally becomes president, whether that vote count constitutes a majority of the American eligible citizens (a result never achieved by any candidate for president since 1824), a majority of those voting (achieved by about 60 percent of the persons elevated to the presidency) or only a plurality of those voting (a group that includes not only Al Gore but also Andrew Jackson, Abraham Lincoln, Woodrow Wilson, Harry S. Truman, John F. Kennedy, Richard Nixon, Bill Clinton and eight other presidents); and 3. That no minor party or independent candidate B a Ralph Nader, Ross Perot, John Anderson or George Wallace B can deny the person with the greatest number of citizen votes the presidency by denying him or her the electoral votes in one or more states..

Direct elections would accomplish all of these goals. The question is at what price.

The basic effect of moving from an electoral college system to direct elections would be to totally nationalize the election of American presidents with some major negative consequences, including but not limited to:

1. Manipulation: The central question in the creation of any system of election is its incentive structure -- what activities it encourages and what it does not. Arguably the worst thing that has happened in the modern era to the conduct of American politics is the coaxial cable and the free rein it has given political consultants to pollute our airwaves with attack ads every biennium -- driving up the cost of campaigns, driving voters both from the polls and increasingly from respect for political leadership or the political process as a whole.

While even with the electoral college increasingly the bulk of campaign resources are poured into televised political advertising, direct elections would insure that almost all monetary resources would be poured into such advertising. There would be virtually no incentive to try to mobilize constituencies, organize specific interests or devote any resources to such things as

voter registration and education. The result of direct elections is that campaigns would be run on the basis of polling the gross number of likely voters across America and targeting television messages to their interests and views. Our election would, in essence, not be a contest between two putative Presidents, but rather between two would-be king-makers, the non-responsible and increasingly irresponsible consultants who generate the advertising -- in a race to the bottom to see who can do the better job of turning off the other's potential voters.

As a corollary to a national media campaign is that the rest of a candidate's political activities would be to alight in various places for brief periods to get free media attention. And it is virtually certain that the places the candidates will alight will be those with the largest population and the greatest media reach. That does not, I think, include Alaska or unless a former governor is a nominee.

2. Grassroots engagement: The same incentives that would, under a direct election system, propel all campaign resources into television advertising would virtually eliminate the devotion of any resources to grassroots and citizen involvement. Under the electoral college, there is a strong incentive -- at least in some states -- for campaigns, interests and others to organize groups on the grassroots level because some of those groups may be determinative in winning state electoral votes. It is, for instance, in the Republican Party's interest to organize Christian conservatives in the south to offset the Democratic Party's advantage among African-Americans in the region.

But were the nation as a whole the only base of votes, it is unlikely that any campaign would find it cost-effective to devote any resources to organization and involvement. That, in turn, would undermine the already declining base of political participation and American pluralism.

3. Pluralism: The success of American democracy has rested, in part, on achieving a balance between the will and desires of the majority of Americans and recognizing the rights and

needs of various minorities. The electoral college serves to protect the latter in national politics.

To take the most obvious example, the number of farmers in the United States has dwindled so precipitously that nationally they are no longer a serious numerical factor in electoral outcomes -- despite the fact that most of the food we have on our tables is due to their individual and collective effort. In a system of direct elections, their concerns could easily be ignored. But because their votes are critical to winning electoral votes in several mid-western and western states, their needs must be addressed, their views must be solicited, their allegiances must be competed for.

The needs and aspirations of America's African-American population could easily be ignored in a direct election. They comprise perhaps 12 percent of the eligible electorate. But, in several Southern states, they account for nearly a majority of eligible citizens, and they comprise a significant and, perhaps on occasion, pivotal minorities in several northern states. The electoral college ensures, in national elections, that their views must be taken into account.

Union members, Christian fundamentalists, Latinos, fiscal conservatives, rural denizens are but a few of the significant minorities whose views and needs might be ignored if campaigns were totally nationalized.

American governance -- and the durability of its laws --derives its strength, not from the one-time expression of a national will, but from the coalescence of disparate interests into consensus. Direct election promotes a national will. The electoral college is a primary instrument for forging coalition and consensus.

4. Participation: The undermining of both grassroots activity and pluralism -- mobilization and sub-party level engagement cannot but have a negative effect on participation. So too will the aggregation of votes solely on a national level.

In this age of intense polling, where the movement of national numbers in the Presidential horse-race is tracked more intensively and surely more publicly than the heartbeat and blood pressure of a patient in intensive care, it will become increasingly difficult for the citizen to see how his vote will make much difference in a national electorate in which the margins of victory are usually in the millions of votes. It is much more likely that a citizen will see, in most jurisdictions (the District of Columbia excepted), his or her vote making a difference in the hundreds or thousands (as in less than 1,000 in Florida in 2000) which determine the allocation of electoral votes in individual states. In a sense the existence of an electoral college enhances both the perception and reality of electoral competition, where direct elections acts in precisely the opposite direction.

In recent elections, because of the intense focus of campaign activity B including massive grassroots campaigns, coalition building in those states and effective person-to-person get out the vote campaigns B turnout in the "battleground states" has substantially exceeded that of the other states that have been neglected or get only a televised advertising campaign.

5. Federalism: There were times, particularly in the 1960's, when those who supported segregation of the races tended to use the cover of state's rights to mask their desire to keep African-Americans in their place, when the structure of American federalism -- the diffusion of power between the national government and the states and localities -- was called into question.

More recently, however, there is a bi- or multi-partisan consensus that the idea of states and localities might be a good one -- that the administration of many programs is better handled at levels closer to the citizenry, that the states do serve as innovators and laboratories for useful, productive and, particularly in the cases of welfare reform and crime control, better public policy solutions than the national government can formulate.

In national politics, the instrumentality which forces consideration of federalism is the electoral college. By mandating the gathering of votes by states, it forces the engagement of state

leaders and party organizations and elevates concern about state and local issues. We sacrifice that, I believe, to the detriment of the welfare of American democracy.

6. Recounts: While the situation may not occur often, but likely might have occurred both in the 1960 and 2000 elections, a very close election B with disputes over the validity of votes and the bona fides of some casting ballots B might call for a recount as occurred in Florida in 2000 and might have occurred in Illinois and Texas in 1960 but for the grace, then, of Richard Nixon. But if such a recount were needed, one would need a recount of all the ballots cast in the nation, a process that would make the 37-days of recounts, contention and court decisions in Florida in 2000 seem like a pleasant walk in the park.

Supporters of direct elections usually cite polls to buttress their position -- polls which show a majority of Americans supporting direct elections. But I would venture to say that none of those polls raise the consequences of direct elections in the questions that are asked. Were the public asked not only whether they desired direct elections, but whether they desired direct elections even if it meant campaigns only run on television, erosion of grassroots activity and pluralism, declining voter participation and the erosion of federalism, the results might be very different.

Our founding fathers may not have had the best reasons for adopting an indirect system for the election of Presidents. But American democracy has survived, prospered, grown and strengthened under this means of electing our presidents and despite the fact that a handful of winners of a plurality of the national vote were not elevated to the presidency. It is not at all clear whether it would prosper equally in a direct election system.

The electoral college system of electing presidents is not without its flaws, the two most prominent of which are the limited number of states in which the presidency is contested and the profoundly inequitable procedure for decided elections in which neither candidate gets a majority of electoral votes.

Under the present electoral college system and with the exception of Maine and Nebraska, the winner of the popular vote in each state B whether the margin of victory is one vote or 1 million B gets all the electoral votes of that state. So, in states where, by demography and history, one party is assured of victory and the other of defeat, both parties abandon those states in favor of states where there is competition and the electoral votes at stake may determine the electoral college outcome. So, in many recent elections as few as 12 states have been in play. But the problem is not the electoral college per se, but the winner-take-all aspect of the current way electors are chosen.

If instead of either direct elections or winner-take-all, states were to adopt either a proportional allocation of electors based on the popular vote outcome or the Maine-Nebraska system whereby the winner of states overall popular vote gets two electors (the standard based on U.S. Senate representation which is identical in all states) and the balance are given the popular vote winner in each congressional district, there would be an incentive to campaign in virtually every state, to engage in grassroots and coalition building activity, to enhance turnout and, probably but not certainly, achieve an electoral college result closer to that of the national popular vote than under the present system.

The current method of resolving elections in which no candidate achieves a majority of the popular vote is an abomination. Under the present Constitutionally-mandated system, the House of Representatives with each state casting one vote will elect the new president. That, in turn, means that Wyoming with 350,000 eligible voters will have the same clout as California with 24 million. That needs to be radically changed.

States have the power to choose how their electors are selected so they can choose proportionality or the Maine-Nebraska system, but it will take a constitutional amendment to change the method of resolving inconclusive electoral college results. Both, however, are worth doing.

To return to where this testimony started, do we want democracy by plebescite or do we want a democracy which is more complex and more complete.

In sum, I hope you reject SB.39, maintain the modest advantage of small states like Alaska, Connecticut, Vermont and Wyoming, among others in the election of presidents, and keep (and later perhaps improve) a system that has served the nation well and preserved certain essential underpinnings of a healthy American democracy.

Thank you again.



**Testimony of Courtney O'Brien
Director of the Public Safety and Elections Task Force**

**On behalf of the American Legislative Exchange Council
Submitted to the Alaska Senate**

February 23, 2011

Mr. Chairman and Members of the Committee:

Thank you for allowing the American Legislative Exchange Council (ALEC) to submit testimony regarding SB 39 and the current effort to replace the Electoral College with a National Popular Vote. My name is Courtney O'Brien, and I am the Director of the Public Safety and Elections Task Force at ALEC in Washington, D.C., which is the nation's largest, nonpartisan membership association of state legislators.

The idea of the National Popular Vote is a problematic one on several fronts. A National Popular Vote would undermine our historical government structure, jeopardize federalism, and would be less efficient than the current system.

The Founders created the Electoral College to ensure a balance is maintained between large and small states and among different interest groups in the country. This is one of the foundational principles of federalism. This system ensures an elected executive has support in different regions and among different groups, and thus protects minority interests.

Furthermore, **SB 39** would have Alaska join the constitutionally questionable interstate compact known as the "Agreement among the States to Elect the President by National Popular Vote." This interstate compact is an end-run around the Constitution. The appropriate way to change the nation's voting system would be to amend the U.S. Constitution, but the inventors of this compact know this will be difficult because Congress has previously rejected more than 1,000 amendments to alter the Electoral College.

The Electoral College, not a National Popular Vote, has worked for America throughout our history and is clearly the best option moving forward. Our membership of almost 2,000 state legislators has passed a *Resolution in Support of the Electoral College* and a

Resolution in Opposition to the National Popular Vote. Both are submitted with this testimony.

Mr. Chairman, I thank you for allowing me to submit testimony on this important matter. If you should have any questions, please feel free to contact me at 202-742-8504, or at cobrien@alec.org. Thank you.



Resolution in Opposition to the National Popular Vote Interstate Compact

Summary

This resolution calls on the State of (insert state) to oppose the plan popularly known as National Popular Vote. The National Popular Vote scheme threatens freedom, representation, and the identity of the United States as a confederation of distinct governing bodies who act according to the wishes of the majority of their citizens. The National Popular Vote scheme would undermine state authority and give some states power over the voice of others. It would render minority groups voiceless and empower densely populated and ideologically homogenous regions as well as radical fringe groups.

Model Resolution

{Title, enacting clause, etc.}

WHEREAS, the plan known as National Popular Vote claims to create a national system for conducting presidential elections, yet fails to create national standards for ballot access; and

WHEREAS, the plan known as National Popular Vote claims to create a national system for conducting presidential elections, yet fails to create national standards for voter qualifications; and

WHEREAS, the plan known as National Popular Vote claims to create a national system for conducting presidential elections, yet fails to create national standards for requiring a recount of ballots within a state; and

WHEREAS, the plan known as National Popular Vote claims to create a national system for conducting presidential elections, yet fails to establish any rule to require a national recount where the national result is within a small margin even if the result in no individual state is within a margin that requires a recount in the state; and

WHEREAS, the plan known as National Popular Vote claims to create a national system for conducting presidential elections, yet fails to create national standards for recounting ballots; and

WHEREAS, the plan known as National Popular Vote claims to use an interstate compact rather than a constitutional amendment to enact a change that most Americans believe requires such an amendment and should at least be the subject of national discussion and deliberation; and

WHEREAS, the plan known as National Popular Vote has no majority requirement, but would allow a candidate with a plurality – however small – to become President.

THEREFORE, BE IT RESOLVED, that the State of (insert state) opposes the plan know as National Popular Vote or any other proposal to manipulate the Electoral College for the purpose of creating a national presidential vote through an interstate compact.

Adopted by the Criminal Justice Task Force at the Annual Meeting, August 2007. Approved by the ALEC Board of Directors September 2007.



Resolution in Support of the Electoral College

Summary

This resolution calls on the State of (insert state) to recognize the current Electoral College system as the best way to elect the President of the United States. The current Electoral College system respects small states, rural areas, and the principle of federalism. Furthermore, this resolution calls on the State of (insert state) to defeat any multi-state compact legislation that would cause (insert state)'s electoral votes to be awarded based on the results of the national popular vote.

Model Resolution

{Title, enacting clause, etc.}

WHEREAS, the Founding Fathers rejected having the President of the United States elected by a national popular vote and instead chose the Electoral College system; and

WHEREAS, the current Electoral College system encourages presidential candidates to campaign in large metropolitan areas and also in rural areas and small states; and

WHEREAS, the current Electoral College system ensures that the winning Presidential candidate has support from multiple regions of the country; and

WHEREAS, the current Electoral College system respects the Founders' strong belief that individual states should have a vital role in electing the President of the United States; and

WHEREAS, the National Popular Vote Interstate Compact diminishes the importance of individual states in presidential elections; and

WHEREAS, the current Electoral College system respects the separation of and balance of power and authority between the States and the Federal government; and

WHEREAS, the current Electoral College system ensures that (insert state)'s electoral votes are awarded based on how the majority of the State's citizens vote;

WHEREAS, under the National Popular Vote Interstate Compact, (insert states)'s electoral votes could be awarded to a candidate that the majority of the State's citizens did not vote for; and

WHEREAS, the current Electoral College system is better suited to handle recounts because they happen at the state level, which is more manageable than if they were to happen at the national level as they might if the National Popular Vote Interstate Compact were adopted; and

WHEREAS, the current Electoral College system creates a needed balance between agrarian and industrial interests; and

WHEREAS, the current Electoral College system best preserves our two-party system and prevents the fracture of America's political structure; and

WHEREAS, the United States Congress has rejected over 1000 amendments to the Constitution to change the Electoral College, including amendments to change to a popular vote system; and

WHEREAS, the constitutionality of the National Popular Vote Interstate Compact is questionable because Article I, Section 10 of the Constitution states that no state, without the consent of Congress, may "enter into any Agreement or Compact with another State."

THEREFORE, BE IT RESOLVED that the State of (insert state) endorses its current Electoral College system as the best way to elect the President of the United States.

BE IT FURTHER RESOLVED that the State of (insert state) shall defeat any legislation that creates a multi-state compact for the purpose of dismantling its current Electoral College System.

Adopted by the Criminal Justice Task Force at the Annual Meeting, August 2007. Approved by the ALEC Board of Directors September 2007.

Cindy Smith

From: Lila Hobbs
Sent: Tuesday, February 22, 2011 1:02 PM
To: Cindy Smith
Subject: FW: S B 39. Senate Judiciary Committee Hearing Wednesday, February 23, 2011

From: carolyn V Brown [mailto:cvbrown1937@yahoo.com]
Sent: Tuesday, February 22, 2011 1:01 PM
To: Sen. Hollis French
Subject: S B 39. Senate Judiciary Committee Hearing Wednesday, February 23, 2011

Senator French:

I am sorry that I can neither be in attendance nor call in to speak to the Judiciary Committee about S B 39 on Wednesday, February 23rd at 1:30 PM. My patient commitments preclude this. I ask your indulgence to consider my written testimony.

The issue of the national popular vote is of sufficient importance and value to me to warrant my written message to you about SB 39 that provides for election of the President and Vice-President of the United States by a national popular vote.

As you know, over our history in America the President and Vice-President have been elected in a variety of ways. This makes for fascinating reading! These election modalities have included election by state governors, by Congress, by state legislatures, by electors, and by national popular vote. The Constitutional Convention never agreed on a method of choosing the President and Vice-President. The matter was turned over to each of the states. This is an important concept.

The US Constitution states in Article II, Section 1, Clause 2 that, "Each state shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Numbers of Senators and Representatives to which the State may be entitled in the Congress..."

Our US Constitution permits that Alaska can decide how we wish to elect the President and Vice-President of the United States. Is the current method adequate to represent that each vote in Alaska is equal for this critical selection?

The Electoral College is in place and needs to continue to be an integral part of our electoral process. What we need to do is to develop a renewal of the imperative that the President and Vice-President be elected by a single vote of every voting citizen of America. The current system does not provide this and each vote in Alaska is not equal to all other votes.

The interstate compact provisions of S B 39 provides for a mechanism to elect the President and Vice-President by national popular vote – just as we elect our Assembly Members, School Board Members, Mayors, State and Congressional senators and representatives, and Governors. Why would we want not to do this?

I respectfully ask that you consider and vote affirmatively for S B 39. This legislation can move our State and our Country toward "Participatory Democracy" wherein our single and individual votes genuinely count to elect our President and Vice-President.

There is much to be learned in an open and reasoned discussion on this issue. Please continue with your discussions, considerations and debates on this issue. The election of the President and Vice-President is profoundly important and must become the "will of the people". This simply means that "each vote is equal" and must count.

Please let me know if I can answer questions or provide additional information.

carolyn V Brown MD MPH
1640 Second Street
Douglas Alaska 99824 USA

907-364-2726
907-364-2727 fax
907-321-0784 cellular

cvbrown1937@yahoo.com

Lila Hobbs

From: Bill Parker [billparkerak@yahoo.com]
Sent: Monday, February 14, 2011 10:54 PM
To: Sen. Hollis French
Subject: Support SB 39

The electoral college is an anachronism. The one person, one vote principle makes it illogical. The perceived political advantage for small-population states like ours is outweighed by our duty for equality for all Americans in choosing a President. Please share this with the members of your committee.

Thank You.
Bill Parker
Patrice Parker

Sent from my iPhone

Lila Hobbs

From: Nicholes New [nicholesnew@yahoo.com]
Sent: Monday, February 14, 2011 9:23 PM
To: Sen. Hollis French
Subject: Senate Bill 39, US Presidential Election Compact Bill.

Greetings Senator French,

I am an Alaskan resident and registered voter, who would like to commend and support you in any way that I can with regards to your sponsorship of the Senate Bill 39, US Presidential Election Compact Bill.

I have read the bill and fully understand the effects this bill would have on the residents of Alaska. The opportunity for Alaska to join a compact made up of states that have pledged to cast their electoral votes in favor of the national popular vote winner is a commendable step towards making this great state a presence as much as the 17 states that are focused on at this time. In other words, to me, this bill will give way to a fair and balanced system to encourage and persuade Candidates to focus on all the people; rather than an esoteric group that may have all the power.

I feel this bill is a step into a higher rank of democracy and must be carried with the peoples voice as far as it can reach. I can not convey my passion for your support in this bill.

Having met you personally I feel confident in your endorsement of this bill and wish you all the luck in your pursuit of same.

With Best regards, I am

Sincerely,
Nichole Dewey
nicholesnew@yahoo.com

- Post office box 101528
- Anchorage, AK 99502
- (907)350-9324

Lila Hobbs

From: tom biss [tombiss823@gmail.com]
Sent: Monday, February 14, 2011 8:49 PM
To: Sen. Hollis French
Subject: Supporting Senate Bill 39

Senator French,

I support your sponsorship of Senate Bill 39, US Presidential Election Compact and the beneficial modification it brings to our Electoral College. It may even bring a candidate to the State of Alaska for the first time in years.

V/r

Tom Biss

Lila Hobbs

From: Christopher Dewey [kenaidew@yahoo.com]
Sent: Monday, February 14, 2011 8:38 PM
To: Sen. Hollis French
Subject: SB 39 Support!

Good Morning Senator French,

Thank you for sponsoring Senate Bill 39, US Presidential Election Compact. I lend my whole hearted support to return the power of voting back to the people. Alaskans will have more say in determining the US President and it will ensure a more evenly divided campaign effort from the candidates.

Regards,

Christopher D. Dewey
7038-A Arnold Ave
JBER, AK 99506

We won't tell. Get more on [shows you hate to love](#)
(and love to hate): [Yahoo! TV's Guilty Pleasures list](#).

Lila Hobbs

From: heathedward@gmail.com on behalf of Heath Hilyard [Heath@HeathEdward.com]
Sent: Monday, February 14, 2011 4:44 PM
To: Sen. Hollis French
Cc: Sen. Bill Wielechowski; Sen. Joe Paskvan; Sen. Lesil McGuire; Sen. John Coghill
Subject: Support for SB 39 - National Popular Vote

Senator French and Members of the Senate Judiciary Committee:

I would like to take this opportunity to support SB 39 - *U.S. Presidential Election Compact*. As I'm sure you're aware there have been a variety of efforts to reform the U.S. presidential election process in order to address the growing unfairness to states (specifically low population and/or geographically distant states) resulting from pre and post Primary presidential campaign strategies.

These concerns have long led critics to debate the ongoing relevance of the Electoral College. While I recognize that this bill does not ultimately address that larger issue, it does provide a workable alternative to increase parity among states during a presidential campaign.

There are a host of reasons why this legislation is necessary and timely, and I'm certain the committee will have the opportunity to hear from more eloquent speakers with greater expertise than I, so I won't belabor my comments with excessive information you're likely to otherwise be provided.

I appreciate the opportunity to comment on this important legislation.

Respectfully,
Heath E. Hilyard
3105 Eureka, Apt. 5
Anchorage, AK 99503

Lila Hobbs

From: Jack Heesch [akjack@gci.net]
Sent: Monday, February 14, 2011 3:37 PM
To: Sen. Hollis French
Subject: SB39

Senator French:

I want to express my support for SB 39 allowing for a direct vote for the President of the US.

Thank you for introducing and supporting this legislation.

Jack Heesch

Jack R. Heesch, President
The J.R. Heesch Company
P.O. Box 201608
Anchorage, Alaska 99520-1608
(907) 277-7316
(201) 725-0199 cell
akjack@gci.net

Lila Hobbs

From: Jim Babb [jimb66089@gmail.com]
Sent: Monday, February 14, 2011 3:31 PM
To: Sen. Hollis French
Subject: SB-39

Dear Hollis,

Please support SB-39 and ask the committee to do so also

Jim Babb
Anchorage, AK 99503



February 16, 2011

AMERICAN CIVIL
LIBERTIES UNION OF
ALASKA
1057 W. Fireweed, Suite 207
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ZACH FICK, Anchorage
STUDENT ADVISOR

The Honorable Hollis French, Chair
The Honorable Bill Wielechowski, Vice-Chair
Senate Judiciary Committee
Alaska State Senate
Juneau, AK 99801-1182
via email: Senator_Hollis_French@legis.state.ak.us
Senator_Bill_Wielechowski@legis.state.ak.us

Re: **Senate Bill 39**
ACLU Statement of Support

Chair French, Vice-Chair Wielechowski:

Thank you for the opportunity to submit written testimony in support of Senate Bill 39, the National Popular Vote Compact.

As you know, the American Civil Liberties Union of Alaska represents thousands of members and activists throughout the state who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. In that regard, we would like to advise the Committee of our **SUPPORT of SB 39**, and we thank Senator French for introducing this Bill.

National Popular Vote Compact

The National Popular Vote compact provides that state election officials in all states participating in the plan would award their Electoral College votes to the presidential candidate who receives the largest number of popular votes in all 50 states and the District of Columbia. This compact would not go into effect until enacted by states collectively possessing a majority of the electoral vote – 270 of the 538 electoral votes.

Today, all states choose their Electors by direct statewide election (except Maine and Nebraska, which select two Electors by a statewide popular vote and the remainder by the popular vote in each Congressional district).

Under the National Popular Vote compact, the Electors would be selected based on a nationwide popular vote.

The National Popular Vote Furthers Core Principles of Democracy

Ensuring the Candidate with the Most Votes Wins. The compact would eliminate the possibility that a candidate who received the most popular votes, but did not receive the requisite 270 Electoral College votes needed to win, could lose the election.

This has happened four times in American history: in 1824 (Adams-Jackson), 1876 (Hayes-Tilden), 1888 (Harrison-Cleveland), and 2000 (Bush-Gore).

Furthering the Principle of One Person, One Vote. By ensuring that each vote cast has an equal impact on the outcome of the Presidential Election, National Popular Vote gives each citizen equal power in the election, regardless of the state in which the voter lives. Instead of voters in a few swing states deciding the outcome, candidates will need to speak to – and listen to – all citizens throughout the country equally.

National Popular Vote Compact is Constitutional

Article II, Section 1 of the Constitution provides that: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors” **Thus, the states have inherent power to select their Electors as they see fit**, provided that some other provision of the Constitution, such as the Fourteenth or Fifteenth Amendments, is not violated.

The Supreme Court has held that states have *exclusive* power over the appointment and mode of appointment of electors under the Constitution. Therefore, exercising this state power in no way infringes on any area of supremacy of the United States, as there is no federal power to award electoral votes.

Conclusion

As of November 2009, five states had enacted the National Popular Vote compact: Hawaii, Illinois, Maryland, New Jersey, and Washington. That amounts to 61 (23%) of the 270 electoral votes needed to activate the compact.

Senate Judiciary Committee
S.B. 39 – ACLU Statement of Support
February 16, 2011
Page 3

The ACLU of Alaska, along with the National ACLU and its more than 500,000 members, support our State joining this group and adding the voices of Alaskans to those Americans who believe that our President should be elected by all Americans.

Thank you again for permitting us to share our support for SB 39. Please feel free to contact the undersigned should you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Mittman', with a long horizontal flourish extending to the right.

Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Senator Joe Paskvan, Senator_Joe_Paskvan@legis.state.ak.us
Senator Lesil McGuire, Senator_Lesil_McGuire@legis.state.ak.us
Senator John Coghill, Senator_John_Coghill@legis.state.ak.us