

THE STATE OF CONNECTICUT
JOINT COMMITTEE ON GOVERNMENT ADMINISTRATION AND ELECTIONS

*H.B. 6163 & S.B. 752: An Act Concerning an Agreement Among the States to Elect the
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 H.B. 6163 and S.B. 752. This National Popular Vote (NPV) legislation would create many new, logistical problems for our presidential election process. It would also essentially eliminate the Electoral College, an institution that protects small states such as Connecticut and is critical to the success of our republican democracy.

Problems Created by NPV. NPV contains many hidden problems. It awards the presidency to the winner of any plurality—even a very small one. Connecticut could be required to cast its electoral votes for a candidate who did not qualify for the ballot in Connecticut. 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 H.B. 6163 and S.B. 752. This important aspect of our Constitution continues to protect our freedom, just as it did when it was created in 1787.

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Full Testimony

The bills before you, H.B. 6163 and S.B. 752, represent the latest attempt to eliminate America's unique and successful presidential system. Abolishing the Electoral College would be unhealthy for the country and especially detrimental to small states such as Connecticut. But eliminating the Electoral College in 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 these bills 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 small states such as Connecticut.

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, Connecticut 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 Connecticut. Voters in that state did not have the chance to vote for—or against—him. Yet Connecticut would *still* be forced to award its entire slate of electors to the choice of Texas voters. Connecticut 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 Connecticut will like it. Paul would be entitled to personally appoint the seven electors who will represent Connecticut in the Electoral College. In all likelihood, he would select Texans to represent Connecticut in the election so that he would not be undermined by a "faithless" elector who was determined to vote for the choice of Connecticut'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, Connecticut 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 H.B. 6163 and S.B. 752