

THE STATE OF CONNECTICUT  
JOINT COMMITTEE ON GOVERNMENT ADMINISTRATION AND ELECTIONS

*HB 6163: An Act Concerning an Agreement Among the States to Elect the  
President of the United States by National Popular Vote*  
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Full Testimony

HB 6163 represents the latest attempt to eliminate America’s unique and successful presidential system. Abolishing the Electoral College would be unhealthy for the country and especially detrimental to small states such as Connecticut. 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 HB 6163 will ensure that all voters receive equal attention because each vote will have equal weight. But the truth is the precise opposite: NPV will guarantee unequal treatment of voters.

*Problems Created by NPV*

The plan proposed by NPV is fraught with difficulties—some logistical and legal, some philosophical. I will discuss these latter issues—arguments “for” and “against” the Electoral College—in a moment. But the logistical and legal 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 (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 it would attempt to derive one single result from these 51 elections. Suddenly, internal variances among states’ laws—previously irrelevant—would matter a great deal. Differing state election codes now mean that voters are treated unfairly and unequally.

Consider the issue of early voting. Voters in Connecticut have one set of laws regarding early voting. Other states might have different provisions regarding when early voting starts, how long it lasts, or who may early vote and how they may early vote. These differences in

laws do not matter when Connecticut voters are participating in their own statewide election, but if NPV throws voters of all states into the same election pool, then the differences in laws begin to create many inequities. How can Connecticut voters be equal with those in other states when their election operates under a different set of laws than those applicable to other voters in the same election pool?

There are many other differences among states' laws: States differ in whether they allow felons to vote. They differ in their requirements for ballot qualification. 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 sees what is going on and chooses 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 other states. Inevitably, Connecticut voters would have to abide by election results derived from policies with which they disagree—even if those policies give other states' voters more chances to vote. Indeed, other states might purposefully pass very lenient election laws in the hopes that they will have a bigger impact on the national total.

Additional problems are created by the fact that NPV states can't force others to participate in a run-off. Thus, NPV gives the presidency to the candidate winning *any* plurality. NPV is not looking for a majority winner. It is not even looking for a minimum plurality. As a practical matter, it can't. Thus, a candidate could win with only 15 or 20 percent of votes nationwide. But it gets even worse. Under this scheme, Connecticut could be forced to award its entire slate of electors to a candidate who was not on its ballot. Imagine 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 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 questionable solution. Paul would be entitled to personally appoint the seven electors who will represent Connecticut in the Electoral College vote. He seems likely to appoint Texans (guaranteed to remain faithful) to represent Connecticut in the presidential election.

Finally, remember that NPV's compact is a temporary solution—easy to join and unjoin, by its own terms—as opposed to a constitutional amendment, which would be a relatively permanent solution. Imagine that NPV has just enough states to be operable during the 2012 election. The presidential campaigns are proceeding on the assumption that a national direct election will be in place on Election Day. But in late June, Massachusetts gets worried that the Republican will win the national popular vote. In disgust, its legislature decides to pull out of NPV's compact. Suddenly, NPV no longer has enough states to proceed. The country is again hosting a normal presidential election with the Electoral College in place.

Well, unless some other state changes its mind and swiftly adopts NPV for purely political, partisan reasons. This kind of flip-flopping back and forth is not good for the stability of the country or its presidential election system.

Formally eliminating the Electoral College through a constitutional amendment would be unhealthy for the country. But NPV's attempt 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 history of the Electoral College must be understood if its benefits are to be appreciated.

The Founders' Constitution seeks 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: 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 religious beliefs. Thus, the Constitution combines democracy with republicanism and federalism. Safeguards such as the Senate (one state, one vote), 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 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 HB 6163.