

**Testimony of Trent England¹ regarding Senate Bill 432
Before the Committee on Government Administration and Elections
Of the Connecticut General Assembly**

There are two questions at issue before you.

1. Should we deviate from the Electoral College as it works today?
2. If we should change how we elect the President of the United States, is the National Popular Vote interstate compact the best, or even a plausible, reform?

I suggest that the answer to these questions is “no,” and I thank you for this opportunity to explain my reasoning on each point, starting with the second.

The National Popular Vote interstate compact is a novel strategy to fundamentally change the workings of a part of our federal constitutional structure. It relies on an ambiguity in the text of Article II, Section 1, of the Constitution, which says

Each State shall appoint, in such Manner as the Legislature thereof may direct, a number of Electors....

Indeed, various states have, at various times, used different manners of appointment, including

1. direct appointment by the legislature,
2. popular election among individual Elector candidates,
3. popular election by district and party (the “Congressional District Method” currently used by Maine and Nebraska), and
4. popular election statewide and by party (the “Winner Take All” system currently used by the other 48 states—including Connecticut—and the District of Columbia).

Looking at the historical precedent, one thing is clear. All these methods of appointment are about the political will of the people within the state, whether expressed through their elected legislators or through some form of popular election. It is also clear that this was the original intent of this constitutional provision—to allow state legislatures to figure out how best to express their own state’s political will in each presidential election.

National Popular Vote advances the argument that both the historical precedent and the original intent should not matter to state legislators, and that it will not matter to state and federal judges.

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If National Popular Vote's interpretation of Article II, Section 1, is correct, you could auction off your state's Electors or award them by lot. You could give them away to a candidate who did not even appear on the ballot here in Connecticut—in fact, the legislation before you specifically provides for such a scenario.

A closer examination of Article II, Section 1, makes clear that presidential Electors belong not to the legislature, but to the state itself, that is, to the people of the state. Whether your power to direct the manner of appointment actually includes the power to disregard the people of your state is a question never addressed by any federal court. I submit that this is at least a close question and thus a sure cause for litigation. The entire National Popular Vote plan hinges on this close and untested constitutional question.

Beyond the constitutional concern, there are many practical questions about the National Popular Vote plan. Among the most serious are the following.

1. The compact does not actually establish a “national popular vote,” but relies on each state to certify the national result for itself.
2. The compact could create the need—for the first time in American history—for a national recount, yet does nothing to ensure the uniformity of such a process.
3. While the compact creates potential conflicts between the states, it is silent on how to adjudicate these disputes.
4. The compact provision limiting a state's power to withdraw is likely unenforceable, leaving the compact subject to political gamesmanship during an election.

Aside from the specific concerns raised by the National Popular Vote interstate compact, there remains the threshold question of whether the current Electoral College system really demands change. Without presuming to answer the question for you, let me suggest three benefits of the current system that would be reduced or even eliminated by a move to any form of national popular vote.

1. The Electoral College as it works today, and has worked from the very near our nation's beginning, moderates our politics by forcing presidential campaigns to focus on the most evenly divided states.
2. The state-by-state process allows election administration to remain at the state level. This lets us use our 51 “laboratories of democracy” to develop the very tools of democracy and prevents presidential appointees from running presidential elections.
3. Nations as large and diverse as the United States are often fraught with radical, regional politics, but our current state-by-state presidential election system forces campaigns (and political parties that hope to win the White House) to build a geographically broad base to stand a chance at winning an Electoral College majority.

Finally, perhaps the greatest benefit of the current Electoral College system is that we actually do understand it. We know the rules. We have watched it work, in our own lifetimes and across our nation's history. We have precedents for how to solve difficult problems. And we have seen it work for all sides—just in the last three decades we have seen Republicans and Democrats—liberals, moderates, and conservatives—win elections. That a political process is imperfect and at times frustrating simply is not reason enough to throw it out.

Rejecting the current system, particularly in favor of National Popular Vote's attempt to use an interstate compact to cobble together a *de facto* direct election, brings inherent costs: uncertainty, litigation, public mistrust, unforeseen manipulations, and unintended consequences.

Thank you.