

Government Administration and Elections Committee:

I'd like to thank you for your time and attention to this bill. I write as the Executive Director of Democracy Awakens, a 200 person group based in Litchfield in favor of HB5434.

The General Assembly should put Connecticut's interests first this session by passing national popular vote legislation. Electing the president by popular vote would put Connecticut - and the concerns of all its citizens - back on the electoral map.

I would like to take a moment to address 8 common myths about Interstate Compacts and Congressional Consent.

COMMON MYTH No 1: Interstate compacts are exotic and fishy.

Interstate compacts are authorized by the U.S. Constitution and are in widespread use by every state.

Interstate compacts predate the Constitution. One interstate compact approved at the time of the Articles of Confederation remained in force until 1958 (when it was replaced by an updated version).

The subject matter of existing interstate compacts varies widely and has included topics as far ranging as agriculture, boundaries, and bridges —to education, emergency management, lotteries and taxation.

Compacts are often used on a nationwide basis. For example, the Interstate Compact on the Placement of Children and the Interstate Compact on Juveniles are examples of compacts adhered to by all 50 states and the District of Columbia.

The National Popular Vote plan is an interstate compact—a type of state law that is explicitly authorized by the U.S. Constitution to enable otherwise sovereign states to enter into legally enforceable contractual obligations with one another.

Common MYTH No 2: The topic of elections addressed by the National Popular Vote Compact is not an appropriate subject for an interstate compact.

- There are no constitutional restrictions on the subject matter of interstate compacts other than the implicit limitation that a compact's subject matter must be among the powers that the states are permitted to exercise.
- The U.S. Constitution gives each state the "exclusive" and "plenary" power to choose the manner of appointing its presidential electors. Thus, the subject matter of the National Popular Vote compact is among the powers that the states are permitted to exercise.
- The 10th Amendment independently addresses the question of whether the states are prohibited from exercising a particular power when the Constitution contains no specific prohibition against it. It says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Common MYTH No 3: The National Popular Vote Compact is defective because Congress did not consent to it prior to its consideration by state legislatures.

- Advance congressional consent is not required, nor is it the norm in the field of interstate compacts.

- If a particular compact requires congressional consent, Congress generally considers the matter only after the compact has been approved by the combination of states required to bring the compact into effect.

Common MYTH No 4: The National Popular Vote Compact is defective because it fails to mention congress in its text.

- Most interstate compacts do not specifically mention congressional consent, regardless of whether the particular compact requires congressional consent.

AND Most compacts do not specifically mention congressional consent, regardless of whether the states involved intend to seek it.

For example, the Port Authority of New York Compact is silent as to congressional consent. The two states involved did not intend to seek congressional consent at the time that they entered into the compact. Later, they decided to seek congressional consent (and received it).

Conversely, the states involved in the Multistate Tax Compact (also silent as to the role of Congress) originally sought congressional consent, but, after realizing that they could not obtain it, the states proceeded to implement the compact without congressional consent. The U.S. Supreme Court ruled in favor of the states (and upheld that sequence of events) in the 1978 case of *U.S. Steel Corporation v. Multistate Tax Commission*

There is no need for a compact to mention Congress, even if the states involved intend to seek congressional consent.

Common MYTH No 5: The National Popular Vote Compact requires congressional consent to become effective.

- The U.S. Supreme Court has ruled that congressional consent is only necessary for interstate compacts that “encroach upon or interfere with the just supremacy of the United States.” Because the choice of method of appointing presidential electors is an “exclusive” and “plenary” state power, there is no encroachment on federal authority.
- Thus, under established compact jurisprudence, congressional consent would not be necessary for the National Popular Vote compact to become effective.
- Nonetheless, National Popular Vote is working to obtain support for the compact in Congress.

Common MYTH No 6: The National Popular Vote Compact requires congressional consent because of its withdrawal procedure.

- The test as to whether an interstate compact requires congressional consent is based on whether the compact encroaches on federal supremacy—not on the compact’s withdrawal procedure.
- The Interstate Compact for the Placement of Children is an example of a judicially upheld compact that did not require congressional consent to become effective and that imposes a two-year delay on the effectiveness of a state’s withdrawal.

Common MYTH No 7: Adoption of the National Popular Vote Compact would establish the precedent that interstate compacts can be used to accomplish something that would otherwise be unconstitutional.

- The Compacts Clause of the U.S. Constitution permits states to enter into interstate compacts, but does not expand state powers. All compacts must be consistent with the U.S. Constitution.

Common MYTH No 8: The National Popular Vote Compact is a conspiracy.

- An interstate compact is not a "conspiracy" but a mechanism provided by the U.S. Constitution that enables sovereign states to enter voluntarily into binding contractual arrangements with one another.

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