

Dear Senator Flexer, Senator McLachlan, Representative Fox, and Distinguished Members of the GAE Committee,

I am submitting this testimony in support of HB 5421, the bill to have Connecticut join the National Popular Vote Interstate Compact. I'd like to use my testimony to address some common concerns regarding the Compact by reviewing the history of the Electoral College.

Does the state have the power to award its Electors to national popular vote winner?

Awarding Connecticut's Electoral College votes to the national popular vote winner is clearly within our power as a state. Article 2, Section 1 of the Constitution gives the state legislature alone power over the appointment of Electors: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors." States have utilized this power in various ways. Indeed, our neighbor Massachusetts has used 11 different methods of awarding its electoral votes, which are detailed at the end of this testimony.

Can the state award its Electors to the national popular vote winner even if another candidate wins more votes within the state?

One might worry though that awarding our Electors in opposition to the candidate chosen by the plurality or majority of Connecticut voters lacks precedent. It does not. In 2008, John McCain won the majority of votes in Nebraska but Nebraska appointed an elector for Obama. In this case, Nebraska voters statewide went for McCain but the state of Nebraska, utilizing the Congressional district method of appointing electors, appointed an elector based on the voter within one of its Congressional districts, in opposition to the majority of the state.

In 2016, Maine did the same, appointing one elector for Donald Trump while Clinton won a plurality of votes statewide. There are many other historical examples but the most vivid one comes from Illinois in the 1824 presidential contest. Although a plurality of voters in Illinois statewide chose Andrew Jackson, the state appointed electors based on electoral districts and Jackson only received one of the state's three Electoral College votes.

How does the winner-take-all Electoral College system relate to some of the original intended purposes of the Electoral College?

Accepting the constitutionality and historical precedent, one might question whether Connecticut should join the Compact. After all, many are familiar with the some of the origin story of the Electoral College, with the number of Electoral College votes based on the number of House and Senate seats. The number of House and Senate seats arose out of the Connecticut Compromise, which sought to balance the interests of large and small states. Fewer people are familiar with the College's origins in slavery. Indeed, Framers James Madison wrote that the president would have been chosen by national popular vote if not for "the score of the negroes," as Southern states sought to increase their influence on presidential elections through the 3/5 Compromise.

Still, if the founders intended to amplify the voices of smaller states in electing the president by giving them an outsized vote in the Electoral College, they left it entirely to the states to

determine how to cast those votes and make their voices heard. One must ask if the current winner-take-all Electoral College system allows those voices to be heard. Indeed, why would small state like Rhode Island join the Compact if it were well-served by the winner-take-all Electoral College system? Because Rhode Islander's views – like those of Connecticut citizens – go unheard every presidential election as candidates focus on swing states, which with the exception of New Hampshire, are quite large.

Likewise, the winner-take-all Electoral College fails to serve other intended purposes of the Electoral College. In Federalist No 68, Framers Alexander Hamilton argued that the Electoral College was a bulwark against meddling in our elections: it should be an “obstacle... opposed to cabal, intrigue, and corruption.” Yet because the winner-take-all system focuses the election on a handful of swing states, foreign and domestic actors can seek to alter the outcome of an election by focusing on a few states, rather than 50.

Special Counsel Robert Mueller's recent indictment includes quotes Russian operatives pointing to the importance of the swing states, including this clear state: "We clearly understand that the elections winner will be predestined by purple states. And we must win Florida." In similar fashion, voter suppression efforts targeted swing states, with 8 out of 12 swing states making voting more challenging through stringent voter ID laws and reduced early voting since 2014.

The Electoral College was also meant as a protection against the parochial politics of early America. Indeed, the fear that Electors would only support a candidate from their state is still evident in the Constitution today: the president and vice-president cannot hail from the same state, which was nearly an issue in 2000 before Dick Cheney switched his residence and registration from Texas to Wyoming.

Today national politics have invaded every corner of our lives. The idea that a body of worldly, learned people should vote their conscience and choose the president and vice-president has been discarded by the states. (It's worth noting that so-called “faithless electors” did impact one election: in 1836, Virginia's Electors refused to support Richard Johnson for vice-president, on account of his carrying on a public relationship with his slave, whom he treated as a common-law wife. He was ultimately elected vice-president by the Senate.)

According to the National Conference of State Legislatures 30 states and D.C. have laws binding their Electors in some form. In some states violations could be serious: most recently in 2016 in Colorado, a district judge ruled that state law allows electors who take the oath as a public official to face criminal charges. Public officers charged with failing to fulfill their duty, a misdemeanor, can receive up to a \$1,000 fine and one year in jail. All of which is to say, although binding Electors is at odds with the Framers' intentions, given that binding Electors is now common practice, we should have no qualms about binding our Electors to vote for the winner of the national popular vote.

How does the winner-take-all Electoral College system affect voter engagement and public policy?

I hope this history of Electoral College is instructive. It should demonstrate that our state is free to appoint its Electors however the legislature chooses and that the original aims of the Electoral College are not well-served by the current winner-take-all system of appointing Electors.

Looking to recent history, our country is harmed by this winner-take-all system. Swing states receive a disproportionate share of federal funding – receiving 7% more on average in federal grant monies. Policies are warped to serve key constituencies in swing states - the recent metals tariffs are a good example. Voter engagement is lower in spectator states – participation lags by more than 8% behind swing states. Lower participation stunts the growth of grassroots organizing and contributes to voter apathy.

A national popular vote would more fairly distribute our nation's resources, direct policy in a more widely beneficial manner, and increase civic engagement. It would increase the security and integrity of our elections in the face of foreign and domestic meddling. It would make every vote in every state matter. I urge you to support HB 5421

Thanks for your consideration of this testimony.

Sincerely,

Steven Winter
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History of the methods of appointment of Massachusetts' Elector College Electors:

- In 1789, Massachusetts had a two-step system in which the voters cast
- ballots indicating their preference for presidential elector by district, and the legislature chose from the top two vote-getters in each district (with the legislature choosing the state's remaining two electors).
- In 1792, the voters were allowed to choose presidential electors in four multi-member regional districts (with the legislature choosing the state's remaining two electors).
- In 1796, the voters elected presidential electors by congressional districts (with the legislature choosing only the state's remaining two electors).
- In 1800, the legislature took back the power to pick all of the state's presidential electors (excluding the voters entirely).
- In 1804, the voters were allowed to elect 17 presidential electors by district and two on a statewide basis.
- In 1808, the legislature decided to pick the electors itself.
- In 1812, the voters elected six presidential electors from one district, five
- electors from another district, four electors from another, three electors from each of two districts, and one elector from a sixth district.
- In 1816, Massachusetts again returned to state legislative choice.
- In 1820, the voters were allowed to elect 13 presidential electors by district and two on a statewide basis.
- Then, in 1824, Massachusetts adopted its 10th method of awarding electoral votes, namely the statewide winner-take-all rule that is in effect today.

- Finally, in 2010, Massachusetts changed its method of appointing its presidential electors by enacting the National Popular Vote interstate compact. This change will go into effect when states possessing a majority of the electoral votes (270 out of 538) enact the same compact.