

National Popular Vote Legislation

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Issue

Summarize [PA 18-9](#), which adopts the interstate compact entitled “The Agreement Among the States to Elect the President by National Popular Vote.” **This report has been updated by OLR Report [2021-R-0031](#).**

Summary

PA [18-9](#) adopts the interstate compact entitled “The Agreement Among the States to Elect the President by National Popular Vote,” under which Connecticut commits its presidential electors to the national popular vote winner of a presidential election. Any state or Washington, D.C. may join the compact.

The compact takes effect when enough jurisdictions have joined to cumulatively possess a majority of the Electoral College votes (currently 270 of 538 votes) (see BACKGROUND). The compact includes a severability clause so that if a court finds any provision invalid, the remaining provisions are not affected. If the Electoral College is abolished, the compact terminates.

Like most states, Connecticut currently requires its presidential electors to cast their electoral votes for the presidential and vice presidential candidates who receive a majority of the state popular vote. To date, 10 other states and Washington, D.C. have adopted the compact. Together with Connecticut, they hold 172 electoral votes (see BACKGROUND).

Procedure for Determining Presidential Electors

Once the compact goes into effect, each state that joins (“member state”) must elect its presidential electors in accordance with specified procedures. These electors must cast their votes for the presidential and vice presidential candidates who receive a majority of the national popular vote.

The following procedures take place in each member state:

1. the state conducts its presidential election as a “statewide popular election,” whereby individuals cast votes and the votes are counted statewide;
2. the state’s chief election official (e.g., in Connecticut, the secretary of the state) determines the number of votes cast for each presidential slate (president and vice president) in Washington, D.C. and each state (including non-member states) where a statewide popular election occurred and adds them to produce a national popular vote total (see BACKGROUND);
3. the chief election official designates the presidential slate with the largest number of votes as the “national popular vote winner”;
4. the official responsible for certifying the appointment of the state’s presidential electors (“certifying official”) certifies that their nomination is based on the national popular vote winner; and
5. at least six days before the presidential electors meet to vote, the state (presumably through the chief election official) makes a final determination of each presidential slate’s popular vote total for the state and, within 24 hours, communicates that information through an official statement to every other member state (see BACKGROUND).

The compact requires each member state to treat an official statement containing a state’s popular vote totals (e.g., in Connecticut, the Statement of Vote published by the secretary of the state) as conclusive and representative of its final vote. At this point, the certifying official certifies the appointment of the presidential electors in association with the national popular vote winner.

In the event of a tie for the national popular vote winner, each member state's certifying official certifies the appointment of the presidential electors nominated in association with the candidate receiving the largest number of popular votes in the state. If the number of presidential electors a member state nominates is more or less than its number of electoral votes, the national popular vote winner nominates the presidential electors for the state, and the certifying official certifies their appointment.

Finally, each member state's chief election official must release to the public the vote counts and statements of vote immediately after they are determined or obtained.

Other Provisions

Any member state may withdraw from the compact, but a withdrawal during the last six months of a presidential term is not effective until the next president or vice president is qualified to serve (i.e., begins) the next term.

The compact requires each member state's chief executive (governor, or mayor for Washington, D.C.) to notify every other state's chief executive if and when the compact is enacted and takes effect in the official's state or the state withdraws. Each chief executive must also notify every other chief executive when the compact takes effect nationwide.

The compact's governing clause specifies that it applies to the appointment of presidential electors in any year when, on July 20, the compact is in effect because enough states have become members to cumulatively possess a majority of electoral votes (currently 270).

Background

Member States

To date, 10 other states (California, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Vermont, and Washington) and Washington, D.C. have adopted the compact. Together with Connecticut, they currently hold 172 electoral votes. (These electoral votes are based on population and the U.S. Census; thus, they are current until at least the next decennial census in 2020)

Aggregating National Popular Votes, Including Non-Member States

Popular vote tallies from all 50 states and Washington, D.C. are included in the "national popular vote total," regardless of whether the jurisdiction is a member of the compact. Popular votes can be counted from non-member states only if the state votes by popular vote. While all states currently conduct elections this way, neither the U.S. Constitution nor any state constitution, except Colorado's, provides individuals with the right to vote for president and vice president. Instead, state laws provide this right. Since a state could, by law, take the presidential vote away from its people, the compact addresses this unlikely event by specifying that the popular votes of every state that voted by popular vote would be aggregated to produce the national popular vote total.

Date When Presidential Electors Meet to Vote

The six-day deadline corresponds to the deadline in federal law's “safe harbor” provision (3 U.S.C. § 5). Under the safe harbor provision, if a state settles any controversy and makes a final determination concerning its presidential elector appointments at least six days before the time fixed by law for the electors' meeting, that determination is conclusive. Federal law requires the presidential electors of each state to meet and vote on the first Monday after the second Wednesday in December.

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