

Date of Hearing: May 10, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AJR 1 (Low) – As Amended May 2, 2017

SUBJECT: Presidential elections: electoral college.

SUMMARY: Urges the United States Congress to propose and send to the states for ratification a constitutional amendment to abolish the Electoral College, and provide for the direct election of the President and Vice President of the United States by the popular vote of all eligible citizens of the United States.

EXISTING LAW: provides that the Presidential ticket that receives the greatest number of votes in the state will receive all of California's electoral votes.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

1) **COMMENTS:**

Purpose of the Bill: According to the author:

On November 8, more than 136 million Americans—and more than 14 million Californians—cast a ballot to elect the next President of the United States. Despite the fact that Hillary Clinton received 2.8 million more votes, Donald Trump is our country's 45th President. The candidate who received the largest number of votes failed to win the election because they did not gather enough electoral college votes.

Unfortunately, the Electoral College is an unjust and undemocratic institution that distorts presidential elections. It allows candidates to ignore the concerns of voters in all but a small number of "battleground" states, while contradicting the fundamental principle of one person, one vote. The presidential election battleground has consistently marginalized two-thirds of Americans in the last three presidential elections.

Assembly Joint Resolution 1, calls on Congress to abolish the Electoral College and provide for the direct election of the President and Vice President. Abolishing the Electoral College system will remove an inherently flawed process and promote a participatory democracy that reflects the will of the American people.

- 2) **Electoral College System:** The Electoral College is a unique method for indirectly electing the president and vice-president of the United States. The Electoral College consists of a total of 538 members, one for each U.S. senator and representative, and three additional electors representing the District of Columbia. Each state has a number of electoral votes equal to the combined total of its congressional delegation, and each state legislature is free to determine the method it will use to select its own electors.

- 3) **Origins of the Electoral College:** The indirect election of the US president through a “college of electors” was devised in 1787 by the framers of the Constitution. It was established by Article II, Section 1, Clause 2 of the U.S. Constitution, and has only been modified twice since, through the adoption of the 12th and 23rd Amendments.

The framers of the Constitution debated many options for choosing the nation’s highest office during the Constitutional Convention of 1787. Some wanted popular elections, while others wanted Congress to make the choice without public input. The Electoral College was a compromise made to fall between these two options. During the time of this debate, the country had only 13 states, which until 1776 had been separate colonies, and communications and travel across the country of 4 million people was difficult. Delegates feared that if the people were allowed to vote directly for president there would be too many candidates and that citizens of one state would not know much about the candidates from other states. There was concern that the public would vote for the “regional” candidate from their state, and the president would then likely be chosen from a state with a large population.

Another idea put in front of the delegates was to allow Congress to choose the president. This was criticized since such a system would lead away from checks and balances, and there was a chance that political deals would be struck between congressmen and the future president. Delegates were left with the option to create a separate institution composed of a distinct group of individuals to elect the president– an Electoral College. It was decided that the group of electors would meet only once in each respective state to vote for president, and the states would decide how to select their electors. The delegates reasoned that keeping the electors decentralized and temporary would make them less likely to be influenced by each other in their votes. Furthermore, since the electors were not a permanent sitting political body, it would be difficult for a presidential candidate to promise them something beyond the election.

The 12th amendment clarified the procedure for the election of the president and vice-president, and required that each elector have two distinct votes, one for each office. The 23rd amendment granted three electoral votes to the District of Columbia.

- 4) **Constitutional Amendment Procedure:** The Electoral College has been the subject of more proposed amendments than any other provision of the U.S. Constitution (National Archives and Records Administration, 2012). Abolishing the Electoral College requires an amendment to the United States Constitution. Article V of the Constitution provides that an amendment may be proposed either by the Congress with a two-thirds majority vote in both the House of Representatives and the Senate, or by a constitutional convention called for by two-thirds of the state legislatures. Thirty-three amendments to the United States Constitution have been proposed by the United States Congress and sent to the states for ratification since the Constitution was put into operation on March 4, 1789. Twenty-seven of these, having been ratified by the requisite number of states, are part of the Constitution. None of the 27 amendments to the Constitution were proposed by constitutional convention.
- 5) **Candidate Spending & Battleground States:** According to the author, having a national election decided by a handful of battleground states rather than all voting-eligible citizens is problematic and in opposition to democracy’s accepted principle of one person, one vote. Due to the winner-take-all rule, modern presidential campaigns ignore any state where one candidate is comfortably ahead and instead focus only on a small number of closely

contested battleground states. “Campaign events,” defined as public events in which a candidate is soliciting the state’s voters, are concentrated in a handful of states. According to *America Goes to the Polls*, a report by Nonprofit VOTE and US Elections Project, in 2016, the presidential campaigns dedicated 99% of their ad spending and 95% of campaign visits to the 14 battleground states, with well over half going to just four states – Florida, North Carolina, Ohio, and Pennsylvania. According to information compiled by the advocacy organization FairVote, between July and November 2016, California had no Democratic campaign events and only one Republican campaign event. This is in stark contrast to states like Florida with 71, North Carolina with 55, Pennsylvania with 54, and Ohio with 48 campaign events each. Effectively, 65% of the electorate – 147 million voters living in the 36 non-battlegrounds states – were left on the sidelines of the presidential election.

- 6) **Popular opinion:** A national Gallup poll in December 2016 found that 49% of Americans say they want to amend the Constitution to allow for a popular vote for president. In California, a report published by the Public Policy Institute of California in 2008 found that 70 percent of residents and likely voters support electing the president by direct popular vote.
- 7) **Faithless Electors:** There is no federal law or constitutional provision requiring electors to vote for the party that nominated them, and over the years a number of electors have voted against the instructions of the voters. These members of the Electoral College who do not vote for their party's designated candidate have been called "faithless electors." Since the founding of the Electoral College, there have been 167 faithless electors. These are rare since generally, the parties select members known for their loyalty and service to the party, such as party leaders, state and local elected officials, and party activists. The 2016 election had the largest number of individual defections by electors in a U.S. presidential election — but not enough to change the outcome.
- 8) **National Popular Vote Interstate Compact:** The National Popular Vote is an interstate compact in which each member state agrees to award its electoral votes to the Presidential ticket that receives the most votes nationwide. It would effectively allow the President to be selected by the popular vote without amending the U.S. Constitution. According to their website:

The National Popular Vote interstate compact would guarantee the Presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia. Under the compact, the national popular vote winner would be the candidate who received the most popular votes from all 50 states (and DC) on Election Day. When the Electoral College meets in mid-December, the national popular vote winner would receive all of the electoral votes of the enacting states.

The National Popular Vote bill has been enacted by 11 jurisdictions possessing 165 electoral votes—61% of the 270 electoral votes necessary to activate it, including four small jurisdictions (RI, VT, HI, DC), three medium- size states (MD, MA, WA), and four big states (NJ, IL, NY, CA). The National Popular Vote interstate compact would not take effect until enacted by states possessing a majority of the electoral votes—that is, enough to elect a President (270 of 538).

- 9) **Previous Legislation:** AB 459 (Hill) Chapter 188, Statutes of 2011, ratified an interstate compact whereby the state agrees to award its electoral votes to the Presidential ticket that received the most popular votes nationwide.

SB 37 (Migden) of 2007, and AB 2948 (Umberg) of 2006, would have ratified an interstate compact whereby the state agrees to award its electoral votes to the Presidential ticket that received the most popular votes nationwide if certain conditions are met. Both bills were vetoed by the Governor.

AB 45 (Maze) of 2005, provided for California's electoral votes to be divided proportionately among presidential tickets based on each ticket's share of the popular vote in the state. AB 45 failed passage in this committee by a vote of 3-2.

AB 2003 (Longville) of 2004, would have provided that voters shall vote directly for Presidential electors, rather than voting for candidates for President and Vice President at the general election. AB 2003 was held on the Assembly Appropriations Committee's suspense file.

AB 45 (Strickland) of 2001, would have allocated presidential electors based on the winner of each congressional district, instead of the winner of the statewide vote. AB 45 failed passage in this committee.

- 10) **Related Legislation:** SJR 3 (Hill) urges other states to participate in the National Popular Vote interstate compact. That measure is pending in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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