

Date of Hearing: June 14, 2017

**ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING**

Marc Berman, Chair

SJR 3 (Hill) – As Introduced December 21, 2016

**SENATE VOTE:** 25-12

**SUBJECT:** Presidential elections: electoral college

**SUMMARY:** Urges other states to participate in the National Popular Vote interstate compact in which each member state agrees to award its electoral votes to the Presidential ticket that receives the most votes nationwide.

**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. Once the National Popular Vote agreement among the states goes into effect, the Presidential ticket that receives the greatest number of votes nationally will receive all of California's electoral votes.

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

**COMMENTS:**

1) **Purpose of the Resolution:** According to the author:

Regardless of how the Electoral College came to be, ranging from a slave state compromise, to founders being afraid of tyranny of the majority, to representation between big states and small states, to balance between states and the federal government and the branches of federal government, it's time for states to award their electoral votes to the presidential slate that wins the most votes nationwide so that every American vote is treated equally.

The current Electoral College system creates a system where not all votes are equal. For California voters to be represented like Wyoming voters in the Electoral College, California would need 197 votes, not 55. The underrepresentation of large states in the Electoral College dilutes the representation of minority voters who live in diverse urban areas.

We've already corrected mistakes made by the founders who banned women and slaves from voting. We also changed the way US Senators are elected. They used to be appointed by state legislatures and now we allow for popular vote in each state. National Popular Vote is another correction we need to make to guarantee that each vote Americans cast in a presidential election counts equally.

2) **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).

The National Popular Vote interstate compact contains the following provisions:

- a) Allows any state of the United States and the District of Columbia to become a member of the compact.
- b) Requires each member of the compact to conduct a statewide popular election for President and Vice President.
- c) Requires the chief election official of each member state to determine the number of votes cast for each presidential slate in each state of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and to add such votes together to produce a “national popular vote total” for each presidential slate.
- d) Requires the presidential elector certifying official of each member state to certify the appointment of the elector slate nominated in that state in association with the presidential slate that had the largest national popular vote total.
- e) Requires, at least six days before the day fixed by law for the meeting and voting by presidential electors, each member state to make a final determination of the number of popular votes cast in the state for each presidential slate and to communicate an official statement of such results to the chief election officer of every other state. Requires the chief election official of each member state to treat any such statement received from another state as conclusive.
- f) Provides that, in the event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment in that official’s own state of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official’s state.
- g) Provides that if the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state’s number of electoral votes, the presidential candidate on the presidential slate

that had the largest national popular vote total shall have the power to nominate the presidential electors for that state and that state's presidential elector certifying official shall certify the appointment of such nominees.

- h) Provides that this compact will govern the appointment of presidential electors in each member state in any year in which the agreement is in effect in states cumulatively possesses a majority of electoral votes as of July 20 of that year (six months prior to the beginning of the next presidential term).
  - i) Provides that the compact shall take effect when states cumulatively possessing a majority of the electoral votes have enacted the compact in substantially the same form and the enactments in such states have taken effect in each state.
  - j) Permits any member state to withdraw from the agreement, except that a withdrawal occurring six months or less before the end of a President's term shall not become effective until a President and Vice President have been qualified to serve the next term.
  - k) Requires the Governor (or the Mayor in the case of the District of Columbia) of each member state to notify the Governor (Mayor) of all other states when the compact has been enacted and has taken effect in that official's state, when the state has withdrawn from the compact, and when the compact takes effect generally.
  - l) Provides that the compact shall terminate if the Electoral College is abolished.
  - m) Defines various terms for the purposes of the compact.
  - n) Provides that if any provision of the compact is held invalid, the remaining provisions shall not be affected.
- 3) **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.
- 4) **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.

- 5) **States Decide:** The constitution gives state legislatures the power to decide how to appoint their electors. Forty-eight states and the District of Columbia currently award electoral votes through a winner-take-all system based on the popular vote in their state. Two states, Maine and Nebraska, have chosen to award one electoral vote to the Presidential ticket that receives the greatest number of votes in each Congressional district in the state, and two electoral votes to the Presidential ticket that receives the greatest number of votes in the state. Maine has used this system of electoral vote allocation since 1972, while Nebraska adopted this method in 1996. While the “winner take all” method of awarding electoral votes used in California and the district-based method of awarding electoral votes that is used in Maine and Nebraska are the only two methods that states currently use to award electoral votes, the states are not limited to these two options. Rather, the United States Constitution gives the state legislatures complete authority to determine how presidential electors are appointed.
- 6) **Candidate Spending & Battleground States:** According to the author, our current electoral college system is causing all but the battleground states to be ignored in presidential elections. 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. Effectively, 65% of the electorate – 147 million voters living in the 36 non-battlegrounds states – were left on the sidelines of the presidential election.
- 7) **Representation of Minority Populations:** In support of this resolution, the author argues that the “underrepresentation of large states in the Electoral College dilutes the representation of minority voters who live in diverse urban areas.” According to *America Goes to the Polls*, the report discussed in the previous comment, “In 2016, the electoral college

disproportionately impacted minority communities by effectively disenfranchising 75% of the Latino and 81% of the Asian American voters in the nation who did not live in a battleground state.”

- 8) **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% of residents and likely voters support electing the president by direct popular vote.
- 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:** AJR 1 (Low) requests 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. AJR 1 was approved by this committee on a 5-2 vote, and is pending on the Senate Floor.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Teachers Association

##### **Opposition**

None on file.

**Analysis Prepared by:** Bish Paul / E. & R. / (916) 319-2094