



LEAGUE OF WOMEN VOTERS
NEW HAMPSHIRE

www.LWVNH.org

4 Park St. Room 200
Concord, NH 03301

January 25, 2017

To the Chair and members of the House Election Law Committee:

Re: **HB 447 relative to allocating electors based on the national popular vote**

The League of Women Voters New Hampshire urges you to vote Ought to Pass on HB 447.

The League of women is a non-partisan organization that never supports or opposes candidates or parties. We do, however, through a process of study and concensus, develop positions on issues from which we advocate. The League has a long-standing position in support of the direction election of the President. We would, ultimately, like to see the Electoral College abolished, but in the interim we support the National Popular Vote Compact as a way to have the majority of the voters elect the President of their choice.

It is unfortunate for our non-partisan argument that it has been the same party that won the popular vote but lost the election twice in the twenty-first century. The difference was only half a million votes in 2000, but in 2016 it was a difference of more than 2.9 million votes. The League is bothered by this system that ignores the wishes of the majority, no matter which party was denied its win.

We are attaching the text of a Newsweek magazine article of November 22, 2016, titled “How to Fix the Electoral College System” that contains a number of facts, but also some interpretations that the League does not agree with. We are including it for your consideration, but we want to make the following points carefully in our own defense of signing on to the Compact:

1. The National Popular Vote Compact already has 10 states plus the District of Columbia signed on, for a total of 165 electoral votes. Nothing will happen differently until more states sign on, totaling at least 270 electoral votes. Most recently, the bill was passed by a bipartisan 40–16 vote in the Republican-controlled Arizona House, 28–18 in Republican-controlled Oklahoma Senate, 57–4 in Republican-controlled New York Senate, and 37–21 in Democratic-controlled Oregon House. It has passed one house in 12 additional states with 96 electoral votes and been approved unanimously by committee votes in two additional states with 27 electoral votes.
2. New Hampshire’s 4 votes may seem insignificant, but as a “swing state” our signing on sends a message that we recognize the value of the NPVC in the principle of fairness to all voters.
3. Other states are also considering legislation in this session, notably Pennsylvania with its 20 electoral votes. State Sen. Daylin Leach said, in introducing his bill there, “In the heart of every American you’ll find an instinctive commitment to the principle of one person, one vote. Despite that, our country elects its leader using a convoluted and unfair process that values the votes of some over the votes of others. It’s time for Pennsylvania to do the right thing, the fair thing, the democratic thing.” League echoes that sentiment for New Hampshire.
4. Proportional voting by electors is not the answer. Maine and Nebraska are not winner take all states;

rather their electoral votes are based on the popular vote in their Congressional districts. League believes this would not cure the current unbalanced weight of various states' electoral votes, and if practiced by more states could well lead to more situations where the final decision goes to the House of Representatives. That happened several times in the early history of our country, and we don't want it repeated. Direction election is the League's ultimate goal.

5. Some on the committee and certainly some members of the NH House believe in the sanctity of the Constitution on the point of electors. Alexander Hamilton described the electors as wise men "most likely to possess the information and discernment" to choose a good President, and he didn't want the electors pledged to any candidate. But these days, the electors are almost always party faithful and former elected officials, chosen almost as honorary representatives of the party, merely rubber stamping the electoral ballots. They are not the independent body of wiser- than-us-all people deciding whether to ratify the people's choice.

6. At the time the writers of the Constitution came up with the Electoral College, the difference in size between the states was much narrower than now. Contrast California's 55 electoral votes with NH's 4 votes, based on population. Voting residents in less populous states have more influence over their electoral votes than do voting residents in more populous states. For instance, a vote from one Wyoming-resident voter has twice as much influence as a vote from one Pennsylvania-resident voter. This imbalance was a primary reason for the formation of the National Popular Vote Compact, to give equal weight to each citizen's vote.

7. But if there are large states with bigger numbers of electors, is that where the candidates go to get votes? Who gets the bulk of the advertising and campaign visits? That is not determined by size. California (a "blue" state if there ever was one) was host to only one major campaign event post-primary 2016. New Hampshire had 21 visits for major rallies (presidential or vice-presidential candidates). Florida topped the list with 72 major events by candidates vying for their 29 electoral votes. While I will admit this may be good for NH's economy, and our airwaves earn a huge part of their revenue from political ads, in the broadest sense it is just not right. We're a swing state, please visit us, but many in New Hampshire are saying "enough already."

8. Lest you think that this position is merely reflecting the views of the party that lost in 2000 and 2016, please consider that in 2014 then Speaker Newt Gingrich endorsed NPVC, <http://www.nationalpopularvote.com/newt-gingrich-endorses-national-popular-vote> and eight former national chairs of ALEC have also endorsed it. <http://www.nationalpopularvote.com/8-former-alec-national-chairs-endorse-national-popular-vote> The National Popular Vote Compact has non-partisan origins.

Respectfully submitted,

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Offered for your information, although League does not agree with all points made herein.
from Newsweek magazine 11/22/16 "How to Fix the Electoral College System"

If you voted in the recent presidential election, there's a pretty good chance you spent some time pondering the qualifications of Donald Trump and Hillary Clinton. There's almost no chance you were thinking about David Ferriero's résumé, but you should have been. As the chief archivist of the United

States, Ferriero and his colleagues organize the vote of the 538 electors in the Electoral College who actually choose the president.

The Constitution requires all electors to meet in their state capitols to cast ballots. Ferriero collects and organizes them, makes sure the states have followed the rules, then presents the ballots to Congress, which is charged with getting them counted. This antiquated ritual will play out again on January 6; only then will the U.S. officially elect its 45th president.

Outside of a fifth-grade social studies class, most people don't study the Electoral College, but this year it's controversial because Trump lost the popular vote (by well over a million votes, and it could be 2 million when the counting's done). This has happened just five times in American history, but twice in the past 16 years, the other time being George W. Bush's Electoral College defeat of Al Gore in 2000. But given demographics, it could happen again, and soon.

Trump supporters bristle when they hear griping about the Electoral College, and they probably should. No one is doubting their man won by the rules of the game, but a lot of people are now questioning why Americans play this silly game every four years. Democratic Senator Barbara Boxer of California has introduced a bill to abolish the Electoral College, and anti-Electoral College op-ed writers have been ripping it for weeks now. Among their questions and laments: Why have a system that ensures most states are ignored during the presidential campaign while a few swing states are buried with attention from the candidates? Should a minority of voters get to decide who becomes president? And is there any way to fix this system short of a constitutional amendment?

The Founding Fathers, worried about mob rule, envisioned the Electoral College as a kind of cooler-heads-prevail backstop. Alexander Hamilton saw the electors as wise men "most likely to possess the information and discernment" to choose a good president, and he didn't want the electors pledged to any candidate. But these days, the electors are almost always party hacks and former elected officials, merely a rubber stamp, not some independent body of wise souls solemnly weighing whether to ratify the people's choice. (In a bit of eerie prescience, Hamilton in "Federalist 68" seemed to anticipate the controversy over Russian hacking by saying the electors might be able to overturn a popular vote that had been unduly influenced by a foreign power.)

But that's not happening now or in the past. In recent decades, there have been only a few "faithless electors," as they call those who defied the voters who chose them. This year, one Clinton elector has declared he won't back her because of her lax record on Native American rights.

The biggest beef against the Electoral College is that it weights the election in favor of small, rural states. The number of electors is based on the total House and Senate members in each state's congressional delegation. The smallest-population states have three electoral votes, while California, the largest, has 55, far ahead of Texas, which has 35. Defenders of the Electoral College say that tilting it in favor of small states keeps the presidential race from being a frenzy to harvest votes in the most populated areas. Without it, candidates would mostly hustle in cities, overlooking huge swaths of the country. The founders, who were openly elitist, didn't want flat-out majoritarian rule, which is why the Senate is apportioned so that each state has two senators no matter its population, while the House reflects a one-person, one-vote standard. Wyoming, with just over 582,000 people, has the same number of senators as California, which has 39.5 million. (And Trump thought the election was rigged?)

The Electoral College put Donald Trump in the White House, even though he got swamped in the popular vote. Is it time for some postgraduate work on how the U.S. elects presidents?

That raises another problem with the Electoral College: The founders never envisioned a behemoth state like California. In their day, the population difference between the largest and smallest state was

10 to one (Virginia versus Delaware). What's more, cities were minuscule. There was no clear rural-urban divide. In 1790, New York City, which has always been the nation's most populous city, had 33,000 residents. Today, it has 8.4 million (and almost 79 percent of its voters backed Clinton against the "local boy"). The founders didn't anticipate that kind of hyper-urbanization.

Another knock against the Electoral College is that instead of ensuring a nationwide race, it creates a nutty focus on swing states such as Nevada or Iowa. It's bad enough that the system tilts in favor of small states, but it tilts even more insanely toward small swing states. Folks in New Hampshire were the most powerful voters in 2016, according to analyses, because their state was the smallest of those in play. No wonder Clinton and Trump were constantly there, ignoring much bigger but out-of-play states like Washington or Kansas.

If you don't like this system, get ready to like it a lot less in the near future. The huge population growth of California since World War II (when it was only the fifth largest state, with under 7 million people in 1940) and its strong Democratic leanings mean it's likely there will be many more elections in which the winner of the popular vote gets trumped by the Electoral College. (Democrats have won the popular vote in six of the past seven elections.)

The super-blue hue of California means we're likely to see a Democratic win in the popular vote again and again if the race is close. Trump won seven of the 10 most populous states, but two of them were by 1 percent. His best of the big states was Texas, which he won by just over 9 percent. But Clinton won her three top 10 states by huge margins: California by 28.5 percent, New York by 21.2 percent and Illinois by 16.9 percent, which is a large part of the reason she won the popular vote nationally. As long as the large blue states remain so big and so lopsided in their preferences (especially California), Democrats are likely to keep winning the popular vote.

How Can We Help You, Utah?

Not that it's ever going to be put to a vote, but the overwhelming majority of Americans think the popular vote should pick the president. That's worrisome, because at some point there is bound to be a real crisis of legitimacy; the majority may not always be content to merely grumble when it is ruled by the minority.

Until that happens, the Electoral College ain't going away. Dismantling it via a constitutional amendment would require two-thirds of Congress and three-quarters of the states to sign on—which would mean that many of those who benefit from the current arrangement would have to help kill it. There's no reason small-population states like Rhode Island and Idaho would back an amendment that would give them less clout.

There are two interesting ideas that could make the system better. One is the National Popular Vote Interstate Compact, an agreement among states that they will give all of their electoral votes to the winner of the national popular vote. The upside of this is that if enough big states sign on, it won't matter nearly as much what the small states do. The downside is that it's not enforceable—the electors have pretty much free rein to vote as they choose, and the Constitution likely prevents such interstate compacts and treaties. So far, 10 blue states of all sizes, including California, have signed on, which makes sense since Democratic candidates are the ones getting short-sticked on this matter.

The more intriguing idea may be to expand what Maine and Nebraska have done with their electors. The Constitution sets up the Electoral College, but it leaves it to the states to decide how to apportion their electoral votes. All go with the winner-take-all system, but Maine and Nebraska apportion their electors by congressional districts. In most presidential elections, Maine and Nebraska's individual districts don't break off from the rest of the state. But in 2008, Nebraska's urban 2nd District, which includes Omaha, went for Barack Obama. This year, Maine's vast, rural 2nd District went for Trump.

The good thing about this scheme is that it drew the presidential candidates to areas that might otherwise have been ignored. Trump held multiple rallies in Bangor, in Maine's north, and Clinton worked Omaha, hoping to replicate Obama's win.

If more states apportioned electors by congressional districts, they'd get more attention. Right now, there's no incentive for candidates to go to safe blue states such as New Jersey or safe red ones like Tennessee. If the electors were apportioned by congressional district, that might change. Trump could have mined New York state's Republican districts—from the Canadian border to Staten Island—that regularly go red. Likewise, Clinton might have played harder in deep-red Texas, seeking votes in Austin, Dallas and Houston. Just having a few states adopt this system would make for a more interesting race. Instead of the candidates fawning over a few winner-take-all swing states, they would have to woo more of the country. *[League's analysis shows that with this system, the chance of no candidate getting 270 electoral votes would increase, particularly if a strong third-party candidate were to emerge, throwing the election into the House of Representatives; so we do not support proportional electoral votes.]*

Hamilton wisely favored choosing electors by district, but the majority party in the states couldn't resist posting statewide slates of electors—all the better to crush the chances of any minority party electors. Once one state did it, it became a kind of arms race, and today we're stuck with 48 winner-take-all elections.

Once again, Hamilton was smarter than the rest of us.