

Legislative Analysis



PRESIDENTIAL VOTE COMPACT

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House Bill 6610 without amendment

Sponsor: Rep. Steve Tobocman

Committee: Ethics and Elections

First Analysis (12-11-08)

BRIEF SUMMARY: The bill would create a new act to be known as the "Interstate Compact to Elect the President by National Popular Vote," in order to elect the U.S. president and vice president by popular vote, instead of through the electoral college.

FISCAL IMPACT: A fiscal analysis is in process.

THE APPARENT PROBLEM:

In the 2000 presidential election campaign, the winning slate for U.S. president and vice president did not capture the highest number of popular votes. They did, however, capture a majority of votes in states whose electors, added together, made-up a majority of the Electoral College. The winning slate (Bush-Cheney) won 271 electoral votes (270 being the minimum needed) with 47.87 percent of the popular vote (50,456,002 supporters). In contrast, the losing slate (Gore-Lieberman) garnered 266 electoral votes, yet won 48.38 percent of the popular vote (50,882,955 supporters). See *BACKGROUND INFORMATION*. This was the third time in U.S. history that winners of the popular vote lost their elections in the Electoral College, including the 1876 election when Rutherford B. Hayes beat Samuel Tilden, and the 1888 election when Benjamin Harrison beat Grover Cleveland, despite the fact that both Tilden and Cleveland won the popular vote. (A fourth presidential candidate, Andrew Jackson, lost the presidency despite earning the most popular and electoral college votes in a four-way race before the development of the current two-party system and before the national popular vote was officially tallied in elections. No candidate received the required majority of electoral college votes in that year. Instead, the election was settled by the U.S. House of Representatives and John Quincy Adams became president.)

In 2006, a non-profit 501(c)(4) organization headed by a Vermont state representative was established to mount "The National Popular Vote" drive. That effort invites election officials in all 50 states and the District of Columbia to enter into an interstate compact to ensure that the winning U.S. presidential slate is that team of candidates that wins the popular vote. Four states have signed the compact: Illinois, Hawaii, New Jersey, and Maryland. More information is available at the organization's website:
<http://www.nationalpopularvote.com>

The Electoral College (which since 1964 has had 538 electors) is a form of indirect election, an idea referenced within the U. S. Constitution, and originated when the framers were wary of giving the people the power to directly elect the president. As an

indirect election, voters elect not the person running for president but instead an elector who is pledged to vote for a specific person for president. The U.S. Constitution (in Article 2 Section 1, and in the 12th Amendment) allows the states, through their legislatures, to determine how the electoral votes within a state are assigned. Most states (48) have a "winner takes all" system. Two--Nebraska and Maine--award their Electoral College votes based on the popular vote in their congressional districts. Michigan is a "winner takes all" state. Here, the presidential slate receiving the highest number of popular votes is assigned all 17 of the state's electoral votes. Then, when the Electoral College electors convene, all 17 electoral college votes go to the winner of the popular vote.

If Michigan were to enter into the compact, the state would--after all votes are tallied nationwide and the popular vote is known--commit its 17 presidential electoral votes to the presidential slate that picked up the highest number of popular votes nationwide, instead of to the candidate who won the highest number of votes in Michigan.

A bill to create the "National Popular Vote" interstate compact in Michigan has been introduced in the legislature.

THE CONTENT OF THE BILL:

House Bill 6610 would create a new act to be known as the "Interstate Compact to Elect the President by National Popular Vote."

Under the bill, the Interstate Compact to Elect the President by Popular Vote would, itself, be enacted into law. Then all jurisdictions would legally enter into the compact. The bill presents the language of the compact--drafted as five articles--in substantially the form in which it is proposed that the language of the compact be adopted. A description of each article follows.

Article I - Membership. This article specifies that any state of the United States and the District of Columbia could become a member of this agreement by enacting it.

Article II - Right of the People in Member States to Vote for President and Vice President. Before the meeting of the presidential electors, this article requires the chief election official of each state to determine the number of votes cast for each presidential slate in a statewide election. Added together, those votes would produce a "national popular vote total" for each slate. The slate receiving the largest vote total would be declared the "national popular vote winner," so designated by the state's chief election official.

Then each member state's presidential elector certifying official would certify the appointment of the elector slate nominated, in association with the national popular vote winner. At least six days before the day set by law for the meeting and voting by the presidential electors, each member state would make a final determination of the number

of popular votes cast in the state for each presidential slate, and then communicate an official statement of that determination, within 24 hours, to the other member states.

The bill requires that the chief election official of each member state treat as conclusive an official statement containing the number of popular votes for each slate (made by the day established by federal law for making a state's final determination conclusive), as to the counting of electoral votes by Congress.

In the event of a tie for the national popular vote winner, the presidential elector certifying official of each member state would certify the appointment of the slate receiving the largest number of popular votes.

If the number of presidential electors nominated in a member state were less or greater than the state's number of electoral votes, the presidential candidate on the slate that had been designated as the national popular vote winner would have the power to nominate the presidential electors for that state, and that state's presidential elector certifying official would certify the appointment of the nominees.

The bill requires that the chief election official of each member state immediately release to the public all of the vote counts or statements of votes as they are determined or obtained.

Under the bill, *Article III* would govern the appointment of presidential electors in each member state in any year in which this agreement was, on July 20, in effect in states cumulatively possessing a majority of electoral votes.

Article IV - Other Provisions. The bill requires that this agreement take effect when states cumulatively possessing a majority of the electoral votes have enacted the agreement in substantially the same form, and those enactments have taken effect. Any member state could withdraw from the agreement, except that a withdrawal that occurred less than six months before the end of a president's term would not become effective until a president or vice president had been qualified to serve the next term.

The chief executive of each member state would be required to promptly notify the chief executive of all other states of three events: when this agreement had been enacted and taken effect; when the state had withdrawn from the agreement; and when the agreement took effect generally.

The bill specifies that the agreement would terminate if the Electoral College was abolished.

Under the bill, if any provision of the agreement was held to be invalid, the remaining provisions would not be affected.

Article V - Definitions. The bill defines "chief executive" to mean the governor of a state (or the mayor of the District of Columbia). "Elector slate" means a slate of candidates

who have been nominated in a state for the position of presidential elector in association with a presidential slate.

"Chief election official" means the state official or body that is authorized to certify the total number of popular votes for each presidential slate. "Presidential elector" means an elector for president and vice president of the United States. "Presidential elector certifying official" means the state official or body that is authorized to certify the appointment of the state's presidential electors.

"Presidential slate" means a slate of two persons, the first of whom has been nominated as a candidate for President of the United States and the second of whom has been nominated as a candidate for Vice President of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state.

"Statewide popular election" means a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis.

The compact contains a six-month blackout period from July 20 of each presidential year through the inauguration. During this period, states may not withdraw from the compact (<http://www.nationalpopularvote.com/pages/explanation.php>).

BACKGROUND INFORMATION:

Presidential Election of 2000: Electoral and Popular Vote Summary, by State, and Totals.

	George W. Bush		Albert A. Gore, Jr.		Ralph Nader		Electoral votes		
	Popular vote	%	Popular vote	%	Popular vote	%	R	D	G
Alabama	941,173	56%	692,611	42%	18,323	1%	9		
Alaska	167,398	59	79,004	28	28,747	10	3		
Arizona	781,652	51	685,341	45	45,645	3	8		
Arkansas	472,940	51	422,768	46	13,421	1	6		
California	4,567,429	42	5,861,203	53	418,707	4		54	
Colorado	883,748	51	738,227	42	91,434	5	8		
Connecticut	561,094	38	816,015	56	64,452	4		8	
Delaware	137,288	42	180,068	55	8,307	3		3	

DC	18,073	9	171,923	85	10,576	5		2 ¹	
Florida	2,912,790	49	2,912,253	49	97,488	2	25		
Georgia	1,419,720	55	1,116,230	43	13,432 ²	1	13		
Hawaii	137,845	37	205,286	56	21,623	6		4	
Idaho	336,937	67	138,637	28	12,292 ²	2	4		
Illinois	2,019,421	43	2,589,026	55	103,759	2		22	
Indiana	1,245,836	57	901,980	41	18,531 ²	1	12		
Iowa	634,373	48	638,517	49	29,374	2		7	
Kansas	622,332	58	399,276	37	36,086	3	6		
Kentucky	872,492	57	638,898	41	23,192	2	8		
Louisiana	927,871	53	792,344	45	20,473	1	9		
Maine	286,616	44	319,951	49	37,127	6		4	
Maryland	813,797	40	1,145,782	56	53,768	3		10	
Massachusetts	878,502	33	1,616,487	60	173,564	6		12	
Michigan	1,953,139	46	2,170,418	51	84,165	2		18	
Minnesota	1,109,659	46	1,168,266	48	126,696	5		10	
Mississippi	572,844	58	404,614	41	8,122	1	7		
Missouri	1,189,924	50	1,111,138	47	38,515	2	11		
Montana	240,178	58	137,126	33	24,437	6	3		
Nebraska	433,862	62	231,780	33	24,540	4	5		
Nevada	301,575	50	279,978	46	15,008	2	4		
New Hampshire	273,559	48	266,348	47	22,198	4	4		
New Jersey	1,284,173	40	1,788,850	56	94,554	3		15	
New Mexico	286,417	48	286,783	48	21,251	4		5	
New York	2,403,374	35	4,107,697	60	244,030	4		33	
North Carolina	1,631,163	56	1,257,692	43	—	—	14		
North Dakota	174,852	61	95,284	33	9,486	3	3		
Ohio	2,351,209	50	2,186,190	46	117,857	3	21		

Oklahoma	744,337	60	474,276	38	—	—	8		
Oregon	713,577	47	720,342	47	77,357	5		7	
Pennsylvania	2,281,127	46	2,485,967	51	103,392	2		23	
Rhode Island	130,555	32	249,508	61	25,052	6		4	
South Carolina	785,937	57	565,561	41	20,200	1	8		
South Dakota	190,700	60	118,804	38	—	—	3		
Tennessee	1,061,949	51	981,720	47	19,781	1	11		
Texas	3,799,639	59	2,433,746	38	137,994	2	32		
Utah	515,096	67	203,053	26	35,850	5	5		
Vermont	119,775	41	149,022	51	20,374	7		3	
Virginia	1,437,490	52	1,217,290	44	59,398	2	13		
Washington	1,108,864	45	1,247,652	50	103,002	4		11	
West Virginia	336,475	52	295,497	46	10,680	2	5		
Wisconsin	1,237,279	48	1,242,987	48	94,070	4		11	
Wyoming	147,947	68	60,481	28	4,625 ²	2	3		
Total	50,456,002	47.87%	50,999,897	48.38%	2,882,955	2.74%	271	266	

NOTE: Total electoral votes = 538. Total electoral votes needed to win = 270. Dash (—) indicates not on ballot. Percentages may not add up to 100% due to rounding and other candidates.

1. The District of Columbia has 3 votes. There was 1 abstention.

2. Write-in votes.

Source: Federal Election Commission.

Voting age population (Census Bureau Population Survey for Nov. 2000): 205,815,000

Percentage of voting age population casting a vote for president: 51.3%

ARGUMENTS:

For:

The National Popular Vote bill is a state-based way to implement nationwide popular election of the president. The current system of electing the president in 48 states has a winner-take-all rule, awarding all of a state's electoral votes to the presidential candidate who receives the most popular votes in each state. Under the present system, a candidate can win the presidency without winning the most popular votes nationwide.

Under the proposed state legislation, the popular votes from all 50 states and the District of Columbia would be added together to obtain a national grand total for each presidential candidate. Then, state election officials in all states participating in the plan would award their electoral votes to the presidential candidate who received the largest

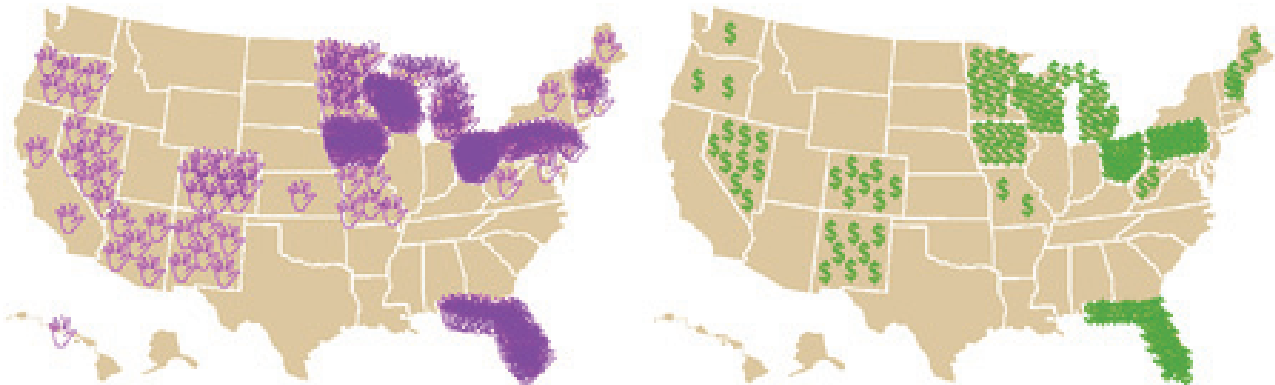
number of popular votes nationwide. The compact would take effect only when enacted by states collectively possessing 270 of the 538 electoral votes. This guarantees that the presidential candidate receiving the most popular votes nationwide would win enough electoral votes in the Electoral College to become president. The 270-vote threshold represents a majority of the people of the United States, ensuring that every vote in all 50 states and the District of Columbia is equally important in presidential elections.

The compact contains a six-month blackout period from July 20 of each presidential year through the inauguration. During this period, states may not withdraw from the compact.

This bill would allow the candidate with the most popular votes--arguably the candidate who best represents the will of the majority of American people--to become the president of the United States.

For:

The leaders of the National Popular Vote drive say they have two goals: *Fairness*, assuring that every voter's vote counts equally; and *Broad Participation*, ensuring that the campaign for the presidency includes citizens across the United States, involving them in our nation's most important policy conversation. Currently, the voters in just a few "swing states" see most of the campaign action, as the maps below--tracking campaign visits and expenditures-- illustrate.



These maps show the amount of attention given to each state by the [Bush](#) and [Kerry](#) campaigns during the final five weeks of the [2004 election](#). At left, each waving hand represents a visit from a presidential or vice-presidential candidate during the final five weeks. At right, each dollar sign represents one million dollars spent on TV advertising by the campaigns during the same time period.

During the 2008 presidential campaign, the Obama-Biden slate had a so-called 50-state election strategy, and both political parties' presidential candidates' campaigns were visible in more states. However, activity continued to focus on a few key winnable states. According to committee testimony, 98 percent of the candidates' visits centered on 15 states, while 55 percent of their expenditures were in just four.

This bill would help ensure a more broadly participatory presidential election, since the popular vote in all states would count equally, circumventing the Electoral College system. Consequently, the candidates would wish to make their arguments, face-to-face and electronically, to all voters in all states.

Response:

Although adoption of the interstate compact may well broaden the policy conversation in a direct election, it seems reasonable to assume that candidates would continue to prioritize their scheduling and expenditures in order to concentrate their time and attention on highly populated states.

Against:

No arguments in opposition to the presidential vote interstate compact were advanced in the House Ethics and Elections Committee.

POSITIONS:

National Popular Vote supports the bill. (12-10-08/

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.