

Assembly Bill 186

Agreement Among the States to Elect the President by National Popular Vote

Bill Summary

Assembly Bill 186 enacts the Agreement Among the States to Elect the President by National Popular Vote. An interstate compact, the Agreement takes effect when states that cumulatively possess a majority of the Electoral College votes have enacted the Agreement.

Bill Rationale

The National Popular Vote bill would guarantee the presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia. Each member state would direct its electoral votes to the candidate who receives the highest number of votes nationwide.

Forty-eight states now award presidential electors on the basis of winner-take-all.¹ As a result, five of this country's presidents assumed the office on the basis of the Electoral College vote, while not receiving the most popular votes nationwide.² The will of the people, as expressed in the popular vote, was denied.

Background

Article II, Section 1 of the *United States Constitution* gives states exclusive control over awarding their electoral votes: "Each state shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress"

The Electoral College was not debated at the 1787 Constitutional Convention. The winner-take-all rule is not mentioned in the *Federalist Papers*. The method of awarding all electoral votes to the winner was used by only three states in the first presidential election in 1789.³

According to the National Popular Vote, the compact has been enacted into law in 11 states and the District of Columbia. These jurisdictions possess 172 electoral votes.⁴ On February 21, 2019, the Colorado General Assembly passed Senate Bill 19-042 to join the compact, adding 9 electoral votes to the total.⁵ The bill has been sent to the Governor.

¹ Maine and Nebraska allocate electors by congressional district.

² 1824, John Quincy Adams; 1876, Rutherford B. Hayes; 1888, Benjamin Harrison; 2000, George W. Bush; and 2016, Donald J. Trump.

³ National Popular Vote, https://www.nationalpopularvote.com/section_9.1#myth_9.1.1.

⁴ National Popular Vote, <https://www.nationalpopularvote.com/>.

⁵ Colorado Public Radio, <https://www.cpr.org/news/story/colorado-house-passes-national-popular-vote-bill-gop-pushes-for-ballot-measure>

Contents of the Agreement

The compact would not take effect until it is enacted by states whose electoral votes would total enough to elect the President (270 of 538). States pledge to award their electoral votes to the winner of the nationwide popular vote.

- Each member state conducts a statewide popular election for the President and Vice President.
- The state's chief election official designates the slate with the largest vote total as the national popular vote winner. The elector slate associated with the national popular vote winner will be certified.
- In the event of a tie for the national popular vote winner, the state official authorized to certify presidential electors shall certify the elector slate associated with the presidential slate receiving the largest number of popular votes in that official's own state.

An individual state's control of its elections is preserved. A state can withdraw from the compact at any time, except that a withdrawal within six months of the end of a President's term shall not become effective until a President or Vice President shall have been qualified for the next term.

The Agreement does not repeal the Electoral College.

Impact on Uniform Faithful Presidential Electors

Nevada adopted the Uniform Faithful Presidential Electors Act in 2013. Under these existing provisions:

- Electors who represent Nevada in the Electoral College must pledge to cast their votes for the President and Vice President of the United States, according to the results of the popular vote in Nevada at the General Election.
- Nevada's Secretary of State is authorized to enforce the pledge of an elector.
- In the event that an elector returns a ballot that does not conform to the pledge, the Secretary shall refuse to accept the ballot, declare the position of elector vacant, and appoint an alternate, who will also be bound by the pledge.

Assembly Bill 186 revises the pledge to require an elector to vote for the candidates of the political party that nominated the individual, rather than for the candidates who received the highest number of votes in Nevada.

If the Agreement is not effective, then existing provisions under the Uniform Faithful Presidential Electors Act apply. If the Agreement has become effective, then the appointment of presidential electors shall be determined pursuant to the Agreement.