

FOREWORD

By Dr. Robert A. “Bob” Holmes

The struggle to achieve voting fairness and political equality has continued since the founding of the United States in 1789. Many voting-rights issues were first discussed and resolved in the states many years before they were finally applied nationwide, such as granting former slaves and women the right to vote. The states are continuing to serve as “laboratories” for developing new and creative solutions to make this nation a more democratic system of government. The National Popular Vote legislation is another opportunity for states to take a leadership role in changing the current archaic and undemocratic method used to elect the President of the United States.

Perhaps the most important issue of voting inequality in the nation today is the method used to choose the President, particularly the awarding of states’ Electoral-College votes using the winner-take-all method. Article II, Section 1 of the U.S. Constitution gives the 50 states the exclusive authority to decide how to allocate their electoral votes in presidential elections. Originally, the Electoral College was created to allow a group of “chosen wise men” whose numbers were determined by the size of the congressional delegation from the various states to meet after the general election at their state capitals to vote for the candidate whom they believed should be President. While competing political parties have come and gone, and there have been changes in the methods for choosing members of the Electoral College, the allocation of these Electoral-College votes among the candidates has remained a plenary power of the 50 individual state legislatures. Forty-eight states and the District of Columbia use the winner-take-all method while two states, Maine and Nebraska, assign their votes based on congressional districts. Under the current system, four of the 56 presidential elections (1 of each 14) have been “won” by the candidate who finished second in terms of the total national popular vote of the electorate. Further, a change of less than 1% in one or two states would have led to the same results in five of the last 12 presidential elections.

In fact, two of the first three elections in the 21st century provide good examples of a major flaw in the current system. In the 2000 contest, Democratic presidential candidate Al Gore won 537,000 more votes than his Republican opponent George Bush, but the latter became President. Then in the 2004 election, President Bush won more than 3 million more popular votes than Democrat John Kerry, but Kerry would have won the Presidency if he had received only 60,000 more votes in Ohio.

The winner-take-all rule (used in 48 states and Washington, D.C.) awards all of the Electoral-College votes to the candidate who receives the most popular votes in

the state (or the District of Columbia). This method of awarding electoral votes is the primary culprit of undemocratic outcomes in presidential elections.

A second major problem of the current system is that both major party candidates regularly ignore about 35 of the 50 states in their campaigns because the polls show they are either far ahead in some states or way behind their opponent. Thus, neither candidate has any incentive to campaign in states that are reliably Republican (red) or Democrat (blue) in voting for presidential candidates. Therefore, candidates spend 98% of their financial resources and campaign activities in only 15 states that are considered competitive battlegrounds (which, in practice, means less than a 5% difference in the polls between candidates). And even worse, persons who vote for the losing candidate in their state have their votes awarded to the winning candidate who receives all of the Electoral-College votes in the state!

The current system of electing the President is similar to the method used to elect the Governor of Georgia until 1962. Georgia used the county “unit system” and allocated units (similar to electoral votes) to each county based on their population. The largest counties (including Fulton with 300,000) had a maximum of six units to vote for Governor, whereas the smallest counties (some having only 2,000 residents) were guaranteed a minimum of one unit. Thus, six of the smallest counties (with a combined total of less than 20,000 people) had more voting power than one county with more than 300,000 people.

Fortunately, the U.S. Supreme Court declared the county unit system used to elect the Governor of Georgia unconstitutional because it violated the political equality doctrine of “one person, one vote.” Yet in the 21st century, the President of the United States is still elected by an Electoral-College vote system that is clearly inequitable. It is important to know that none of the more than 200 nations in the world uses such an anti-democratic method to elect their head of state.

The national popular vote method of electing the President provides a new innovative and creative method that will produce much-needed reform that will guarantee that all future Presidents will be chosen based on the candidate receiving the most national popular votes cast in the 50 states and the District of Columbia.

Recent polls taken between 2008 and 2010 in 32 states show that the American electorate overwhelmingly supports the idea of the direct election of the President by a national electorate, not 51 separate political jurisdictions. In every one of the 32 states where polls were conducted, there was a minimum of 67% who favored the new system over the current method. Also, the actions of many state legislators have already resulted in eight states and the District of Columbia enacting the National Popular Vote bill (half of the electoral votes required). The bill has been approved by 31 legislative bodies in 21 states.

Under the national popular vote method, all of the Electoral-College votes of states that enact legislation to join the interstate compact would agree to cast their Electoral-College votes for the candidate who receives the most national popular votes.

The compact would be activated when the number of states that adopt the legislation constitute a majority (270) of the Electoral-College votes (538) required to elect the President.

The public and their elected state legislators understand that the new method would make every vote equal in each state and would likely achieve two other democratic outcomes: (1) cause all presidential candidates to campaign in all of the states just as they do to win their party's nomination, and (2) generate greater voter interest and turnout in Presidential elections because election data show that fewer people turn out in solid red and blue states compared to competitive states. For example, when North Carolina and Virginia (which had been red states for 50 years) became competitive in the 2008 election, voter turnout increased by 8% and 10%, respectively.

Under a national popular vote, candidates would have to pay attention and respond to the policy priorities and concerns of voters in the 50 states, not just 15 states.

Many organizations that have for decades been at the forefront of electoral reform in this nation have recently endorsed the national popular vote legislation because they recognize that the current system of electing the President is the antithesis of the fundamental democratic principles of "one person, one vote" and "every vote equal." Among these organizations are: the American Civil Liberties Union, Common Cause, FairVote, Demos, The League of Women Voters, the National Association for the Advancement of Colored People, the National Black Caucus of State Legislators, the National Coalition on Black Civic Participation, and many others. Their support resolutions passed at their national conventions included phrases stating the justification for their support, such as: "It would effectively ensure that no future President would be elected without having received the most popular votes" and "It would guarantee that each American vote in this process would count equally."

The National Popular Vote legislation is the most significant proposed election reform in this nation since the Voting Rights Act of 1965 because it will ensure that the principle that every vote should be equal will apply in the election of the President of the United States. This excellent treatise provides a detailed historical, legal, and political analysis of attempts at presidential election reform and also effectively answers the questions and criticisms (myths) made by opponents. More important, it provides the best solution to democratize the process of electing the President. In sum, it is an idea whose time has come, and I urge the reader to contact their state legislators and get involved in their state to ensure that this great idea reaches fruition.