



ACLU Of Wisconsin Statement in Support of Entering Into an Agreement Among the States to Elect the President of the United States by Means of a National Popular Vote (AB 751)

**Submitted to the Assembly Committee on Elections and Campaign Reform
February 17, 2010**

The American Civil Liberties Union national Executive Committee at its meeting on September 11, 2009, with the endorsement of the ACLU Voting Rights Project, approved ACLU support of the National Popular Vote (NPV) compact, which would award the presidency to the candidate who received the largest number of popular votes in all 50 states and the District of Columbia. This compact would not go into effect until enacted by states collectively possessing a majority of the electoral vote - 270 of the 538 electoral votes.

To prevent partisan manipulation, the compact contains a six-month blackout period from before the election through the January 20 inauguration during which a state would be prevented from withdrawing from the compact. The compact would eliminate the possibility under the existing system of "faithless presidential electors," i.e., an elector casting a ballot for a candidate other than the one chosen by the majority of the state's voters.

It would also eliminate the possibility that a presidential election would be decided by the House of Representatives and a vice presidential election would be decided by the Senate, in the event no person received a majority of the Electoral College votes, as is provided by current law. Most notably, the compact would eliminate the possibility that a candidate who received the most popular votes, but did not receive the requisite 270 Electoral College votes needed to win, could lose the election, as happened, for example, in the Bush-Gore 2000 election. **The 2000 election was actually the fourth time in American history when the winner of the popular vote failed to win the presidency: those elections were in 1824 (Adams-Jackson), 1876 (Hayes-Tilden), 1888 (Harrison-Cleveland), and 2000 (Bush-Gore).**

Current ACLU Policy #324, adopted in 1969, provides: "The Union supports an amendment to the Constitution of the United States to provide for the election of the President and Vice-President by direct popular vote, on condition, however, that such amendment contains the following provisos: (1) if no candidate receives more than a fixed percentage of the total number of votes cast - preferably a majority but not less than 40% - a run-off election be held between the two highest contenders for the offices of President and Vice-President respectively; and (2) federally prescribed and federally supervised uniform non-discriminatory procedures and standards for registration and voting in such elections are required." While NPV is not a constitutional amendment and does not contain a 40% provision, it is consistent with ACLU policy premised on the belief "that the electoral college from its basic conception was and is an

undemocratic institution. It was brought into being based on a concept of elitism, under which the most distinguished citizens of each state would choose the President and Vice-President of the United States, unhampered by the wishes of those who selected the electors.

ACLU believes that the Electoral College should be abolished and the President of the United States should be chosen by direct popular election. Our position is based on the principle that each individual is entitled to the equal protection of the laws in having an elector's vote equally weighed, and on its corollary enunciated in the one-man, one vote rule.

The ACLU would be concerned that inserting a runoff provision into the National Popular Vote plan might lead to a scheme in which voters would have to go to the polls more than once. Such a result might place an undue burden on voters and has the potential to reduce the number of votes cast. Therefore, the Board is currently re-examining the 40% runoff provision of Policy #324. Only once has a presidential candidate failed to receive at least 40% of the popular vote. In the 1860 election, Abraham Lincoln received 39.65% of the popular vote and won the election with 59.41% of the Electoral College vote.

The constitutionality of the National Popular Vote compact is supported by Article II, Section 1 of the Constitution which provides that: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . ." Thus, the **states have inherent power to select their Electors as they see fit**, provided the method of selection does not violate some other provision of the constitution, e.g., the Fourteenth or Fifteenth Amendments.

As of November 2009, five states have enacted the National Popular Vote compact: Hawaii, Illinois, Maryland, New Jersey, and Washington. That amounts to 61 (23%) of the 270 electoral votes needed to activate the compact. In 2009, the compact was introduced in legislatures in 31 other states. In nine of these states, the compact was approved by one of the two legislative bodies: Arkansas, Colorado, Connecticut, Delaware, New Mexico, Nevada, Oregon, Rhode Island, and Vermont.

The ACLU of Wisconsin has approximately 9,000 members who support its efforts to defend the civil liberties and civil rights of all Wisconsin residents. For more on the work of the ACLU of Wisconsin, visit our [webpage](#). You can also get news and opinion on civil liberties in Wisconsin on our [Cap City Liberty blog](#). Find us on [Facebook and Twitter at ACLUMadison and ACLUofWisconsin](#).

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