

**Testimony Re: SB 242**  
**Senate Ethics & Elections Committee**  
**Laura Brod**  
**Spokesperson**  
**Support Popular Vote**  
**February 2, 2012**

The National Popular Vote bill will guarantee the Presidency to the candidate who wins the most votes in all 50 states.

The bill has been passed 31 chambers in 21 different states and has been enacted by 9 states equaling 132 electoral votes or 49% of the votes necessary to trigger the compact into effect. There is a growing bipartisan – nonpartisan—movement across the country.

The shortcomings of our current system stem from the winner-take-all state laws in which a state awards all of its electors to the candidate who wins that state.

The problems and shortcomings of the current system are due to state statutes – not the electoral college -- which is why our proposal seeks to change state law and does not touch or attempt to alter the electoral college one bit. In fact, our bill actually PRESERVES the electoral college in its current form while at the same time solving two major shortcomings in our current system:

1. The candidate who comes in 2<sup>nd</sup> can win the Presidency – 5 out of 56 elections.
2. The candidates run campaigns based on a system which has led to a total focus on a few competitive “battleground” states while they effectively ignore the rest of the country in general elections leaving them in a “flyover” status. 98% of all campaign spending, visits, and issue focus occurs in 15 states.

The “flyover” status which is a creation of our winner-take-all statutes, leads candidates to not only ignore the 35 flyover states – including Kansas – for campaign purposes, but even more importantly leads them to ignore the issues and concerns of voters in these states where they are comfortably ahead or hopelessly behind. If candidates are ignoring 2/3 of the country during the campaign, they likely are not focused on the issues important to those folks during and after the campaign. (Example: WSJ Map showing Presidential travel)

The National Popular Vote bill creates a voluntary compact between any combination of states which collectively total at least 270 electoral votes – a majority of electoral votes required to elect the President. States enter the compact by passing a law, just like any other law, in which they agree to enter the compact.

The compact only triggers into effect when enough other states have joined the agreement of states to equal 270 electoral votes.

The National Popular Vote plan achieves the following:

1. Preserves the Constitution and the role of our Electoral College -- It does NOT abolish or render it irrelevant while at the same time solving some of the shortcomings of the winner-take-all state laws in order to assure that every vote matters in every election in every state.
2. Exercises state powers delineated in Article II, Section 1 of the Constitution -- It is not an end run around the Constitution -- but utilizes an explicit state power set forth through 17 words in the Constitution.
3. Provides an incentive for presidential candidates to campaign in a vastly larger number of states beyond the current 6- 10 battleground states determined by campaign consultants.
4. The small state "advantage" is negated by the current winner-take-all statutes. (Reference Sen. Bob Dole Statement and 1966 Buckson Lawsuit).

Smaller population states, like Kansas, get a greater advantage by utilizing ALL of their votes for a particular candidate because their margins are so strong.

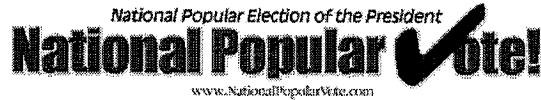
National Popular Vote allows states to keep their intended electoral voice in tact, while layering on top a practical influence because every vote will count and be sought after in a way that is not occurring today.

## Conclusion

In 1787, after debating the method of electing the president for 22 days and conducting 30 votes on the matter, delegates at the Constitutional Convention never agreed on a method for choosing Presidential electors at the national level. They did agree, however, that the matter should be turned over to the state legislators. The Founders expected the states to act in the best interests of the people they represent.

The legislation will strengthen Kansas' voice and allow her to utilize ALL the votes of the people for the candidate for whom they were cast.

The people of this country aim to elect the President of the United States, not the President of the targeted states.



August 8, 2011

### “Agreement Among the States to Elect the President by National Popular Vote”

The National Popular Vote bill would guarantee the Presidency to the candidate who receives the most popular votes in the entire United States. The bill ensures that *every* vote, in *every* state, will matter in *every* presidential election.

The bill has been enacted by 9 jurisdictions possessing 132 electoral votes — 49% of the 270 necessary to activate it (VT, MD, WA, IL, NJ, DC, MA, CA, HI).

The bill has passed 31 legislative chambers in 21 jurisdictions (AR, CA, CO, CT, DC, DE, HI, IL, ME, MD, MA, MI, NV, NJ, NM, NY, NC, OR, RI, VT, WA). In the recent 47–13 vote in the Republican-controlled New York Senate, Republicans supported the bill 21–11, and Democrats supported it 26–2. The bill has been endorsed by 2,124 state legislators.

The shortcomings of the current system stem from the winner-take-all rule (i.e., awarding all of a state’s electoral votes to the candidate who receives the most popular votes in each state).

The winner-take-all rule has permitted a candidate to win the Presidency without winning the most popular votes nationwide in 4 of our 56 elections — 1 in 14 times. A shift of 60,000 votes in Ohio in 2004 would have elected Kerry despite Bush’s nationwide lead of 3,000,000.

Another shortcoming of the winner-take-all rule is that presidential candidates have no reason to pay attention to the concerns of voters in states where they are comfortably ahead or hopelessly behind. In 2004 and 2008, candidates concentrated two-thirds of their visits and ad money in the post-convention campaign in just six closely divided “battleground” states— with 98% going to just 15 states. Two thirds of the states were ignored.

Article II, Section 1 of the U.S. Constitution gives the states exclusive control over the manner of awarding their electoral votes: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors....” The winner-take-all rule is not in the Constitution. It was used by only 3 states in our nation’s first election in 1789. Maine and Nebraska’s awarding of electoral votes by district is a reminder that states control the process.

Under the National Popular Vote bill, all the electoral votes from the enacting states would be awarded to the presidential candidate who receives the most popular votes in all 50 states (and DC). The bill would take effect only when enacted by states possessing a majority of the electoral votes — that is, enough electoral votes to elect a President (270 of 538).

The National Popular Vote bill preserves the Electoral College and state control of elections.

The bill has been endorsed by *New York Times*, *Sacramento Bee*, *Minneapolis Star-Tribune*, *Chicago Sun-Times*, *Los Angeles Times*, *Fayetteville Observer*, *Tennessean*, and *Miami Herald*.

The bill has been endorsed by League of Women Voters, Common Cause, and FairVote.

State polls are favorable: AK-70%, AR-80%, AZ-67%, CA-70%, CO-68%, CT-74%, DC-76%, DE-75%, FL-78%, ID-77%, IA-75%, KY-80%, ME-77%, MA-73%, MI-73%, MS-77%, MO-70%, MT-72%, NH-69%, NE-74%, NV-72%, NM-76%, NY-79%, NC-74%, OH-70%, OK-81%, OR-76%, PA-78%, RI-74%, SC-71%, SD-75%, TN-83%, UT-70%, VT-75%, VA-74%, WA-77%, WI-71%, WV-81%, and WY-69%.

Our National Advisory Board includes former Senators Jake Garn (R-UT), Birch Bayh (D-IN), and David Durenberger (R-MN) and former congressmen John Anderson (R-IL, I), John Buchanan (R-AL), Tom Campbell (R-CA), and Tom Downey (D-NY). Former Senator Fred Thompson (R-TN) and Governors Bob Edgar (R-IL) and Chet Culver (D-IA) are champions.

Additional information is available in our book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* and at [www.NationalPopularVote.com](http://www.NationalPopularVote.com).

**Excerpts from**  
**1979 U.S. Senate Floor Statement of Senator Robert Dole**  
**Republican nominee for President in 1996 and Republican**  
**nominee for Vice President in 1976**

“Many persons have the impression that the electoral college benefits those persons living in small states. I feel that this is somewhat of a misconception. Through my experience with the Republican National Committee and as a Vice Presidential candidate in 1976, it became very clear that the populous states with their large blocks of electoral votes were the crucial states. It was in these states that we focused our efforts.”

“I think we would see a resulting change in the nature of campaigning. While urban areas will still be important campaigning centers, there will be a new emphasis given to smaller states. Candidates will soon realize that all votes are important, and votes from small states carry the same import as votes from large states. That to me is one of the major attractions of direct election. Each vote carries equal importance”

“Direct election would give candidates incentive to campaign in States that are perceived to be single party states.”

<sup>91</sup> Congressional Record. July 10, 1979. Page 17748. <sup>92</sup> Congressional Record. January 14, 1979. Page 309.

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## **Kansas a Party to Small State 1966 Lawsuit Against New York's Winner-Take-All Rules**

In 1966, the state of Delaware led a group of 12 predominantly low-population states (including North Dakota, South Dakota, Wyoming, Utah, Arkansas, Kansas, Oklahoma, Iowa, Kentucky, Florida, and Pennsylvania) in suing New York in the U.S. Supreme Court.<sup>93</sup>

David P. Buckson (Republican Attorney General of Delaware at the time) led the effort. Delaware's brief argued:

"The state unit-vote system [the 'winner-take-all' rule] debases the national voting rights and political status of

Plaintiff's citizens and those of other small states by discriminating against them in favor of citizens of the larger states. A citizen of a small state is in a position to influence fewer electoral votes than a citizen of a larger state, and therefore his popular vote is less sought after by major candidates. He receives less attention in campaign efforts and in consideration of his interests." [Emphasis added]

In their brief, Delaware and the other plaintiffs stated:

"This is an original action by the State of Delaware as *parens patriae* for its citizens, against the State of New York, all other states, and the District of Columbia under authority of Article III, Section 2 of the United States Constitution and 28 U.S. Code sec. 1251. The suit challenges the constitutionality of the respective state statutes employing the 'general ticket' or 'state unit-vote' system, by which the total number of presidential electoral votes of a state is arbitrarily misappropriated for the candidate receiving a bare plurality of the total number of citizens' votes cast within the state.

"The Complaint alleges that, although the states, pursuant to Article II, Section 1, Par. 2 of the Constitution, have some discretion as to the manner of appointment of presidential electors, they are nevertheless bound by constitutional limitations of due process and equal protections of the laws and by the intention of the Constitution that all states' electors would have equal weight. Further, general use of the state unit system by the states is a collective unconstitutional abridgment of all citizens' reserved political rights to associate meaningfully across state

lines in national elections.”<sup>94</sup>

The plaintiff’s brief argued that the votes of the citizens of Delaware and the other plaintiff states are

“diluted, debased, and misappropriated through the state unit system.”

The U.S. Supreme Court declined to hear the case (presumably because of the well-established constitutional provision that the manner of awarding electoral votes is exclusively a state decision). Ironically, the defendant (New York) is no longer an influential closely divided battleground state (as it was in the 1960s). Today, New York suffers the very same disadvantage as the plaintiff states because it, too, has become politically non-competitive in presidential elections. Today, a vote in New York in a presidential election is equal to a vote in Delaware—both are equally worthless.