

**STATE OF NEVADA**  
**SENATE COMMITTEE ON LEGISLATIVE**  
**OPERATIONS AND ELECTIONS**

*Hearing on AB 413: An Act Enacting the Agreement Among the  
States to Elect the President by National Popular Vote*  
May 7, 2009

Submitted By: Tara Ross  
Author of *Enlightened Democracy: The Case for the Electoral College*

**Overview**

I urge you to vote against AB 413. It would create many new, logistical problems for our presidential election process. It would also essentially eliminate the Electoral College, an institution that is critical to the success of our republican democracy.

**Problems Created by AB 413.** The National Popular Vote plan proposed by AB 413 contains many hidden problems. NPV awards the presidency to the winner of any plurality—even a very small one. Nevada could be required to cast its electoral votes for a candidate who did not qualify for the ballot in Nevada. Recounts would be controlled by 51 different standards (50 states plus D.C.), not one national standard. Chaos, litigation, and confusion would result. Some voters would be disenfranchised because their votes would be counted differently than voters in other states.

**Applying the Electoral College Today.** The Electoral College provides many benefits that still serve Americans:

- **The Benefits of Federalism.** Presidential candidates must build national coalitions of voters. Historically speaking, the candidate who builds the broadest coalition will win. Thus, presidents are good representatives for all Americans; they do not merely represent one region, state, or special interest group.
- **Moderation and Compromise.** The Electoral College encourages Americans to work together, across state lines. A direct election system, by contrast, would result in multi-party presidential races, a fractured electorate, increasingly extremist third-party candidates, and constant recounts.
- **Stability and Certainty in Elections.** The Electoral College typically produces quick and undisputed outcomes. Any problems are isolated to one or a handful of states. Fraud is minimized because it is hard to predict where stolen votes will matter.

**Conclusion.** We must not allow the Electoral College to be eliminated through legislation such as AB 413. This important aspect of our Constitution continues to protect our freedom, just as it did when it was created in 1787.

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**Full Testimony**

The bill before you, AB 413, represents the latest attempt to eliminate America's unique and successful presidential system. Abolishing the Electoral College would be unhealthy for the country and especially detrimental to small states such as Nevada. But eliminating the Electoral College through this roundabout manner, without going through a formal constitutional amendment process, carries its own special dangers.

Proponents claim the National Popular Vote plan outlined in AB 413 will ensure that all voters receive equal attention because each vote will be weighted equally. But the truth is the precise opposite. NPV will lessen the need of presidential candidates to obtain the support of voters in rural areas and in less densely populated states such as Nevada.

***Problems Created by NPV***

The plan proposed by NPV is fraught with difficulties—some logistical, some philosophical. I will discuss these latter issues—arguments “for” and “against” the Electoral College—in a moment. But the logistical difficulties of changing the presidential election process without a constitutional amendment need to be fully explored.

The compact contemplated by AB 413 would give the presidency to the candidate winning the “largest national popular vote total.” Note that it says the “*largest*” total. It is not looking for a majority winner. It is not even looking for a minimum plurality. Thus, a candidate could win with only 15 percent of votes nationwide. But it gets worse. Under this scheme, Nevada could be forced to award its entire slate of electors to a candidate who was not on its own ballot. What if voters in New York and Massachusetts throw all their weight behind one regional candidate? That person may not be on the ballot in a state like Nevada, but all 5 electors from Nevada would be given to that Northeastern regional candidate if that candidate obtains any winning (albeit small) plurality.

Nevada probably did not nominate a slate of electors for the third-party candidate in this example. But don't worry. NPV's compact allows the winning candidate to select his own

slate. Perhaps he would select five New Yorkers to represent Nevada in the Electoral College vote. He'd hate to be undermined by a "faithless" Nevada elector, determined to vote for the choice of Nevada voters.

There are other inconsistencies among states' ballots that would skew the election results. Some states allow felons to vote. States such as Nevada do not. States differ in their requirements for ballot qualification. Inevitably, Nevada would have to abide by national election results derived from policies with which it disagrees.

I wish I were done, but I am not. It gets even worse. States have different criteria for what does (or does not) trigger recounts within their borders. These differences could cause a whole host of problems. What if the national total is close—close enough to warrant a recount—but a recount can't be conducted because the margins in individual states were not close? Or perhaps recounts are conducted, but only in two or three states, each with a different idea of how to count a hanging chad. Perhaps a fourth state would see what is going on and choose to conduct a recount that its statutes previously deemed optional. Maybe this fourth state has a different definition of "hanging chad," and its sole goal is to counteract the efforts of the other states.

Such a state of affairs invites chaos, litigation, and confusion each and every election year. Some voters will be disenfranchised by the widely differing ideas of how to count a vote.

What if such problems caused one state to pull out of the compact in violation of its terms? How would compliance be enforced? How much litigation would ensue before the presidential election could be resolved?

Formally eliminating the Electoral College through a constitutional amendment would be unhealthy for the country. But NPV's efforts to skirt the constitutional amendment process altogether would create added difficulties. These logistical nightmares could haunt the country each and every presidential election year.

### ***The Benefits of the Electoral College***

I do not mean to imply that the only problem with NPV is its logistical difficulties. Eliminating the Electoral College would do serious harm to a country as diverse as our own. The system provides our country with many great benefits that tend to remain unnoticed and thus unappreciated by most Americans.

The history of the Electoral College must be understood if its benefits are to be appreciated. The delegates to the Constitutional Convention had to reconcile two seemingly irreconcilable goals: They wanted the people to govern themselves, but they also wanted to ensure that minority interests could not be completely ignored by the majority. A pure democracy would not accomplish their objective. In a pure democracy, 51 percent of the

people rule the other 49 percent all the time, without exception. If we lived in a pure democracy, imagine what could happen in the wake of an event like 9/11. A bare majority could enact any law it desired, even if that law was tyrannical, racist, or penalized some people for their religious beliefs.

The Founders decided not to create a pure democracy. Instead, they created a Constitution that tempered its democratic aspects with republican and federalist characteristics. Constitutional safeguards such as the Senate (with its one state, one vote representation), the presidential veto, supermajority requirements to amend the Constitution, and the Electoral College allow the majority to rule, but only while they act reasonably. Minority political interests, particularly the small states, are protected.

The Electoral College provides three benefits that still protect Americans today.

### **The Benefits of Federalism**

Electoral College opponents argue that presidential elections are undemocratic. They are wrong. America holds 51 purely democratic elections each presidential election year (one in each state and one in D.C.). Such a process combines democracy and federalism into one process. The result is that candidates can't win unless they build nationwide support.

Obama can't rely solely on big cities in California. Republicans can't rely solely on Texas. They must win simultaneous, concurrent majorities nationwide. They can't achieve those victories unless they reach out to a wide variety of voters. They will fail if they rely upon isolated pockets of support in one region or among voters in one special interest group.

Many dispute that our system creates national coalition-building, arguing that it instead causes a disproportionate focus on mid-sized "swing" states. These arguments appear true if we focus on one or a handful of election years in isolation. But if we look at the states' full histories of voting, we see that the identity of "swing" and "safe" states changes all the time. West Virginia, for example, was considered a safe Democrat state for years. Since 2000, however, it has been voting Republican. Likewise, California is often viewed as irreversibly Democrat, but it voted for Republican candidate George H.W. Bush as recently as 1988. Texas used to be as undeniably Democrat as it is Republican today. States such as Georgia, Kentucky, and Louisiana all voted for Bill Clinton in the 1990s, but they were considered very safe Republican states in 2008.

Ultimately, the Electoral College ensures that the political parties must reach out to all the states. As a matter of history, no political party has ever been able to ignore any state for too long without feeling the ramifications at the polls.

### **Moderation and Compromise**

The most likely consequence of a change to a direct popular vote is the breakdown of the two-party system. Today, third-party candidates do not receive much support. In a direct

popular election, everything changes. A vote for Ross Perot or Ralph Nader is no longer “wasted,” and the number of presidential candidates would increase drastically. Voters would fracture their votes across many candidates. The result will be lower vote totals per candidate and an increased likelihood that two or more candidates will have close popular vote totals. Recounts would proliferate. Worse, extremist candidates could more easily sway an election, because no candidate is required to obtain majority support. This problem is exacerbated by the fact that AB 413 does not include a run-off provision. Electoral votes are given to the winner of any plurality—even a very small one.

NPV proponents argue that the President should have the support of most Americans. But in real life, “most” Americans will never agree on their ideal candidate. Individuals’ opinions differ too greatly. Given the general inability to obtain majority consensus (or even the consensus of a large plurality), the Electoral College provides the country with the next best alternative. Electing Presidents by states’ electoral votes, rather than individuals’ votes, creates a method of electing a President who is a good compromise candidate for most Americans, as represented by their states. The Electoral College requires moderation, compromise, and coalition-building from any candidate before he can be successful.

### **Stability and Certainty in Elections.**

The Electoral College encourages stability and certainty in our political system. Events such as those that occurred in 2000 are rare. The Electoral College typically produces quick and undisputed election outcomes for two reasons: First, the system (in combination with the winner-take-all rule) tends to magnify the margin of victory, giving the victor a certain and demonstrable election outcome. Such certainty couldn’t be provided by a direct popular election. Popular votes are often close, and these close votes would result in constant litigation and recounts. Second, the system controls the impact of fraud and error. In part, this is because it is difficult to predict where stolen votes will make a difference to the national outcome. But if one person can identify a problematic state (think Ohio in 2004), then, in all likelihood, everyone knows and that area is closely watched. It becomes harder to steal votes. To the degree that fraud and errors do occur, the Electoral College makes it possible to isolate the problem to one or a handful of states. The country is given a clear set of problems to resolve one way or another before moving on to a definitive election outcome.

### ***Conclusion***

The Electoral College is an important safeguard in our constitutional system of checks and balances, and it is critical to the success of our nation’s republican democracy. I urge you to protect the Electoral College by voting “no” on AB 413.