



Written by [Joe Wolverton, II, J.D.](#) on June 4, 2010

## Massachusetts House Passes Bill for Democratic Election of President

On June 2, the Massachusetts House passed by a vote of 113 to 35 a resolution to support the adoption of a national popular vote in Massachusetts. The bill now will be sent to the State Senate for deliberation.

While the vote in Massachusetts is a recent occurrence, the movement to abolish the Electoral College has been slowly and steadily moving through state houses nationwide. According to [information](#) published on the National Popular Vote organization's website, 29 state legislative chambers in 19 states have passed a resolution calling for the reformation of the electoral college, California and Colorado being the first in 2006.



The National Popular Vote (NPV) movement does not call for the elimination of the Electoral College altogether, rather they are pushing for a change in the way the electoral votes are tallied. The group has authored a model bill for use in by state legislators allied to their cause.

Simply put, the measure calls for state legislatures to pass bills committing their state's electoral votes to the candidate who wins the nationwide popular vote. The effect of this bill would be to obviate the possibility that a candidate for President who received the most popular votes would lose the election because he did not receive the requisite 270 electoral votes.

Four times in the history of the United States a candidate has garnered more popular votes than his opponent, yet lost the race for the White House. The first time was in 1824, when despite winning a plurality of the popular and electoral vote, Andrew Jackson did not win the requisite majority of electoral votes and under terms of the 12th Amendment, the election was decided by the House of Representatives who chose John Quincy Adams to be President.

The second time a candidate lost after winning the popular vote was in 1876, when a particularly tumultuous election resulted in Rutherford B. Hayes becoming President. This election was so rife with scandal and corruption that opponents of Hayes took to calling him "Rutherfraud B. Hayes" for his allegedly illegitimate election. Hayes lost the popular vote by approximately 250,000 votes.

Just 12 years after the debacle that resulted in the Hayes presidency, the country experienced another controversy in the presidential election. In 1888, Benjamin Harrison defeated incumbent President Grover Cleveland by a count of 233 electoral votes to 168, thus becoming the 23rd President of the United States. Harrison received about 90,000 votes fewer than Cleveland, however.

The fourth and final time that a candidate did not become President despite winning the popular vote count was in 2000, when the Supreme Court held in favor of George W. Bush with regard to Florida's



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electoral votes, thus handing him the presidency. In that race, Al Gore bested Bush in the popular vote, but lost 266 to 271 in the Electoral College tally.

To proponents of the National Popular Vote initiative, the notion that a candidate could be favored by a majority of Americans yet not be sworn in as their President is inimical to the "one person, one vote" theory of democracy. The argument they advance is that the current system of calculating electoral votes permits voters in swing states to determine the outcome of the presidential election, while voters in other states (that is, states with fewer electoral votes) are ignored by candidates and their votes are rendered null.

For support of their cause, the National Popular Vote alliance (consisting of several of the usual liberal suspects: the [League of Women Voters](#) and the [ACLU](#) among others) points to Article 2, Section 1 of the Constitution, which in relevant part reads, "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 Congress."

It is irrefutable that the cited clause of the Constitution does delineate practically plenary power of deciding the manner of appointing electors to the state legislatures. There is, in fact, no federal power to appoint electors and thus the states may do so in any manner they deem appropriate (providing no other provision of the Constitution is offended).

The constitutional soundness of the premise, notwithstanding, the philosophy underlying it is flawed and contrary to the genius of the American system of federalism, as established by the Constitution of 1787.

In fact, the concept of the direct, popular election of the President was not anticipated by our Founding Fathers. It was anathema to the delicate balance of power between state and national governments. The opinion held by the drafters of the Constitution on the topic of the Electoral College and its role in choosing the head of the executive branch, is expressed cogently and clearly by Alexander Hamilton in *The Federalist*, # 68.

Curiously, in light of the current kerfuffle, Hamilton opens that letter stating "the mode of appointment of the chief magistrate of the United States, is almost the only part of the system, of any consequence, which has escaped without severe censure." Hamilton goes on to remark that even those who found fault with the plan of the Constitution, considered the mode of electing President contained therein to be worthy of approbation.

A cornerstone of the foundation of our unique Republic is the concept that we are not only United, but states, as well. Federalism undergirds the beautifully simple and simply beautiful construction of our limited government. In *The Federalist*, Hamilton decrees that the method of choosing the President as laid out in the Constitution "unites in an eminent degree all the advantages, the union of which was to be wished for." That is to say, the voice of the people is to be heard through electors chosen by them. These electors would be then able to distill the will of the masses and commingle it with their own insight and experience, thus choosing the most qualified and distinguished individual to fill so powerful an office.

Chiefly, the plan proffered by the NPV coalition throws off kilter the delicate balance between national and state governments by removing the fulcrum of federalism upon which it rests. The NPV proposal is an end run around the Constitution and thereby undermines the legitimacy of presidential elections. It relegates states to mere subordinate status and virtually eliminates their current (and constitutional)



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role in the election of the President.

The Constitution establishes a republic, not a democracy. One of the organizations pushing for adoption of the NPV plan, the League of Women Voters, declares on its website that the direct, popular election of the President of the United States is so fundamental to the proposition of "one person, one vote" that they "reject arguments for federalism over those for individual voters' rights in this matter." The upshot is that the direct election of the President by the voice of the majority of the people weighs so heavily on the scales of morality, that the circumvention of the Constitution is excusable, at least in this instance.

Unfortunately for those "one person, one vote" zealots, their plan has no teeth and will not accomplish the ends they seek by means of sidestepping the Constitution. In fact, the NPV nationalizes disputed outcomes and can compel no state that is a party to the proposed "interstate compact" to accept the outcome of an election that state deems unfair or contrary to its own parochial interests.

And, ironically, the NPV dilutes the strength of the votes of individuals by, perhaps inadvertently, rigging the system in a way that encourages presidential candidates to spend their time and money in mega media markets where the cost per vote would be most economical. States that the NPV crowd claims are ignored now, will most certainly be ignored under their system, as well.

Finally, while there may be flaws in the Electoral College method of electing the President, those flaws are minor and are evidence only of the general fallibility of mankind, not of any systematic defect in the Constitution itself. The Electoral College has performed precisely as the Founders intended (for the most part) and as Alexander Hamilton said in the letter quoted above, "If the manner of it be not perfect, it is at least excellent."



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