H.B.5205, H.B.5434, H.B.5435, H.B.5736, S.B.9, S.J.11 – Oppose **Luther Weeks**
Government Administration and Elections Committee **Luther@CTVotersCount.org**
Testimony – February 22 2017 334 Hollister Way West, Glastonbury, CT 06033

Chairs and members of the Committee, my name is Luther Weeks, Executive Director of CTVotersCount. I am a computer scientist and a certified election moderator. I live in Glastonbury. This testimony does not represent the views of any other organization with which I may be associated.

I have also submitted testimony today on the following bills:

- H.B.6423 – Support, with a critical change
- S.B 108, S.B.133, S.J.11 – Oppose

I understand the theoretical advantages of the national popular vote, yet there are extreme risks in its mismatch with our existing state-by-state voting system.

Many concepts such as Nuclear Power, GMOs, DDT, and Fracking have benefits, but also have unintended, unrecognized, and unappreciated consequences. This Compact is another.

What often appears simple is not. The Compact would cobble the national popular vote onto a flawed system designed for the Electoral College. It does not change that system. It magnifies the risks.

Events over the last year make the dangers more apparent than ever. After the 2016 election, citizens and a candidate attempted to obtain recounts in three closely contested states, (Wisconsin, Minnesota, and Pennsylvania). **Apparent was a flawed system with errors and uncertainty, ultimately unable to prove accuracy and integrity, with strong official resistance to audits and recounts.**

This is not a partisan issue. It has been opposed by prominent members of both major parties, including:

- **Susan Bysiewicz (D),** former Connecticut Secretary of the State
- **Arnold Schwarzenegger (R),** former California Governor
- **Mark Ritchie (D),** Minnesota Secretary of State and former President of the National Association of Secretaries of State
- **Daniel Patrick Moynihan(D),** former Wesleyan professor and U.S. Senator
- **William Cibes (D),** former State University System Chancellor

Six major concerns with the Compact include:

1. **The 12th Amendment and the Electoral Count Act govern declaring the President. They have been called a "Ticking Time Bomb" because of strict, yet, ambiguous rules, causing problems seen in 1876 and 2000. The Compact would exacerbate that risky system.** (see page 6)
2. **There is no official national popular vote number compiled in time, such that it could be used to officially and accurately determine the winner in any close election.** (see page 3)
3. **Even if there were such a number, it would aggravate the flaws in the system. The Electoral College limits the risks and damage to a few swing states. With a national popular vote, errors, voter suppression, and fraud in all states would count against the national totals.** (see page 5)

4. **There is no national audit or recount available for close elections, to establish an accurate popular vote number.** Only in some individual states, if close numbers happened to occur in those states, would there be even a fraction of a national recount. About half of the states have audits or close vote recounts. (see page 4)

5. **With the Compact there is every reason to believe that any close election would be decided by partisian action of the Congress or the Supreme Court, as in Gore v. Bush.** Since the founding, close election controversies have all been decided in seemingly partisan decisions by Congress, special commissions, or the Supreme Court. (see page 6)

6. **This Compact will not make every voter equal.** The state-by-state variations in the franchise and access to voting will remain intact, enfranchising and disenfranchising different voters in states.

I urge you to consider the risks and chaos made possible if Connecticut were to endorse the National Popular Vote Compact, including reading the attached editorials and detailed arguments.

I also oppose S.J. 11. The Electoral College deserves nobody's endorsement. It has many of these same problems, yet to a lesser degree**.** Other democracies that have national popular votes also have uniform national voting systems – we do not.

I would support a national popular vote amendment to the U.S. Constitution, *if and only if*, it provided for a uniform franchise, required sufficient voting systems, sufficient audits and recounts nationwide. And sufficient laws that were enforceable and enforced to provide a trustworthy and trusted national popular vote number. Those ifs are a large leap for our democracy, yet are reasonable, economical, realistic requirements to achieve trustworthy democracy,

Thank You

Fact or Myth?

There is no official national popular vote number compiled in time, such that it could be used to officially and accurately determine the winner in any close election.

> **According to NationalPopularVote.org:**
>
> 20.1 MYTH: There is no official count of the national popular vote.
>
> It is sometimes asserted that there is no official national vote count for President and, therefore, the National Popular Vote bill would be impossible to implement. Contrary to this assertion, existing federal law (section 6 of Title 3 of the United States Code) requires that an official count of the popular vote from each state be certified and sent to various federal officials in the form of a "certificate of ascertainment…

Reality:

Yes: **There is an official, unaudited, national popular vote number** which can be determined by examining data posted by the federal government at: http://www.archives.gov/federal-register/electoral-college

Reality: The number is not compiled and available in time, such that states could use the number to determine, under the Compact, how to allocate their electoral votes. Looking at the details for 2016[1]. We find:

- States must prepare a Certificate of Ascertainment listing electors and the votes that they received: *"These [Certificates of Ascertainment] should be sent to the Archivist as soon as possible after the November 8 results are finalized…The State must retain the other six original Certificates of Ascertainment for the meeting of the of the State's electors on December 19, 2016. Those six originals will be pared and distributed with the Certificates of Vote executed at the Electoral College meeting. The paired Certificates must be submitted to the appropriate officials…no later than December 20,"*
- *"On the first Monday after the second Wednesday in December (December 19, 2016), the electors meet in their respective States. Federal law does not permit the States to choose an alternate date for the meeting of electors - it must be held on December 19, 2016… At this meeting, the electors cast their votes for President and Vice President."*
- Since states are not required to submit electors and their official unaudited vote totals to the Archivist until December 20th, the national popular vote number obviously could not be guaranteed to be available on December 19th. And since the Certificate cannot be created until after the electors of a state have voted, the final official unaudited national popular number could not be official until all states electors have already voted.
- **But wait…** "*Any controversy or contest concerning the appointment of electors must be decided under State law at least six days prior to the meeting of the electors."*

  So, each state must actually appoint its electors six (6) days before they must meet and vote which is seven (7) days before each state is required to send the state's official unaudited popular vote numbers to Washington.
- **But wait…** *"The statutory deadline for the designated Federal and State officials to receive the electoral votes is December 28, 2016. Because of the very short time between the meetings of the electors in the States on December 19 and the December 28 statutory deadline, followed closely by the counting of electoral votes in Congress on January 6, 2009, it is imperative that the Certificates be mailed as soon as possible."*

  So, the real deadline for each state's popular vote number arriving in Washington, would be nine (9) days after the vote for electors, and fifteen (15) days after electors have to be deterimed. Presumably some time is also needed to accurately post that information so that the official, unaudited numbers would be available for state officials to review.
- **Compact proponents claim that certificates are available earlier, some are, but looking at the certificates for 2016 we find two dated Dec 19th – MD, TN, and two dated Dec 20th – MN, MT[2].**

[1] https://www.archives.gov/federal-register/electoral-college/resources/state-officials-instructions.pdf
[2] https://www.archives.gov/federal-register/electoral-college/2016/certificates-of-ascertainment.html

Fact or Myth?

There is no national recount available for close elections, to establish an accurate number.

According to NationalPopularVote.org:
3.4 MYTH: Conducting a recount would be a logistical impossibility under a national popular vote.

A recount is not an unimaginable horror or a logistical impossibility. All states routinely make arrangements for a recount in advance of every election. A recount is a recognized contingency that is occasionally required in the course of conducting elections, and recounts do indeed occur about once in every 332 elections. The personnel and resources necessary to conduct a recount are indigenous to each state. A state's ability to conduct a recount inside its own borders is unrelated to whether a recount is occurring in another state.

Reality: **Most states, but not all have some type of recount law.**

- According to the CEIMN Searchable Recount Database, only 21 states have laws which provide for recounts on close votes: [3]

Reality: A national recount would be a legal and technical impossiblity. NationalPopularVote.org claims to refute six Myths about Recounts, yet none address the central issue that there would be no recounts of a close national popular vote:

- State recount laws are based on close votes within a state, none would be trigered by a close national popular vote.
- As covered previously, there is no official national popular vote number compiled in time for states to determine their Electoral College votes – thus there would be no number available in time to trigger a national recount, even if it were possible to have a national recount.
- There is no provision for a recount within the Compact, even if there was such a provision, it could only apply to states signing the Compact.
- There would be no reason for states controlled by the party of the apparent winner to voluntarily agree to a recount.
- **2017 update:** After the 2016 election, citizens and a candidate attempted to obtain audits in three closely contested states, WI, MN, and PA. Apparent was a flawed system with errors and uncertainty, ultimately unable to prove accuracy and integrity, and strong official resistance to audits and recounts.

Reality: Even if somehow states agreed to a national state by state recount, the Supreme Court can be expected to rule as it did in Gore v. Bush that it would be unfair since it would not be uniform:

- *"Upon due consideration of the difficulties identified to this point, it is obvious that the recount cannot be conducted in compliance with the requirements of equal protection and due process without substantial additional work. It would require not only the adoption (after opportunity for argument) of adequate statewide standards for determining what is a legal vote, and practicable procedures to implement them …there is no recount procedure in place under the State Supreme Court's order that comports with minimal constitutional standards. Because it is evident that any recount seeking to meet the December 12 date will be unconstitutional for the reasons we have discussed, we reverse the judgment of the Supreme Court of Florida ordering a recount to proceed.[4]"*
- Even though the Court claimed the decision was not to be used as a precident, on what basis would they rule differently when faced with a challenge to a far from uniorm state by state recount? See Moritz School of Law Profesor Edward B. Foley's comments on Gore v. Bush and equality: [5]

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[3] http://ceimn.org/ceimn-state-recount-laws-searchable-database/
[4] http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=00-949
[5] http://moritzlaw.osu.edu/electionlaw/comments/index.php?ID=8099

Fact or Myth?

Currently the Electoral College <u>limits the risk and the damage to a few swing states</u> in each election. With a national popular vote, errors, voter suppression, and fraud in <u>all states</u> would count against the national totals.

According to NationalPopularVote.org:

3.6 MYTH: Political fraud and mischief would be encouraged under a national popular vote.

The potential for political fraud and mischief is not uniquely associated with either the current system or a national popular vote. In fact, the current state-by-state winner-take-all system magnifies the incentive for fraud and mischief because all of a state's electoral votes are awarded to the candidate who receives a bare plurality of the votes in each state.

Under the current system, the national outcome can be affected by mischief in one of the closely divided battleground states (e.g., by placing insufficient or defective voting equipment into the other party's precincts, by selectively and overzealously purging voter rolls). The accidental use of the butterfly ballot by a Democratic election official in one county in Florida cost Gore an estimated 6,000 votes—far more than the 537 popular votes that he needed to carry Florida and win the White House in 2000. However, an incident involving 6,000 votes would have been a mere footnote if the nationwide count had governed the presidential election (where Gore's margin was 537,179).

Senator Birch Bayh (D–Indiana) summed up the concerns about possible fraud in a 1979 Senate speech by saying:

"One of the things we can do to limit fraud is to limit the benefits to be gained by fraud. Under a direct popular vote system, one fraudulent vote wins one vote in the return. In the electoral college system, one fraudulent vote could mean 45 electoral votes." ….

Yes: "*The potential for political fraud and mischief is not uniquely associated with either the current system or a national popular vote"*

Reality: ***"the current state-by-state winner-take-all system ~~magnifies~~ <u>limits to swing states</u> the incentive for fraud and mischief*** *because all of a state's electoral votes are awarded to the candidate who receives a bare plurality of the votes in each state."*

Reality: Because, under the national popular vote, all of the nation's electoral votes would be awarded to the candidate who receives a bare plurality of the votes in all states, **the national popular vote would magnify the opportunity and magnify the incentive.** It would magnify the opportunity to all 50 states and the District of Columbia. If would magnify the incentive since fraud and mischief in one or all of those states could change the national popular vote plurality and take all 538 electoral votes.

Yes: "*Under the current system, the national outcome can be affected by mischief in one of the closely divided battleground states… In the electoral college system, one fraudulent vote could mean 45 electoral votes."*

Reality: Using the same logic, under the national popular vote, **the national outcome can be affected by mischief in one or all of the 50 states and the District of Columbia,** including in one or more of the closely divided battleground states.

Reality: Senator Bayh is incorrect. If one vote "*could mean 45 electoral votes*" under the Electoral College, then under the National Popular Vote one vote could mean all 538 electoral votes, <u>not</u> as claimed by Senator Bayh: "*one vote in the return*".

Fact or Myth?

With the Compact there is every reason to believe that any close election would be decided by partisian action of the Congress or the Supreme Court. As in Gore v. Bush, <u>since the founding</u>, close election controversies have all been decided in seemingly partisian decisions by Congress, special commissions, or the Supreme Court.

Reality:

Quoting Professor Edward B. Foley and Nathan L. Colvin, of the Moritz School of Law, in their recent paper, "*The Twelfth Amendment: A Constitutional Ticking Time Bomb*":

> ***Although the Supreme Court's decision in Bush v. Gore averted congressional confrontation over electoral votes pursuant to the deficient framework of the Twelfth Amendment, the episode signals the possibility that a similar dispute might arise again—but this time without the saving intervention of the Supreme Court. Although the events of 2000 produced passing interest in the mechanism established by the Twelfth Amendment, since then there has been no sustained plan to prepare the nation if a dispute over electoral votes goes all the way to Congress***. *Nevertheless, the history of the Twelfth Amendment and the commentary on it during the nineteenth century show that the nation needs a contingency plan of this sort….like putting off preparations to defend against a once-a-century category five hurricane, it is easy to postpone considerationof a constitutional amendment designed to protect against another debacle of the kind that occurred in 1876… it is also worth proposing a second-best legislative solution that would modify the Electoral Count Act…* ***either of the two major political parties will want to block any measure it perceives as disadvantageous to its interest …our country has embarked on a meandering journey of ad hoc approaches to resolving electoral disputes. The decision of the Supreme Court in 2000 marked only the most recent stop on this journey but was met with as much dissatisfaction as previous historic stops such as the Electoral Commission and the Twenty-second Joint Rule.*** *Instead of waiting for the next electoral dispute and hoping that the Court or a bipartisan split in Congress might save our country, Congress should address this historic problem with an amendment to the Constitution that clearly addresses the electoral count procedures…* ***The starting issue for an analysis of electoral vote determination under the Constitution is ascertaining where the Constitution vests the power to count and/or determine the validity of votes, and this is where the first ambiguity comes from. There are four possible actors: (1) the Vice President of the United States acting as the President of the Senate, (2) the two houses of Congress acting together, (3) the two houses of Congress acting separately, and (4) the states.13 The text of the Twelfth Amendment is unclear on this subject, and, throughout our history, various theories have prevailed.***

They also quote Justice Joseph Story:

> ***In the original plan, as well as in the amendment, no provision is made for the discussion or decision of any questions, which may arise, as to the regularity and authenticity of the returns of the electoral votes . . . . It seems to have been taken for granted, that no question could ever arise on the subject****; and that nothing more was necessary, than to open the certificates, which were produced, in the presence of both houses, and to count the names and numbers, as returned.*

References:

The Twelfth Amendment: A Constitutional Ticking Time Bomb
http://www.law.miami.edu/studentorg/miami_law_review/issue_archive/pdf/vol64no2/MIA204.pdf
The Founders' Bush V. Gore: The 1792 Election Dispute and Its Continuing Relevance
http://indylaw.indiana.edu/ilr/pdf/vol44p23.pdf

OP-ED | The "National Popular Vote" Interstate Compact Is a Bad Idea
CTNewsJunkie by Bill Cibes
January 29, 2012

Connecticut should not join the proposed Interstate Compact to substitute the outcome of the National Popular Vote (NPV) for the current Electoral College procedure for electing the President. In addition to the reasons recently outlined on this site by Representative John Hetherington, this Compact should be opposed because:

· The Compact would substitute the will of outsiders for the determination of Connecticut citizens. It would require that Connecticut's 7 electoral votes for president be cast for the winner of the national popular vote, regardless of whom the voters of Connecticut voted for. For example, in 2004, if the compact had been in effect, Connecticut's electoral votes would have gone NOT to John Kerry, who won 54% of Connecticut's popular vote, but to George W. Bush. Overturning the will of Connecticut voters flagrantly renounces their clear choice.

· **It actually diminishes Connecticut's voting power in the contest for president.**

This fact is obscured by the deceptive ads of the NPV proponents, who assert that "A voter in Connecticut should matter as much as anywhere else." In reality, under the current Electoral College system, a voter in Connecticut matters MORE than he or she would under the NPV scheme, because of two factors:

a) The number of electoral votes allotted to each state, as a result of a compromise authored by Roger Sherman and his Connecticut colleagues at the Constitutional Convention of 1787, is computed by adding the number of Senators to the number of Congressmen. For Connecticut, that means a total of 7 (2 U.S. Senators plus 5 U.S. Congressmen). The allocation is designed to favor small states, like Connecticut, because small states have more electoral votes per voter. "It's not a huge effect," notes Andrew Gelman of Columbia University. "It's trivial compared to the small-state bias of the U.S. Senate, but it's there."

b) The minimal advantage enjoyed by small states is augmented greatly by the "winner-take-all" provision currently in effect. The voting power of the majority in Connecticut is enhanced because all of the state's 7 electoral votes are cast for the candidate receiving the most votes in the state. The 979,316 votes received by Barack Obama in Connecticut in 2008 were 1.56% of the 62,612,951 (50% plus 1) of the votes he would have needed to win the national popular vote. But his 7 Connecticut electoral votes were 2.59% of the 270 electoral votes he needed to win in the Electoral College. This enhanced voting "clout" of the majority of Connecticut voters under the current system – 66% higher than their voting power in a national popular vote system – would be obliterated by the NPV proposal.

· Deferring to the outcome of the national popular vote would decrease the likelihood that any candidate would pay attention to Connecticut.

This result is more than a little ironic, since proponents of the National Popular Vote weakly defend the evisceration of the state's voting power noted above by arguing that, under the current system, Connecticut "gets no attention" by candidates for president: "a candidate who is sure to carry Connecticut will always take us for granted, and a candidate who is sure to lose will write us off."

But being the object of attention doesn't make up for the loss of real voting power. Increasing the number of "campaign visits" does not maximize my clout. Running additional "ads on the radio and TV" doesn't increase my influence. Conducting additional polls of Connecticut voters makes not a whit of difference in the poll that counts, on Election Day in November.

Much more probable is that candidates would, like Willie Sutton (who robbed banks because that's where the money was), focus on geographic areas with large concentrations of voters. The relatively small size of Connecticut would certainly not attract as much interest as metropolitan areas like New York or Chicago or Los Angeles or Houston.

· The NPV Compact would greatly enhance the influence of those who can afford to buy national advertising to cynically manipulate the passions of a nationwide electorate. Rich individuals, corporations and businesses, under the Citizens United decision, can now fund ideological propaganda that can sway the national popular vote. James Madison, in The Federalist, warned of "specious declamations" by "adversaries to liberty" who introduce "instability, injustice and confusion" into government. The contemporary capacity of millionaires to use electronic media to persuade voters to pursue faddish but foolish ideas would not have diminished Madison's concerns.

· Such a radical change in the method of electing the President should occur by constitutional amendment, not by a backdoor mechanism which would circumvent the extraordinary majority requirement demanded by the Framers. They set out, in Article V of the Constitution, procedures which were meant to ensure that any alterations to the framework they established would only occur after a full national review of the implications of the proposed revision.

For all these reasons, close scrutiny of the NPV scheme should result in its rejection.

Bill Cibes is a former professor of government at Connecticut College and former chancellor of the Connecticut State University System. He formerly served as Secretary of the Office of Policy and Management in the administration of Governor Lowell P. Weicker.

Op-Ed: Voting Requires Vigilance. Popular Isn't Always Prudent
CTNewsJunkie by Luther Weeks
January 21, 2013

One third of Americans vote on machines, without the paper ballots we use in Connecticut. Our president is chosen based on faith in those unverifiable machines, vote accounting, and unequal enfranchisement in 50 independent states and the District of Columbia.

In 2000, we witnessed the precarious underpinnings of this state-by-state voting system combined with the flawed mechanism of the 12th Amendment and the Electoral Accounting Act. The Supreme Court ruled votes could not be recounted in Florida, because even that single state did not have uniform recount procedures. What could possibly make this system riskier?

The National Popular Vote Compact now being considered in states, including Connecticut, would have such states award their electoral votes to a purported national popular vote winner. The Compact would take effect once enough states signed on, equaling more than one-half the Electoral College. Then the President elected would be the one with the most purported popular votes. Sounds good and fair at first glance. Looking at the touted benefits and none of the risks many legislators, advocates, and media influence the public to make the Compact popular in some polls. Popular is not always prudent. Voting requires vigilance.

The Compact, cobbled on an already precarious system, would exacerbate its flaws, adding additional risks. Currently errors, voter suppression, and fraud can only sway the result in the few swing states. With the Compact errors, suppression, and fraud in every state would count toward the popular vote total.

Compact supporters overlook and proponents befog the reality that there would be no official national popular vote total available in time for states to choose their electors. The only official popular vote total is the sum of the Certificates of Attainment sent by each state to the national Archivist. They cannot be used for choosing electors, since certificates are not required to be sent until seven days after electors are chosen and are not required to arrive in Washington until fifteen days after the electors must be chosen. Supreme Court decisions in 2000 and 1876 stress that these dates must be strictly followed.

Even if the totals could be obtained in time from each state, they would not be audited and could not be recounted. Compact proponents obfuscate this by describing how some states routinely perform audits or recounts. They conveniently ignore that about one-third of the states do not have audits and recounts; many voting machines cannot be audited; state recounts are based on close-vote margins within a state, so even in those states, recounts would not be triggered by a close national vote. Just as critical, there would be insufficient time for recounts or audits given the strict Constitutional deadlines. The Supreme Court would likely reject any recount going beyond state borders, using the same reasoning used to reject the 2000 Florida recount, as insufficiently uniform.

Additional legal challenges and maneuvers under the Compact would also be available for partisans bent on sending any reasonably close election to the Supreme Court or Congress. States not signing the Compact could delay certifying and transmitting results until the latest deadline. Partisans could dispute results in their states or sue their Secretary of State for using uncertified results from other states, delaying reporting or negating the state's Electoral College vote.

Nothing is available, but legal challenges, even in Compact states, to deter a future partisan Secretary of State from failing to follow the Compact.

Supporters and opponents debate other contentions for and against the Compact, most of which are subjective and speculative. e.g. Which is more ideal, the current Federal system or the popular vote? Would small states or large states benefit more from the Compact? Where would candidates campaign and join with PACs in media buys? How equal would every voter actually be, given the state-by-state system of voter enfranchisement, disenfranchisement, suppression, and registration?

An accurate, fair, and credible popular vote requires a uniform, workable national voting system we can trust. That is, a system with uniform enfranchisement, paper ballots, effective audits, and national recounts, enforceable and provably enforced as a prerequisite to a considering a national popular vote.

Luther Weeks is executive director of CTVotersCount.

Minnesota Secretary of State Mark Ritchie's comments in a speech to the National Association of Secretaries of the State (NASS) , winter conference, February 7, 2009 in Washington, D. C.: *"I'd love to discuss the Electoral College and the importance of that institution, when you imagine a national recount"*

Also verified by Luther Weeks in conversations with Mark Ritchie, Seattle, WA, Spring 2009: He expressed opposition to the national popular vote in any form because of the lack of uniform laws, especially the absence of and the difficult logistics of a national recount.

The Day, Mar 16, 2014

Connecticut should reject popular vote scheme
By Paul Choiniere

The National Popular Vote folks are at it again in Connecticut. They want to end the practice of using the Electoral College system to determine the election of the president. Instead, the candidate who gets the most votes nationally would become president.

They don't, however, want to amend the Constitution to make this change – the way it should be done – because the movement apparently sees that goal as too difficult.

Instead, its backers seek a clumsy and byzantine approach, one wrought with potential problems. What might happen if the Connecticut General Assembly endorses the plan, enters into the compact and the governor signs the legislation?

Picture this.

Connecticut voters make a clear choice who they want to be president. The state's support is enough to give that candidate the electoral votes necessary to become president. However, because Connecticut's choice to lead the country did not win the popular vote, Connecticut has to give its electoral votes to the other guy, electing him (or her).

I expect that would not sit well with many of those who voted in the majority, only to see their choice ignored.

How could such a thing happen? The National Popular Vote legislation requires states that sign on to this movement to agree to cast their electoral votes for the top voter getter nationally, regardless of who that state's voters want to be president.

So far, nine states and the District of Columbia have passed National Popular Vote laws. They control 136 electoral votes, which means the movement is about halfway to its goal of locking up 270 electoral votes in this manner, the majority necessary to elect someone president.

So, the Electoral College system would remain in place, but all these states would basically be committed to ignoring it and making sure the popular vote, not the Electoral College system, determined the winner.

I can see that plan unraveling quickly. One can easily imagine the anger of voters in, for argument's sake, a traditional Republican state seeing the state's electoral votes handed to the Democrat – against the will of the people in that state – giving the Democrat enough electoral votes to win. Can anyone doubt the legislature would be pressed to return in special session, abandon the National Popular Vote compact, and back the voters' choice?

A rush for the exits would soon follow among other states.

The National Popular Vote organization calls this impossible because the compact prohibits it. They also say such a reversal would face insurmountable constitutional hurdles. That's debatable. At the very least, it invites potential chaos.

Motivating the popular vote movement are arguments of fairness and making more states relevant. The fairness issue is basic – the candidate with the most votes should win. A strong argument can be made for that position, but is this version of "fair" what is best for the country and Connecticut? The current system has arguably served the nation well for 207 years.

Less credible is the contention that election by popular vote will force the candidates to pay attention to more states. Currently, candidates focus their resources and their visits largely on contested states, particularly those with big electoral numbers. Yet, I suspect, even with a popular vote determining the winner, candidates would continue to give their attention to big population centers, which does not describe Connecticut or its cities.

In any event, if the people of the United States want to abandon the Electoral College system in favor of the direct election of the president, they should do so by formally amending the U.S. Constitution. It may be difficult, but it is preferable to the controversy the National Popular Vote arrangement invites.

Paul Choiniere is editorial page editor.

NO: Electoral College Votes Should Represent State Voters' Choice
By Chris Desantis
The Hartford Courant
April 17, 2011

At a March public hearing, state Rep. Andrew Fleischmann, D-West Hartford, spoke strongly in favor of a National Popular Vote bill to change Connecticut's participation in the Electoral College. If this bill becomes law, Connecticut's seven Electoral College votes will be granted to the winner of the national popular vote in a presidential election, rather than to the winner of our state's popular vote. The bill would take effect if similar bills are passed in enough other states to represent a majority of Electoral College votes and form a compact. Unfortunately, if more states successfully join this effort, the Electoral College will eventually become irrelevant.

The General Assembly's time would be better spent dealing with Connecticut's fiscal mess, rather than unwisely working to alter a system that George Washington, Alexander Hamilton and John Adams created.

First, the Electoral College promotes relative civility in our presidential elections. The dispute in Florida over balloting during the 2000 presidential election between George W. Bush and Al Gore, for example, demonstrated why the Electoral College is worth keeping —- not abolishing. Thanks to the Electoral College, the struggle was centered only in Florida and encompassed only that state's 25 electoral votes.

With a national vote differential of only 500,000 (less than a 0.5 percent) between the two candidates, a national popular vote Electoral College compact would have caused Florida's problems to appear minor in comparison. Both campaigns would have contested votes state by state, precinct by precinct, looking for a few thousand here and a few thousand there. That struggle would have taken place across America, rather than just in Florida.

The late Democratic senator from New York, Daniel Patrick Moynihan, once remarked about such a circumstance under a national popular vote agreement: "There would be genuine pressures to fraud and abuse. It would be an election no one understood until the next day or the day after, with recounts that go on forever, and in any event, with no conclusion, and a runoff to come. The drama, the dignity, the decisiveness and finality of the American political system are drained away in an endless sequence of contests, disputed outcomes and more contests to resolve outcomes already disputed. That is how legitimacy is lost." Close presidential races are managed more effectively with the Electoral College.

Second, the Electoral College preserves federalism by giving candidates the incentive to campaign in lightly populated states. Notice New Hampshire or Iowa, which, although having comparatively few voters, see

presidential candidates often. Under a national popular vote, candidates would appeal only to more populous states and cities by making promises to them, garnering enough votes there to win. The worries of rural voters and those not clustered in L.A., New York or Chicago, among other large cities, would not be considered.

The Electoral College, on the other hand, forces candidates to understand different policy preferences state by state, both small and big. Wyoming's three electoral votes, for example, have far more influence than the state's popular votes, giving that state relatively more sway in choosing the president.

Third, the National Popular Vote bill could disenfranchise Connecticut voters. If this system existed in 2004, Connecticut's seven Electoral College votes would have gone to George W. Bush, winner of the national popular vote, even though our state overwhelmingly voted for John Kerry, 54.31 percent to 43.95 percent.

Again, Sen. Moynihan's convictions come to mind: "The president would be elected by a popular vote expressed through the states. That has been our principle ever since. It is the principle enshrined in the Electoral College." Moynihan believed that power should never be given to an individual "save when it is consented to by more than one majority." Allowing 50 majorities to choose our president rather than one national majority provides more accountability, diversity and balance.

If Connecticut considers any changes to the Electoral College, it should adopt the Congressional District Method, which would grant presidential candidates one Electoral College vote for every congressional district in which they win the popular vote. This idea further respects the vote of individuals, while maintaining the college's other important features.

If Electoral College abolitionists insist on making the college irrelevant, they should work through the correct process of amending the U.S. Constitution

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ELECTORAL COLLEGE
There Is A Better Way To Pick A President
By SUSAN BYSIEWICZ
December 14, 2008

Tomorrow, I will preside over a special meeting of Connecticut's seven electors at the state Capitol in the Senate chambers. There, they will officially cast votes for president and vice president of the United States. Hundreds of students from local schools and members of the public are expected to watch this 200-year-old exercise in democracy after one of our most historic presidential elections.

Although this special ceremony connects us to our great history and the Founders of our republic, the Electoral College serves little practical value and has outlived its usefulness. I believe it divides Americans across state lines and should be abolished. We need only look back at the 2000 presidential campaign to see how flawed and troubling it is that the candidate who won the popular vote still lost the election.

As President-elect Barack Obama has often said, we are one people. We are not just a loose confederation of states with profoundly different languages or cultures. A working mother in Idaho is just as concerned as a working mother in Connecticut about keeping health care for her children if she or her spouse loses a job.

Many important issues are largely ignored in our national conversation, due in part to the way we elect the president. For instance, when was the last time you heard a Republican or a Democratic presidential nominee make a serious proposal to tackle urban poverty or campaign for votes in some of our most destitute and densely populated areas?

The reality is that the needs of the urban poor are largely ignored because many millions of city dwellers don't vote. They don't feel they have a stake in the presidency. In cities including New York, Chicago, Los Angeles, Oklahoma City, Houston, Atlanta, Buffalo and right here in Hartford and Bridgeport — in solid "blue" and "red" states — the outcome of the presidential election is a foregone conclusion. We can't continue to disregard our cities because the "real" votes are in the suburbs and then be shocked when these areas are plagued by blight and violence.

It doesn't have to be this way. Our Constitution was written to accommodate change, and this is one of those rare historic moments.

Let's remember why the Electoral College was originally put into the Constitution: It was a significant concession to the slave-holding South. Because slaves were not eligible to vote, the South would be at an electoral disadvantage compared with Northern states with higher populations of eligible voters (white, adult property-owning males). With the number of electoral votes allotted to each state based on congressional representation, every state was guaranteed at least three electors. This checked the voting power of the North and preserved significant electoral influence for the South. The Electoral College was put in place to protect the institution of slavery. It is long past time for this last vestige of that shameful era to go.

The most direct way to eliminate the Electoral College is to amend the Constitution to mandate that the president be elected by a majority of voters, with provisions to deal with plurality elections such as in 1992.

There is a movement in several states to circumvent the Electoral College by changing state laws to mandate that electors vote for the national winner of the popular vote. I oppose this idea because electoral votes would not necessarily be awarded to the candidate who won the most votes in a given state.

To abolish the Electoral College, a constitutional amendment must pass with the support of at least two-thirds of the Congress and be ratified by three-quarters of the states. It has happened before. Slavery was abolished in 1865. Women were granted the right to vote nationally in 1920. The minimum voting age was lowered to 18 in 1971.

Many detractors say it's never going to happen. The smaller states that are given disproportionate electoral power under our current system will never agree to the change, they say, and it will only take 13 states voting no to scuttle the proposed amendment.

But to all those who say it's never going to happen — before 2008 nearly everyone would have said the same thing about electing an African American president.

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More on the National Popular Vote Movement

A Few Obstacles to Consider

By Rosanne Smyle

Special to The [Mystic] Times

Were you one of those voters disgusted with the Electoral College system after the 2000 Presidential election debacle? Were you angry that, despite Al Gore having garnered hundreds of thousands of votes over George W. Bush, Gore ultimately lost the election? Did you find yourself asking, "What happened to the concept of one person, one vote? Is it time to get rid of the Electoral College system?"

You might also have found yourself behind the National Popular Vote movement. Four states have voted for the NPV compact, and another 15, including Connecticut, have legislation in the works to try to pass the concept that elects the candidate with the highest number of votes nationally.

Before scrapping a system that has been in place for more than 200 years, however, **Political Scientist Dorothy B. James cautioned that the NVP has more than a few obstacles to overcome before becoming reality.**

James, professor of government at Connecticut College, offered historical perspective and a dose of political reality in a recent talk sponsored by the League of Women Voters of Southeastern Connecticut at the Waterford Public Library.

While some people felt passionate about the outcome of the 2000 election, James, whose specialization includes presidential politics, elections and Constitutional law, noted that the election marked one of only five times since 1789 that the electoral vote has not agreed with the popular vote.

The first two, in 1800 and 1824, happened before the country established a strong political party system, she said. The third, in 1876, occurred in an election genuinely in doubt, James said, while the fourth, in 1888, happened in an election marred by fraud and corruption.

The circumstances surrounding the 2000 election culminated in what some have called a political perfect storm, borrowing the term from the maritime tragedy detailed in the book "The Perfect Storm," in which everything that could go wrong did go wrong, James said.

"This is not something that's the wave of the future," she said. "And this is not going to be a frequent event."

The National Popular Vote Compact proposal offers a way to elect the president by popular vote and circumvent the U.S. Constitution, in which the Electoral College system is specified. It does, however, use the Electoral College, as it would take effect nationally only after identical legislation was passed by enough states to equal the required majority of 270 electoral votes.

Maryland, New Jersey, Illinois and Hawaii – representing 50 electoral votes – have passed legislation to enact the NVP.

Going this route has its obstacles, but amending the Constitution would present even more difficult challenges. Changing the Constitution is a rare feat, James said, given the history of proposing and ratifying 27 amendments in more than 200 years, 10 comprising the Bill of Rights and three enacted during the Civil War, when half the country wasn't included in the vote.

Another issue for thought, James said, is if the NVP system is enacted, what would prevent another matter from circumventing the amendment route and being implemented, another matter that might not be as benign as electing a president.

Under the NVP system, if the majority of the nation voted for the Republican candidate, while Connecticut voted for the Democrat, our state would have to go along with the majority.

The Electoral College also gives rural states a chance to vote for their candidate, rather than be swallowed up in a larger geographical area with a different candidate choice under the NVP compact. The critical number of 270 electoral votes would be reached if the country's 11 largest states adopted the NVP compact.

James also noted that the United States is a nation with an overabundance of lawyers who would dissect the wording of any NPV proposal and ultimately tie up the issue in litigation. She reminded her audience of a former president's question on language that depended on the definition of what "is" is.

Also, she said, the NPV has no provision for recounts, which, given the current state of the contested Minnesota senate race, would seem necessary.

Even more problematic, she said, is that we have 51 different electoral systems across the nation and a general sloppiness in vote counts. Keeping track of voters is an issue.

"People are losing their homes. They are not living where they vote."

Absentee ballots failing to arrive on time, inaccurate voter registrations and flawed software are just a few of the basic problems sorely needing attention in an inadequately funded and staffed system.

Then there is the problem of unannounced polling places. James noted that she, a political scientist, didn't know until she went to vote that the location changed because of construction. She said she scrambled to call people and let them know.

Driving home her point, she cited a recent New York Times article on an academic study, in which it was reported that in 2008, four million to five million voters had problems with registration or absentee ballots and did not vote. The story also said another two million to four million voters were discouraged from voting after encountering problems such as long lines and identification requirements.

Also, while some are calling for more and more technology, James said, "Technology gets in the way of accuracy."

It's one more step and one more chance, she said, for something to go wrong.

"Voters do obscenely stupid things," she said. What is needed in an election is accuracy, simplicity, verifiability, speed, transparency and anonymity for the voter.

"Until you can take care of these technical issues, then you're not going to get closer to one person one vote."

Rosanne Smyle is a member of the board of the League of Women Voters of Southeastern Connecticut. The League, open to men and women, is a non-partisan group that encourages informed and active participation in government.

CTMirror Viewpoints

Be careful what you ask for. NPV compact has unintended consequences

November 16, 2016
by Luther Weeks

Once again, we have an election where it is alleged that the losing candidate won the popular vote. Understandably we have calls from her supporters to abolish the Electoral College by means of the National Popular Vote Compact.

Once again, we must articulate to our friends why this is a bad idea. Once again, we point out to most of those that support the Electoral College that they support it primarily for the wrong reasons.

We have a broken, risky, unequal election system. Cobbling a well-intended compact on top of it makes it more risky, more vulnerable, and the results even less credible:

- Our current system is subject to multiple risks from officials, other insiders, domestic partisans, independent hackers, and foreign powers. The Compact does not change any of that. It makes the system more risky to manipulation in every state. Currently the risk is limited to the so-called swing states.
- Our current system is not audited at all in half the states and insufficiently audited in the majority the states that have audits. The public should have little confidence in the accuracy of vote totals in each state and in the unofficial and official national totals. We should have little confidence in the purported popular vote winner, and even less if the compact is enabled.
- The compact is flawed in that there is no official national popular vote number until after the Electoral College is required to vote. The Compact does not and cannot change that. Its supporters attempt to refute that fact with obfuscation.
- Voters are unequal between states. The Compact will not fix that. It will aggravate that. Different voters are enfranchised and disenfranchised by differing state laws for eligibility. Voting is easier or more difficult by differing ease of registration and voting across the states. Frequently there are obvious attempts to make it easier or more difficult for certain classes of voters to vote. The Compact will increase those trends.
- Contrary to the Compact's proponents contentions there is no national recount possible. Only half the states have some form of recount available. Those recounts are based on state margins, not on the alleged national popular vote number. The Compact does not change that. It could not, since the Compact will be triggered and apply to states representing barely more than half the votes. It would also require the establishment of a national body to declare and manage a recount. Once again, proponents claim through obfuscation that a recount would be possible.
- Let us not forget that we do not have voter verified paper records for a significant percentage of votes, so those votes are not actually auditable or recountable.

I would favor a national popular vote amendment to the U.S. Constitution, if and only if, it provided for a uniform franchise, required sufficient voting systems, sufficient audits and recounts nationwide. And sufficient laws that were enforceable and enforced to provide a trustworthy and trusted national popular vote number. Those ifs are a large leap for our democracy, yet are reasonable, economical, realistic requirements to achieve trustworthy democracy.

Luther Weeks is Executive Director of the website CTVotersCount.org, where this article was first published.