



### **Testimony in Opposition to LD 1356:**

**“An Act to Change the State's Method of Allocating Electoral Votes from a Congressional District Method to a Winner-take-all Method Contingent on the State of Nebraska Changing its Method of Allocating Electoral Votes”**

Senator Hickman, Representative Supica, and the distinguished members of the Committee on Veterans and Legal Affairs, my name is Harris Van Pate, and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free-market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. I am here today to express our strong opposition to LD 1356.

LD 1356 seeks to change Maine’s unique and more representative method of allocating electoral votes—by congressional district—to a contingent winner-take-all model, but only if the State of Nebraska first abandons its own district-based approach. This bill is flawed on multiple levels—constitutionally, practically, and philosophically.

### **Constitutional Concerns: Compact Clause and Delegation to Another State**

By conditioning Maine’s electoral vote allocation on a policy decision made by the Nebraska Legislature, LD 1356 concerningly cedes control over Maine’s electoral process to another state. This raises serious questions under the Compact Clause of the U.S. Constitution (Article I, Section 10, Clause 3), which prohibits states from entering into agreements or compacts without congressional consent. This principle was at issue in cases such as *Virginia v. Tennessee* (1893), where the Court scrutinized interstate arrangements with potential political ramifications.

While the court in that case ruled that not all interstate agreements violate the compact clause, the ones that did violate the clause were those “treaties of a political character, such as treaties of alliance [...] confederation, political cooperation, [...] or conferring internal political jurisdiction, or or external political dependence.”<sup>1</sup>

This bill serves as an agreement between Maine and Nebraska to mutually undo their current non-winner-take-all electoral vote system, which, in MPI’s view, is an agreement of political cooperation and internal political jurisdiction. By doing so, Maine may be in violation of certain constitutional restrictions, due to the amount of power it gives Nebraska, another state, over the final outcome of Maine elections. Nebraska could unilaterally change how one of Maine’s electoral votes is cast, raising major concerns about this power transfer away from the people of Maine.

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<sup>1</sup> <https://supreme.justia.com/cases/federal/us/148/503/>



Additionally, this bill violates the nondelegation doctrine, especially regarding state sovereignty. It is troubling that a law passed by Nebraska could automatically alter how Maine's electoral votes are allocated, effectively outsourcing Maine's election policy to an external legislature over which Mainers have no influence or recourse.

## **Equal Protection and Voting Rights Concerns**

The proposal introduces arbitrary and inconsistent standards for Maine voters, echoing the equal protection concerns of *Bush v. Gore* (2000). A voter in Maine's Second Congressional District could find that their vote no longer helps determine a unique electoral vote, based entirely on decisions made in another state—decisions outside their control and unrelated to Maine's own democratic processes. This contravenes the core constitutional principle that all votes must be weighed equally and fairly.

In that case, the Supreme Court stated, "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." Further quoting *Reynolds v. Sims*, "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."<sup>2</sup>

Removing the independent control over their legislators in Maine's congressional districts entirely, based on laws passed in another state is concerningly close to the concept of diluting Maine voters' votes based solely upon wholly arbitrary standards.

## **Undermining the Independent State Legislature Doctrine**

The U.S. Supreme Court in *Moore v. Harper* (2023) reaffirmed the central role of state legislatures in setting the rules governing federal elections.<sup>3</sup> LD 1356 would allow a change in Maine's law to be automatically triggered by the actions of another state's legislature, effectively disempowering the Maine Legislature and violating the spirit of this doctrine.

## **Loss of Electoral Independence and Local Representation**

Maine's current system of allocating electoral votes by congressional district—shared only with Nebraska—better reflects the state's geographic and ideological diversity. It ensures that rural and urban voters have a voice in presidential elections.

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<sup>2</sup> <https://supreme.justia.com/cases/federal/us/531/98/>

<sup>3</sup> [https://www.supremecourt.gov/opinions/22pdf/21-1271\\_3f14.pdf](https://www.supremecourt.gov/opinions/22pdf/21-1271_3f14.pdf)



By contrast, a winner-take-all system discourages voter turnout in less populous areas and disincentivizes presidential campaigns from engaging with the whole state. It consolidates power in urban population centers and erases the political uniqueness of jurisdictions like Maine's Second Congressional District, which has diverged from statewide results in recent presidential elections.

### **State Sovereignty and Contingency Based on Nebraska's Actions**

Tying Maine's election laws to Nebraska's legislative process is unprecedented and irresponsible. The Maine Legislature must craft policy based on the will of Mainers, not to tether our electoral practices to the whims of a different state with different political dynamics and constitutional obligations. No matter what happens in Nebraska, the people of Maine deserve a consistent and independent electoral process.

### **Conclusion**

LD 1356 is a misguided attempt to undermine Maine's thoughtful, representative method of allocating electoral votes. It raises serious constitutional questions, invites future legal challenges, and weakens both electoral fairness and state sovereignty.

For these reasons, we respectfully urge the committee to reject LD 1356. Thank you for your time and thoughtful consideration.