

TESTIMONY OF MEAGAN SWAY, ESQ.

Ought to Pass

LD 1578, An Act to Adopt an Interstate Compact to Elect the President of the United States by National Popular Vote

Joint Standing Committee on Veterans and Legal Affairs

January 8, 2024

Senator Hickman, Representative Supica and members of the Joint Standing Committee on Veterans and Legal Affairs, good morning. My name is Meagan Sway and I am Policy Director for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions through advocacy, education, and litigation. On behalf of our members, we support LD 1578, which would allow Maine to participate in the National Popular Vote Compact, advancing the principle of “one person, one vote.”

The National Popular Vote Compact provides that state election officials in all states participating in the plan would award their Electoral College votes to the presidential candidate who receives the largest national popular vote total from all 50 states and the District of Columbia. This compact would not go into effect until enacted by states collectively possessing a majority of the electoral vote, or 270 of the 538 electoral votes.

Article II, Section 1 of the Constitution provides that: “Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . .” Thus, the states have inherent power to select their Electors as they see fit, provided that some other provision of the Constitution, such as the Fourteenth or Fifteenth Amendments, is not violated. The U.S. Supreme Court has held that states have exclusive power over the appointment and mode of appointment of electors under the Constitution. Therefore, exercising this state power in no way infringes on any area of supremacy of the United States, as there is no federal power to award electoral votes.

The ACLU of Maine supports the national popular vote compact because it advances two fundamental principles of our nation's democracy: ensuring that the candidate with the most votes becomes president and furthering the principle of "one person, one vote."

First, the compact would eliminate the possibility that a candidate who received the most popular votes but did not receive the requisite 270 Electoral College votes needed to win, could lose the election. This has happened five times in American history: in 1824 (Adams-Jackson), 1876 (Hayes-Tilden), 1888 (Harrison-Cleveland), 2000 (Bush-Gore), and 2016 (Trump-Clinton).

Second, by ensuring that each vote cast has an equal impact on the outcome of the presidential election, the National Popular Vote Compact would give each voting citizen equal power in the election, regardless of the state in which the voter lives. Instead of voters in a few states deciding the outcome of the presidential election, candidates will need to speak to – and listen to – all citizens throughout the country equally.

Last, the Electoral College is a vestige of American slavery. When it was created, northern and southern States had roughly equal populations. However, approximately one-third of the people who lived in southern states were Black and could not vote. The Electoral College gave southern states more voting power while allowing them to still count enslaved people as 3/5 of a person under the Constitution. People were enslaved in the North and South, yet this clause proved essential for slaveholders' political power in the South. By joining the National Popular Vote Compact, Maine will move our state and nation one step closer to uprooting the dark parts of our history, living up to our collective promise of treating all people equally under the law, and ensuring that the president is the person who wins the most votes.

Because Maine should join in with the 17 other states that have passed the National Popular Vote law, we urge you to vote "ought to pass" on LD 1578.