The League of Women Voters
Of Dane County presents...

Issues Forum

The Electoral College:
Bad for Our Democracy?

Join us for a presentation created by the League of Women Voters of Illinois:
Why We Should Abolish the Electoral College and How To Do It

Readers: Aileen Nettleton and Joy Cardin
Comments: Andrea Kaminski, Past Executive Director of LWV Wisconsin

Wednesday, November 7, 2018
7:00 - 8:30 p.m.
Capitol Lakes Grand Hall
333 West Main Street in downtown Madison

The event is free and open to the public.
Free parking in the ramp across the street.
Bring your ticket into Capitol Lakes to get stamped.

For more information visit the League’s website at
www.lwvdanecounty.org or call 608-232-9447.
Discussion Questions

1. In July, 2018, the LWV National Convention urgently reaffirmed “its long-held position that the Electoral College should be abolished.” How should the LWV Dane County take action on this initiative?
2. In 2016, the presidential election attracted more votes for the Democrat, while the Electoral College cast more votes for the Republican. Will any proposal to abolish the Electoral College inevitably appear to be a partisan issue? How can we persuade the public that it is a non-partisan improvement on the current system?
3. What questions do you have about the National Popular Vote Interstate Compact? Do you think it would work?

Action Plans: ways that you can bring reform of the method of selecting the President into the public discussion

1. Contact your state representatives about your views.
2. Share what you learned at the forum with friends, family, and groups you participate in.

LWV Positions

Resolution Adopted at the Biennial Convention of the League of Women Voters of the United States on July 1, 2018 in Chicago IL

Whereas: The League of Women Voters of the United States has had a position regarding the selection of the President and Vice-President of the United States since 1970 and this position supports a popular vote system and the abolition of the electoral college system, and

Whereas: The 2018-2020 recommended LWVUS program focus is The Campaign for Making Democracy Work®, which includes a free, fair, and accessible electoral system for all eligible voters by focusing on Voting Rights, Improving Elections, Campaign Finance/Money in Politics, and Redistricting, and

Whereas: The existing LWVUS position on The Selection of the President is directly related to these topics included in the Campaign for Making Democracy Work®, and

Whereas: The method for the selection of the President has become an issue of much public discussion and concern in recent times and has generated interest among the public and among members of the League of Women Voters, and

Whereas: The LWVUS reminds us that our adopted national position on the Selection of the President calls for uniform national voting qualifications and procedures at all necessary levels to achieve a consistent nationwide electoral policy and infrastructure and that the abolition of the Electoral College is essential to achieve this standard without delay.

Therefore May It Be Resolved That: The 2018 Convention of the League of Women Voters of the United States urgently reaffirms its long-held position that the Electoral College should be abolished.
LWVUS has had a position to abolish the electoral college since 1970: 47 years. This is a non-partisan issue.

Uniform and unifying election process.

One person, one vote.

Engage and inform.

The League’s Position,

The League of Women Voters of the United States believes that the direct-popular-vote method for electing the President and Vice-President is essential to representative government. The League of Women Voters believes, therefore, that the Electoral College should be abolished. We support the use of the National Popular Vote Compact as one acceptable way to achieve the goal of the direct popular vote for election of the president until the abolition of the Electoral College is accomplished. The League also supports uniform voting qualifications and procedures for presidential elections. The League supports changes in the presidential election system – from the candidate selection process to the general election. We support efforts to provide voters with sufficient information about candidates and their positions, public policy issues and the selection process itself. The League supports action to ensure that the media, political parties, candidates, and all levels of government achieve these goals and provide that information.

Statement of Position on Selection of the President, as Announced by National Board, January 1970, Revised March 1982, Updated June 2004 and Revised by the 2010 Convention:

The usual method for passage of a Constitutional Amendment requires approval by 2/3 of both houses of Congress, followed by ratification by 3/4 of the states. The Constitution has 27 Amendments, so it can be done.
The Background:
LWV US position on the Electoral College and Selection of the President

A League study of the presidential electoral process culminated in a 1970 position supporting direct election of the President by popular vote as essential to representative government. The League testified and lobbied for legislation to amend the Constitution to replace the Electoral College with direct election of the President, including provisions for a national runoff election in the event no candidates (President or Vice-President) received 40 percent of the vote. The measure, which passed the House and nearly passed the Senate in 1971, has been revived in each Congress without success. In 1997, the LWVUS again called for abolition of the Electoral College and for direct election of the President and Vice-President in testimony before the House Subcommittee on the Constitution.

The League has supported national voting qualifications and procedures for presidential elections to ensure equity for voters from all states and to facilitate the electoral process. In February 2001, a memo was sent to the state and local Leagues outlining the League’s position on the Electoral College under the LWVUS position on Selection of the President.

The League believes strongly that the Electoral College should be abolished and not merely “reformed.” One “reform” which the League specifically rejects is the voting by electors based on proportional representation in lieu of the present “winner-takes-all” method. Such a system would apportion the electoral votes of a state based on the popular vote in that state. Instead of making the Electoral College more representative, such proportional voting would increase the chance that no candidate would receive a majority in the Electoral College, thereby sending the election of the President to the House of Representatives where each state, regardless of population, would receive only one vote. Election of the President by the House further removes the decision from the people and is contrary to the “one person, one vote” principle. The League also does not support reform of the Electoral College on a state-by-state basis because the League believes there should be uniformity across the nation in the systems used to elect the President.

The 2002 Convention voted to expand and update the position. The League came to concurrence on a new position in June 2004, which takes into account the entire presidential selection process and supports a process that produces the best possible candidates, informed voters and optimum voter participation.

The 2008 Convention voted to conduct a study of the National Popular Vote proposal, which would establish the popular election of the President through a compact among the states governing how they would cast their votes in the Electoral College. The 2010 Convention amended the national position to support the National Popular Vote compact as another method of selecting the President until such time as the Electoral College is abolished.

from LWVUS Impact on Issues, 2016-2018, pp. 27-28
The winners of Tuesday’s elections — Republican or Democrat, for governor, mayor or dogcatcher — all have one thing in common: They received more votes than their opponent. That seems like a pretty fair way to run an electoral race, which is why every election in America uses it — except the most important one of all.

Was it just a year ago that more than 136 million Americans cast their ballots for president, choosing Hillary Clinton over Donald Trump by nearly three million votes, only to be thwarted by a 200-year-old constitutional anachronism designed in part to appease slaveholders and ratified when no one but white male landowners could vote?

It feels more like, oh, 17 years — the last time, incidentally, that the American people chose one candidate for president and the Electoral College imposed the other.

In both cases the loser was a Democrat, a fact that has tempted more than a few people to dismiss complaints about the Electoral College as nothing but partisan sour grapes. That’s a mistake. For one thing, Republicans nearly suffered the same fate in 2004. A switch of just 60,000 votes in Ohio would have awarded the White House to John Kerry, who lost the national popular vote by roughly the same margin as Mr. Trump. More important, decades of polling have found that Americans of all stripes would prefer that the president be chosen directly by the people and not by 538 party functionaries six weeks after Election Day.

President Trump agrees, or at least he used to. In 2012, when he thought Barack Obama would lose the popular vote but still retake the White House, he called the Electoral College “a disaster for a democracy.” Last November, days after his own victory, Mr. Trump said: “I would rather see it where you went with simple votes. You know, you get 100 million votes, and somebody else gets 90 million votes, and you win. There’s a reason for doing this, because it brings all the states into play.”

He was right, even if he has since converted to an Electoral College advocate. The existing winner-take-all system, which awards all of a state’s electoral votes to the popular-vote winner in that state, no matter how close the race, is deeply anti-democratic. It treats tens of millions of Americans — from Republicans in Boston to Democrats in Biloxi — as if their voices don’t matter.

Defenders of the Electoral College argue that it was created to protect the interests of smaller states, whose voters would otherwise be overwhelmed by the much larger populations living in urban areas along the coasts. That’s wrong as a matter of history: The framers of the Constitution were concerned primarily with ensuring that the president wasn’t selected by uneducated commoners. The electors were meant to be a deliberative body of intelligent, well-informed men who would be immune to corruption. (The arrangement was also a gift to the Southern states, with their large, unenfranchised populations of slaves.)

But regardless of its original intent, the Electoral College today is, as Mr. Trump said, a disaster for a democracy. Modern presidential campaigns ignore almost all states, large and small alike, in favor of a handful that are closely divided between Republicans and Democrats — and even within those states, they focus on a few key regions. In 2016, two-thirds of all public campaign events were held in just six states: Michigan, Ohio, Florida, Pennsylvania, Virginia and North Carolina; toss in six more and you’ve got 94 percent of all campaign events.

This may be smart campaigning, but it’s terrible for the rest of the country, which is rendered effectively invisible, distorting our politics, our policy debates and even the distribution of federal funds. Candidates focus their platforms on the concerns of battleground states, and presidents who want to stay in office make sure to lavish attention, and money, on the same places. The emphasis on a small number of states also increases the risk to our
national security, by creating an easy target for hackers who want to influence the outcome of an election. Perhaps most important, voters outside of swing states know their votes are devalued, if not worthless, and they behave accordingly. In 2012, 64 percent of swing-state voters showed up, compared with 57 percent everywhere else, a pattern that persisted in 2016. What better way to get more voters to register and go to the polls than to ensure that everyone’s vote is weighed equally?

The Electoral College has been the subject of more amendment efforts — 595 as of 2004 — than any other part of the Constitution. But amending the Constitution is a heavy lift. A quicker and more realistic fix is the National Popular Vote interstate compact, under which states agree to award all of their electoral votes to the winner of the national popular vote. The agreement kicks in as soon as states representing a total of 270 electoral votes sign on, ensuring that the popular vote will always pick the president. So far, 10 states and the District of Columbia have joined, representing 165 electoral votes. The problem is that they are all solidly Democratic, which only adds to the suspicion that this is no more than a partisan game. It’s not: When Mr. Trump is not making up stories about millions of illegal voters, he has argued that if the presidency were decided by popular vote, he would have campaigned differently and still would have won. He may well be right.

How can red states be persuaded to sign on and give all their citizens a voice? Some, like Georgia and Arizona, may not stay red for much longer. But even deep-red states would benefit from the infusion of attention and cash from campaigns seeking to rustle up every vote they can find.

This problem isn’t going away; if anything it’s going to get worse as Americans continue to cluster. Half the population now lives in just nine states. It’s time for states that have been on the fence about the national popular-vote compact to get off and sign on. Connecticut, Oregon and Delaware have all come close to passing the compact in recent years; they should get it done now. Yes, they’re three reliably blue states representing 17 electoral votes among them, but every vote counts.

* * *


On Monday, Dec. 19, the Electoral College will choose as president of the United States a candidate who lost the popular vote by more than 2 1/2 million votes. Never before has anyone who lost so decisively been deemed president and this is entirely because the Electoral College violates the basic constitutional principle of one person, one vote.

Although it is provided for in the Constitution, the allocation of votes in the Electoral College should be declared unconstitutional as violating the constitutional amendments that guarantee equal protection of the law. No court is going to do this for the 2016 election and invalidate the election of Donald Trump. But the federal courts should use the pending cases to do this for the future and help ensure that never again is there the election of a president who lost the popular vote.

The problem with the Electoral College is that Article II of the Constitution provides that the number of electors from each state will be the sum of its representatives and senators. Because every state has two senators, smaller states have disproportionate influence in choosing the president. Wyoming has a population of 584,153 and three electoral votes, so each Wyoming elector represents 194,717 voters. California has a population of 38.8 million and has 55 electoral votes, so each elector represents 705,454 voters. In theory today, states with only 22 percent of the country’s population can choose the president.

The problem of the Electoral College is compounded by state laws that provide that electoral votes are awarded on a winner-take-all basis. In all states except Nebraska and Maine, the candidate who wins the popular vote in a state —
even by the narrowest margin — gets all of the electoral votes from that state. This, too, greatly increases the chances of the Electoral College choosing a president who lost the popular vote.

Article II of the Constitution creates the Electoral College and defines its membership, but remember that the text of the Constitution is modified by its amendments. Article I authorizes Congress to regulate interstate commerce, and this would allow federal licensing of the press, except that the First Amendment makes that unconstitutional. Article III permits a federal court to hear a suit against a state by citizens of other states, but the Eleventh Amendment was adopted to preclude such litigation.

The Supreme Court long has held that the Fifth Amendment assurance of due process of law includes a requirement that the federal government not deny any person equal protection of the laws. And for over a half century, the court has ruled that a core aspect of equal protection is one person, one vote; every person must have an equal ability to influence the outcome of an election.

Courts thus can and should declare that the guarantee of equal protection found in the Fifth Amendment modifies Article II of the Constitution and requires that electors be allocated strictly on the basis of population. Also, they should hold “winner take all,” provided by state law and not the Constitution, to be unconstitutional. This would virtually ensure that the winner of the popular vote would be chosen as president. That is what should happen in a democracy.

Yet, understandably, no court is going to declare the composition of the Electoral College unconstitutional in 2016. The rules for this election were clear when the candidates ran and when people voted.

But a number of lawsuits have been filed challenging the constitutionality of the allocation of representation in the Electoral College and the winner-take-all rule. The law is clear that a case challenging election procedures does not become moot when the election is over because the underlying issues remain. Courts should use these cases to require that in the future the votes in the Electoral College be allocated consistent with population and that each state’s votes be decided proportionate to the popular vote in the state.

Judicial action is especially important because this is an area where the political process won’t cure itself. Small states that benefit from the composition of the Electoral College never will approve amending the Constitution to change it.

We should be embarrassed by the Electoral College. It was created because of a distrust of the people and democracy. Alexander Hamilton, in Federalist No 68, said the president should be chosen by a “small number of persons” with the requisite “information and discernment.”

On Nov. 6, 2012, Donald Trump tweeted, “The electoral college is a disaster for a democracy.” . . . Trump was right and now is the time for action to make sure that never again is the loser in the election made president of the United States.

* * *

Excerpts from Wikipedia, the free encyclopedia:

The National Popular Vote Interstate Compact (NPVIC) is an agreement among a group of U.S. states and the District of Columbia to award all their respective electoral votes to whichever presidential candidate wins the overall popular vote in the 50 states and the District of Columbia. The compact is designed to ensure that the candidate who wins the most popular votes is elected president, and it would come into effect only when it would guarantee that outcome.[2][3] As of September 2018, it has been adopted by eleven states and the District of Columbia. Together, they have 172 electoral votes, which is 32.0% of the total Electoral College and 63.7% of the electoral votes needed to give the compact legal force.
Mechanism

Proposed in the form of an interstate compact, the agreement would go into effect among the participating states in the compact only after they collectively represent an absolute majority of votes (currently at least 270) in the Electoral College. In the next presidential election after adoption by the requisite number of states, the participating states would award all of their electoral votes to presidential electors associated with the candidate who wins the overall popular vote in the 50 states and the District of Columbia. As a result, the winner of the national popular vote would always win the presidency by always securing a majority of votes in the Electoral College. Until the compact's conditions are met, all states award electoral votes in their current manner.

The compact would modify the way participating states implement Article II, Section 1, Clause 2 of the U.S. Constitution, which requires each state legislature to define a method to appoint its electors to vote in the Electoral College. The Constitution does not mandate any particular legislative scheme for selecting electors, and instead vests state legislatures with the exclusive power to choose how to allocate its own electors. States have chosen various methods of allocation over the years, with regular changes in the nation's early decades. Today, all but two states (Maine and Nebraska) award all their electoral votes to the candidate with the most votes statewide.

Congressional approval

It is possible that Congress would have to approve the NPVIC before it could go into effect. Article I, Section 10 of the US Constitution states that: "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign Power." However, the U.S. Supreme Court has ruled in Virginia v. Tennessee, 148 U.S. 503 (1893), and in several more recent cases, that such consent is not necessary except where a compact encroaches on federal supremacy.

Every Vote Equal argues that the compact could never encroach upon federal power since the Constitution explicitly gives the power of casting electoral votes to the states, not the federal government. (Some) argue that the NPVIC would nonetheless affect the federal system in such a way that it would require Congressional approval, while (others) argue that Congress is actually prohibited under the Constitution from granting approval to the NPVIC. NPVIC supporters dispute this conclusion and state they plan to seek congressional approval if the compact is approved by a sufficient number of states.

You can download a free copy of Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote, by John R. Koza, et.al. here: http://www.every-vote-equal.com

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LWVIL Electoral College Committee Resources: An informal list of websites, articles, books, and videos about the abolition of the Electoral College

General Information


National Archives and Records Administration: U.S. Electoral College. This site has extensive information about the electoral college. https://www.archives.gov/federal-register/electoral-college/

Articles


**Radio, YouTube**

YouTube video, "Crash Course in Our Dysfunctional Electoral College": Jack Rakove, TEDxStanford https://www.youtube.com/watch?v=OMRFuRfZgHM

Joy Cardin’s guests discussed the Electoral College on Wisconsin Public Radio on 11/8/ 2016 (https://www.wpr.org/listen/1018226) and 11/16/2016 (https://www.wpr.org/shows/big-question-how-should-we-elect-president)

**Books**


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The presentation and supporting references can be found at https://www.lwwilmette.org/electoral-college-reform.html
Why Should We Abolish the Electoral College?

What did the framers of the Constitution intend?

- Avoid selection of president by Congress, to maintain independence between the branches.
- Help bridge information gap across large distances with limited communication.
- Presidential choice should be based on the popular wishes of the citizenry.
- But electors could exercise discretion in case of “poor choice” by the people (not borne out in practice).
- Not a well-thought-out system: “The second choice of many but the first choice of few.”

*None of the founders’ original concerns remain relevant today.*

The Electoral College is an imperfect system that is damaging to our democracy.

- Puts the choice of president in the hands of voters in only a few so-called “swing states.”
- Decreases participation in our democracy.
- Polarizes our electorate into “red” and “blue.”
- Has resulted five times in a presidential winner who did not receive a majority of the votes.

**MYTH**  VS  **FACT**

*Without the Electoral College, our presidents would be chosen by just a few large states.*

*Election by popular vote would mean every person is equally represented, regardless of where they live. We no longer would be voting by state, but by person.*

*There is no coherent “small state” interest that needs protecting by the Electoral College. The representatives of small states do not vote as a bloc in Congress, and their citizens do not vote as a bloc for president. Presidential candidates have not focused their campaigns on any supposed “small state” issues. The Electoral College actually diminishes the representation of the residents of larger states.*

*Smaller states need the Electoral College to ensure their interests are represented.*

*The Courts and the Senate protect the rights of minority groups. The president is supposed to represent the interests of all Americans. This means one person, one vote.*

*The Electoral College protects the rights of the minority from the tyranny of the majority.*

*This system can, and has, affected both parties. This is a non-partisan issue.*

How Do We Abolish the Electoral College?

- A constitutional amendment has been introduced in Congress many times. We need to introduce it again, and pass it. This means contacting our legislators repeatedly and persistently.
- The National Popular Vote Interstate Compact (NPVIC) is an acceptable interim solution. States agree to apportion their electoral votes to whomever wins the national popular vote.
- Assigning electors proportionate to each state’s popular vote would likely result in no candidate receiving a majority of electoral votes, which would send the decision to the House of Representatives. Not an acceptable solution.