



TO: The Honorable Louis Luchini
The Honorable John Schneck, Co-Chairs
Members of the Joint Standing Committee on Veterans and Legal Affairs

DATE: March 1, 2019

RE: LD 418 – An Act To Implement the National Popular Vote for President
LD 816 – An Act To Implement the National Popular Vote for President of the United States

Senator Luchini, Representative Schneck, and members of the Joint Standing Committee on Veterans and Legal Affairs:

Thank you for the opportunity to testify on LD 418 and LD 816.

My name is John Brautigam. I am here today as Legal Counsel and Senior Policy Advisor for the League of Women Voters of Maine.

The League of Women Voters will celebrate its Centennial next year. We invite you and anyone listening to help us mark our rich heritage of 100 years safeguarding and improving our democracy. That heritage informs our testimony on the bill now before you.

We strongly support electing our president and vice president by popular vote, and we support the National Popular Vote Compact to achieve that result.

Like many people, I can remember when I first learned about the Electoral College. I was puzzled. I struggled to understand how the system works. Electors designated by each state are given independent authority to select the leader of our country? But at the same time, those electors are bound by state rules to vote in a certain way depending on the popular vote within the state? And each state has its own rules for how those electors are designated and how they should vote in the Electoral College?

It was not just confusing -- it seemed undemocratic. Why doesn't the candidate with the most votes win? I was aware of all of the justifications offered for the electoral college system, but none seemed persuasive or reassuring.

Like many, I still struggle to reconcile our longstanding heritage of popular democracy with the fact that the winner of the presidential election is not necessarily the choice of the people whom that president is supposed to represent.

We have conducted nationwide popular elections for over 150 years. In that time, our commitment to electoral democracy has grown in importance. It is now part of our political culture and a bedrock feature in our democracy. Yet when each state uses a winner-take-all approach based on the vote within that state, the result does not necessarily reflect one-person, one-vote. The system now in place does not align with our bedrock principles.

The League of Women Voters supports election of the President and Vice President by direct popular vote. Our position is clear and simple: the presidential candidate with the most support from voters across the country wins. The electorate should be the same as the population being governed, and their votes should count on a one-person, one-vote basis.

This goal is within reach. It does not need a constitutional amendment, and it does not require abolition of the Electoral College.

Under the U.S. Constitution, each state has discretion over the allocation of its electoral votes. Some states use a "winner take all" approach, giving all their electoral votes to the candidate who wins the plurality from voters in that state. Maine uses a district approach, with two of our four electoral votes going to the statewide winner, and one going to the winner in each congressional district.

And here is the crucial point: The allocation of electors for any one state is not required by the U.S. Constitution or the Maine Constitution. It is not required by a federal law. It is a decision entrusted to the state.

In Maine, that decision is found in Title 21-A, Section 805(2). That section says that Maine presidential electors must vote as follows: Two at-large electors must vote for the candidate winning the most votes statewide, and the other two each vote for the candidate winning the most votes in his/or respective congressional district. Section 805(2) is attached to this testimony for your convenience.

LD 816 merely amends Section 805(2). Once this bill takes effect, state law would direct our electors to vote for the winner of the national popular vote, rather than the state or district popular vote. It's that simple.

This rule only takes effect when enough states have agreed to join together to allocate their electors in this manner. Until that time, Maine would continue to allocate our electors as we always have – using our hybrid at-large and district allocation approach.

It really is simple. The electors entrusted to our state by the federal constitution are under state control. The power to allocate them is a power entrusted to our legislature – to you.

We urge you to support LD 816 so that Maine can do our part to realize the goal of a presidential election system that honors the vote of each voter in each state. It is an important step in the unfinished work of creating a more perfect union.

Thank you.

Maine Revised Statutes
Title 21-A: ELECTIONS
Chapter 9: CONDUCT OF ELECTIONS

§805. CONVENTION DUTIES

The duties of the presidential electors in convention are as follows.

1. Separate ballots. When convened as required by section 804, the presidential electors shall each cast separate ballots for President and Vice President, at least one of whom must not be a resident of this State.

2. Presidential electors. The presidential electors at large shall cast their ballots for the presidential and vice-presidential candidates who received the largest number of votes in the State. The presidential electors of each congressional district shall cast their ballots for the presidential and vice-presidential candidates who received the largest number of votes in each respective congressional district.

3. Certificate prepared and sent. The presidential electors shall make and subscribe to 6 certificates containing the number of votes cast separately for President and Vice President. They shall attach one of the lists of electors furnished them by the Governor to each certificate. They shall seal each certificate and attached list in an envelope stating that a certificate of the votes of this State for President and Vice President is contained inside.

4. Envelope sent immediately.

4-A. Certificates sent immediately. The presidential electors shall send immediately by registered mail one certificate to the President of the Senate of the United States and 2 certificates to the Archivist of the United States in Washington, D.C. The presidential electors shall deliver 2 certificates to the Secretary of State, who shall hold one of them subject to the order of the President of the Senate of the United States and shall retain the other for public inspection for one year. The presidential electors shall deliver one certificate to the Chief Judge of the United States District Court for the District of Maine.

5. Envelope sent next day.