
HOUSE BILL 1911

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Klippert, McCune, and Haler

Read first time 02/09/11. Referred to Committee on State Government & Tribal Affairs.

1 AN ACT Relating to withdrawing from the interstate compact to elect
2 the president by national popular vote; amending RCW 29A.56.320;
3 creating new sections; repealing RCW 29A.56.300; and repealing 2009 c
4 264 s 1 (uncodified).

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
7 withdraw from the interstate compact which purportedly would establish
8 a system to elect the president by a national popular vote. The
9 compact was approved in Senate Bill No. 5599, chapter 264, Laws of
10 2009.

11 Ending state participation in a compact that is not yet operative,
12 only two years after initial approval, warrants an explanation as to
13 the causes for rejecting the compact.

14 Reasonable people may disagree about whether the nation is best
15 served by the current system where the electors of each individual
16 state select the president, or whether the system should be changed so
17 that a national election could be held and the candidate with the most
18 popular votes nationwide would be president. It is not reasonable to
19 claim that the current system of voting, where each state has its own

1 group of candidates on the ballot, and each state has its own voting
2 standards and requirements, constitutes a single national election from
3 which a single national vote winner can be identified.

4 Candidates for president file for office in each state, or only in
5 some states, as they choose and are able to qualify. In every election
6 there exists a broad array of choices that voters have for president,
7 depending on which state the voter lives in. Candidates may appear in
8 one state as the candidate for X party and in another state as the
9 candidate for Y party. Candidates may file Mr. X as their vice
10 presidential running mate in one state and file Ms. Y as their
11 candidate for vice president in another state. Candidates who are on
12 the ballot and actively campaigning in some states will not appear at
13 all on the ballot in other states. These are not mere hypothetical
14 possibilities, they are the actual occurrences in recent elections. As
15 long as all the voters in one particular state face common ballot
16 choices, there is currently no requirement nor need for voters of other
17 states to face the exact same choices. Voters in Washington state, for
18 example, cast votes that impact only the vote of Washington state
19 presidential electors, and their vote has no impact on other states
20 whose candidate choices may not have been the same. Under the compact,
21 the vote totals of each state will be counted and the president named
22 based on the largest total number of votes obtained nationwide, with no
23 recognition of the fact that voters faced very different choices from
24 one state to the next.

25 In addition to each state having its own unique list of candidates
26 and political parties on its ballot, each state has its own unique
27 voter qualification rules and voting methods. In forty-eight states a
28 felon who is in prison is not allowed to vote in that state's election,
29 two states do allow such votes. Under the compact every state would be
30 required to accept the vote total of every other state, meaning that
31 when compact states decide which candidate should receive the electoral
32 votes of their state they would be required to count votes of persons
33 who would not have been allowed to vote in their state. The number of
34 differences between the states in election processes is greater than
35 the number of similarities between the states. Some states are almost
36 exclusively election day only voting at polling locations, while other
37 states have early voting beginning over twenty days before election
38 day. Some states have very conservative rules regarding absentee

1 ballots while the state of Oregon sends everyone a ballot and has no
2 polling locations. It would be unconstitutional for any single state
3 to have within that state the broad range of different voting rules and
4 process that now exist among the states, such a diverse system would
5 deny equal protection of the laws. It is constitutional for the
6 individual states to choose voting rules and methods that are very
7 different from other states, because under current law, what the voters
8 of one state decide has no influence on the electoral votes to be cast
9 by any other state. The interstate compact would change all that.
10 Elections in every state, those within the compact and those that are
11 not, would determine how a compact state would be required to cast its
12 electoral votes.

13 The interstate compact is not unconstitutional because it fails to
14 provide equal protection of the law, there is not now any requirement
15 in our federal system that each state have the same ballot or voting
16 process. However, by requiring each state to determine how its
17 electoral votes will be cast based upon election results from other
18 states with different ballots and voting requirements, the compact is
19 unconstitutional for a more basic reason. All laws must be rational.
20 The mere rationality test is the easiest standard of review by which a
21 law can pass constitutional scrutiny. If a court finds that there is
22 even a remote possibility that a reasonable person could have imagined
23 that the law made sense, then it will be presumed to pass the mere
24 rationality test. The interstate compact purporting to establish a
25 national election without first creating a common ballot and common
26 voting process for every state fails to meet even that minimal test.

27 It is possible that a revised compact could require a common ballot
28 and common voting process for all states before going into effect. It
29 would then be up to the individual states to adopt conforming laws, or
30 it might be possible for the federal government in the area of
31 presidential elections to mandate a common ballot and voting process
32 nationwide. At this time there is no requirement for a common ballot
33 and no requirement for common voting process among the states. Given
34 that the compact in its current form is not rational, Washington state
35 is compelled to withdraw from the compact.

36 NEW SECTION. **Sec. 2.** In accordance with RCW 29A.56.300, Article
37 IV, the governor of Washington state shall notify the governor of all

1 other states currently in the compact to notify them of Washington
2 state's withdrawal from the compact. The governor shall forward to
3 each such governor a copy of this act.

4 **Sec. 3.** RCW 29A.56.320 and 2009 c 264 s 3 are each amended to read
5 as follows:

6 In the year in which a presidential election is held, each major
7 political party and each minor political party or independent candidate
8 convention held under chapter 29A.20 RCW that nominates candidates for
9 president and vice president of the United States shall nominate
10 presidential electors for this state. The party or convention shall
11 file with the secretary of state a certificate signed by the presiding
12 officer of the convention at which the presidential electors were
13 chosen, listing the names and addresses of the presidential electors.
14 Each presidential elector shall execute and file with the secretary of
15 state a pledge that, as an elector, he or she will vote for the
16 candidates nominated by that party. The names of presidential electors
17 shall not appear on the ballots. The votes cast for candidates for
18 president and vice president of each political party shall be counted
19 for the candidates for presidential electors of that political party(~~(+~~
20 ~~however, if the interstate compact entitled the "agreement among the~~
21 ~~states to elect the president by national popular vote," as set forth~~
22 ~~in RCW 29A.56.300, governs the appointment of the presidential electors~~
23 ~~for a presidential election as provided in clause 9 of Article III of~~
24 ~~that compact, then the final appointment of presidential electors for~~
25 ~~that presidential election shall be in accordance with that compact))~~).

26 NEW SECTION. **Sec. 4.** The following acts or parts of acts are each
27 repealed:

- 28 (1) RCW 29A.56.300 (States' agreement--Presidential election--
29 National popular vote) and 2009 c 264 s 2; and
30 (2) 2009 c 264 s 1 (uncodified).

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