

D R A F T

FOR DISCUSSION ONLY

# **UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT**

---

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

March 2, 2010 Interim Draft

*With Prefatory Note and Comments*

Copyright ©2009  
By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

*The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.*

March 2, 2010

## **DRAFTING COMMITTEE ON A UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in drafting this Act consists of the following individuals:

SUSAN KELLY NICHOLS, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629, *Chair*

JAMES BOPP, JR., 1 S. 6th St., Terre Haute, IN 47807

JAMES M. BUSH, 3003 N. Central Ave., Suite 2600, Phoenix, AZ 85012

RICHARD A. CHAMPAGNE, Legislative Reference Bureau, One East Main St., Suite 200, Madison, WI 53701-2037

JESS O. HALE, JR., Office of Legal Services, G-16 War Memorial Bldg., Nashville, TN 37243-0059

GENE N. LEBRUN, 909 St. Joseph St., Suite 900, P.O. Box 8250, Rapid City, SD 57709

LARRY L. RUTH, 530 S. 13th St., Suite 110, Lincoln, NE 68508-2820

LANE SHETTERLY, 189 SW Academy St., P.O. Box 105, Dallas, OR 97338

J. SAMUEL TENENBAUM, Northwestern University School of Law, 357 E. Chicago Ave., Chicago, IL 60611

TERESA ANN TILLER, House Legislative Services Office, P.O. Box 1018, Jackson, MS 39215-1018

CAM WARD, 124 Newgate Rd., Alabaster, AL 35007

MICHAEL J. WILKINS, Utah Supreme Court, 450 S. State St., 5th Floor, P.O. Box 140210, Salt Lake City, UT 84114-0210

ROBERT BENNETT, Northwestern University School of Law, 357 E. Chicago Ave., Chicago, IL 60611, *Reporter*

### **EX OFFICIO**

ROBERT A. STEIN, University Of Minnesota Law School, 229 19th Avenue South, Minneapolis, MN 55455, *President*

JACK DAVIES, 1201 Yale Place, Unit #2004, Minneapolis, MN 55403-1961, *Division Chair*

### **AMERICAN BAR ASSOCIATION ADVISOR**

JOHN HARDIN YOUNG, 300 M St. S.E., Suite 1102, Washington, DC 20006, *ABA Advisor*

### **EXECUTIVE DIRECTOR**

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602  
312/450-6600  
[www.nccusl.org](http://www.nccusl.org)

# **UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT**

## **TABLE OF CONTENTS**

Prefatory Note. . . . .	1
SECTION 1. SHORT TITLE.....	6
SECTION 2. DEFINITIONS. . . . .	6
SECTION 3. DESIGNATION OF STATE’S ELECTORS.....	6
SECTION 4. PLEDGE. . . . .	7
SECTION 5. CERTIFICATION OF ELECTORS. . . . .	7
SECTION 6. PRESIDING OFFICER; ELECTOR VACANCIES. . . . .	8
SECTION 7. ELECTOR VOTING. . . . .	10
SECTION 8. NOTIFICATION OF ELECTOR REPLACEMENTS AND HANDLING OF ASSOCIATED CERTIFICATES. . . . .	11
SECTION 9. DEATH OF PRESIDENTIAL OR VICE-PRESIDENTIAL CANDIDATE. . . . .	11
SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.. . . .	12
SECTION 11. REPEALS.. . . .	12
SECTION 12. EFFECTIVE DATE.....	13

# **UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT**

## **Prefatory Note**

### **Introduction**

From the very beginning, the formalities of presidential (and vice-presidential) selection under the United States Constitution have revolved around what has come to be known as the “electoral college.” Despite this formal constancy, the realities of the selection process have changed dramatically over the years, to the point that the electoral college actually functions in a way that could hardly have been imagined by those who promulgated the constitutional provisions. The dissonance between formality and reality has opened room for what are called “faithless electors,” members of the electoral college who vote for candidates for president or vice-president (or both) other than those for whom the popular electoral majority (or plurality) assumed it was casting its votes. Faithless electors hold the potential for serious damage to our democratic processes, making advisable a uniform law to minimize the dangers posed.

### **The Formal Constitutional Process**

Under the Constitution, each state is entitled to a number of electors equal to its total representation in the two houses of Congress. Originally the District of Columbia had no electoral votes, but the Twenty-Third Amendment now assigns to the District a number of electors equal to that of the least populous state. Electors are chosen “in such manner as [each state] . . . legislature [or Congress in the case of the District] may direct” and every four years they meet in separate state (and DC) meetings on a date chosen by Congress. That date is constitutionally required to be uniform throughout the country. *See* U.S. Const., Art. II, § 1, cls. 2 & 3, Am. XXIII. Under current law, the date that Congress has designated for those meetings comes about forty days after what is uniformly thought of as “election day,” formally the day, also designated by Congress, on which those electors are chosen. *See* 3 U.S.C. §§ 7 & 1 (“the first Monday after the second Wednesday in December” and “the Tuesday next after the first Monday in November” respectively). At those disparate state meetings the electors choose the nation’s president and vice-president.

### **State-Centered Decisions about the “Manner” of Elector Selection**

The District and every state has opted for popular election as its “manner” of choosing electors. Maine and Nebraska select two of their electors by the statewide popular vote count, and their remaining electors through the tally in each of the state’s congressional districts. *See, e.g.,* Neb. Election Code § 32-1038. The remaining forty-eight states and the District use what is called “winner-take-all,” with the choice among complete slates of electors that have qualified under state law turning on the popular vote count in the state as a whole. *See, e.g.,* Colo. Rev. Stat. § 1-5-403.

This does not, however, exhaust the possibilities for the “manner” of elector choice. In

the early presidential elections, for instance, some state legislatures chose their electors directly. And in recent years there has been a movement to have a state's electors determined by the nationwide popular vote count, rather than the statewide count. To date five states (Maryland, Hawaii, Illinois, New Jersey and Washington) have signed on to that nationwide popular vote plan, though even in those five states, the plan would not become effective until states with a majority of the total number of electors throughout the country (270) sign on. *See* John R. Koza *et. al.*, *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* (2d ed. National Popular Vote Press 2008).

### **State Law and the Election-Day Ballot**

In virtually all states, however, the part played by electors is shrouded by state law, very much including the way states structure the ballot. In many states, for instance, the ballot makes no mention at all of electors, instructing the voter instead to vote for one or another set of paired candidates for president and vice-president. Even in states that include some reference to electors on the ballot (or in a few, even list the elector candidates, *see, e.g.*, Ariz. Rev. Statutes § 16-507), the names of presidential and vice-presidential candidates—and their political parties—are given considerably greater prominence. State law then dictates that the electors associated with the popular vote winners become the state's electors entitled to vote at those later elector meetings. *See, e.g.*, Ala Code § 17-14-32; Ariz. Rev. Statutes § 16-507.

### **Some Early Assumptions about the Process**

When the office of elector was created in the original Constitution, it surely was assumed that in their state-by-state meetings electors would vote not based on some decision in an earlier vote, but rather after genuine debate and deliberation at the meetings about who in the nation would be best suited for the presidency. A majority of the country-wide total of “appointed” electors was required to prevail in the electoral college, but with the vote taken in unconnected meetings, it would not have been surprising if no candidate commanded the required nationwide majority. Thus a backup procedure was provided in which the House of Representatives would choose the president if the electoral college balloting was indecisive. *See* U.S. Const., Art. I, § 1, cl. 3.

### **The Unanticipated Role of Political Parties and the Twelfth Amendment**

The entry of political parties into the process utterly confounded assumptions underlying this scheme. Parties are nowhere mentioned in the Constitution, and indeed were thought by many of the most important constitutional draftsmen to be potentially mischievous “factions,” which might have to be tolerated but which were to play no real role in presidential selection. *See, e.g.*, Federalist 10 (Madison). Starting quite early, however, political parties moved to center stage in the presidential selection process, nominating presidential and vice-presidential candidates and also slates of electors who, it was taken for granted, would vote for the parties' executive office candidates were they “chosen” as the states' electors.

This political party loyalty was on stark display in the 1800 election. Two parties had quickly emerged, the Federalists and a competitor associated with Thomas Jefferson which went under various names, but which we can call the “Jeffersonians.” Under the original constitutional scheme, each elector cast two votes for president, and once the presidency had been determined, the candidate with the next highest number of electoral votes became vice-president. There was no separation of the two votes, and the vice-president did not even require a majority in the electoral college. *See* U.S. Const., Art. I, § 1, cl. 3. But in the 1800 election, all the electors nominated by the Jeffersonians cast both their votes “faithfully” for the party’s presidential “candidate,” Thomas Jefferson, and also for the party’s vice-presidential candidate, Aaron Burr. The result was a tie, throwing the selection into the backup procedure in the House—albeit through the unanticipated mechanism of political party coordination rather than on account of uncoordinated coincidence.

A majority of state delegations was required for House selection, *see* U.S. Const., Art. I, § 1, cl. 3, and it took thirty-six House votes before Jefferson emerged victorious. This unsettling drama prompted passage of the Twelfth Amendment, separating the votes for president and vice-president, requiring electoral college majorities for both offices, and designating the Senate to conduct any required backup procedure for selecting the vice-president.

Despite the fact that the 1800 election had shown how important political parties had become in the process, the Twelfth Amendment continued to ignore their role. The Supreme Court has suggested that states are constitutionally required to hold open the possibility of presidential and vice-presidential candidates not associated with any political party. *See Storer v. Brown*, 415 U.S. 724, 745-46 (1974). In fact, however, most of the candidates today—for the nation’s executive offices and for the office of elector—are nominees of political parties. Indeed, since Washington’s presidency, all prevailing candidates have been readily associated with a political party. And the role of parties in the process has set the stage for elector faithlessness.

### **The Problem of “Faithless” Electors**

Over the years almost all electors have in fact voted for their parties’ candidates, but for a variety of reasons, an occasional elector has not. These latter “faithless” electors have never changed the outcome of a presidential election, but that is in good part because with the winner-take-all approach of almost all states, the electoral college outcome is seldom very close. Still, close counts are certainly possible—evidenced by the 2000 election—and there is ample reason to believe that presidential campaigns make plans to court faithless votes if the nationwide electoral college count promises to be close. After the 1976 election, for instance, Robert Dole, the Republican vice-presidential candidate, testified about Republican plans to court faithlessness had the outcome been closer than it was. And in the run-up to the 1968 election, several electors made contingency plans for their own faithlessness. *See* Robert Bennett, *Taming the Electoral College* 231 n.31 (Stanford University Press 2006); *see also id.* at 231-32 n.32. Should the apparent outcome of an election appear to turn on whether faithless votes are counted as cast or as previously committed, however, an extraordinarily rancorous dispute would be in prospect.

## **State Responses**

It is thus not surprising that approximately thirty states have taken some action to discourage or forbid faithless electoral votes. Some employ pledges of faithfulness, administered in some cases by political parties and in other cases as part of the ballot qualification process. *See, e.g.*, Ala Code § 17-14-31; Florida St., Title IX, § 103.021. In 1952, the Supreme Court upheld a political party-administered pledge against a constitutional challenge. *See Ray v. Blair*, 343 U.S. 214 (1952). Others forbid faithlessness, some with civil, or even criminal penalties. *See, e.g.*, Calif. Election Code § 6906 (no apparent penalty); N.M. Stat. Ann. § 1-15-9(B) (fourth degree felony). And some provide that faithless voting constitutes resignation from the office of elector. *See, e.g.*, Mich. Comp. Laws Ann. § 168.47. Some of these measures raise questions of whether any faithless votes might nonetheless be counted, while others raise the different question of whether a disqualified vote was nonetheless that of an “appointed” elector for purposes of determining whether the required “majority of whole number of electors appointed” was obtained. U.S. Const. Art. II, § 1, cl.2; Am. XII.

## **The Approach of the Uniform Law**

The Conference has decided that a uniform law is advisable, in order to foreclose the possibility of faithlessness, and simultaneously to help assure that all states attempting to appoint a complete complement of electors will succeed. The uniform law proposes a state-administered pledge of faithfulness (sections 4 and 6(c)), with any attempt to submit an elector vote in violation of that pledge effectively constituting resignation from the office of elector (section 7(c)). The draft Act provides a mechanism for filling a vacancy created for that reason or any other, with the substituted elector taking a similar pledge (sections 6(b) & (c)). After a full set of faithful elector votes is obtained, the uniform law further provides that the official notification of the identity of the state’s electors that is required under federal law (through a document called a “certificate of ascertainment,” *see* 3 U.S.C. § 6) be officially amended by the Governor, so that the state’s official list of electors contains the names of only faithful electors (section 8).

The Act focuses narrowly on the possibility that an elector will break a commitment upon which popular voters were entitled to rely. Thus it explicitly provides that death of a presidential or vice-presidential candidate brings no obligation for an elector to vote for the dead candidate, or, in the case of the death of a presidential candidate, to vote for the vice-presidential running mate (section 8). The intention is simply to leave those problems for separate state action if a state sees fit.

## **Conclusion**

The goal of this Act is admittedly to address a problem that may be unlikely to arise. If it does arise, however, the potential is great for harm to our democracy caused by faithless electors whose votes prove decisive. The solution of the Act is to prevent the problem from arising by binding electors to the pledge they made as a condition of being chosen as an elector. Uniform adoption of the Act will assure that the solution is consistent among the states, foreclosing

attempts to “peel off” electors and helping states to secure their full complements of electoral votes. Widespread adoption will also strengthen the Act against any claim that the remedy is unconstitutional.



1                                   **UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT**

2                   **SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Faithful  
3 Presidential Electors Act.

4                   **SECTION 2. DEFINITIONS.** In this [act]:

5                   (1) “Elector” means an individual selected as a presidential elector under [applicable state  
6 statute] and the procedures of this [act].

7                   (2) “President” means the President of the United States.

8                   (3) [“Unaffiliated presidential candidate” means a candidate for president who qualifies  
9 for the general election ballot in this state by means other than nomination by a political party.]

10                  (4) “Vice President” means the Vice President of the United States.

11                                   **Comment**

12                  As mentioned in the prefatory note, the Supreme Court has suggested that states are  
13 required to hold open the possibility of presidential candidates unaffiliated with any political  
14 party. *See Storer v. Brown*, 415 U.S. 724, 745-46 (1974). Most states do not, however, deal  
15 explicitly with that possibility. For states that want to make the possibility explicit, a bracketed  
16 definition of “unaffiliated presidential candidate” is provided in Section 2, and then bracketed  
17 substantive provision for such candidates is included in Sections 3, 4 and 6.

18                  No definition of a “faithful” presidential elector is provided in Section 2, but the idea is  
19 captured by the pledge requirements of Sections 4 and 6(c), and then the provision of Section 6  
20 that attempted violations of the pledges cause the violating electors to vacate the office of elector,  
21 creating a vacant position to be filled under Section 6.

22  
23                  **SECTION 3. DESIGNATION OF STATE’S ELECTORS.** For each elector position  
24 in this state, a political party contesting the position [, or an unaffiliated presidential candidate,]  
25 shall submit to the [Secretary of State] the names of two qualified individuals. One of the  
26 individuals must be designated “elector nominee” and the other “alternate elector nominee”.  
27 Except as otherwise provided in Sections 5, 6, 7 and 8, this state’s electors are the winning

1 elector nominees under the laws of this state.

2 **Legislative Note:** *Section 3 uses the device of elected alternates as a convenient vehicle*  
3 *for facilitating the filling of elector vacancies, which is then dealt with under Section 6. But*  
4 *alternates are not essential for the filling of vacancies, nor does the designation of alternates for*  
5 *each elector position absolutely guarantee that the alternates will suffice for the filling of all*  
6 *vacancies that conceivably might arise. Thus most states do not at the present time provide for*  
7 *the initial selection of alternate electors, relying instead on persons who happen to be available*  
8 *should there be a vacancy that has to be filled. For examples of states that do employ designated*  
9 *alternates, see Hawaii Rev. Stat. Ann. §§ 14-21, 14-23; Minn. Stat. Ann. §§ 208.03, 208.05.*  
10 *Note, however, that Minnesota does not designate an alternate for each elector position. In any*  
11 *event, if a state preferred not to employ the device of alternates, adjustment of this section and of*  
12 *Section 6 would be necessary.*

13  
14 *It may be that some states hold open the possibility of slates of electors which are not*  
15 *committed to any political party or to particular presidential or vice-presidential candidates.*  
16 *[citation to Mississippi and others if discovered] Adjustment of Section 3 would be required for*  
17 *any such states, as would adjustment of Sections 4 and 6.*  
18  
19

20 **SECTION 4. PLEDGE.** Each elector nominee and alternate elector nominee of a  
21 political party shall execute the following pledge: “If selected for the position of elector, I agree  
22 to serve and to cast my ballots for President and Vice President for the nominees for those offices  
23 of the party that nominated me. [If selected for the position of elector as a nominee of an  
24 unaffiliated presidential candidate, I agree to serve and to cast my ballots for that candidate and  
25 for that candidate’s vice-presidential running mate.]” The executed pledges must accompany the  
26 submission of the corresponding names to the [Secretary of State].

27 **SECTION 5. CERTIFICATION OF ELECTORS.** In submitting this state’s  
28 certificate of ascertainment as required by 3 U.S.C. Section 6, the [Governor] shall certify  
29 this state’s electors and state in the certificate that:

30 (1) the electors will serve as electors unless a vacancy occurs in the office of elector  
31 before the end of the meeting at which elector votes are cast, in which case substitute electors

1 will fill those vacancies pursuant to state law; and

2 (2) if substitution of electors is required, the [Governor] will submit an amended  
3 certificate of ascertainment stating the names on the final list of this state's electors.

4 **Legislative Note:** 3 U.S.C. § 6 instructs “the executive of each state” to inform relevant  
5 federal officials as well as prevailing elector candidates about the identity of the state’s electors.  
6 The document containing this information is called a “certificate of ascertainment,” and it is also  
7 to include the names and number of popular votes obtained by all elector candidates in the state.  
8 This is to be done “as soon as practicable” after the decisions have been made, but this is surely  
9 not intended to prevent later substitution of electors, and many states already make provision for  
10 such substitutions. [supply citations]. The possibility of later substitution is central to the  
11 Uniform Act’s approach to the problem of elector faithlessness, and for that reason Section 5 of  
12 the Act instructs the state executive to make explicit in the certificate of ascertainment that later  
13 substitution is possible and that where it has proved necessary a later amended certificate of  
14 ascertainment will be provided with a revised list of the state’s electors. Section 8 then provides  
15 for submission of any amended certificate of ascertainment that proves necessary. Under the  
16 Constitution electoral votes are counted at a joint meeting of the House and Senate, U.S. Const.,  
17 Am. XII, and at times in the past at those sessions, faithless elector votes have been counted as  
18 cast. See Robert Bennett, *Taming the Electoral College* 38-39, 96 (Stanford University Press  
19 2006). Those appear to have been situations where the certificate of ascertainment named the  
20 eventually faithless electors as those of the state, and provision in this Uniform Act for an  
21 amended certificate should assure that the votes that are counted are only those of the electors  
22 on the amended list, all of whom would have cast faithful votes.

23  
24 Most state statutes specify that the Governor is to carry out this duty assigned to “the  
25 executive of each state. [give examples]. States could presumably opt for a different executive  
26 officer, both in Section 5 and Section 8.

## 27 28 29 **SECTION 6. PRESIDING OFFICER; ELECTOR VACANCIES.**

30 (a) The [Secretary of State] shall preside at the meeting of electors described in Section 7.

31 (b) The position of an elector not present to vote is vacant. The [Secretary of State] shall  
32 appoint an individual to fill a vacancy as follows:

33 (1) by appointing the alternate elector associated with the vacant position, if the  
34 alternate elector is present to vote;

1 (2) if the alternate elector described in paragraph (1) is not present to vote, by  
2 appointing an elector chosen by lot from among the alternate electors present to vote who were  
3 nominated by the same political party [or unaffiliated presidential candidate];

4 (3) if the alternate electors present to vote are insufficient to fill any vacant  
5 position pursuant to paragraphs (1) and (2), by appointing any immediately available individual  
6 who is qualified to serve as an elector and chosen through a process of nomination by and a  
7 plurality vote of the remaining electors, including nomination and vote by a single elector if only  
8 one remains;

9 (4) if there is a tie among two or more candidates in a vote conducted under  
10 paragraph (3), by appointing an elector chosen by lot from among those candidates; and

11 (5) if all elector positions are vacant and cannot be filled pursuant to paragraphs  
12 (1) through (4), by appointing a single presidential elector, with remaining vacant positions to be  
13 filled under paragraph (3) and paragraph (4), if necessary.

14 (c) To qualify as a substitute elector under subsection (a), an individual who has not  
15 executed the pledge required under Section 4 must execute the following pledge: "I agree to cast  
16 my ballots for resident and Vice President consistent with the pledges of the individual to whose  
17 elector position I have succeeded."

18 ***Legislative Note:*** *A number of states name the Secretary of State to preside at the*  
19 *meeting of electors, but states might opt for a different official. For that reason, Section 6*  
20 *brackets the designation of the Secretary of State as the presiding officer.*

21 *As with Sections 3 and 4, adjustment of this Section would be required for any state*  
22 *where unpledged electors might be permissible.*

1                   **SECTION 7. ELECTOR VOTING.**  
2

3                   (a) At the time designated for elector voting and after any vacant position has been filled  
4 under Section, the [Secretary of State] shall provide each elector with a presidential and a vice-  
5 presidential ballot. The elector shall mark the elector's presidential and vice-presidential ballots  
6 with the elector's votes for the offices of President and Vice President respectively, along with  
7 the elector's signature and the elector's legibly printed name.

8                   (b) Except as otherwise provided in Section 9, each elector shall present both completed  
9 ballots to the Secretary of State], who shall examine them and cast all ballots of electors who  
10 voted consistently with their pledges executed under Section 4 or 6. Except as otherwise  
11 permitted in light of Section 9, the [Secretary of State] may not cast and may not count either an  
12 elector's presidential or vice-presidential ballot if the elector has not marked both ballots or has  
13 marked a ballot in violation of the elector's pledge.

14                  (c) An elector who presents an unmarked ballot or a ballot marked in violation of the  
15 pledge vacates the office of elector, creating a vacant position to be filled under Section 6.

16                  (d) The [Secretary of State] shall distribute ballots to and collect ballots from substituted  
17 electors and repeat the process under this section of examining ballots, declaring and filling  
18 vacant positions as required, and casting and recording appropriately completed ballots from the  
19 substituted electors, until all of this state's electoral votes have been cast and recorded.

20                                   **Comment**  
21

22                  For the reasons discussed in the Legislative Note for Section 6, references to the Secretary  
23 of State are bracketed in Section 7.  
24  
25  
26

1                   **SECTION 8. NOTIFICATION OF ELECTOR REPLACEMENTS AND**  
2                   **HANDLING OF ASSOCIATED CERTIFICATES.**

3                   (a) After the vote of this state’s electors is completed, if the final list of electors differs  
4                   from any list that the [Governor] previously included on a certificate of ascertainment prepared  
5                   and transmitted pursuant to 3 U.S.C. Section 6, the [Secretary of State] shall immediately prepare  
6                   an amended certificate of ascertainment and transmit it to the [Governor] for the [Governor’s]  
7                   signature.

8                   (b) The [Governor] shall expeditiously deliver the signed amended certificate of  
9                   ascertainment to the [Secretary of State] and deliver a signed duplicate original of the amended  
10                  certificate of ascertainment to all individuals entitled to receive this state’s certificate of  
11                  ascertainment, indicating that the amended certificate of ascertainment is to be substituted for the  
12                  certificate of ascertainment previously submitted.

13                  (c) The [Secretary of State] shall prepare a certificate of vote to be signed by the electors  
14                  on the final list and process and transmit the certificate with the amended certificate of  
15                  ascertainment as provided in 3 U.S.C. Sections 9, 10, and 11.

16                                   **Comment**

17  
18                  For the reasons discussed in the Legislative Notes for Sections 5 and 6, references to the  
19                  Governor and the Secretary of State are bracketed in Section 8.  
20

21  
22                   **SECTION 9. DEATH OF PRESIDENTIAL OR VICE-PRESIDENTIAL**  
23                   **CANDIDATE.**

24                  (a) An elector is not required by this act to vote for a deceased presidential or vice  
25                  presidential candidate.

(b) If the presidential candidate for whom an elector pledges to vote pursuant to Section 3 or 6 dies before the elector votes pursuant to Section 7, the elector is not required by this act to vote for the vice-presidential running mate of the deceased presidential candidate.

#### **Comment**

The Twentieth Amendment deals with the problem of death of a president-elect after the elector meetings and before inauguration day, as well as with the possibility that the selection process will not have produced a decisive choice for president by the time for inauguration. In both situations, the Amendment turns to the vice-president-elect to fill in, unless, of course, the vice-president elect has also not been chosen. The Amendment authorizes the Congress to pass legislation to designate an acting president where neither a president-elect nor a vice-president-elect has been chosen. For these purposes, a candidate presumably becomes president-elect (and vice-president elect) after the electoral college voting, if that voting has produced a definitive result. But the Constitution is silent on a variety of other problems caused by deaths or, indeed, other sorts of disqualifying developments. This is particularly notable in the period after election day but before the electors have met and voted. Some state statutes deal with problems in that earlier period, but they differ as to whether to follow the Twentieth Amendment's lead and substitute the vice-presidential running mate where possible or instead to allow the political party of an unavailable candidate to fill the gap. [citations for examples].

The Uniform Law does not address these questions, and Section 9 makes that explicit in the case of death, by excluding what seems on account of the Twentieth Amendment's provisions to be the most obvious possibility. Another possibility would be elector discretion in such circumstances, but Section 9 is not designed to address that possibility either.

**SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION 11. REPEALS.** The following are repealed:

(1) ....

(2) ....

(3) ....

**SECTION 12. EFFECTIVE DATE.** This [act] takes effect....