

DRAFT

FOR DISCUSSION ONLY

FAITHFUL PRESIDENTIAL ELECTORS ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

Without Prefatory Note and with Comments

For December 4 – 5

~~MEETING IN ITS ONE HUNDRED AND EIGHTEENTH YEAR~~

~~SANTA FE, NEW MEXICO~~

~~JULY 9 – JULY 16, 2009~~ Committee Meeting

~~FAITHFUL PRESIDENTIAL ELECTORS ACT~~

~~WITHOUT PREFATORY NOTE AND WITH COMMENTS~~

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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November 17

~~June 1~~, 2009

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FAITHFUL PRESIDENTIAL ELECTORS ACT

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1 **FAITHFUL PRESIDENTIAL ELECTORS ACT**

2

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

4 Electors Act.-

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

6 (1) "Elector" means an individual identified under [applicable state statute] and the
7 procedures of this [act] as a presidential elector.-

8 (2) "Faithful" elector means an elector who designates on the presidential and vice-
9 presidential ballots provided to electors under Section 6 the presidential and vice-presidential
10 candidates of the political party that nominated that elector or that nominated the elector whose
11 position was filled by the designating elector. {Our Style Liaison has suggested that this
12 definition be removed because it "is used only in the title of the act, the short title, and the
13 definition itself. In addition, the definition is substantively redundant because the act
14 imposes no obligation on an elector to vote faithfully; instead, the act imposes an obligation
15 on the Secretary of State to reject the ballot of any elector who does not vote faithfully."
16 The question of whether to keep it may be moot if the Committee chooses another of the
17 suggested titles for the Act.}

18 (3) "President" means the President of the United States.

19 ~~(4) (2) "President" means the President of the United States.~~

20 ~~(3) "Vice-President" means the Vice-President of the United States.~~

21 ~~(4) "Winning presidential candidate" means the candidate for President qualified under~~
22 ~~the laws of this state who receives the greatest number of qualified popular votes in this state for~~
23 ~~the office of President.~~

1 ~~—— (5) “Winning vice presidential candidate” means the candidate for Vice President~~
2 ~~qualified under the laws of this state who is the vice presidential running mate of the winning~~
3 ~~presidential candidate.~~

4 ~~*Legislative Note: As of 2009, there are two states—Maine and Nebraska—where some electors*~~
5 ~~*are chosen in congressional district-wide, rather than state-wide, elections. In addition, there*~~
6 ~~*seems to be one state—Mississippi—where a slate of unpledged electors may qualify for the*~~
7 ~~*general election ballot. These definitions would have to be adapted to make room for these*~~
8 ~~*possibilities.*~~

9
10 ~~——~~ **SECTION 3. DESIGNATION OF STATE’S ELECTORS.** For each elector position
11 in this state, a political party contesting the position shall submit to the [Secretary~~Two lists~~ of
12 State] the names of two qualified ~~individuals, qualified to be electors in this state, each list~~
13 ~~containing a number of names equal to the number of electors allocated to this state under the~~
14 ~~United States Constitution, shall be submitted to the [Secretary of State] for each slate of~~
15 ~~candidates for President and Vice President under [applicable state statute]. One of those~~
16 ~~individuals~~ list ~~must be designated “elector nominee”, nominees” and the other~~ second list must be
17 ~~designated “alternate elector nominee”, nominees.”~~ Each individual ~~on the two lists~~ shall execute
18 and sign the following pledge: “If selected for the position of elector, I agree to serve and to cast
19 my ballots for ~~the winning presidential candidate for~~ President and ~~for the winning vice-~~
20 ~~presidential candidate for~~ Vice-President for the nominees for those offices of the party that
21 nominated me for the position of elector or alternate elector.”.” The executed pledges must
22 accompany the corresponding names ~~shall be attached to the respective lists when~~ submitted to
23 the [Secretary of State]. Except as otherwise provided in Section 4, ~~the persons on the list of~~
24 ~~elector nominees submitted for the winning presidential and vice presidential candidates are~~ this
25 state’s electors are the winning elector nominees under the laws of this state.—

1 **Legislative Note:** Most states do not at the present time provide for the initial ~~selection~~~~election~~
2 of alternate electors. -Two states that do are Minnesota and Hawaii, although even they do not
3 ~~designate~~~~employ~~ an alternate for each elector position.~~state of the exact size as the state's~~
4 ~~electoral college delegation.~~ This section uses the device of elected alternates as a convenient
5 vehicle for facilitating the filling of elector vacancies, which is dealt with under Section 5.- But
6 alternates are not essential for the filling of vacancies, nor does ~~the designation~~~~state~~ of
7 alternates for each elector position absolutely guarantee that the alternates will suffice for ~~the~~
8 filling of all vacancies that conceivably might arise. -For ~~these~~~~those~~ reasons, a state might not
9 employ the device of ~~an elected state of~~ alternates, in which case adjustment of this section and
10 of Sections 4 and 5 would be necessary.

11 -
12 Adaptation of this section may also be required in Mississippi or other states where
13 ~~unpledged some~~ electors might be chosen in districts, currently Maine and Nebraska, or
14 ~~where unpledged states of electors, currently Mississippi, are~~ permissible. —

15 16 Comment

17
18 {New Section 8 addresses the possibility of the death of a candidate for president or
19 vice president before the electors vote. It is included for discussion in light of comments
20 received at the 2009 Annual Meeting. This comment will be modified if necessary after the
21 Committee decides whether to include a Section in the Act on the death of a candidate.}
22

23 The possible death or disability of presidential and vice-presidential candidates raises
24 questions which the Act does not address. -The candidates presumably become president and
25 vice-president “elect” after the elector voting, assuming they receive the required majorities. The
26 United States Constitution provides a mechanism for dealing with vacancies that arise after the
27 president and vice-president elect have been chosen. -See U.S. ~~CONST~~~~CONST.~~ amend. XX, §§ 3
28 & 4.- But aside from some state laws that deal with the subject, there is no clear guidance in the
29 Constitution, federal statutes or case law about the effect of death or disability between election
30 day and elector voting. —

31
32 Questions that might arise with respect to electors include whether an elector is impliedly
33 released from a pledge taken under Section 3 on account of the death or disability of a candidate.
34 If that were the appropriate interpretation, then further questions would be raised about whether
35 elector discretion would then be appropriate or some mechanism would be supplied for
36 providing substitute candidates. The Committee ~~at its initial meeting~~ thought that difficult
37 enactability problems could be presented by attempting to address the effect on electors of such
38 death or disability of candidates between the general election and elector voting. ~~However, the~~
39 ~~Committee welcomes suggestions on these matters from the Conference.~~
40

41 SECTION 4. IDENTIFICATION OF ELECTORS. In submitting this state’s
42 certificate of ascertainment as required by 3 U.S.C. Section 6, the [Governor] shall certify both

1 this state's electors and this state's alternate electors, ~~and. The [Governor]~~ shall explicitly recite
2 in the

3 certificate that:

4 ~~certification that:~~ (1) the electors will serve as electors unless a vacancy occurs in the
5 office of elector before the end of the meeting at which elector votes are cast, in which case,
6 pursuant to state law, substitute-replacement electors will be chosen to fill those the vacancies;
7 from among the alternate electors if ~~possible~~; and

8 (2) if substitution of electors is required, the [Governor] will submit an amended
9 certificate of ascertainment specifying the names of a complete set of the state's electors,
10 including the replacement electors, who are entitled to cast this state's electoral votes.

11 *Legislative Note: The federal statute assigns duties to a state's "executive," and most state*
12 *statutes that identify the officer ~~employs~~specify the Governor to carry out those duties. States*
13 *could presumably opt for a different executive officer, both in this Section and in Section 7.*
14 _____

15 **SECTION 5. PRESIDING OFFICER; ELECTOR VACANCIESVACANCY.**

16 _____(a) The [Secretary of State] shall preside at the meeting of electors. If any elected
17 elector is unable to be present, the position of the electors are not present at the meeting, the
18 positions of the absent elector is ~~electors are~~ deemed to be vacant. A vacancy that occurs for that
19 or any other reason shall be filled with the assistance of the [Secretary of State] in the following
20 manner:

21 (1) by the alternate elector associated with the absent elector, if the alternate
22 elector is present at the meeting;

23 _____ (2) if the associated alternate elector is not present at the meeting, ~~by~~ lot from
24 among ~~the~~ alternate electors nominated by the political party of the absent elector who are
25 present at the meeting;:-

1 ~~(3) if~~ ~~(2) If~~ alternate electors present at the meeting are insufficient to fill
2 ~~any~~the vacancies pursuant to paragraphs (1) and (2), by any immediately available individuals
3 who are qualified to
4 serve as electors, through a process ofby nomination by and a plurality vote of the remaining
5 ~~electors, including choice by a~~the single elector if only one remains;:-

6 ~~(4) if~~ ~~(3) If no substitute elector receives a plurality vote~~ pursuant to
7 paragraph ~~(3)2), but~~ there is a tie among two or more candidates ~~each with the same plurality~~
8 ~~vote,~~ by lot from among the candidates having the same plurality vote; and-

9 ~~(5) if~~ ~~(4) If~~ all elector ~~and alternate elector~~ positions are vacant and
10 cannot be filled pursuant to paragraphs (1) through (4), the [Secretary of State] shall designate a
11 single presidential elector, with remaining vacancies filled under paragraph ~~(3)2)~~ and, if
12 necessary, paragraph ~~(4)3)~~-

13 (b) To qualify as a substitute elector under subsection (a), an individual who has not
14 previously executed and signed the pledge required under Section 3 must execute and sign the
15 following pledge: "I agree to cast my ballots for presidential and vice-presidential candidates for
16 the nominees for those offices of the party that nominated for the position of elector the
17 individual to whose elector position I have succeeded." ~~that pledge.~~

18 *Legislative Note: Adjustment-Adjustments would be required for the districting-approach-of*
19 *Maine and Nebraska and the-unpledged elector possibility inapproach-of Mississippi.*
20

21 ~~SECTION 6. ELECTOR VOTING.~~ At the time designated for elector voting;
22 and after any vacancies have been filled under Section 5, the [Secretary of State] shall provide
23 each elector with a presidential ~~ballot~~ and a vice-presidential ballot. The elector shall mark the
24 elector's presidential ballot and vice-presidential ballot with the elector's votedesignate votes for

1 ~~the office of President and Vice-President, those offices~~ respectively, along with the elector's
2 signature and the ~~elector's~~ legibly printed name. Each elector shall present both
3 completed ballots to [the Secretary of State], who shall examine them and record as cast all
4 ballots ~~of electors who voted consistently with their pledges under Section 3 or 5. The [Secretary~~
5 ~~of State] shall not cast for the winning presidential and shall not count winning vice-presidential~~
6 ~~candidates respectively. Neither~~ an elector's presidential ~~or~~ vice-presidential ballot ~~is to be~~
7 ~~cast, and neither shall be counted,~~ if the elector ~~has left either ballot blank or has marked either~~
8 ~~ballot fails to vote for the winning presidential or winning vice-presidential candidate~~ in violation
9 of the elector's pledge, ~~required under Section 3 or 5.~~ An elector who presents a blank ballot or
10 ~~a~~ ballot in violation of the pledge ~~required under Section 3 or 5~~ is deemed to have resigned from
11 the office of elector, creating a vacancy to be filled as provided in Section 5.- The [Secretary of
12 State] shall then distribute to and collect ballots from properly substituted electors and ~~repeat the~~
13 ~~process of examining ballots, declaring and filling vacancies as required, and casting and~~
14 ~~recording appropriately completed ballots from the substituted electors, until all of the state's~~
15 ~~electoral votes have been cast by electors who vote consistently with their pledges record as cast~~
16 ~~votes for the winning presidential and winning vice-presidential candidates until a full slate of~~
17 ~~elector votes has been recorded as cast.~~

18 ~~SECTION 7. NOTIFICATION OF ELECTOR REPLACEMENTS AND~~
19 ~~HANDLING OF ASSOCIATED CERTIFICATES.~~ After ~~the vote of~~ this state's ~~electors is~~
20 ~~completed~~ ~~elector votes are cast~~, if the final list of electors differs from any list that [the
21 [Governor] has previously included on a certificate of ascertainment ~~prepared and~~
22 ~~transmitted~~ ~~submitted~~ pursuant to 3 U.S.C. Section 6, the [Secretary of State] shall immediately
23 prepare an amended certificate of ascertainment containing the final list and transmit ~~it~~

1 | ~~certificate~~ to ~~the~~ [Governor] for ~~the~~ [Governor's] signature. ~~The~~ [Governor] shall
2 | expeditiously deliver the signed, amended certificate of ascertainment to the [Secretary of State]
3 | and to all federal, state, and local officials entitled to receive this state's certificate of
4 | ascertainment, including the President of the United States Senate and each of this state's
5 | electors on the final list, indicating that ~~the~~this amended certificate of ascertainment is to be
6 | substituted for the certificate of ascertainment previously submitted. The [Secretary of State]
7 | shall prepare a certificate of vote for the electors on the final list to sign, process, and transmit
8 | along with the substituted certificate of ascertainment as provided in 3 U.S.C. Sections 9, 10, and
9 | 11.

10 | **Comment**

11 | —
12 | ——— The Constitution imposes no impediment to a state's Secretary of State serving as
13 | an elector, and state statutes do not appear to preclude that possibility. If a state wanted to guard
14 | against that remote possibility, it could presumably do so explicitly. In addition, it is possible
15 | that the Secretary of State might call on other state officials to help in carrying out duties
16 | assigned under the Uniform Act. The power to do so can probably be presumed, but there would
17 | be no harm in a state making such a possibility explicit. ~~In addition, those states which prohibit~~
18 | ~~the holding of two elective offices may wish to provide explicitly that no elected official may be~~
19 | ~~elected to serve as an elector.~~

20 | **SECTION 8. DEATH OF PRESIDENTIAL OR VICE-PRESIDENTIAL**

21 | **CANDIDATE.**

22 | (a) If the presidential candidate for whom an elector pledges to vote pursuant to Section 3
23 | or 5 dies before the elector votes pursuant to Section 6, the elector fulfills the pledge only if the
24 | elector marks the elector's presidential and vice-presidential ballots as follows:

25 | (1) the presidential ballot for the vice-presidential candidate of the political party
26 | that nominated that elector or that nominated the elector to whose position the voting elector
27 | succeeded; and

1 (2) the vice-presidential ballot for the substitute vice-presidential candidate
2 designated by that political party.

3 (b) If the vice-presidential candidate for whom an elector pledges to vote pursuant to
4 Section 3 or 5 dies before the elector votes pursuant to Section 6, the elector fulfills the pledge
5 only if the elector marks the elector's presidential and vice-presidential ballots as follows:

6 (1) the presidential ballot for the presidential candidate described in the elector's
7 pledge pursuant to Section 3 or 5; and

8 (2) the substitute vice-presidential candidate designated by the political party that
9 nominated that elector or, if the elector filled a vacancy under Section 5, the political party that
10 nominated the elector to whose position the voting elector succeeded.

11 (c) If both the presidential and vice-presidential candidates for whom an elector pledges
12 to vote pursuant to Section 3 or 5 die before the elector votes pursuant to Section 6, the elector
13 fulfills the pledge only if the elector marks the elector's presidential and vice-presidential ballots
14 respectively for the substitute presidential and vice-presidential candidates designated by the
15 political party that nominated that elector or, if the elector filled a vacancy under Section 5, the
16 political party that nominated the elector to whose position the voting elector succeeded.

17 **SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
18 applying and construing this uniform act, consideration must be given to the need to promote
19 uniformity of the law with respect to its subject matter among states that enact it.

20 **SECTION 10.9. REPEALS.** The following are repealed: _____; _____

21 **SECTION 11.10. EFFECTIVE DATE.** This [act] takes effect. . . .-

22 _____