



## UNIFORM FAITHFUL PRESIDENTIAL ELECTORS ACT

### *Summary*

Almost all presidential electors in this country's history have voted for their parties' candidates, but in a few incidents electors have not voted as directed by the party. Fortunately, that occasional "faithless" elector has not changed the outcome of a presidential election, but that is in good part because most Electoral College counts are not very close. In several elections where close Electoral College votes seemed possible (but did not come about), campaigns have made plans to court faithlessness, and some electors have contemplated voting faithlessly.

The **Uniform Faithful Presidential Electors Act** addresses the problem of elector who decides to vote inconsistently with the way they were elected to vote by the people of the state. The UFPEA creates a procedure that helps assure that all states attempting to appoint a complete complement of electors will succeed and maintains the sanctity of the electoral process.

The emergence of political parties, the designation by those parties of presidential and vice-presidential candidates, and the parties' nomination of presidential electors in each state who it was assumed would vote for the parties' presidential and vice-presidential candidates has created dissonance between what the Constitution envisaged and the realities of the electoral process. In many states the ballot contains no mention of a role for electors at all. Instead, the names of candidates for president and vice president appear on the ballots, accompanied by political party designation. Votes for these candidates are then turned by state law into votes for electors. Even where ballots do make some mention of electors, the names of presidential and vice-presidential candidates appear and are typically given greater prominence. To all appearances voters are thus casting ballots directly for presidential and vice-presidential candidates. That is surely the working assumption of the overwhelming preponderance of the voters in the country, even if some of them — perhaps even many — appreciate that the eventual winner is determined by the electoral vote count.

In the contemporary electoral context, faithless votes hold the potential for great mischief, producing a president or vice-president (or both) other than those for whom voters were led to believe they were casting their votes. In order to address electoral mischief, 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. Others forbid faithlessness, some with civil, or even criminal penalties. And some provide that faithless voting constitutes resignation from the office of elector.

The variation in state laws opens up the possibility for disputes about whether a faithless vote is to be counted, and also whether a faithful vote might be substituted for it. Different conclusions might be reached under different state laws, and there might be further dispute about the consequences of one resolution or another for the number of appointed electors — the base across the country for determining the required majority. These various potential sources of discord and confusion argue strongly in favor of a uniform law adopted by every state that would forbid or nullify elector faithlessness and assure that each state submits an electoral vote count that reflects faithful voting.

The UFPEA proposes a state-administered pledge of faithfulness, with any attempt by an elector to submit a vote in violation of that pledge effectively constituting resignation from the office of elector. The Act provides a mechanism for filling a vacancy created for that reason or any other, with the substituted elector taking a similar pledge. 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 be officially amended by the Governor, so that the state's official list of electors contains the names of only faithful electors.

Additionally, 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.

The possibility of later substitution is central to the Uniform Act's approach to the problem of elector faithlessness, and for that reason Section 5 of the Act instructs the state executive to make explicit in the certificate of ascertainment that later substitution is possible and that where it has proved necessary a later amended certificate of ascertainment will be provided with a revised list of the state's electors. Section 8 then provides for submission of any amended certificate of ascertainment that proves necessary.

The Act addresses a problem that, in practice, may only rarely arise but has the potential to inflict great harm to our electoral process. 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.

For further information about the UFPEA, please contact ULC Legislative Counsel Lindsay Beaver at (312) 450-6618 or [lbeaver@uniformlaws.org](mailto:lbeaver@uniformlaws.org).