

D R A F T

FOR DISCUSSION ONLY

FAITHFUL PRESIDENTIAL ELECTORS ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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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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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] as a
7 presidential elector.

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

9 (3) “Vice-President” means the Vice-President of the United States.

10 (4) “Winning presidential candidate” means the candidate for President qualified under
11 the laws of this state who receives the greatest number of qualified popular votes in this state for
12 the office of President.

13 (5) “Winning vice-presidential candidate” means the candidate for Vice-President
14 qualified under the laws of this state who is the vice-presidential running mate of the winning
15 presidential candidate.

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

21

22 **SECTION 3. DESIGNATION OF STATE’S ELECTORS.** Two lists of individuals
23 qualified to be electors in this state, each list containing a number of names equal to the number
24 of electors allocated to this state under the United States Constitution, shall be submitted to the
25 [Secretary of State] for each slate of candidates for President and Vice-President under
26 [applicable state statute]. One list must be designated “elector nominees” and the second list

1 must be designated “alternate elector nominees.” Each individual on the two lists shall execute
2 and sign the following pledge: “If selected for the position of elector, I agree to serve and to cast
3 my ballots for the winning presidential candidate for President and for the winning vice-
4 presidential candidate for Vice-President.” The executed pledges shall be attached to the
5 respective lists when submitted to the [Secretary of State]. Except as provided in Section 4, the
6 persons on the list of elector nominees submitted for the winning presidential and vice-
7 presidential candidates are this state’s electors.

8 ***Legislative Note:*** *Most states do not at the present time provide for the initial election of*
9 *alternate electors. Two states that do are Minnesota and Hawaii, although even they do not*
10 *employ an alternate slate of the exact size as the state’s electoral college delegation. This*
11 *section uses the device of elected alternates as a convenient vehicle for facilitating the filling of*
12 *elector vacancies, which is dealt with under Section 5. But alternates are not essential for the*
13 *filling of vacancies, nor does a slate of alternates absolutely guarantee that the alternates will*
14 *suffice for vacancies that conceivably might arise. For those reasons, a state might not employ*
15 *the device of an elected slate of alternates, in which case adjustment of this section and of*
16 *Sections 4 and 5 would be necessary*

17
18 *Adaptation of this section may also be required in states where some electors are chosen*
19 *in districts, currently Maine and Nebraska, or where unpledged slates of electors, currently*
20 *Mississippi, are permissible.*

21 22 **Comment**

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

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

1 welcomes suggestions on these matters from the Conference.

2 **SECTION 4. IDENTIFICATION OF ELECTORS.** In submitting this state's

3 certificate of ascertainment as required by 3 U.S.C. Section 6, the [Governor] shall certify both

4 this state's electors and this state's alternate electors. The [Governor] shall recite in that

5 certification that: (1) the electors will serve as electors unless a vacancy occurs in the office of

6 elector before the end of the meeting at which elector votes are cast, in which case replacement

7 electors will be chosen to fill the vacancies, from among the alternate electors if possible; and

8 (2) if substitution of electors is required, the [Governor] will submit an amended certificate of

9 ascertainment specifying the names of a complete set of the electors, including the replacement

10 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 specify the Governor to carry out those duties. States could opt*
13 *for a different executive officer, both in this Section and in Section 7.*

14
15 **SECTION 5. PRESIDING OFFICER; ELECTOR VACANCY.**

16 (a) The [Secretary of State] shall preside at the meeting of electors. If any of the electors
17 are not present at the meeting, the positions of the absent electors are deemed vacant. A vacancy
18 that occurs for any reason shall be filled in the following manner:

19 (1) By lot from among the alternate electors who are present at the meeting.

20 (2) If alternate electors present at the meeting are insufficient to fill the vacancies,
21 by any immediately available individuals who are qualified to serve as electors, by nomination
22 by and a plurality vote of the remaining electors, including choice by the single elector if only
23 one remains.

24 (3) If no substitute elector receives a plurality vote pursuant to paragraph (2), but
25 there is a tie among two or more candidates each with the same plurality vote, by lot from among
26 the candidates having the same plurality vote.

1 (4) If all elector and alternate elector positions are vacant, the [Secretary of State]
2 shall designate a single presidential elector, with remaining vacancies filled under paragraph (2)
3 and, if necessary, paragraph (3).

4 (b) To qualify as a substitute elector, an individual who has not previously executed and
5 signed the pledge required under Section 3 must execute and sign that pledge.

6 ***Legislative Note:*** *Adjustments would be required for the districting approach of Maine and*
7 *Nebraska and the unpledged elector approach of Mississippi.*
8

9 **SECTION 6. ELECTOR VOTING.** At the time designated for elector voting, and
10 after any vacancies have been filled under Section 5, the [Secretary of State] shall provide each
11 elector with a presidential ballot and a vice-presidential ballot. The elector shall designate votes
12 for those offices respectively, along with the elector's signature and the elector's legibly printed
13 name. Each elector shall present both completed ballots to [the Secretary of State] who shall
14 examine them and record as cast all ballots for the winning presidential and winning vice-
15 presidential candidates respectively. Neither an elector's presidential nor vice-presidential ballot
16 is to be cast, and neither shall be counted, if the elector fails to vote for the winning presidential
17 or winning vice-presidential candidate in violation of the elector's pledge required under Section
18 3 or 5. An elector who presents a blank ballot or ballot in violation of the pledge required under
19 Section 3 or 5 is deemed to have resigned from the office of elector, creating a vacancy to be
20 filled as provided in Section 5. The [Secretary of State] shall then distribute to and collect
21 ballots from properly substituted electors and record as cast votes for the winning presidential
22 and winning vice-presidential candidates until a full slate of elector votes has been recorded as
23 cast.

24 **SECTION 7. NOTIFICATION OF ELECTOR REPLACEMENTS AND**
25 **HANDLING OF ASSOCIATED CERTIFICATES.** After this state's elector votes are cast, if

1 the final list of electors differs from any list that [the Governor] has previously included on a
2 certificate of ascertainment submitted pursuant to 3 U.S.C. Section 6, the [Secretary of State]
3 shall immediately prepare an amended certificate of ascertainment containing the final list and
4 transmit the certificate to [the Governor] for [the Governor's] signature. [The Governor] shall
5 expeditiously deliver the signed, amended certificate of ascertainment to the [Secretary of State]
6 and to all federal, state, and local officials entitled to receive this state's certificate of
7 ascertainment, including the President of the United States Senate and each of this state's
8 electors on the final list, indicating that this amended certificate of ascertainment is to be
9 substituted for the certificate of ascertainment previously submitted. The [Secretary of State]
10 shall prepare a certificate of vote for the electors on the final list to sign, process, and transmit
11 along with the substituted certificate of ascertainment as provided in 3 U.S.C. Sections 9, 10, and
12 11.

13 **Comment**

14
15 The Constitution imposes no impediment to a state's Secretary of State serving as an
16 elector, and state statutes do not appear to preclude that possibility. If a state wanted to guard
17 against that remote possibility, it could do so explicitly. In addition, it is possible that the
18 Secretary of State might call on other state officials to help in carrying out duties assigned under
19 the Uniform Act. The power to do so can probably be presumed, but there would be no harm in
20 a state making such a possibility explicit. In addition, those states which prohibit the holding of
21 two elective offices may wish to provide explicitly that no elected official may be elected to
22 serve as an elector.
23

24 **SECTION 8. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

25 applying and construing this uniform act, consideration must be given to the need to promote
26 uniformity of the law with respect to its subject matter among states that enact it.

27 **SECTION 9. REPEALS.** The following are repealed: _____.

28 **SECTION 10. EFFECTIVE DATE.** This [act] takes effect _____.