New Jersey Second State to Support National Popular Vote

by Phyllis Raybin Emert

With the 2008 presidential election fast approaching and both parties’ conventions imminent, the way in which the U.S. elects its president is once again under scrutiny.

In January 2008, New Jersey became the second state in the country (after Maryland) to enter a compact that would award the Garden State’s fifteen electoral votes to the winner of the national popular vote for president, regardless of the results of its state vote. Illinois may soon become the third state in the nation to enter the compact if its governor signs the bill. The support of these three states brings 46 electoral votes to the compact’s passage, with 224 still needed before it would take effect. According to National Popular Vote, Inc., a non-profit organization whose purpose is to study, analyze and educate the public about the National Popular Vote proposal, the legislation “has also been approved by one legislative house in Arkansas, Colorado and North Carolina.”

Information on National Popular Vote Inc.’s website, states that the compact would “change the Electoral College from an institution that reflects the voters’ state-by-state choices to a body that reflects the voters’ nationwide choice.”

Not everyone is convinced. California Governor Arnold Schwarzenegger and the governor of Hawaii vetoed similar bills in their states despite them having the approval of their respective state legislatures.

How the current system works
While Americans elect their senators and representatives by direct vote, when it comes to electing our chief executive, the process is more complicated, which is what the Founding Fathers wanted. According to the League of Women Voters, the Founding Fathers didn’t trust the people to vote directly for presidential candidates because of what they termed “popular passion.” So, they devised a system, outlined in Article II, Section 1 of the U.S. Constitution, where the president would be elected indirectly by presidential electors who would make up what is called the Electoral College.

Today, the Electoral College consists of 538 presidential electors.

CONTINUED ON PAGE 2

U.S. Supreme Court to Weigh in on Policing the Airwaves

by Phyllis Raybin Emert

There are words you can’t say on radio or television and you probably know what they are or can guess. For the first time in 30 years the U.S. Supreme will weigh in on the subject when it hears FCC vs. Fox Television, a case that deals with obscenity and indecency standards on public airwaves.

How the FCC works
The U.S. government regulates public airwaves through the independent Federal Communications Commission (FCC), which was established in 1934. The Commission responds to complaints by individuals who don’t like what they see or hear on radio and television. The Media Bureau (one of seven FCC bureaus) regulates radio and television programming. According to the FCC’s website, “Obscene speech is not protected by the First Amendment. To be obscene, material must meet a three-prong test [as determined by the U.S. Supreme Court]… An average person… must find that the material… [has] a tendency to excite lustful thoughts, the material must depict or describe, in a patently offensive way, sexual conduct specifically defined by applicable law, and the material… must lack serious literary, artistic, political or scientific value.”

The Pacifica decision
One of the most significant legal rulings regarding indecency is the 1978 case of FCC v. Pacifica. That case involved the Pacifica Radio Station’s 2 p.m. broadcast of a satiric monologue
spread over the 50 states and the District of Columbia. Each elector casts one electoral vote. How many electors or electoral votes each state receives is determined by its congressional representation. Each state receives one electoral vote for each of its senators and representatives in the U.S. Congress. For example, New Jersey has two senators and 13 representatives for a total of 15 electoral votes. Although the District of Columbia has no senator or representative, it is afforded the minimum of three electoral votes. According to the U.S. Constitution, the electors originally met in their respective states and voted for two candidates. A list of the candidates and votes cast was sent to the president of the Senate, who then announced the votes. The person with the largest number of votes became president if he had a majority. If there was a tie, the House of Representatives chose the president. The two票 were given to the president, while the person with the next highest total was appointed vice president.

### Early problems

In 1876, using the new Electoral College system, Federalist John Adams became president, while Thomas Jefferson, a Democratic-Republican, became vice president. Today, this would be the equivalent of Republican George Bush becoming president and Democrat Al Gore becoming vice president. To avoid similar problems, in 1904, the Twelfth Amendment was passed, which basically stated that electors should now have two separate ballots, one for president and a separate one for vice president. The only other change to the Electoral College was made in 1961 when the District of Columbia was awarded three electoral votes.

While electors in colonial America had plenty of clout and voted for whomever they wanted to become president or vice president, but the 17th Amendment, which became law in 1913, forbade this. Each elector, who are appointed by the state’s individual party organizations (Democrat and Republican), as a practical matter, merely confirm the existence of their state’s popular vote, although they are free to vote their conscience. The electors meet in mid-December following the election to officially cast their votes in their respective state capitals. With the exception of Maine and Nebraska, the remaining 48 states operate on a winner-take-all system (Maine and Nebraska award their votes on a proportional basis).

### How a national popular vote would work

There have been four presidential elections (1824, 1876, 1888 and 2000) where the winner of the popular vote lost the presidency because he did not win the majority of electoral votes. That is why proponents of the compact are pushing hard for changing the Electoral College so that voters directly vote for presidential candidates.

A Gallup poll, taken after the 2000 presidential election, revealed that 60 percent of the voting public supports a direct election for president. According to a poll conducted by The Washington Post, the Kaiser Family Foundation and Harvard University, that number jumped to 72 percent in 2007.

The bill or compact, officially titled the Agreement Among the States to Elect the President by a National Popular Vote, offers an alternative to passing a constitutional amendment, which would require ratification by two-thirds of the states and could possibly take years to pass. The compact does not take effect, however, until a combination of other states, which have a cumulative number of 270 electoral votes also enter into it. While that could take years as well, Robert Richie, executive director of FairVote, a non-profit, non-partisan organization that seeks universal access to elections and majority rule for all, believes the National Popular Vote “will be in place for the 2012 election,” according to FairVote’s website.

### Changing the system

Detractors of a direct presidential election claim that the Electoral College promotes the two-party system, discouraging the formation of third parties. Since every vote would be equal, a national popular vote would encourage third-party and independent candidates, who previously would never have had a chance of securing enough electoral votes. This could prove problematic.

In a column posted on cnn.com, Bill Schneider, CNN Senior Pollster, said, “The election is decided by a ‘national popular vote,’ not by the winner of the electoral vote.所以 if the popular vote is 50 percent to 49.5 percent and the House of Representatives chooses the president, the country is effectively divided.”

### National Popular Vote

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<th>State</th>
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### Popular, Not Always the Winner

Winning the national popular vote does not always win you the presidency. Just ask Andrew Jackson, Samuel Tilden, Grover Cleveland and, most recently, Al Gore.

#### 1824 — A Deal Was Struck

The first election year in which the president did not win the popular vote was 1824 when four candidates vied for the U.S. presidency. Competing in the race were Andrew Jackson, of Tennessee, a popular war hero; John Quincy Adams, of Massachusetts, the current secretary of state and also the son of the nation’s second president; William H. Crawford, of Georgia, who became seriously ill during the campaign; and U.S. Representative Henry Clay of Kentucky.

Jackson won the popular vote by more than 38,000 votes over Adams. All four candidates received electoral votes from some of them had had enough of an Electoral College majority. The decision went to the House of Representatives, which could only vote for the top three candidates so Clay, who had received the largest number of electoral votes, was eliminated. Adams struck a deal with Clay, who rounded up western votes and threw his support to the New Englander. The result was that Adams won enough states’ votes to become president. One of the first things the new president did was to name Henry Clay as his secretary of state.

Obviously, that was part of the deal that Jackson called a “corrupt bargain.” Jackson was so incensed at the outcome of the election that he founded the Democratic Party. Then he ran again in 1828 as a man of the people against the incumbent president and won both the popular vote (56 percent to 43.6 percent) and the electoral vote (170 to 83).

#### Other “popular” candidates

In 1876, the winner of the popular vote by a quarter of a million votes, Democrat Samuel Tilden, lost the election to Republican Rutherford B. Hayes, who beat Tilden in the Electoral College, 185 to 184. A special commission was appointed by Congress to resolve the disputed ballots, resulting in the closest Electoral College victory by a candidate.

Although Democrat Grover Cleveland won the popular vote for president in 1888 by a small margin, it was Republican Benjamin Harrison who became president after winning the majority in the Electoral College. 233 to 168. Cleveland had been elected president in 1884, and went on to run again in 1892, this time defeating Harrison. He is the only U.S. president to serve two non-consecutive terms.

In 2000, the small margin of victory (537 votes) for George W. Bush in Florida set off protests by many voters because of confusion with the ballot. The Florida Supreme Court ruled that there should be a hand recount of the disputed ballots. The U.S. Supreme Court. In a 5–4 decision, the Court stopped the recounts and awarded Florida’s electoral votes to Bush. Gore won the popular vote by 543,895 votes, but lost in the Electoral College 271-266.

— Phyllis Raybin Emert

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by Barbara Sheehan

In a controversial move that some people say infringes on the rights of young people, some malls around the nation have imposed weekend curfews on teen shoppers.

According to the International Council of Shopping Centers (ICSC), about 51 malls around the country have implemented either a weekend or a Monday-Thursday curfew that requires teenagers and younger kids to be accompanied by a parent or person over 21. While the ICSC asserts that no teen curfews or escort policies have been reported in New Jersey, in other states, such policies are growing in popularity. Some experts believe it is a growing trend, with an estimated 11 malls signing youth under 16 to be accompanied by a parent or guardian 21 years or older during the hours of 6 p.m. until the mall closes on Fridays and Saturdays.

"It was done as a last resort but has worked really well," Maureen Bausch, Mall of America’s director of business development, said in an article. An October 2001 ICSC newsletter reported that incidents at the mall dropped from about 50 to 60 before the policy to about 2 the next year.

Teen Curfews in Malls Get Mixed Reviews

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National Popular Vote continued from page 2

senior political analyst wrote, “Someone could win the national vote with a bare plurality, perhaps as low as 25 or 30 percent... The new rules would also disconnect a state’s voters from its electors.”

Third parties have affected the outcome of American elections in the past because third party candidates tend to take votes away from one of the major parties, allowing the other party to win. For example, Ralph Nader’s Green Party received more than 97,000 votes in Florida in 2000. Democrat Al Gore got 17 million votes, allowing Republican George W. Bush to take the state and with it, the presidency. Green Party voters, who belonged to the Democratic Party and most likely would have cast their ballots for Al Gore, could have easily given him the win in Florida.

One person, one vote?

David O. Stewart, who is the author of The Summer of 1787: The Men Who Invented the Constitution, wrote an article in The Los Angeles Times where he criticized the Electoral College, calling it “unfair,” and claiming it “exaggerates the power of small states.” As an example, he stated that in 2004, each of California’s 55 electoral votes represented 226,000 voters, while each of Alaska’s three electoral votes represented 100,000 voters. Therefore, according to Stewart, California voters counted less than Alaska voters. “One person, one vote? Hardly,” Stewart wrote.

While civil rights attorney Stephen Latimer, of Hackensack, agrees that the Electoral College is one pie and may have outlived its usefulness, he believes it should be abolished by constitutional amendment in favor of a direct election of the president by popular vote.

In terms of the current proposed compact, Latimer explained that the U.S. Constitution has been interpreted to permit states to enter into contracts or compacts with each other. However, he stated, there is some debate as to whether the courts would uphold the compact’s constitutionality if a state “thumbed its nose at the legislation changed its mind and called off all the agreement. Latimer also noted the possibility of a serious constitutional question that could arise involving the “one person, one vote” issue.

“Suppose 60 percent of New Jersey voters voted for the Democratic candidate, but 57 percent of the national vote went to the Republican,” explained Latimer. “If the New Jersey electoral votes were given to the Republican candidate, that would nullify the electoral will of New Jersey voters, thus effectively depriving them of the vote. I think that would be unconstitutional,” Latimer stated.

Swinging elections

Historically, some states favor one party over another. Currently campaigning presidential candidates focus on so-called “swing states.” These are states, like Ohio, Florida and Pennsylvania, that have not consistently favored any one party and “could go either way,” giving one candidate a victory. Supporters of the national popular vote believe that candidates would have to campaign everywhere and not just battleground or swing states with large electoral votes. But that may not be the case.

Tom Mann, a constitutional scholar, told CNN. “You would see a much greater emphasis by the candidates campaigning in large uncontrollable states, like California, Texas and New York.” In other words, the “swing states” and smaller states would then be left out of the election process. Either way the pendulum swings, the current system is interesting to note that the United States is still having the same problem today that our Founding Fathers had in the 1700s. We still can’t agree what is the best and fairest way to elect our president with all states having equal participation in the process.