
OLR Bill Analysis

sHB 6872 (as amended by House "A")*

AN ACT CONCERNING FAITHLESS PRESIDENTIAL ELECTORS AND AUTHORIZING MANDAMUS ACTIONS RELATED TO THE CERTIFICATION OR DECLARATION OF ELECTION RESULTS.

SUMMARY

This bill creates several practices regarding the certification and election of public officials. Specifically, the bill does the following:

1. establishes procedures for nullifying the vote of, and removing and replacing, a presidential elector who does not vote as pledged (i.e., a faithless elector);
2. establishes a criminal penalty for becoming a faithless elector and a bar from serving as a presidential elector in the future;
3. specifies that certain provisions on presidential electors are no longer effective if the National Popular Vote Interstate Compact (NPVIC, see BACKGROUND) takes effect;
4. moves the date that presidential electors convene by one day, from the first Monday after the second Wednesday in December to the first Tuesday; and
5. authorizes any state resident to bring mandamus actions against certain officials charged with certifying election results.

The bill also makes technical changes.

*House Amendment "A" adds provisions (1) moving the date that presidential electors convene by one day and (2) specifying that certain provisions of existing law and the bill will cease to be effective if the NPVIC takes effect.

EFFECTIVE DATE: October 1, 2023

FAITHLESS ELECTORS

Under existing law, when a voter casts a ballot for a presidential candidate, the ballot is cast for a slate of presidential electors who have pledged to vote for that candidate when all state electors convene to choose the president and vice president of the United States (CGS § 9-175). State law currently requires presidential electors to vote for the presidential and vice-presidential candidates under whose names they ran on the official ballot, but it does not impose consequences if they fail to do so.

In the case of a presidential elector who does not vote for the candidates under whose name he or she ran on the ballot, the bill does the following:

1. nullifies the vote;
2. requires the elector to forfeit his or her office as presidential elector, causing a vacancy;
3. requires the other electors present to elect by ballot a replacement elector to fill the vacancy;
4. requires the replacement elector to vote for the candidates to whom the elector being replaced was pledged;
5. bars future eligibility as an elector; and
6. subjects the elector to a fine of up to \$1,000, up to a year in prison, or both.

The bill also applies these provisions to replacement presidential electors who fail to vote for the candidates to whom the elector being replaced was pledged.

Additionally, the bill specifies that the law on presidential electors' casting of ballots, and the bill's related provisions, cease to be effective if the NPVIC takes effect under existing law (CGS § 9-175a).

WRIT OF MANDAMUS

The bill allows any state resident to bring a mandamus action directly to the Connecticut Supreme Court to compel certain officers to comply with laws relating to certification or declaration of election results (see the table below, organized by bill section number). The bill also establishes the court’s jurisdiction to hear such cases. If a resident prevails in the action, the bill authorizes the recovery of court costs and reasonable attorney’s fees.

A writ of mandamus is a court order that compels a public official or agency to perform a specific duty. However, under Connecticut Supreme Court precedent, a writ is only proper when “(1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy” (*Miles v. Foley*, 253 Conn. 381 (2000)).

Table: Covered Offices and Certifying Officials

§	<i>Office to be Certified</i>	<i>Certifying Officials</i>
2	Congressional legislators and presidential electors	Treasurer, secretary of the state (SOTS), and comptroller
3	Vacancy for Congressional seat	Treasurer, SOTS, and comptroller
4	Congressional senator	Governor and SOTS
5	Governor, lieutenant governor, and constitutional officers	People authorized to receive and count the votes and the General Assembly
6	State legislators and probate judges	Treasurer, SOTS, and comptroller

BACKGROUND

Related Case

In 2020, the U.S. Supreme Court affirmed a Washington Supreme Court decision, holding that a state may constitutionally enforce a presidential elector’s pledge to support his or her party’s nominee – and the state voters’ choice – for president (*Chiafalo et al. v. Washington*, 140 S. Ct. 2316 (2020)).

National Popular Vote Interstate Compact

The NPVIC is an interstate agreement that any state party to the agreement will commit its presidential electors to the national popular vote winner if enough jurisdictions have done so to cumulatively possess a majority of the Electoral College votes (currently 270 of 538 votes).

To date, 14 other states (California, Colorado, Delaware, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington) and Washington, D.C. have adopted the compact. Together with Connecticut, they currently hold 195 electoral votes. (These electoral votes are based on population and the U.S. Census; thus, they are current until at least the next decennial census in 2030.)

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 13 Nay 6 (03/15/2023)

Judiciary Committee

Joint Favorable

Yea 23 Nay 13 (04/19/2023)