



House of Representatives

File No. 786

General Assembly

January Session, 2023 **(Reprint of File No. 336)**

Substitute House Bill No. 6872
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 18, 2023

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

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 9-176 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2023*):

3 (a) The presidential electors shall meet at the office of the Secretary of
4 the State at twelve o'clock [,] noon [,] on the first [Monday] Tuesday after
5 the second Wednesday of the December following their election and, as
6 required by the Constitution and laws of the United States, shall cast
7 their ballots for President and Vice President. Each such elector shall
8 cast [his] such elector's ballots for the candidates under whose names
9 [he] such elector ran on the official election ballot, as provided in section
10 9-175. If any such elector is absent or if there is a vacancy in the electoral
11 college for any cause, the electors present shall, before voting for
12 President and Vice President, elect by ballot an elector to fill such

13 vacancy, and the person so chosen shall be a presidential elector, shall
14 perform the duties of such office and shall cast his or her ballots for the
15 candidates to whom the elector he or she is replacing was pledged. In
16 the case of any such elector who fails to cast such elector's ballots for the
17 candidates under whose names such elector ran on the official election
18 ballot, or who fails to cast such elector's ballots for the candidates to
19 whom the elector he or she is replacing was pledged, (1) the votes of
20 such elector shall be nullified, (2) such elector shall forfeit such elector's
21 office as presidential elector, causing a vacancy in the electoral college,
22 and (3) the other electors present shall elect by ballot an elector to fill
23 such vacancy, and the person so chosen shall be a presidential elector,
24 shall perform the duties of such office and shall cast his or her ballots
25 for the candidates to whom the elector he or she is replacing was
26 pledged.

27 (b) Any presidential elector who fails to cast such elector's ballots for
28 the candidates under whose names such elector ran on the official ballot,
29 or who fails to cast such elector's ballots for the candidates to whom the
30 elector he or she is replacing was pledged, shall (1) be ineligible, upon
31 such failure and thereafter, to the office of presidential elector, and (2)
32 be imprisoned not more than one year, be fined not more than one
33 thousand dollars, or both.

34 (c) If, in accordance with Article IV of the Agreement Among the
35 States to Elect the President by National Popular Vote under section 9-
36 175a, said agreement takes effect generally and the chief executive, as
37 defined in said section, of this state notifies the chief executive of all
38 other states that said agreement has taken effect generally, the
39 provisions of subsections (a) and (b) of this section shall cease to be
40 effective upon such notification.

41 Sec. 2. Section 9-315 of the general statutes is repealed and the
42 following is substituted in lieu thereof (*Effective October 1, 2023*):

43 (a) The votes returned as cast for a senator in Congress,
44 representatives in Congress and presidential electors shall be publicly

45 counted by the Treasurer, Secretary of the State and Comptroller on the
46 last Wednesday of the month in which they were cast, and such votes
47 shall be counted in conformity to any decision rendered by the judges
48 of the Supreme Court as provided in section 9-323. In accordance with
49 the count so made, they shall, on said day, declare what persons are
50 elected senators in the Congress of the United States or representatives
51 in Congress, and the Secretary of the State shall forthwith notify them
52 by mail of their election; and they shall declare the proper number of
53 persons having the greatest number of votes to be presidential electors
54 and, in case of an equal vote for said electors, shall determine by lot from
55 the persons having such equal number of votes the persons appointed,
56 and the Secretary of the State shall forthwith notify them by mail of their
57 appointment.

58 (b) If the Treasurer, Secretary of the State or Comptroller fails to carry
59 out any duty required under subsection (a) of this section, any resident
60 of the state may bring an action against said officer, as applicable, in the
61 Supreme Court for a writ of mandamus to compel said officer to carry
62 out such duty. Any such resident who prevails in such action shall be
63 entitled to recover court costs and reasonable attorney's fees.

64 Sec. 3. Section 9-316 of the general statutes is repealed and the
65 following is substituted in lieu thereof (*Effective October 1, 2023*):

66 (a) The Treasurer, Secretary of the State and Comptroller shall, within
67 thirty days after a vacancy election for a senator in Congress or
68 representative in Congress, subject to the provisions of section 9-323,
69 publicly count the votes returned, and declare what person is elected,
70 and the Secretary of the State shall forthwith notify [him] such person
71 by mail of [his] such person's election. The Secretary of the State shall
72 enter the returns in tabular form in books kept by [him] the Secretary
73 for that purpose and present a copy of the same, with the name of, and
74 the total number of votes received by, each of the candidates for said
75 office, to the Governor within ten days thereafter.

76 (b) If the Treasurer, Secretary of the State or Comptroller fails to carry

77 out any duty required under subsection (a) of this section, any resident
78 of the state may bring an action against said officer, as applicable, in the
79 Supreme Court for a writ of mandamus to compel said officer to carry
80 out such duty. Any such resident who prevails in such action shall be
81 entitled to recover court costs and reasonable attorney's fees.

82 Sec. 4. Section 9-317 of the general statutes is repealed and the
83 following is substituted in lieu thereof (*Effective October 1, 2023*):

84 When any senator in Congress has been elected, the Governor shall
85 certify [his] such election under the seal of the state to the President of
86 the Senate of the United States, which certificate shall be countersigned
87 by the Secretary of the State. If the Governor fails to so certify or the
88 Secretary fails to so countersign, any resident of the state may bring an
89 action against said officer, as applicable, in the Supreme Court for a writ
90 of mandamus to compel said officer to carry out such duty. Any such
91 resident who prevails in such action shall be entitled to recover court
92 costs and reasonable attorney's fees.

93 Sec. 5. Section 9-318 of the general statutes is repealed and the
94 following is substituted in lieu thereof (*Effective October 1, 2023*):

95 (a) The votes for Governor, Lieutenant Governor, Secretary of the
96 State, Treasurer, Comptroller and Attorney General shall be canvassed
97 by the persons authorized to receive and count the same, within thirty
98 days next after they were cast, unless a complaint under the provisions
99 of section 9-324 is pending, in which case such canvass shall not be made
100 until after the third Monday of December next after they were cast. In
101 making such canvass, the votes upon the returns made by presiding
102 officers shall be counted in conformity to the decision of the judge of the
103 Superior Court or of the Supreme Court, as the case may be, and such
104 canvass shall be in conformity to such decision, and a fair list of such
105 votes made to conform to the original returns of the presiding officers,
106 as corrected or affected by the finding or decision of such judge, with
107 the original returns of the presiding officers and certified copies of the
108 decision of such judge, shall, on the first day of the session, be laid before

109 the General Assembly, which shall declare who are elected to said
110 offices respectively.

111 (b) (1) If any of the persons authorized to receive and count the votes
112 for Governor, Lieutenant Governor, Secretary of the State, Treasurer,
113 Comptroller or Attorney General fail to carry out any duty required
114 under subsection (a) of this section, any resident of the state may bring
115 an action against such person, as applicable, in the Supreme Court for a
116 writ of mandamus to compel such person to carry out such duty.

117 (2) If the General Assembly fails to declare who is elected to any of
118 said offices, as required under subsection (a) of this section and in
119 accordance with the provisions of section 9-173, any resident of the state
120 may bring an action against the General Assembly in the Supreme Court
121 for a writ of mandamus to compel the General Assembly to carry out
122 such duty.

123 (3) Any resident of the state who prevails in an action brought under
124 subdivision (1) or (2) of this subsection shall be entitled to recover court
125 costs and reasonable attorney's fees.

126 Sec. 6. Section 9-319 of the general statutes is repealed and the
127 following is substituted in lieu thereof (*Effective October 1, 2023*):

128 (a) The votes for state senators, state representatives and judges of
129 probate, as returned by the moderators, shall be canvassed, during the
130 month in which they are cast, by the Treasurer, Secretary of the State
131 and Comptroller, and they shall declare, except in case of a tie vote, who
132 is elected senator in each senatorial district, representative in each
133 assembly district and judge of probate in each probate district. The
134 Secretary of the State shall, within three days after such declaration, give
135 notice by mail to each person chosen state senator, state representative
136 or judge of probate of [his] such person's election.

137 (b) If the Treasurer, Secretary of the State or Comptroller fails to carry
138 out any duty required under subsection (a) of this section, any resident
139 of the state may bring an action against said officer, as applicable, in the

140 Supreme Court for a writ of mandamus to compel said officer to carry
141 out such duty. Any such resident who prevails in such action shall be
142 entitled to recover court costs and reasonable attorney's fees.

143 Sec. 7. Subsections (b) and (c) of section 51-199 of the general statutes
144 are repealed and the following is substituted in lieu thereof (*Effective*
145 *October 1, 2023*):

146 (b) The following matters shall be taken directly to the Supreme
147 Court: (1) Any matter brought pursuant to the original jurisdiction of
148 the Supreme Court under section 2 of article [sixteen] sixteenth of the
149 amendments to the Constitution; (2) an appeal in any matter where the
150 Superior Court declares invalid a state statute or a provision of the state
151 Constitution; (3) an appeal in any criminal action involving a conviction
152 for a capital felony under the provisions of section 53a-54b in effect prior
153 to April 25, 2012, class A felony or any other felony, including any
154 persistent offender status, for which the maximum sentence which may
155 be imposed exceeds twenty years; (4) review of a sentence of death
156 pursuant to section 53a-46b; (5) any election or primary dispute brought
157 to the Supreme Court pursuant to section 9-323 or 9-325, or any action
158 for a writ of mandamus brought to the Supreme Court pursuant to
159 sections 9-315 to 9-319, inclusive, as amended by this act; (6) an appeal
160 of any reprimand or censure of a probate judge pursuant to section 45a-
161 65; (7) any matter regarding judicial removal or suspension pursuant to
162 section 51-51j; (8) an appeal of any decision of the Judicial Review
163 Council pursuant to section 51-51r; (9) any matter brought to the
164 Supreme Court pursuant to section 52-265a; and (10) any other matter
165 as provided by law.

166 (c) The Supreme Court may transfer to itself a cause in the Appellate
167 Court. Except for any matter brought pursuant to its original
168 jurisdiction under section 2 of article [sixteen] sixteenth of the
169 amendments to the Constitution, the Supreme Court may transfer a
170 cause or class of causes from itself, including any cause or class of causes
171 pending on July 1, 1983, to the Appellate Court. The court to which a
172 cause is transferred has jurisdiction.

| | | |
|---|------------------------|-------------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2023</i> | 9-176 |
| Sec. 2 | <i>October 1, 2023</i> | 9-315 |
| Sec. 3 | <i>October 1, 2023</i> | 9-316 |
| Sec. 4 | <i>October 1, 2023</i> | 9-317 |
| Sec. 5 | <i>October 1, 2023</i> | 9-318 |
| Sec. 6 | <i>October 1, 2023</i> | 9-319 |
| Sec. 7 | <i>October 1, 2023</i> | 51-199(b) and (c) |

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 24 \$ | FY 25 \$ |
|---|-----------------------------|-----------|-----------|
| Comptroller - Adjudicated Claims Account | GF - Potential Cost | See Below | See Below |
| Judicial Dept. (Probation); Correction, Dept. | GF - Potential Cost | See Below | See Below |
| Resources of the General Fund | GF - Potential Revenue Gain | See Below | See Below |

Note: GF=General Fund

Municipal Impact:

| Municipalities | Effect | FY 24 \$ | FY 25 \$ |
|------------------------|----------------|-----------|-----------|
| Various Municipalities | Potential Cost | See Below | See Below |

Explanation

The bill creates criminal penalties for faithless electors and allows residents of Connecticut to sue certain officials for failing to perform their duties related to elections resulting in the potential costs and revenue gains described below.

Section 1 creates a criminal penalty of up to a \$1,000 fine and up to one year of jail which results in a potential cost for incarceration or probation and a potential revenue gain from fines. On average, the marginal cost to the state for incarcerating an offender for the year is

\$2,500¹ while the average marginal cost for supervision in the community is less than \$800² each year.

Sections 2-6 allows residents of Connecticut to bring legal action to certain officials for failing to perform their duties related to elections which results in a potential future cost to the Office of the State Comptroller- Adjudicated Claims account to the extent that claims against the state are made and are successful. In addition, the bill allows suits to be brought against certain municipal officials. This results in a potential cost to municipalities in the event the claim is successful.

House "A" alters the meeting day of presidential electors and provides a provision that will nullify the criminal penalties that apply to faithless presidential electors if the presidential election moves to a popular vote.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of offenses and cases.

¹ Inmate marginal cost is based on increased consumables (e.g. food, clothing, water, sewage, living supplies, etc.) This does not include a change in staffing costs or utility expenses because these would only be realized if a unit or facility opened.

² Probation marginal cost is based on services provided by private providers and only includes costs that increase with each additional participant. This does not include a cost for additional supervision by a probation officer unless a new offense is anticipated to result in enough additional offenders to require additional probation officers.

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

| § | Office to be Certified | Certifying Officials |
|---|--|---|
| 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)