



LEAGUE OF WOMEN VOTERS OF DELAWARE
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**LWVDE Supports SB 57 Which Would Add the Uniform Faithful
Presidential Electors Act to the Delaware Code.**

The League supports incorporation of the Uniform Law Commissioners' Uniform Faithless Electors Act, which would ensure that Delaware's presidential electors follow the choice of the voters.

Senate Bill No. 57 (introduced March 1, 2023) would incorporate the Uniform Faithful Presidential Electors Act¹ by amending chapter 43 of title 15 of the Delaware Code. 15 Del Code §§ 4301- 4329. The League of Women Voters urges passage of SB 57. While the League favors the abolition of the Electoral College and supports the direct-popular- vote method of electing the president and vice president, it also “believes there should be uniformity across the nation in the systems used to elect the president.”²

The Faithless Elector.

Article II, section 1, clause two of the U.S Constitution, provides that the president and vice-president are to be chosen by electors in “Each State... in such Manner as the Legislature thereof may direct ... equal to the number of U.S. senators and representatives.” This means that the president and vice president are selected by a statewide winner-take-all vote, except in Maine and Nebraska, which allocate electors by the winner in each congressional district. Electors are selected by the political parties or the presidential campaigns and are committed to vote for their nominee. In presidential general elections, voters are officially voting for the political party's slate of electors, not the actual presidential and vice-presidential candidates.

It also means, as occurred in 1876 and 1888, and recently in 2000 and 2016, that the president and vice-president can be elected without winning the national popular vote. For example, in 2000, Al Gore received approximately 500,000 more votes than George Bush, but lost the Electoral College, after a recount in Florida resulted in Florida's 29 electors going for Bush. In 2016, Hillary Clinton won the national popular vote by more than 3 million votes, but lost the Electoral College to Donald Trump. In a close election, such as in 2000, when the candidates were close in electoral votes before the Florida recount, a small change in the electors could change the election outcome.³

The problem of the faithless elector arises because there's no expressed provision of the Constitution or federal statute binding an elector's vote to a specific candidate.⁴ Most state legislation provides that electors should vote for the popular winner in casting a vote in the Electoral College. Thirty-two states and the District of Columbia mandate that electors vote for the candidate to whom they are pledged. Most states, however, do not enforce this pledge.

Following the 2016 election, faithless electors in Washington state and Colorado voted for candidates other than those for whom they were committed. Washington fined the faithless electors. Colorado voided the faithless voter's ballot. The cases ended up in the U.S. Supreme Court. On July 6, 2020, in a unanimous decision, the Court in *Chiafalo v. Washington* and *Colorado Department of State v. Baca* held that the states may enforce laws to punish faithless electors.⁵

The Uniform Faithful Presidential Electors Act.

The Uniform Faithful Presidential Electors Act (UFPEA), which is the basis for SB 57, attempts to correct the faithless elector problem by requiring pledges of the faithfulness of all electors. This is heart of the UFA and SB 57's addition of § 4324 to the Delaware Code. Under the UFPEA, and proposed §4327(c), any attempt to violate an elector's pledge results in automatic resignation and replacement by an alternate elector.⁶ Finally, SB 70 requires, in proposed §4329, that: "In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

The benefits of the state's adoption of the uniform act are that it:

- Provides voters confidence and certainty that the votes they have cast will be voted as they intended in the Electoral College.
- Enacts a clear process for removing an elector who is not faithful to the popular will.

- Prevents the solicitation of faithless electors by entities who wish to change the results of an election.
- Follows a nationally uniform approach to faithful elector voting.

For these reasons, the League of Women Voters of Delaware supports the enactment of SB 57.