

Why Oregon Needs a Faithless Elector Law

Testimony by David A. Weinberg to the Oregon Senate Interim Committee
on Judiciary, November 17, 2025

Protect Democracy Policy Strategist David A. Weinberg testified on November 17, 2025 to an informational meeting of the Oregon Senate's Interim Committee on the Judiciary. He testified in favor of legislation that would help safeguard the will of Oregon's voters from disenfranchisement by faithless presidential electors.

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Introduction

Chairperson Prozanski, Vice-Chair Thatcher, and distinguished Members of this Committee, thank you for the opportunity to testify for you today about modernizing Oregon's election code to protect against faithless presidential electors.

For the record, my name is Dr. David Weinberg. I am here as a policy strategist for Protect Democracy United, a cross-partisan 501(c)(4) that seeks to strengthen the representative institutions of our system of government.

Today I am going to proceed by first identifying the potential problem. Second, I'll review Oregon's current approach. And third, I'll walk you through a proposed solution.

The Problem

Ok, so what's the problem?

Even a single faithless presidential elector arguably constitutes a major violation of representative democracy. Just one person casting their electoral vote in a way that rejects the certified will of the state's voters is equivalent to the retroactive disenfranchisement of hundreds of thousands of voters.

Faithless electoral votes also have the potential to overturn the legitimate outcome of an entire presidential election. And there is reason to fear that the risk of faithless electoral votes has dramatically increased in recent years, not least because of a broader rise in political violence across our society today.

Political Violence

The vast majority of Americans worry that politically motivated violence is increasing, according to a new poll by Pew.¹ You can also see a significant increase over time in the trajectory of threats and harassment against local U.S. officials, for instance, as data from Princeton's Bridging Divides Initiative shows.²

I may be preaching to the choir here because you already spent considerable time discussing this worrisome trend as a committee back in February.³ Even worse, I understand that many of you have been the recipients of such inexcusable threats of violence, whether directed at yourselves, your staff, or your homes or loved ones.

I am so deeply sorry for what you have experienced, and I'd like to take a moment to just say to each of you: thank you for the sacrifices that each of you continue to make to engage constructively in public service, including during tense times such as this. We don't say that nearly enough these days.

The Coercion of Electors

Shifting gears a little now, I'd ask you to consider for a moment how severe the threats and attempts at coercion might be against somebody who, for six weeks, has their name on a public list of individuals in each state with the mighty power to, rightly or wrongly, change the outcome of the next presidential election.

The leading U.S. scholar who surveys the experiences of presidential electors, Dr. Robert Alexander of Bowling Green, has found that presidential electors today receive "incessant letters, phone calls, e-mails, lawsuits, and death threats."⁴

Here are two such examples, one from a 2016 Republican elector in Michigan and another from a 2020 Democratic elector in Washington State.⁵

¹ Joseph Copeland and Jocelyn Kiley, "Americans say politically motivated violence is increasing, and they see many reasons why," Pew Research Center, Oct. 23, 2025, <https://www.pewresearch.org/short-reads/2025/10/23/americans-say-politically-motivated-violence-is-increasing-and-they-see-many-reasons-why/>

² Princeton Bridging Divides Initiative, Threats and Harassment Dataset: September 2025 Update, Oct. 31, 2025, <https://bridgingdivides.princeton.edu/updates/2025/threats-and-harassment-dataset-september-2025-update>

³ Oregon Senate Committee on Judiciary, 2025 Regular Session, Feb. 11, 2025 Public Hearing Agenda, <https://olis.oregonlegislature.gov/liz/2025R1/Committees/SJUD/2025-02-11-15-00/Agenda>

⁴ Robert M. Alexander, *Presidential Electors and the Electoral College: An Examination of Lobbying, Wavering Electors, and Campaigns for Faithless Votes* (Cambria Press, 2012), p. 176.

⁵ Michael Gerstein, "Michigan Electors Cite Threats over Trump Vote," *The Detroit News*, Nov. 17, 2016, <https://www.detroitnews.com/story/news/politics/2016/11/17/elector-threats/94003176/>; "Lakewood Police investigating after reported death threat against 2020 presidential elector," *Fox 13 Seattle*, Jan. 11, 2021, <https://www.fox13seattle.com/news/lakewood-police-investigating-after-death-threat-found-on-2020-presidential-electors-porch>

In fact, 2016 was by some measures the year with the highest number of faithless electoral votes in history so far.

Ok, so that's the bad news. The good news is that this is actually one issue area where most such threats can be deterred with a narrowly tailored law that doesn't infringe on constitutionally protected speech.

Let's proceed now by reviewing this dimension of the electoral college and Oregon's current approach.

The Electoral College

Now, as we know, the date of the general election for president falls every four years on a Tuesday in early November. Then, those results are tabulated and certified, first at the local level, followed by the states.

Based on these totals, each state's executive issues a certificate of ascertainment, which formally designates the state's presidential electors. In order to comply with a new federal election law passed in 2022, this certificate must be issued by the second Wednesday in December.

Six days later, the electors convene in each state to fill out electoral vote ballots with their picks for president and vice president. These totals are tallied on something called a certificate of electoral vote, which must be sent that day to the federal government. Then, on or around January 6th, Congress counts those certificates, and two weeks later the President is inaugurated.

Oregon's Current Approach

Oregon is one of thirteen states with laws on the books that show a clear intent for their electors to honor the will of their voters and yet lack a mechanism to prevent an elector who violates that expectation from being able to squander or flip one of that state's precious electoral votes.

Here's what Oregon's election code currently says:

"A candidate for elector when selected shall sign a pledge that, if elected, the candidate will vote in the electoral college for the candidates of the party for President and Vice President."⁶

And that's great, but it may not cut it in an era when individuals serving in this role generally have superb intentions but might find themselves subjected to excruciating coercion. Most may still honor their responsibilities, but what if not all of them do?

This is why William Galston of the Brookings Institution and Wall Street Journal wrote in early 2024 that: "if I held a leadership position in a state legislature with no law or a vague law on this

⁶ From Or. Rev. Stat. Ann. § 248.355(2), https://oregon.public.law/statutes/ors_248.355

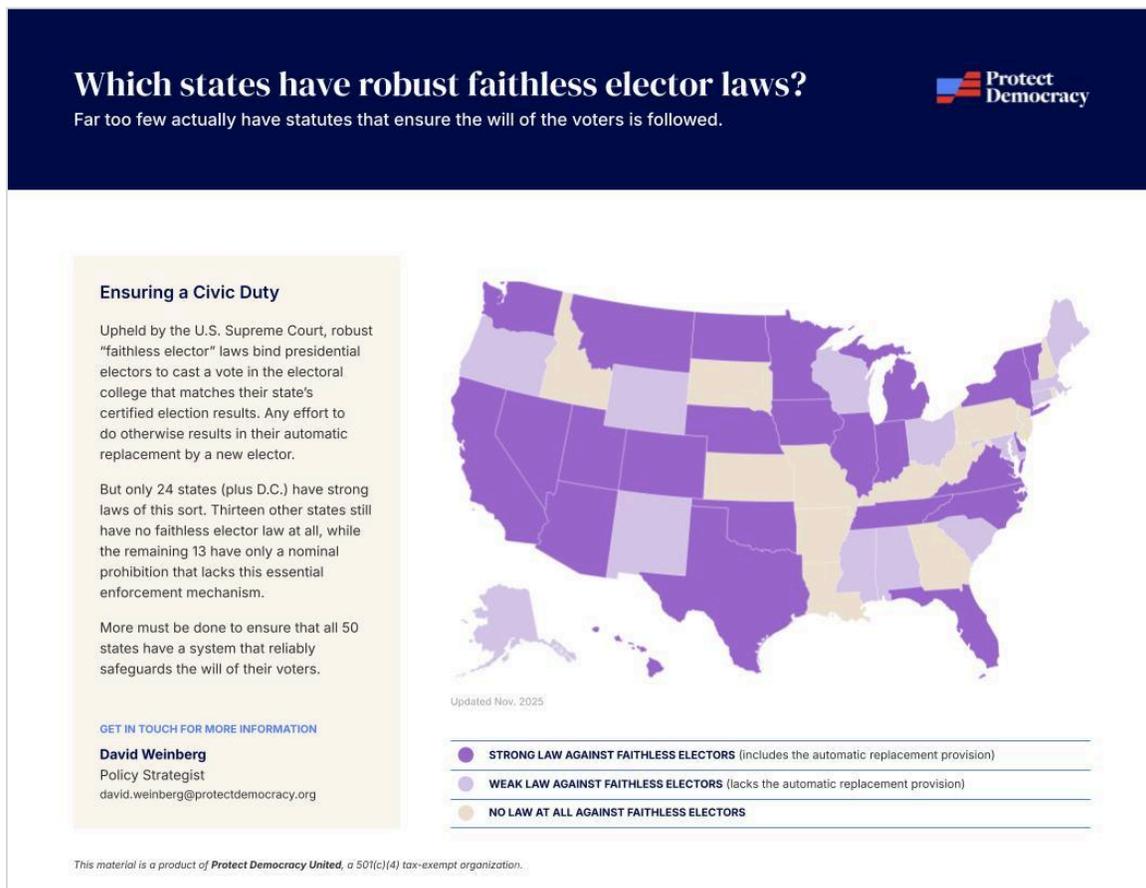
matter, I'd be urging my colleagues to act now or, if it's too late for this cycle, in time for the 2028 presidential election."⁷

Stronger Faithless Elector Laws

So, what exactly would an ideal solution entail?

It looks like the sort of robust laws to deal with faithless electors that are already in place in about half of all states today. So far, D.C. and 24 states have laws on the books which specify that any elector who refuses to cast a faithful electoral vote ballot shall forfeit their position and instead be replaced by somebody else who will.

Here you can see those 24 states with strong faithless elector laws shown in dark purple. The 13 states such as Oregon that have weaker faithless elector laws are shown in light purple.



There's no overarching pattern to the states that already have this kind of law. They run the

⁷ William A. Galston, "Commentary: Could a single faithless elector cost Joe Biden the presidency?" Brookings Institution, May 21, 2024, <https://www.brookings.edu/articles/could-a-single-faithless-elector-cost-joe-biden-the-presidency/>

gamut in terms of political orientation, geography, and population. If anything, it mostly seems to be a matter of legislative initiative relative to inertia.

The best crafted version of these robust faithless elector laws is called the Uniform Faithful Presidential Electors Act, and it was designed by the Uniform Law Commission in 2010.⁸ We are particularly fortunate to be able to hear in a bit from Mr. Lane Shetterly here today, since he is one of its foresightful bipartisan authors.

The Model Act's Provisions

The most important part of the UFPEA is that any elector who fills out their electoral vote ballot faithlessly loses their post. All other elements of the model Act are really just there to reinforce this core provision.

For instance, most states designate a presiding officer for when their electors convene. In Oregon, that's already the Secretary of State.

The UFPEA instructs the state's presiding officer to review each electoral vote ballot after the electors fill them out, and it prohibits the presiding officer from accepting any that are filled out faithlessly. This ensures that a faithless electoral vote ballot doesn't get counted by the state in the tally on its certificate of electoral vote that gets transmitted to Congress. Instead, a replacement elector is appointed to fill out a new electoral vote ballot faithfully first.

Additionally, the UFPEA makes sure that states have clearly defined policies for how they fill any such vacancies occurring among their electors, and that any substitutes who fill these vacancies are held to the same pledges as the originals.

And then lastly, the UFPEA provides clear guidelines for ensuring that the replacement of any faithless electors doesn't result in any unintentional delays or errors in the certificates that the state must send regarding its electors to the federal government.

The Act is Versatile

There are several other benefits of this legislation that further bolster its versatility, too.

First, it's worth recognizing that the federal judiciary has already considered and affirmed the constitutionality of this sort of law. In 2020, the U.S. Supreme Court ruled unanimously that states have the power to pass laws to enforce their requirements for presidential electors to act faithfully, including if states want to replace these electors, so none of their electoral votes would get squandered.⁹

Second, although the UFPEA doesn't explicitly deal with the tragic potential scenario in which a winning candidate for president or vice president dies between election day and elector

⁸ National Conference of Commissioners on Uniform State Laws, "Uniform Faithful Electors Act," 2010, <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.aspx?DocumentFileKey=57ea05a1-4244-44d3-1084-c97b6f1f43e4>

⁹ *Chiafalo v. Washington*, 140 S. Ct. 2316 (2020); *Baca v. Colorado Department of State*, 140 S. Ct. 2316 (2020).

balloting day, the UFPEA does explicitly invite the addition of language to address this situation.¹⁰

What you could do in this regard is to follow the lead of Indiana and California, which added a sentence or two when passing the UFPEA to specify that in such a scenario their electors will henceforth be bound to the winning party's successor candidate, instead of being bound to the deceased individual.¹¹

This is just one hypothetical contingency, but given the multiple assassination attempts against President Trump when he was running for president last year, it's the sort of worrisome scenario that we would ignore at our peril.

Third, this law does nothing to interfere with a state's choices regarding the National Popular Vote Interstate Compact that Oregon has already joined. The UFPEA would function properly if the compact never goes into effect, or if the compact does go into effect, or if the compact were later to lapse. Nor would this Act lock states into the compact if they later decide to leave it.

And finally, the UFPEA has broad bipartisan and institutional support, as well as a decade-plus track record in the West. The first state to adopt the UFPEA was Montana in 2011, followed by Nevada in 2013; other western states with this law include Washington, California, and Hawaii, and laws akin to it are also in place in Utah, Colorado, and Arizona.¹²

Broad Bipartisan Support

The Act also has a bipartisan track record of adoption. So for example, Montana and Nevada both passed it with near unanimous bipartisan support in both chambers. Out of the 24 states that have laws in place for automatically replacing faithless electors, about half were where the law's lead sponsor was a Republican, and in about half the lead sponsor was a Democrat.

In 2020, Oregon actually signed onto an amicus brief that encouraged SCOTUS's eventual decision in favor of states having this power. That amicus brief wasn't just blue states or red states. It was led by South Dakota and signed by 45 states in total.

And then lastly, I'd like to note that the UFPEA is approved by the American Bar Association through its House of Delegates and has been included as suggested state legislation by the Council of State Governments.¹³ It is endorsed by the bipartisan policy reform organization Issue One, and the Oregon language we've been working on for introduction for 2026 has been endorsed by Oregon's League of Women Voters, Mormon Women for Ethical Government,

¹⁰ ULC, Uniform Faithful Electors Act, 2010, p. 8.

¹¹ Ind. Code. § 3-10-4-1.7(d), <https://law.justia.com/codes/indiana/title-3/article-10/chapter-4/section-3-10-4-1-7/>; California Elections Code Ann. 6914(d) and (e), <https://law.justia.com/codes/california/code-elec/division-6/part-2/chapter-1-2/section-6914/>

¹² Mont. Code Ann. § 13-25-307; Nev. Rev. Stat. § 298.075; Wash. Rev. Code § 29A.56.090; California Elections Code Ann. 6917; Hi. Rev. Stat. § 14-28; Utah Code Ann. § 20A-13-304; Colo. Rev. Stat. § 1-4-304 with Colo. Code Regs. 1505-1, Rule 24; Ariz. Rev. Stat. § 16-212.

¹³ American Bar Association, "Delegates Adopt Numerous Policies; Board Approves Priorities for the Year," Mar. 1, 2011, https://www.americanbar.org/advocacy/governmental_legislative_work/publications/governmental_affairs_periodicals/washingtonletter/2011/march/midyearmeeting/; Council of State Governments, Suggested State Legislation, vol. 73, 2014, pp. 241-243.

Common Cause Oregon, and nonpartisan groups of technical experts such as the Campaign Legal Center and Secure Democracy USA.

Thank you for your consideration. I look forward to any questions you may have.

For more information, contact:

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ABOUT US

Protect Democracy United is a nonpartisan, nonprofit group working to prevent American democracy from declining into a more authoritarian form of government.