

## Statement by Robert Nemanich 2016 Presidential Elector

As a Presidential Elector in 2016 for Colorado representing CD-5 I support Senate Bill SB-17-099 with a reservation.

As a Presidential Elector in 2016 last December, I along with the Hon Polly Baca, entered into a lawsuit challenging State Law 1-4-304, C.R.S., on constitutional grounds. Specifically we were contesting paragraph (5) of the provision which states:

1-4-304 (5), C.R.S., states that presidential electors shall vote for the presidential/vice-presidential ticket that receives the most votes in the state. Thus, if an elector failed to follow this requirement, our office would likely remove the elector and seat a replacement elector until all nine electoral votes were cast for the winning candidates.

We were seeking a temporary restraining order (TRO), which was denied by Justice Daniels and the subsequently confirmed by the 10th Circuit Court Appellate Court. Although in a footnote appended to their order that was issued, Friday before the Electoral College, suggested that state officials may be constitutionally barred from removing electors once they've started voting. In their order, the judges said "any attempt by Colorado Secretary of State Wayne Williams to remove electors 'after voting has begun' would be 'unlikely in light of the text of the Twelfth Amendment.'" That interpretation could significantly undercut state laws (including Colorado) across the country that demand immediate removal of electors who vote against the popular vote winner in their state. The Appellate Court stated:

"This is not to say that there is no language in Article II or the Twelfth Amendment that might ultimately support plaintiffs' position," they added, citing a 1952 Supreme Court opinion (Ray vs Blair) and a recent legal article," (<http://www.thepublicdiscourse.com/2016/11/18283/>). "But it is not our role to make those arguments for them."

My troubling reservation that I have pertains to any state law that attempts change the US Constitution as to enforce the vote by a selected Elector where as the Appellate Court has suggested along with Ray vs Blair affirmed an Elector is a free agent once the election is conducted. This even though the provision seeks to use the selection process that conceivably engineers a faithful Elector to vote in accordance of the National Popular Vote. (I have included a picture of Judge Reed's opinion from Ray vs Blair.) As we see state laws can be changed, overturned or amended because of current political trends seeking short term partisan efforts. The only guarantee to permanently establishing the National Popular Vote as the one and only means of electing the President (and Vice President) of the United States is a Constitutional Amendment affirming that measure---absolutely. But in the meantime if this State Compact provision meets Federal and State constitutional and political muster I wholeheartedly support it.

Robert Nemanich  
2016 Presidential Elector  
Colorado Springs, CO