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Senator Hulse

SB101



Why South Dakota Needs a Faithless Elector Law

Written Testimony by David A. Weinberg for the South Dakota Senate
Committee on State Affairs, January 26, 2026

Chairman Mehlhaff, Vice-Chair Perry, and distinguished Members of this Committee, thank you for the chance to submit written testimony in support of Senate Bill 101, which would amend certain provisions pertaining to the duties of presidential electors. My name is Dr. David Weinberg, and I am a registered lobbyist for Protect Democracy United, a cross-partisan 501(c)(4) dedicated to defending our freedoms and strengthening the representative institutions of our system of government.

South Dakota is one of only thirteen states today that have no law on the books to safeguard their voice in the electoral college from faithless presidential electors.

This puts South Dakota's votes for president and vice president at potential risk. In a close national election, even a single presidential elector acting wrongly – whether of their own choice or due to intimidation, blackmail, or bribery – might sabotage the entire outcome, something that none of us would want to see occur.

Thankfully, the South Dakota Legislature has the power to fix this problem with a simple, technocratic reform.

Under Chief Justice John Roberts, the U.S. Supreme Court has upheld the rights of states to pass laws that prohibit their presidential electors from casting faithless electoral votes and that automatically appoint a new individual to serve as replacement elector who will then cast an electoral vote that reflects the will of a state's voters.

In advance of this ruling, many state governments joined together to submit a persuasive amicus brief urging the court to uphold states' rights in this regard. And that amicus brief wasn't comprised of just red states or just blue states. It was signed by nearly *all* of the states, led by South Dakota and joined by forty-four others.

As a reflection of this broad consensus, thirty-seven states now have laws on the books to formally prohibit faithless presidential electors. And twenty-four of these include the most important operative provision for doing so: a process to automatically

replace any unfaithful electors, which ensures that electoral votes never get wasted.

All six of the states that border South Dakota already have laws that prohibit faithless electors. And five out of these six – Iowa, Minnesota, Montana, Nebraska, and North Dakota – explicitly provide in that law for automatically replacing any faithless electors.

South Dakota's absence in this regard stands out, and it could potentially work to your state's disadvantage in the event of a close and hotly contested presidential election outcome in the future, putting South Dakota's electors in heightened danger and putting the state's certified election result at risk of being targeted for subversion.

As Senator Hulse thoughtfully shared when she explained the purpose of this bill to the House last year, she first came to this topic in her day job, when her law firm represented the Trump Campaign. It was therefore her job to whip count the electors and ensure that every single elector across the country in places where the GOP ticket had won would show up and carry out their duties on elector balloting day. She explained that this bill can ensure that if an issue ever does come up – if a presidential elector, for whatever reason, refuses to faithfully perform their duties – that South Dakota will still end up having its full allotment of three electoral votes to cast for whichever party's ticket won the most votes for president in this state.

One might fairly ask what reason there could be to revisit a process that South Dakota has been using for presidential elections since 1892. But times have changed.

The presidential election cycle that witnessed the highest number of faithless electors in American history was merely a decade ago, in 2016.

Furthermore, in all three of the last presidential elections, South Dakota has had to fill a vacancy in its list of presidential electors when the time came for them to cast this state's electoral votes.

And in both of the last two instances, state law was arguably impossible to fully carry out. The current statute for replacing a vacant elector spot, § 12-24-2 of the state election code, specifies that "the electors there present shall immediately proceed to elect by ballot, in the presence of the Governor, a person to fill such vacancy." And yet they were unable to follow this requirement because the elector whose spot they were filling due to absence was the governor herself.

Senate Bill 101 would help resolve these kinds of ambiguities as well.

Unfortunately, a third way in which our politics have changed is the sharp rise in vitriol, threats, and even acts of violence in our nation's tense electoral politics. S.B. 101 would serve as a mitigating factor to this problem by instituting the same automatic elector replacement power that Iowa, Minnesota, Montana, Nebraska, and North

Dakota have on the books, as do nineteen other states.

This would ensure that any effort to spoil one or more of South Dakota's electoral votes would be unable to succeed. Instead, any unfaithful presidential elector would be automatically removed for cause, and they would be replaced by another individual to faithfully and accurately cast an electoral vote that represents South Dakota's certified election results. By removing any incentive to try to make an elector vote unfaithfully, this bill would decrease the likelihood of any attempts to coerce such conduct.

I think we can all agree that there is too much hostility in national politics today, and that we all, regardless of political outlook or party affiliation, want the will of the voters to prevail and for our institutions to function the way they were intended.

Approving Senate Bill 101 would help ensure that South Dakota's electoral votes are honored and protected. And now is the best time to act, before the next presidential cycle starts up. It would even send a helpful signal for other states to take action, too.

Putting such a law in place would serve as an important shield, protecting all three of South Dakota's presidential electors from possible harm. That way, any radical actors who might try to harm, intimidate, bribe, or blackmail your presidential electors would know that there can be absolutely no benefit to such improper conduct in the Mount Rushmore State.

Thank you for your consideration of this important legislation. Please don't hesitate to reach out with any questions you may have.

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