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April 9, 2007

The Honorable Martin O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

Re: HB 148 / SB 634

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency SB 634 and HB 148, identical bills that would change the method Maryland elects the President.

This legislation establishes Maryland as a member of the "Agreement Among the States to Elect the President by National Popular Vote", in which Maryland would commit its presidential electors to the national popular vote winner in a presidential election. The State's commitment to the agreement takes effect when the agreement is enacted in substantially the same form by states cumulatively possessing a majority of the electoral votes and the enactments of the agreement have taken effect in each of those states.

Senate Bill 623 / House Bill 148 is novel legislation that has not yet been enacted in any other jurisdiction. *See* Fiscal & Policy Notes on SB 634 and HB 148. Thus, there

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is no court decision finding fault with such a measure.¹

A recent law review article rejects two possible challenges to legislation like SB 634 / HB 148 . *See* Wilson, *Bloc Voting in the Electoral College*, 5 Election L.S. 384 (2006). These hypothetical objections are based on 1) the alleged lack of authority in the States to affect the Electoral College; and 2) the contention that the agreement is an interstate compact that must be approved by Congress under Article I, §10 of the U.S. Constitution. *Id.* at 402-03. Both arguments are met by the Constitution's express conferral on State Legislatures of manner of selecting of electors. *See* Art. II, §1. *Id.*

In the absence of any countervailing authority, we conclude that SB 634 / HB 148 are constitutional.

Very truly yours,

/s/

Douglas F. Gansler
Attorney General

DFG/RAZ/as

cc: Joseph Bryce
Secretary of State
Karl Aro

¹ At least 13 states have statutes binding their electors to vote in a certain manner, but none have attempted the approach adopted by SB 634 / HB 148. None been tested in court. *See* CRS, *The Constitution of the USA: Analysis & Interpretation*, (1987) at 458.