



Testimony to the Government Administration and Elections Committee

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In Support of H.B. No. 5421 (Raised) AA Adopting the Interstate Compact to Elect the President of the United States by National Popular Vote

Senator Flexer, Senator McLachlan, Representative Fox and distinguished members of the Government Administration and Elections Committee, my name is Cheri Quickmire. I am the Executive Director of Common Cause in Connecticut. Common Cause is a nonpartisan, non-profit citizens' lobby that has worked to improve the way Connecticut's government operates since 1971. We have 1.1 million members nationwide and more than 12,000 members and activists in Connecticut. Common Cause in Connecticut has a long history of working to increase transparency in government and

It's happened again. The winner of the Electoral College is not the winner of the Popular Vote. This has happened four times before, and it undermines the legitimacy of the democratic process. What's worse, the presidential campaign itself is only run in a handful of states and they, not all American's are the ones that functionally elect out President. But there is a solution, the National Popular Vote Plan. The plan guarantees the presidency to the winner of the national popular vote once states possessing 270 electoral votes (enough for an Electoral College win) pass identical legislation enabling it. National Popular Vote is a constitutional and practical way to implement nationwide popular election of the President—a goal supported by an overwhelming majority of Americans (72+% in recent Gallup polls). NPV legislation has been passed by 30 state legislative chambers and has been signed into law in 11 states - California, District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, Illinois, VT, and Washington possessing 165 electoral votes (61% of the way to activation). The idea has been widely endorsed by major newspapers and opinion leaders across the nation. Common Cause has played an active role in the movement to establish a popular vote for President and has been a leader in state campaigns in Massachusetts, California, New York, Connecticut, Oregon, Minnesota, and Nebraska.

PROBLEMS WITH THE CURRENT SYSTEM OF PRESIDENTIAL ELECTIONS

- ✓ The candidate who placed second in the popular vote was elected in 2016, 2000, 1888, 1876, and 1824. A shift of a handful of votes in one or two states would have elected the second-place candidate *in five of the last 12 presidential elections.*

- ✓ Effectively disenfranchises voters in more than two thirds of the states who do not live in closely divided "battleground" states.
- ✓ Presidential candidates have no reason to poll, visit, advertise, organize, or campaign in states that they cannot possibly win or lose. In 2004, *70% of all advertising money and campaign visits were in just five states. In 2008 98% of advertising money and campaign visits occurred in just 15 states. In 2012 66% of campaign advertising and visits were in just four states. In 2016 68% of the campaign visits were in just six states.*
- ✓ Voters in "spectator states" including five of the nation's 10 most populous states (California, Texas, New York, Illinois, and New Jersey), and 12 of the 13 least populous states (all but New Hampshire) have no real incentive to go to the polls as their votes do not affect the outcome of the election.

WHY NATIONAL POPULAR VOTE IS BETTER

- ✓ The National Popular Vote would make all votes equal.
- ✓ It would ensure that the candidate with the most votes wins the election, just as in any other election in the country.
- ✓ It would bring candidates to every state and make them listen to everyone's concerns.
- ✓ It would give voters in all states, regardless of party affiliation, an incentive to vote in presidential elections and would help build GOTV efforts in all states.
- ✓ It would rid the nation of falsely polarized red and blue election night maps.

HOW THE CURRENT SYSTEM WORKS

Contrary to popular belief, the U.S. Constitution does not instruct the states on how to select presidential electors. Rather, this is a power reserved to the states that has been used in many different ways over the history of the nation. Electors have been elected directly without relation to a presidential candidate, selected by state legislators, elected by district, and as is currently the case in all but two states (Maine and Nebraska), elected statewide in winner-take-all slates. The U.S. Supreme Court has ruled in multiple cases that the state's power to choose the manner of selecting electors is "supreme," "plenary," and "exclusive." Early in our history, several states (including Massachusetts and New Hampshire) cancelled presidential elections when they were concerned that the "wrong" candidates would be selected, and instead the legislature appointed the electors directly.

HOW THE NATIONAL POPULAR VOTE PROPOSAL WOULD WORK

States currently have the power to award their electors to the winner of the national popular vote, although this would be disadvantageous to the state that did this unless it was joined simultaneously by other states that represent a majority of electoral votes. Hence the National Popular Vote plan is an *interstate compact*—a type of state law authorized by the U.S. Constitution that enables states to enter into a ***legally enforceable contractual obligation*** to undertake agreed joint actions, which may be delayed in implementation until a requisite number of states join in. There are more than a thousand interstate compacts, and each state in the United States belongs to dozens of them. The U.S. Supreme Court has authorized electoral compacts in "dicta" and several other electoral compacts have been proposed in the past.

Under the National Popular Vote plan, *the compact would take effect only when enabling legislation has been enacted by states collectively possessing a majority of the electoral votes—that is 270 of the 538 electoral votes.*

Once effective, states could withdraw from the compact at anytime except during the six-month window between July 20th of an election year and inauguration day (January 20th).

To determine the National Popular Vote winner, state election officials would simply tally the nationwide vote for President based on each state's official results. Then, state elections officials in all states participating in the plan would choose electors sworn to support the presidential candidate who received the largest number of popular votes in all 50 states and the District of Columbia.

The winner would receive all of the compacting states' electoral votes plus additional electoral votes from whatever non-compacting states happened to be carried by the nationwide winner. Thus, in practice, the presidential candidate receiving the most popular votes nationwide would typically receive about three-quarters of the electoral votes.

OTHER BENEFITS OF THE NATIONAL POPULAR VOTE PLAN

- ✓ Accountability: Because the National Popular Vote's plan would create a supermajority for the national popular vote winner, it would reduce the already unlikely possibility of faithless presidential electors.
- ✓ Finality: The supermajority of delegates under the National Popular Vote plan would also eliminate the possibility of a presidential election being thrown into the House of Representatives (where each state would have one vote) and the vice-presidential election being thrown into the U.S. Senate because of a tie vote among electors.
- ✓ Accuracy and Security: With a single massive pool of 122,000,000+ votes, there is less opportunity for a close outcome or recount (and less incentive for fraud) with National Popular Vote than with 51 separate smaller pools, where a few hundred popular votes can decide the presidency. For example, President Bush in 2004 had a decisive 3.5 million votes lead over John Kerry, yet with a shift of only 60,000 votes in Ohio would have lost the election. Similarly, the disputed 2000 presidential election was an artificial crisis created by Bush's 537-vote lead in Florida in an election in where Gore had a 537,179-vote lead nationwide (1,000 times greater).

NATIONWIDE POPULAR ELECTIONS GIVE SMALL STATES A BIGGER VOICE

Despite their mathematic advantage in electoral representation, the least populous states get no real advantage from the current system of electing presidential candidates. Nor do they favor a single political party. In fact, 12 of the 13 smallest states are completely sidelined in presidential elections because they are politically non-competitive. Idaho, Montana, Wyoming, North Dakota, South Dakota, and Alaska regularly go Republican, and Rhode Island, Delaware, Hawaii, Vermont, Maine, and DC regularly go Democratic. These 12 states together contain 11 million people and have 40 electoral votes. Ohio has a comparable 11 million people and has "only" 20 electoral votes, but the 11 million people in Ohio have significantly more influence in presidential elections than the 11 million people in the 12 non-competitive small states. Nationwide election of the President would make each of the voters in the 12 smallest states as

important as an Ohio voter. In fact, the vote of every person in the United States would become equally important under the proposed compact.

Small states are well aware of the illusory nature of their electoral bonus and have supported previous attempts to change the system. A group of small states led by Delaware (plus several other larger states) even sued New York (then a battleground state) in the U.S. Supreme Court in 1966, arguing that New York's use of the winner-take-all method for choosing its electors effectively disenfranchised voters in their states.

NATIONAL POPULAR ELECTION MEANS A RURAL AND URBAN CAMPAIGN IN ALL 50 STATES

Although it is sometimes conjectured that a national popular election would focus only on big cities, it is clear that this would not be the case. Evidence as to how a nationwide presidential campaign would be run can be found by examining the way presidential candidates *currently* campaign *inside* battleground states. Inside Ohio or Florida, the big cities do not receive all the attention, and they certainly do not control the outcome. Because every vote is equal inside Ohio or Florida, presidential candidates avidly seek out voters in small, medium, and large towns. The itineraries of presidential candidates in battleground states (and their allocation of other campaign resources) demonstrate what every gubernatorial or senatorial candidate in every state already knows—namely that when every vote matters, the campaign must be run in every part of the state.

THE NATIONAL POPULAR VOTE PLAN IS CONSTITUTIONAL, PRACTICAL, AND CONSISTENT WITH MANY PREVIOUS NATIONAL ELECTORAL ADVANCES

The selection of presidential electors is specifically and virtually exclusively entrusted to the states by the Constitution. As with other powers entrusted to the states, it is an application, not a circumvention, of the Constitution when the states utilize those powers as they see fit. The framers specifically enacted the provisions relating to the Electoral College to allow for state innovation. In contrast, other issues related to the federal government are not exclusively entrusted to the states, and therefore the states lack the power to alter them.

The non-member states' impact on the outcome of the presidential election will be no less than it is in the current system. Member and non-member states are treated the same under the National Popular Vote agreement – all are included in the popular vote which will determine the winner of the majority of the Electoral College. Moreover, the U.S. Supreme Court has twice declined to declare interstate compacts unconstitutional on the basis that they allegedly impaired the sovereign rights of non-member States or enhanced the power of the member states at the expense of other states. Indeed, in *Oregon v. Mitchell*, Justice Potter Stewart endorsed the concept of an electoral interstate compact.

While there has been no electoral compact to date, any changes in the voting process have occurred through state action without, or prior to, a Constitutional amendment. For example, the Constitution originally required that Senators be selected by state legislatures. Starting in 1907 many States created “advisory” elections for the Senate. State legislatures then appointed the candidate who won this advisory election. This *de facto* popular vote was later made official and obligatory on the states with the 17th Amendment. Women, blacks, and people over the age of 18

were all permitted to vote in many states, including in Federal elections, prior to their inclusion in the Constitution.

ADDITIONAL INFORMATION ABOUT THE NATIONAL POPULAR VOTE PLAN

Visit: www.CommonCause.org/ma and www.NationalPopularVote.com. The National Popular Vote proposal is described in detail in the book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote*. It can be obtained or downloaded at www.nationalpopularvote.com.
