

CONSERVATIVES ★ for ★ NATIONAL POPULAR VOTE

TESTIMONY OF HILLSDALE COLLEGE PROFESSOR DR. GARY WOLFRAM BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON ELECTIONS ON MARCH 7, 2023

Madam Chairman and Members of the Committee,

I am the William Simon Professor Economics and Public Policy at Hillsdale College. I have worked in the Legislature on the policy staff of the Senate Republican caucus, was deputy state treasurer under Governor John Engler, and worked as the chief of staff to a Republican member of Congress.

As my credentials suggest, I approach the National Popular Vote Interstate Compact from a conservative perspective. The legislation before the committee today is truly about policy.

The National Popular Vote Interstate Compact is a nonpartisan elections reform that is supported on a broad bipartisan basis — in fact, it is really tripartisan, given the support of a former Libertarian Party nominee for president.

The legislation before this committee preserves and strengthens the Electoral College. The National Popular Vote Interstate Compact does not amend, alter, abolish or otherwise abrogate the constitutional framework for electing a president of the United States. It is a compact among the states meant to overcome the shortcomings of the winner-take-all method adopted by all of the states except Maine and Nebraska to decide how their electors will vote within the Electoral College.

Article II, Section 1, of the Constitution says that “each state shall appoint, in such manner as the legislature thereof may direct, a number of electors.”

State legislatures are vested with the sole and exclusive authority under the U.S. Constitution to decide how their electors are chosen. The compact does just that.

The compact is merely an agreement among compacting states to assign their electors to the winner of the national popular vote. Changing the method of awarding electors is just that: changing the method. It does not alter or amend the Electoral College.

I want to emphasize that the present method used by Michigan — the state winner-take-all method — does not appear anywhere in the United States Constitution and was not the method used by the Founding Fathers.

Please allow me to also address one other important constitutional aspect of the National Popular Vote Interstate Compact.

Opponents have incorrectly suggested that congressional consent is needed for the compact to take effect.

That just isn't the case.

The United States Supreme Court ruled in *U.S. Steel v. Multistate Tax Commission* and other cases that congressional consent is only necessary when interstate compacts — and I quote — “encroach upon or interfere with the just supremacy of the United States.”

Because the high court held in *McPherson v. Blacker*, which by the way is a precedent arising out of Michigan, that states have the exclusive and plenary power to choose the method of appointing their presidential electors, the National Popular Vote Interstate Compact does not encroach or interfere with federal supremacy. Thus, under well-established jurisprudence, congressional consent would not be necessary for the compact to take effect.

Finally, I teach a class at Hillsdale in what academic calls public choice. In short, this is using the methodology of economics to examine the political process.

Public choice recognizes that people response to incentives; whether are they are shopping at Meijer or running for the Legislature. As you know, if you prefer to be elected you will act in a fashion that increases your chance at being elected.

Any candidate running for president under the current method — state winner-take-all — will not spend time, money or effort in any state where there is little chance that the race will not be close.

If a state such as Michigan has winner-take-all — the present method — and polls show that you will get at most 44 percent of the vote if you campaign and spend \$2 million here, then it makes no sense for you to campaign in our state. You will get the same number of electors (zero) that you will get if you don't spend a dime or moment traversing our state and only get 20 percent of the vote.

As a consequence, presidential campaigns are not national campaigns. One can honestly say that we elect a president of the Battleground States of America, not a president of the United States of America. It is true that Michigan has been a battleground state, but it has also been a completely ignored state.

In the Winter 2020 issue of *Harvard Law and Policy Review*, Lawrence Lessig, Professor of Law and Leadership at Harvard Law School, pointed out that that presidential campaigns focus almost exclusively on the battleground states. He points out that in the 2016 campaign, 99% of general campaign spending occurred in just 14 states. To solve this problem, (as well as

what he terms “the one person one vote” problem) Professor Lessig called for ratification of the National Popular Vote as soon as possible.

Michigan should be a battleground state in each and every presidential election. The votes of Michiganders — your constituents — should be equal to the votes of every other American. The National Popular Vote will accomplish this.

Thank you, Madam Chairman and honorable Members.