Testimony of Vermont State Senator Christopher Pearson to Michigan Legislature

September 6, 2018

Thank you Mister Chair and members of the committee.

My name is Chris Pearson, I am a state senator from Vermont and a member of the Democratic caucus. I am also a member of the National Popular Vote board of directors and work advocating for this proposal around the country.

I'd like to take a few minutes to walk you through the proposal contained in SB 1117/HB 6323 and offer some of the history of how the electoral college has come to function as it does today.

The Constitution is very clear about the role of states in the Electoral College. Article ll, section 1 reads: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors..." This is the key power granted to you by the Constitution. Right now, Michigan like every other state (except Nebraska and Maine) awards electors based on the "winner-take-all" rule in your Michigan state statute. That is, when Trump earns one vote more than Clinton, he gets all 16 of your Electoral Votes. In Maine and Nebraska, they use the district system because they have passed a different state law for awarding electors.

While we tend to think of the Electoral College as the red/blue map we see every four years it is important to recognize that is not what is cemented in the Constitution. The Constitution gives states a number of electors and grants you, as legislators, the exclusive power to award these electors as they see fit. The winner-take-all rule is not in the Constitution and took decades before it became the norm across the country.

In our very first presidential election three states used the winner-take-all rule. They all went on to repeal it by 1800. In 1789, electors were chosen from congressional districts in Massachusetts, from special presidential-elector districts in Virginia, and by counties in Delaware. The Governor and his Council appointed the state's presidential electors in New Jersey and State legislatures appointed presidential electors in the other states.

In the nation's first competitive presidential election in 1796, Jefferson lost the Presidency to Adams by three electoral votes. Presidential electors were chosen by district in the heavily Jeffersonian states of Virginia and North Carolina, and Jefferson lost one district in each state. If Jefferson, instead of Adams, had received these two votes, Jefferson would have become President.

Prior to a rematch with Adams in 1800, Thomas Jefferson wrote James Monroe (then governor of Virginia) on January 12, 1800 saying: "On the subject of an election by a general ticket [winner-take-all]...while 10 states choose either by their legislatures or by a general ticket [winner-take-all], it is folly and worse than folly for the other 6 not to do it."

The Virginia legislature quickly passed a winner-take-all law in time for the 1800 election—thereby assuring Jefferson of all the state's electoral votes.

Meanwhile, the Federalist majority in the legislature of John Adam's home state of Massachusetts—alarmed by rising support for Jefferson's party in ~~the~~ Massachusetts—repealed the state's district system—thereby assuring John Adams of all the state's electoral votes in 1800.

These switches by both parties triggered a domino effect in which each state's dominant political party adopted winner-take-all so that it could deliver the maximum number of electoral votes to its party's nominee. By 1824, 10 states had enacted winner-take-all. Missouri Senator Thomas Hart Benton said in the Senate in 1824: "The general ticket system [winner-take-all], now existing in 10 States was ... not [the offspring] of any disposition to give fair play to the will of the people. It was adopted by the leading men of those states, to enable them to consolidate the vote of the State."

By 1836, all but one state had enacted laws specifying that their state's voters would vote for presidential electors on a winner-take-all basis. 1880 was the first year when all states used this system.

The National Popular Vote bill takes advantage of this state power and works within the electoral college to guarantee the candidate the White House to the candidate with the most votes. Here's how it works:

Today, to take the 16 electors from Michigan, a candidate has to earn the most votes in Michigan. Under National Popular Vote, to get the 16 electors in Michigan a candidate has to get the most popular votes in the entire country. But, there's a trigger. The bill only takes effect when it has been passed by states that hold a majority of the electors – that is 270 electoral votes.

Think of it as a pool. As of today, 11 states and the District of Columbia have enacted our bill. Together they hold 172 electors and are waiting for other states to join them. Once states with at least 270 electors have passed this bill – it won't matter which states have enacted – the National Popular Vote law goes into effect. The candidates will then run their campaigns and whichever candidates gets the most

popular votes in all 50 states plus DC will get all the electors from all the states in the pool. Because of the trigger, that is assured to be a majority of the electoral college.

Once states with 98 more electoral votes pass this bill we will have a National Popular Vote for president. It will make every vote equal. It will make sure every vote counts in every state in every election. And it will guarantees that the candidate with the most votes goes to the White House.

Thank you for taking up this important topic and I'd be happy to answer any questions you may have.