Testimony of Gary Wolfram, Ph.D. regarding National Popular Vote Interstate Compact

September 6, 2018

Mr. Chairman and members of the Committee:

As I suspect is the case with most other supporters of the National Popular Vote movement, my initial reaction was negative. My thought was this was an attempt to get rid of the Electoral College, and was in conflict with the Founders' ideas of how the president should be chosen. But upon further reflection I came to see that it was instead a mechanism to overcome the shortcomings of the winner-take-all systems adopted by nearly all of the states while still preserving the ability of states to decide how their electors would vote within the Electoral College.

The Constitution, under Article II, Section 1, provides that each state shall appoint its electors "in such Manner as the Legislature may direct." States get to decide how they will choose their electors and the National Popular Vote does just that. The states freely enter into a compact stating that they will allocate their electors to the person who wins a nationwide plurality of the votes for President. There is nothing in this that is inconsistent with the wishes of the Founders.

They themselves struggled to agree on a way to choose the president. The Constitutional Convention of 1787 considered several methods of electing the President, including selection by Congress, by the governors of the states, by the state legislatures, by a special group of Members of Congress chosen by lot, and by direct popular election. Late in the convention, the matter was referred to the Committee of Eleven on Postponed Matters, which devised the Electoral College with states determining how the electors are to be chosen. (https://bit.ly/2NC7KWE, National Archives).

Unlike a constitutional amendment, the National Popular Vote does not require a convention process or two-thirds of the Congress and ratification by 3/4 of the states. It is merely an agreement among the signatory states to assign their electors in a certain fashion. The agreement is clear and short, a mere 888 words. Any state may withdraw from the agreement, except a withdrawal within six months of the presidential election is not effective until after the President or Vice President has been qualified to serve the next term. Thus, if any state decides the National Popular Vote isn't an improvement over any other way of assigning its electors it may withdraw from the compact.

Today 48 states, the exception being Maine and Nebraska, assign their electors through a "winner-take-all" process. This is done through state laws, and this was never debated at the 1787 Convention, nor is it to be found in the Federalist Papers. Only three states had winner-take-all laws in 1789, and each repealed them by 1800. There are others here that may detail the developments that led to the current situation, but the point is that the members of the constitutional convention likely did not envisage a situation where winner-take-all by state would be the way the Electoral College would be chosen.

I teach a class in what economists call Public Choice. This is basically using the methodology of economics to examine the political process. It recognizes that people respond to incentives whether they are in Krogers or running for political office. If you would prefer to be elected you will act in a fashion that increases your chances of being elected.

If we think through how the current way of electing people to the Electoral College works, it becomes obvious that anyone campaigning for President will not spend time, money, or effort in any state where there is little chance that the race will be close. If a state such as Michigan has a winner-take-all system, and the polls show that you will get 44% of the vote in Michigan if you campaign there and spend $2 million, then it makes no sense for you to campaign in Michigan. You will get the same number of electors, namely zero, that you will get if you don't spend a dime or a moment in the state and get 20% of the vote.

As a consequence, presidential campaigns are not close to being national. They are carried out in what are known as "battleground states." These are states where the race will be sufficiently close that time and money spent there can determine which candidate gets a plurality in that state. There were 399 general-election presidential campaign events in the 2016 election according to FairVote. Ninety-four percent of the events were in 12 states. Two-thirds of the events were in just six states. Four states, Florida, North Carolina, Pennsylvania, and Ohio, had 57% of the events.

The 2016 election was not an anomaly. In 2012 the only states that received any campaign events were the 12 states where Romney received between 45% and 51%. That year Michigan had only one presidential campaign event. In 2008, there were 62 campaign events held in Ohio, 46 in Florida, and 40 in Pennsylvania. There were none in California, Texas, New York or 28 other states. In 2004 a senior member of the Bush campaign pointed out that the campaign hadn't taken a national poll in almost two years. It had been polling in only 18 potential battleground states. Senator Kerry spent 99% of advertising expenditures in the last month of the 2004 campaign in only 17 states.

The current winner-take-all system of assigning electors then clearly results in presidential campaigns limited to a few select states. This leads to other outcomes. For example, national parties will put money into advertising, recruiting volunteers, and get-out-the-vote campaigns when campaigning in a state for the presidential candidate. These activities will affect voter turnout and thus have an effect on candidates down the ballot. This may affect the make-up of the U.S. House and Senate and thus public policy.

Lack of a national campaign will also more directly affect public policy. While we may wish to believe public policy is independent of politics, realistically it will not be. There is an incentive for legislators and presidents to introduce and support legislation that favors battleground states. John Hudak of The Brookings Institute, in his 2014 book, *Presidential Pork, The Politics of Federal Grants*, found that the president and his subordinates strategically direct federal funding toward electorally competitive states. He examined data from 1996 through 2008 and found that controlling for other variables swing states received 7.8% more federal grants than did safe states. This gap increased in the two years prior to an election.

This is something that would be expected given the incentives of the system. Changing the system would lead to different results. The National Popular Vote would create incentives to campaign nationally since getting ten more votes in Arkansas would be as beneficial as getting 10 more votes in Ohio. You would see the Democratic candidate campaigning in Texas and the Republic candidate campaigning in California. This would increase the likelihood that voters would feel they can have an influence on the election and in turn increase voter participation.

There would be a reduction in the incentives to allocate federal grants and subsidies to the few particular states that are swing states. This would result in more efficient government.

One other point to be made is that, while non-citizens cannot vote in a Presidential election, they do affect the number of Electoral College votes that a state has. This is because electors are affected by the number of Representatives and the number of Representatives depends upon the number of persons in the state, not the number of citizens. As a consequence, voters in a state with a large number of non-citizens will have more Electoral College representatives per voter than those in states with few non-citizens. This would not be an issue under the National Popular Vote.

One cannot know whether Hillary Clinton would have been elected President under the National Popular Vote, as the campaigns would have been run differently. Indeed one of the purposes of the National Popular Vote is to have campaigns run at the national level rather than concentrated in a few states. What we can know is that the incentives of the Presidential candidates and the national parties would have been different and as a result voters in all fifty states would carry equal weight in determining the outcome of the election.