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Testimony for Senate Bill 2271

Our Founding Fathers included three very important provisions in the Constitution, and they were all included for the very same reason. The Founders instinctively foresaw that the major population centers would come under the control of one political party and could potentially run roughshod over the vast majority of the rest of the country that would not have heavily concentrated populations.

To prevent that from happening, the three provisions the Founders included were:

- 1) Equal representation in the Senate irrespective of a state's population.
- 2) The state initiated Article V amendment process.
- 3) The Electoral College.

The Electoral College has served our great country well for over 200 years, but in 2006, a movement started to change the way we elect our presidents. The National Popular Vote Interstate Compact (NPVIC) is a clever, albeit sinister, way to circumvent and subvert the Constitution by using the interstate compact process. Contrary to what some people believe when they first hear of it, the NPVIC is not an effort to amend the Constitution and directly eliminate the Electoral College. The backers of the NPVIC know that there is no chance whatsoever of getting 38 states to ratify such an amendment.

As of today, the NPVIC has been adopted in 15 states and the District of Columbia and now encompasses 196 Electoral College votes. It needs another 74 EC votes to go into effect, and if that happens, the major population centers, mainly on the east and west coasts, will be in complete control of who is elected president and what party they are from. The presidential election votes cast in a state like North Dakota and dozens of others will become irrelevant.

It is very telling to note which states have passed the NPVIC. The states are: Delaware, Hawaii, Rhode Island, Vermont, Colorado, Connecticut, Maryland, Massachusetts, New Jersey, New Mexico, Oregon, Washington, California, Illinois, New York, and the District of Columbia. Ask yourself these two questions: 1) Which political party is solidly in control in those states? 2) Why has not a single red state adopted it after the 15 years of its existence?

This legislation is intended to “thwart” the NPVIC should it ever reach 270 Electoral College votes within the compact. The main mechanism for doing that is SB 2271 prohibits the Secretary of State and all other election officials from releasing the raw vote totals of votes for the presidential election. SB 2271 specifies that the officials may release the election results expressed in percentages.

For example, the Secretary of State could release the results by stating “candidate A received 52% of the vote and candidate B received 48%.” Everyone will still know who won the presidential election in North Dakota and which electors should attend, and cast their votes at, the meeting of the Electoral College. The results of the presidential election in North Dakota will absolutely not be “secret” as some opponents have falsely claimed.

Opponents often cite concerns over the integrity of the 2020 election as a reason to oppose SB 2271, but ignore the fact that the integrity of the 2020 election was only in question in a few states. North Dakota was not one of them. This opposition legislation is most appropriate for passage in states that have a history of protecting the integrity of their elections. North Dakota is one of those states.

The question sometimes arises as to whether dozens of states would need to pass this legislation in order for it to be effective; the short answer is an emphatic “no.” The longer answer can be found in the language of the NPVIC itself.

“Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each State of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a “national popular vote total” for each presidential slate. The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the “national popular vote winner.”

If the compact member states don’t have the raw vote totals from every state in the country, their own compact language would prohibit them from determining the winner of the national popular vote. Declaring a winner without the raw vote totals would very likely face a legal challenge asserting that the compact member states violated the requirements of their own compact, which is a legal document. Best of all, the NPVIC backers will have to go back to square one and reintroduce legislation with new compact language in the 16 jurisdictions in which it has already passed.

Two other important points regarding SB2271:

- Passage of SB 2271 will not affect any other election contest reporting in the state. It only applies to presidential elections.
- SB 2271 would not go into effect unless and until the NPVIC reaches 270 EC votes within the compact, at which time the compact would go into effect. If the NPVIC never goes into effect, SB 2271 never goes into effect. The purpose of this legislation is to prevent the NPVIC from ever going into effect.

Please support Senate Bill 2271 and do your part to save the Electoral College as intended by our Founding Fathers.