

Senate Elections Committee – S.F. 538

Testimony of David Fisher Tuesday, 01.31.2023

Chair Carlson, members of the Committee, my name is David Fisher. I am here today in my capacity as a concerned citizen in support of fair elections in our State. I teach at the University of Minnesota Law School, serve on the Board of Directors of MNsure, and am a former Minnesota Commissioner of Administration.

I speak in support of S.F. 538, sponsored by Senators Hoffman, Rest, Champion, and Dziejdzic.

We all know what this bill would do – if enacted by a sufficient number of states, it assures that the presidential candidate supported by the most voters in our Republic actually will be elected President of the United States. Its purpose is to ensure that every voter – whether Republican, Democrat, unaffiliated, progressive, conservative, liberal, or whatever – is relevant in every presidential election.

The National Popular Vote initiative would take effect when enacted into law by states possessing 270 electoral votes. It has been introduced in all 50 states and as of January 2023, has been adopted by 15 states and the District of Columbia. Together, these jurisdictions have 195 electoral votes, representing 72.2% of the 270 votes needed to give the agreement legal force.

Why is this bill important, and why now?

I believe it's essential to the core theory of a democracy that the people rule, and do so with equal political authority. This is a fundamental principle of representative government – of a republic where ultimate power is held by the people who, alone, select their representatives in government. And it's enshrined in our Constitution as the very purpose of our **decennial census**. As Lincoln charged in his 1863 Gettysburg address: “that government of the people, by the people, for the people, shall not perish from the earth.”

Our current Electoral College system allows a candidate to win the Presidency while losing the national popular vote, an outcome counter to Lincoln's one person, one vote principle of democracy. And it's happened five times (arguably 6) in our Nation's history (1824, 1876, 1888, 2000, 2016) including recent elections of 2000 and 2016 (and arguably 1960). And there have been 2 near-misses in 2020 and 2004.

What does this mean? It means that less than 50% of our electorate – a minority – can elect the one person who may hold the greatest sway over the rest of us.

In our current electoral system, where winners of a statewide vote takes ALL the electoral votes, we actually encourage presidential campaigns to focus disproportionately on a limited set of swing states, where small changes in the popular vote can produce large changes in the Electoral College vote. Example: in the 2016 election in New Hampshire, a shift of just 2,700 votes (less than 0.4% of all votes cast) towards the Republican candidate produced a four electoral vote gain for that candidate. A similar shift in any other state would have produced no change in the electoral vote.

A study by the voting advocacy group FairVote reports that in the 2004 presidential election candidates devoted 3/4ths of their peak season campaign resources to just 5 states, while the other 45 states received very little attention. The report pointed out that 18 states received no candidate visits and no TV advertising.

In fact, in 2016 our Electoral College system effectively disenfranchised about 3 million voters because their votes were not relevant in our Electoral College system. In 2020, if just over 21,000 voters in three states had changed their votes (in Arizona, Georgia and Wisconsin), Joe Biden would have lost the election despite leading the vote nationally by over 7,000,000 votes.

In other words, States with 80% of the U.S. population could be ignored in the 2024 Presidential Election.

I believe that a commitment to honor the national popular vote will encourage candidates to campaign with equal effort for votes in competitive and non-competitive states alike, and assure that the presidential candidate supported by a majority of voters is actually elected.

For these reasons I urge you to support S.F. 538 and instill integrity to our presidential election process.

Q&A suggestions:

Because the NPV initiative does not create a "new interstate governmental apparatus" and because "cooperating states acting together would be exercising no more power than they are entitled to wield individually", the initiative does not constitute an interstate agreement and cannot contravene the Compact Clause of the U.S. Constitution.

The initiative does not alter the power of non-agreeing state governments because all state governments retain their right to select electors as each state chooses. The Elections Clause of Article II, Section I, states that "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress".