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Senator Bill Wielechowski

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March 27, 2023

The Honorable Matt Claman
Chair, Senate Judiciary Committee
Alaska State Capitol, Room 429
Juneau, AK 99801

Chair Claman and committee members:

Thank you for holding an initial hearing on Senate Bill 61, concerning the National Popular Vote compact (NPV), on March 13, 2023. Please see the following responses to issues raised during public testimony.

1: It was stated that Alaska’s ranked choice voting system produces fractional votes and is therefore incompatible with NPV.

This is incorrect. Under ranked choice voting only whole votes are redistributed. There are no fractional votes.

Not only is ranked choice voting compatible with NPV, but Maine – the only other state to use ranked choice voting for state elections – has also debated joining the NPV agreement. SB 61 specifically addresses how ranked choice voting will work under NPV. Section 4 states that Alaska will continue to use ranked choice voting once NPV takes effect which will ensure that all of Alaska’s elections are tabulated the same way.

2: It was stated that NPV effectively repeals the electoral college.

The electoral college will continue to exist, NPV is simply states using the authority granted them by the Constitution to determine how their electors are chosen. States have exercised this authority numerous times – Massachusetts alone has changed its system 11 times. The current system, where most states award their electors to the statewide winner, is itself a creation of states exercising this authority and is found nowhere in the text of the Constitution.

3: It was stated that there are no nationwide election results which can be used to determine a nation-wide popular vote winner.

This is not correct. Federal law already requires that states report official popular vote totals to the federal government, and these totals would be used to calculate the nationwide popular vote winner.

States are already required to submit a “certificate of attainment” that lists their electors and election results by 3 USC 6 and 3 USC 5, as amended by the Electoral Count Reform and Presidential Transition Improvement Act of 2022,

requires these certificates be issued at least six days before the electoral college vote occurs.

Article III of the NPV compact requires each state that is a member of the compact to distribute their official popular vote results to each other member state at least six days before the electors votes. This is the same deadline for submitting the certificates of attainment. It is simply a matter of arithmetic to compute the nationwide popular vote winner from these official state results.

4: It was stated that interstate compacts like NPV are unconstitutional.

This is incorrect. Interstate compacts are a routine feature of the United States' federalist system and Alaska belongs to at least 31 interstate compacts. There are currently three other bills pending in the Senate related to interstate compacts.

Section 10 of Article 1 of the Constitution does require some interstate compacts to receive approval from Congress, but it is likely that NPV does not require approval. In *Virginia v. Tennessee*, 148 U.S. 503 (1893), the U.S. Supreme Court ruled that compacts only need approval when they “increase of political power in the [s]tates, which may encroach upon or interfere with the just supremacy of the United States.” Since the Constitution already grants states plenary power to decide how their electors are chosen, NPV likely does not require congressional approval. Even if this approval is needed, the standard procedure is for states to enter compacts and then seek approval from Congress.

5: It was stated that the current system of awarding electors to statewide winners was a deliberate decision by the framers of the Constitution.

This is historically inaccurate. Rather than being the result of a deliberate decision by the authors of the Constitution, the current system is the result of independent actions by different states over centuries.

In the first presidential election in 1789, only three states awarded their electors to the statewide winner. It was not until 1872 that every state even conducted some form of statewide vote. The 1976 presidential election was the first election in which voters in all states voted for presidential tickets, with Alabama being the last state to elect electors individually. States have continued to change how their electors are chosen, with Nebraska switching to awarding electors by congressional district in 1992.

6: It was stated that states could enter or leave NPV at the last minute or after the election to hand the presidency to their preferred candidate.

The NPV compact is drafted to prevent this from being possible. Article III states that the compact is only in effect for elections when states with a majority of the

total electoral votes have joined the compact by July 20 of the election year. Article IV states that if a state leaves the compact after July 20 of an election year, then the exit does not become effective until after the Inauguration on January 20 of the following year. It would simply not be possible for a state to know the results of an upcoming election with enough specificity to make a strategic decision to enter or leave the compact.

Federal law provides an additional safeguard against states leaving the compact after an election, since the Electoral Count Reform and Presidential Transition Improvement Act of 2022 prohibits states from changing how they choose electors after Election Day.

Thank you for your time and consideration, please do not hesitate to contact me or David Dunsmore of my staff at (907) 465-8164 with any further questions.

Sincerely,

A handwritten signature in blue ink that reads "Bill Wielechowski". The signature is written in a cursive style with a small dot above the letter 'i' in "Wielechowski".

Senator Bill Wielechowski