

The House Majority Policy Committee, March 12, 2012

Testimony

G. Terry Madonna

I am delighted to have this opportunity to testify today before the House Majority Policy Committee relative to the National Popular Vote Interstate Compact. The proposal before the committee would change the allocation of presidential electors from the popular vote winner in the state to the national popular vote winner I want to thank Chairman Reed for the kind invitation. Below are some thoughts relative to the subject before the committee:

NVP-Why it should be adopted:

- 1) The national popular vote winner will be the electoral vote winner—avoiding what occurred in 1824, 1876, 1888, and 2000.
- 2) Avoids the need to amend the U.S. Constitution. More than 700 proposals to eliminate or modify the EC have been introduced since the beginning of the Republic. Historically small states have been opposed to any change.
- 3) States have the constitutional authority to decide how its electors will be appointed, Art. 11, Sect 1. No successful legal challenge to that authority has ever occurred.
- 4) Some believe it will deemphasize the current campaign practice of concentrating all their efforts on the 12-15 battleground states. 64 percent of fall 2008 presidential campaign visits to just five states-- Pa. 3rd-- 13.5% of all visits. 60 percent of fall 2008 presidential campaign advertising went to five states, Pa 2nd-- 25million, 15.5 percent of total. (Source CNN)
- 5) The NVP may be the closest change to what American desire, the direct election of the president-- routinely about 70 percent of Americans favor direct popular vote in national polls. In March, 2011 in a statewide poll, I found that by a 64 percent to 31 percent margin Pennsylvania residents supported popular vote.

NVP-Why it should be opposed:

- 1) In many states, the EC could be cast against the will of the voters of a state.
- 2) Urban area will now be the focus of the campaigns along with the big media markets in the various states. For example, in Pa, the Philadelphia media market reaches 40 percent of the voters of the state, most of Delaware, and southern New Jersey.
- 3) Opponents routinely raise questions about legal challenges as well as the possibility that the state could change their laws relative to the procedures in the compact, putting presidential elections into the courts.
- 4) Opponents also say that nothing in the compact prevents the president from being elected with a plurality of the popular vote. Of course, that currently is the case and conceivably would exist under any direct popular vote plan that might be adopted as well.
- 5) Some opposition exists because it by-passes the constitution and is viewed as an end-around the amendment process.

Pennsylvanians Strongly Support Popular Vote for President

National Popular Vote Project– Poll Results Release, 4-8-11

The strong showing came in Dr. Terry Madonna's March Omnibus Poll involving a telephone survey of more than 800 Pennsylvania residents and voters. Among those interviewed, seven in ten agreed "it would be unjust to have a President who did not receive the most popular votes."

The survey findings were released by the National Popular Vote Project even as state House and Senate sponsors are garnering additional support for enabling legislation on the matter.

Madonna said polling showed bipartisan public support for the project. "A clear majority of Republicans and Democrats favor popular voting in place of the Electoral College's current method for choosing the President," Madonna said. "The fundamental reasons the Founding Fathers created the Electoral College system no longer exist, and the voters of Pennsylvania understand that."

The prime sponsor of the legislation in the House, Republican state Rep. Tom Creighton of Lancaster County, is quick to point out that his legislation does not seek to supplant the Electoral College, but rather seeks to direct the electors as provided in the U.S. Constitution.

The Constitution, Creighton notes, spells out in Article II, Section 1, that only the state legislatures may set rules on electors and that, in fact, the term "Electoral College" does not appear in the Constitution.

"Right now, most states allow electors to abide by a 'winner take all' approach which casts all of a state's electoral college votes for the candidate who wins that state," no matter if the candidate wins by a single vote or in a landslide. That "winner take all" practice has resulted in four elections where the candidate who received the most popular votes was not seated as President. A half dozen other elections resulted in "near misses."

Only about one in four persons surveyed believe that electing a President by the national popular vote will favor one party over another. And of those who believe that, there is a clear split over which party would be favored.

Support was strong for the popular vote across the state although the most vigorous support was noted in Northwestern Pennsylvania, where 72 percent supported the concept. Philadelphia and suburban counties came next with 69 percent supporting a National Popular Vote. 63 percent supported the concept in both Southwestern (including Pittsburgh) and Northeastern Pennsylvania. A clear majority (58 percent) supported the idea in Central Pennsylvania.

The Madonna survey included the questions on the presidential election at the request of the National Popular Vote Project, a non-partisan, non-profit organization promoting the issue nationwide. Interviews were conducted with 807 residents and voters were interviewed for the poll using a random digit telephone number selection system that allowed for the inclusion of cell phone users, in addition to regular landline respondents. The sample error was plus or minus 3.4 percentage points.

Results in the survey were similar to those reported in a 2008 automated survey of more than 1,000 Pennsylvania voters conducted by Public Policy Polling. In that poll about 70 percent favored the election of the President by the national popular vote.

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Should Popular Vote Be Decisive

By G. Terry Madonna

Recently I was a guest on Bob Durgin's Harrisburg-based WHP radio talk show. I was asked to talk about the survey I had just released in which Pennsylvanians by a more than two-to-one margin--64% to 31%--favored electing the presidential candidate with the most popular votes instead of maintaining the Electoral College (EC). Other polls in recent years have produced similar results--overwhelming support for popular election. I was somewhat surprised then because almost all of the callers ripped the popular vote suggestion, favoring the retention of current system.

The discussion was in the context of an effort known as the National Vote Project (NVP). The project's purpose is to ensure that the popular vote winner is the actual winner of the presidential election. Its genesis comes in the wake of Al Gore's 500,000 popular vote victory but electoral vote loss to George Bush in 2000. It would work by having state legislatures cast their state electoral votes to the national popular vote winner regardless whether the popular vote winner actually carried the state. At the moment nine states have joined the compact--California being the last to do so--representing 139 electoral votes, just shy of 50 percent of the total.

There are other considerations in the NVP but my debate with Durgin's callers centered on the EC itself. What the drafters of the Constitution in 1787 thought and did has been always instructive. First was their aversion to electing the president directly, the demonstrable fear of the masses and democracy stood out starkly here. A second consideration was their desire to ensure that the chief executive not be dominated by Congress--something the delegates at one point agreed to when they put the selection into the hands of Congress but then reversed themselves by giving the job to state legislatures. The language in Article two is unambiguous: "Each state shall appoint, in such a manner as the legislature may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled...."

For the most part, state legislatures picked the electors in the first three presidential elections and thereafter electors in the states were chosen by both the winner-take-all method and in congressional districts in the popular vote until the district method was abandoned in most states by the outbreak of

the Civil War. Of course, today Maine and Nebraska choose electors out of congressional districts, but with the exception of the contest in Nebraska's 2nd CD in 2008, the electoral vote of those states had not been divided.

Not much remarked upon in any discussion of the EC these days is the fact that some Founders believed that because the big states would put up sufficient presidential candidates and because political parties did not exist and electors would be chosen by state legislatures no candidate would secure a majority of the EC, forcing the actual selection of a president into the House of Representatives. In the House each state--regardless of size-- has one vote in the selection process, which naturally would enhance the influence of small states in the selection of a president.

But Durgin and his callers made a different argument--one that focused on how popular vote would change the nature of presidential campaigns, leading to the practice of candidates avoiding small states in favor of large urban centers. My point was, however, that the determinative factor was not so much the big state, small state distinction but which states are competitive. That list stretches to 12/15 irrespective of size at the moment, though certainly the states with the larger electoral count are more important to the candidates. But one thing is certain, no candidate will make the pledge that Nixon made in 1960 to visit every state in the union, which found him in some not so helpful places while Kennedy campaign in the vote-rich industrial states as the 1960 campaign came to a conclusion.

(Updated from an original entry on the blog:www.thepoliticalexpress.com)

Terry Madonna Opinion Research-- Spring Omnibus Poll, 2011

Electoral Vote/Popular Questions (NPVP)

EC1. How do you think we should elect the President: should it be the candidate who gets the most votes in all 50 states or the current Electoral College system?

1. Candidate with most votes-64.3%
2. Current system-30.8%
8. DK-5.0%

EC2. In five of the last 12 Presidential elections, a shift of as little as 5,000 votes in one or two states would have resulted in the Electoral College electing a President who did not receive the most popular votes. Do you think it would be just or unjust to have a President who did NOT receive the most popular votes?

1. Just-24.0%
2. Unjust-71.1%
8. DK-4.9%

EC3. If we had a system where the candidate with the most popular votes were guaranteed to be elected President, do you think it would tend to favor the candidates of one political party over the other?

1. Yes-23.4%
2. No-62.6%
8. DK-14%

EC4. Do you think it would favor the: (rotate parties) Democratic Party OR the Republican Party?

1. Democratic party-37.9%
2. Republican party-22.1%
3. Other party-6.3%
8. DK-33.8%