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Agreement Among the States to Elect the President by National Popular Vote

TO: Members of Nebraska Legislature

For the first time in more than half a century, presidential candidates paid attention to Nebraska. More accurately, the presidential candidates paid attention to one third of Nebraska—the closely divided 2nd congressional district. Sarah Palin visited the 2nd district; Obama operated several offices staffed by over a dozen people; and both campaigns spent time, effort, and money trying to win the district's one electoral vote.

Meanwhile, the presidential candidates ignored Nebraska's 1st and 3rd districts. In fact, candidates have no reason to poll, visit, advertise, organize, or pay attention to the concerns of any *district or state* where they are comfortably ahead or hopelessly behind. The outcome in the 1st and 3rd districts was a foregone conclusion and, hence, neither party paid any attention to those areas. According to a recent FairVote report, 98% of the 2008 campaign events involving a presidential or vice-presidential candidate occurred in just 15 closely divided "battleground" states. Similarly, 98% of ad spending took place in these 15 "battleground" states. This means that two thirds of the states were ignored by the presidential campaigns—just as two-thirds of Nebraska was ignored under Nebraska's current congressional district system.

Everyone's vote in Nebraska should be equal, and everyone's vote should be politically relevant.

Clearly every vote was not equal in Nebraska in 2008 under the district system. Barack Obama won one electoral vote in the 2nd district with a margin of 3,378 votes, while McCain won one electoral vote in the 3rd district with a margin of 96,262 and won the 1st district with a margin of 26,768 votes. Moreover, McCain's net win of four out of five electoral votes did not reflect the actual 58%–42% statewide division of the voters in Nebraska.

Some advocate awarding all five of Nebraska's electoral votes on a statewide winner-take-all basis (i.e., the system used by 48 states). However, that would mean that presidential candidates would totally ignore Nebraska because the statewide outcome would be a foregone conclusion. The statewide winner-take-all system would make everybody's vote in Nebraska politically irrelevant to presidential candidates. The 2008 election in Nebraska (and past examples in Maine's 2nd district on the occasions when it was competitive) have demonstrated that presidential candidates will pay attention to an area that is only one quarter of one percent of the nation's population provided that there is something for them to win or lose. Presidential candidates would have no incentive to campaign in Nebraska if all five electoral votes were awarded on a statewide winner-take-all basis.

Others advocate a proportional division of Nebraska's five electoral votes (that is, awarding no electoral votes for less than 10% of the vote, one electoral vote for 10%–30%, two electoral votes for 30%–50%, three electoral votes for 50%–70%; four electoral votes for 70%–90%; and five electoral votes for more than 90%). Given Nebraska's 58%–42% division, the proportional system would produce a 3–2 division of electoral votes. However, in actual practice, the proportional system make everyone's vote in Nebraska politically irrelevant to presidential campaigns. The reason is that 58% is too far from the 70% level needed to increase the Republican share to four electoral votes and too far from the 50% level needed to reduce the Republicans to three electoral votes. Thus, neither party would have any incentive to campaign in Nebraska under a proportional system.

A national popular vote is the only way to make every vote in Nebraska politically relevant. The National Popular Vote bill would guarantee the Presidency to the candidate who receives the most popular votes in all 50 states (and the District of Columbia). Under a national popular vote, a vote anywhere in Nebraska would be as important as a vote in a closely divided battleground state (such as New Mexico, New Hampshire, or Ohio). Under a national popular vote, there would no longer be battleground states (or battleground congressional districts). Every voter in Nebraska (and throughout the United States) would matter.

Under the National Popular Vote bill, all the electoral votes from the states that enact the bill would be awarded, as a bloc, to the presidential candidate who receives the most popular votes in all 50 states (and the District of Columbia). The bill would only take effect only when enacted, in identical form, by states possessing a majority of the electoral votes—that is, enough electoral votes to elect a President (270 of 538).

The National Popular Vote bill has been enacted by states possessing 50 electoral votes — 19% of the 270 necessary to bring the law into effect. The four states are Hawaii, Illinois, Maryland, and New Jersey. The bill has passed 22 state legislative chambers, including one house in Arkansas, Colorado, Maine, Michigan, North Carolina, and Washington, and both houses in California, Hawaii, Illinois, New Jersey, Maryland, Massachusetts, Rhode Island, and Vermont. The bill is currently endorsed by 1,181 state legislators — 439 sponsors and an additional 742 legislators who have voted for the bill.

A national popular vote is, in fact, the *only way* for small states to gain influence in presidential elections. The small states are the most disadvantaged group of states under the current system. Although the small states theoretically benefit from receiving two extra electoral votes corresponding to their U.S. Senators, this “bonus” does not, in practice, translate into political power. Political power in presidential elections comes from being a closely divided battleground state (or district)—not from the two-vote bonus conferred on the small states in the Electoral College.

The reason that the small states are the most disadvantaged group of states under the current system is that almost all of them are one-party states in terms of presidential elections. In the last six presidential elections (1988 through 2008), six of the 13 least populous states (i.e., those with three or four electoral votes) have usually voted Republican (Alaska, Idaho, Montana, Wyoming, North Dakota, and South Dakota). Six others (Hawaii, Vermont, Maine, Rhode Island, Delaware, and the District of Columbia) have usually voted Democratic. New Hampshire has been the only battleground state among the 13 smallest states.

The 12 smallest non-competitive states have a combined population of 11.4 million. Because of the bonus of two electoral votes that every state receives, these 12 small states have 40 electoral votes. Coincidentally, Ohio has 11.4 million people. Ohio has 20 electoral votes. That is, the 11 million people in Ohio have “only” 20 electoral votes, whereas the 11 million people in the 12 smallest non-competitive states have 40 electoral votes. Political power in presidential elections does not arise from the number of electoral votes that a state possesses, but, instead, from whether the state is a closely divided battleground state. In 2008, the battleground state of Ohio received 62 campaign visits (more than one-fifth of all visits). However, the 12 small non-competitive states received no visits because the outcome of the presidential race in those states was a foregone conclusion. The 12 small states (with twice as many electoral votes) were politically irrelevant. The winner-take-all rule makes the 11.4 million people in the closely divided battleground state of Ohio crucial in presidential races, while rendering the 11.4 million people in the nation’s smallest states irrelevant. This is a situation in which 20 is much more than 40. A national popular vote would make every vote equal throughout the United States. A national popular vote would make a vote cast in a small state as important as a vote cast in Ohio.

Most of the states with five or six electoral votes are similarly non-competitive in presidential elections (and therefore similarly disadvantaged). In fact, of the 22 least populous states (i.e. those with three to six electoral votes), only New Hampshire (with four electoral votes), New Mexico (five electoral votes), and Nevada (five electoral votes) have been battlegrounds in recent elections.

The fact that the small states are disadvantaged by the current system has also been recognized by prominent officials from smaller states. In a 1979 Senate speech, Senator Henry Bellmon (R–Oklahoma) described how his views on the Electoral College had changed as a result of serving as National Campaign Director for Richard Nixon and a member of the American Bar Association’s commission studying electoral reform.

“While the consideration of the electoral college began—and I am a little embarrassed to admit this—I was convinced, as are many residents of smaller States, that the present system is a considerable advantage to less populous States such as Oklahoma. ... As the deliberations of the American Bar Association Commission proceeded and as more facts became known, I came to the realization that **the present electoral system does not give an advantage to the voters from the less populous States. Rather, it works to the disadvantage of small State voters who are largely ignored in the general election for President.**”¹ [Emphasis added]

Senator Robert E. Dole of Kansas, the Republican nominee for President in 1996 and Republican nominee for Vice President in 1976, stated:

“Many persons have the impression that the electoral college benefits those persons living in small states. I feel that this is somewhat of a misconception. Through my experience with the Republican National Committee and as a Vice Presidential candidate in 1976, it became very clear that the populous states with their large blocks of electoral votes were the crucial states. It was in these states that we focused our efforts.

¹ *Congressional Record*. July 10, 1979. Page 17748.

“Were we to switch to a system of direct election, I think we would see a resulting change in the nature of campaigning. While urban areas will still be important campaigning centers, there will be a new emphasis given to smaller states. **Candidates will soon realize that all votes are important, and votes from small states carry the same import as votes from large states. That to me is one of the major attractions of direct election. Each vote carries equal importance.**

“Direct election would give candidates incentive to campaign in States that are perceived to be single party states.”² [Emphasis added]

As the *Idaho State Journal* editorialized in 2004,

“As we enter the home stretch of the quadrennial horse race known as the presidential election, it’s time to remember that this is an election for the president of the United States of America—all 50 states, not an election for the president of the ‘Swing States of America.’ ”

The fact that the bonus of two electoral votes is an illusory benefit to the small states is not a new revelation. This fact has been widely recognized by the small states for some time. In 1966, Delaware led a group of 12 predominantly low-population states (North Dakota, South Dakota, Wyoming, Utah, Arkansas, Kansas, Oklahoma, Iowa, Kentucky, Florida, and Pennsylvania) in suing New York in the U.S. Supreme Court. These states argued that New York’s use of the winner-take-all rule effectively disenfranchised voters in their states.³ The Court declined to hear the case (presumably because of the well-established constitutional provision that the manner of awarding electoral votes is exclusively a state decision). Ironically, the defendant (New York) is no longer an influential battleground state (as it was in the 1960s). Today, New York suffers the very same disenfranchisement as most states because it too has become politically non-competitive. Today, a vote in New York is equal to a vote in Wyoming—votes in both are equally irrelevant in presidential elections.

Nebraska has been ignored by presidential candidates for decades not because it is small, but because the outcome of the presidential election is a foregone conclusion at the statewide level. New Hampshire (with four electoral votes) received 12 visits by presidential candidates in 2008, while the other 12 states with four or fewer electoral votes received none.

Recent polls show a high level of support for a nationwide election for President in small states such as Vermont (75%), Maine (71%), and Rhode Island (74%). These results are consistent with the fact that more than 70% of the American people have favored a nationwide election for President since the Gallup poll started asking this question in 1944. The *Washington Post*, Kaiser Family Foundation, and Harvard University poll in 2007 showed 72% support for direct nationwide election of the President. This recent national result is similar to recent statewide polls in Arkansas (74%), California (70%), Connecticut (73%), Massachusetts (73%), Michigan (73%), Missouri (70%), and Washington (77%). In short, there is very little difference

² *Congressional Record*. January 14, 1979. Page 309.

³ Information about *State of Delaware v. The State of New York* may be found at http://www.nationalpopularvote.com/pages/misc/de_lawsuit.php.

in the level of political support for a national popular vote in small, medium-sized, and large states. Details of these polls are available at www.NationalPopularVote.com.

The National Advisory Board of National Popular Vote includes former congressmen John Anderson (R–Illinois and later independent presidential candidate), John Buchanan (R–Alabama), Tom Campbell (R–California), and Tom Downey (D–New York), and former Senators Birch Bayh (D–Indiana), David Durenberger (R–Minnesota), and Jake Garn (R–Utah).

Additional information is available in the book *Every Vote Equal: A State-Based Plan for Electing the President by National Popular Vote* (available for reading or downloading for free at www.NationalPopularVote.com and in book form from National Popular Vote).

Yours truly,



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