

**Prepared Testimony of
Katherine Bussard**

**Before the Senate Committee on Elections and Ethics
And the House Committee on Elections**

Distinguished Chair and Distinguished Members of the Committee: Thank you for providing me the opportunity to present testimony and express my concerns regarding HB 4156 & HB 4440. My name is Katherine Bussard, Executive Director & COO of Salt & Light Global, Vice President of Mid-Michigan Women for Conservative Values, and a lifelong Michigander. I offer the following testimony in my personal capacity.

Amid the discussion of a national popular vote (NPV), there is much talk of the democratic principle of “one person, one vote.” However, this principle is fundamentally misunderstood within our form of government and is equally disconnected from the real impact of an “Agreement Among the States to Elect the President by National Popular Vote,” as proposed in HB 4156 & HB 4440. Our national form of government is that of a constitutional republic, as is our state government.¹ Each time a Michigander recites the Pledge of Allegiance, they affirm their support of “the Republic for which it stands.” The importance of this distinction is articulated in the Princeton Legal Journal, where Alexandra Orbuch explains, “We live in a republic that was *founded* to be a counterbalance to passing popular opinions and fads. It was intended to allow for the expression of regional and state concerns in addition to individual concerns.”² Even if a shift to a National Popular Vote could deliver a more equitable representation of “one person, one vote,” it would still be a shift that conflicts with our very form of government.

However, should the State of Michigan shift away from winner-takes-all participation in the electoral college to the agreement based on the National Popular Vote, equitable representation of the voice of Michiganders would be lost. As stated in Article IV of the agreement, the agreement takes effect “when states cumulatively possessing a majority of electoral votes have enacted this agreement.” Once that happens, the states with the largest populations will have the largest influence in determining Presidential elections. Candidates

¹ The Northwest Land Ordinance of 1787 was adopted by congress to establish a path to statehood for the Northwest Territory, including the tract of land that has become the state of Michigan. Article 5 of the Ordinance specifies that in order for a territory to enter the Union as a state, “the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles.” See <https://www.archives.gov/milestone-documents/northwest-ordinance> Our state’s earliest constitution (1835) affirms that we satisfied the Ordinance’s requirements for entering the union and established a constitutional republic as a form of state government. See <https://www.legislature.mi.gov/documents/historical/miconstitution1835.htm>

² “National Popular Vote: Circumventing the United States Constitution,” by Alexandra Orbuch, *Princeton Legal Journal*, October 2021. <https://legaljournal.princeton.edu/national-popular-vote-circumventing-the-united-states-constitution/>

will only need to campaign in states like California and New York (who have already passed NPV) and will tailor their messaging and policies to the metropolitan interests of those regions.

States with smaller populations like Michigan will simply become a part of “flyover country” and will be subjected to the tyranny of the majority—the very thing the Electoral College sought to prevent in the Constitution. (ibid) Effectively, the passage of the NPV legislation would not mean that the people of Michigan are more equitably represented; it would mean that the people of Michigan are not represented at all. This legislation gives the vote of Michiganders away to other states with larger populations. It is the antithesis of “one person, one vote” and representative governance.

Additionally, there are many concerns about the constitutionality of the proposed legislation. While Article II, Section 1, Clause 2 of the US Constitution give state legislatures the authority appoint Electors to the Electoral College “in such Manner as the Legislature thereof may direct,” it does not authorize them to trespass on other constitutional limitations or bypass the amendment process. If enacted, the proposed “Agreement Among the States to Elect the President by National Popular Vote,” would likely constitute a *prima facie* violation of Article I, Section 10, Clause 3 of the US Constitution which states, “No State shall, without the Consent of Congress,...enter into any Agreement or Compact with another State.” Article V of the Constitution provides a method to change the Constitution, including the method of electing a president, through the amendment process, but HB 4156 & HB 4440 conspire with other states to bypass that legitimate process, thereby trampling on the voice of the other members of the union. The process of states individually adopting an unconstitutional agreement with other states fundamentally silences the voice of other states to participate in the important conversation about the fate of the electoral college. Not unlike the danger of the tyranny of the majority, this poor process directly erodes the opportunity to hear the wisdom and diversity of minority and diverse voices, who are nonetheless entitled to equal protection under the law.

To date, 15 other states around the nation have adopted the National Popular Vote Interstate Compact, and if Michigan passes this legislation, as little as two more states (Texas and Florida, both of whom have pending legislation) could implement this policy in time to shape the 2024 presidential election. With a National Popular Vote Interstate Compact in place, as little as 1/5 of the urban centers across the nation could theoretically determine the outcome of a presidential election, completely disenfranchising rural populations across the nation and especially in places like Michigan. It is vitally important that the wisdom of the Founders to protect state, regional, and individual voices through the Electoral College is not lightly discarded in a process that circumvents the Constitution or our representative republic.

In conclusion, I urge this body to protect the voice of Michiganders in presidential elections, to uphold Constitutional integrity in all public policy procedures, and to oppose the passage of HB 4156 & HB 4440.