



The Center for
Voting and
Democracy

6930 Carroll Ave, Suite 610
Takoma Park, MD 20912
Phone: (301) 270-4616 Fax: (301) 270-4133
www.fairvote.org info@fairvote.org

Electoral College Reform in Michigan

Written Testimony by FairVote executive director Rob Richie on H.B. 5974
Committee on Elections and Ethics Hearing, Tuesday, December 2, 2014

Introduction: Thank you to the committee for my opportunity to provide written testimony on HB 5974. As a critic of both HB 5974 and Michigan's current law for allocating Electoral College votes, I testify to provide information on four topics that are relevant to HB 5974:

- ***Michigan's unlikely battleground status:*** Michigan has a slim chance of being a 2016 battleground state. It is more likely to receive less general election attention from the major candidates than warranted by its population, as was also true in 2008 and 2012.
- ***Impact of HB 5974 rule being used only in Michigan:*** If HB 5974 were law in Michigan in 2016, the state would at most have four electoral votes in play and more likely only two. At least eight other states would have more electoral votes in play. At the same time, there is a plausible scenario where HB 5974 could convert a 275-263 Democratic win in the Electoral College into a 269-269 tie, leaving Congress to pick the president.
- ***Impact of HB 5974 rule being used in all states:***
 - *Nearly all small states ignored:* If the HB 5974 electoral vote allocation method had been used in all states in 2012, 24 states (including DC) would not have had a single electoral vote in play, including fully 14 of the nation's smallest 15 states.
 - *Lack of symmetry in comparable popular vote outcomes:* Barack Obama's 52% to 48% win in the two-party vote would have translated into an electoral vote win of 287 to 251. Simulating a 52% to 48% popular vote win for Mitt Romney shows that Romney would have won by a far larger electoral vote margin of 315 to 223.
 - *Potential of popular vote winner being defeated:* Simulating a national popular vote tie results in a Romney win by 271 to 267, suggesting that this system would likely would have allowed Romney to win even if losing in the popular vote.
- ***Contrasting HB 5974 with the National Popular Vote interstate compact and current winner-take-all rule:*** The best way to treat all states and all voters fairly is to join 10 states and District of Columbia in entering the National Popular Vote interstate compact. To underscore this point, I critique last month's testimony by the League of Women Voters of Michigan that defended the winner-take-all rule.

As background, I have been executive director of FairVote – The Center for Voting and Democracy – since 1992. FairVote is a nonprofit, nonpartisan organization governed by the principle that a representative democracy should respect every vote. With a history of working cooperatively with civic leaders and policymakers from across the spectrum, we pursue research, outreach and education in order to promote the goal of all Americans having a fair chance to cast

a meaningful vote and elect representatives. My writings have appeared in every major newspaper in the United States and in nine books, including as co-author of *Every Vote Equal* about presidential elections and *Whose Votes Count* about alternative voting methods. I recently coauthored a lengthy scholarly article for *Presidential Studies Quarterly* on the 2012 election.¹

(1) Michigan is unlikely to be a battleground state in the 2016 presidential elections:

A battleground state is a state that receives more campaign attention than merited by its population size. To gauge a state's battleground status, FairVote has developed the Attention Index,² which scores each state based on a comparison of how that state's share of the nation's eligible voters compares to its share of campaign attention, as measured by major party ticket campaign events and campaign spending after the parties' conventions. Michigan was a battleground state in 2004, but was not a battleground state in 2008 or 2012. In 2012, Michigan's Attention Index score was 0.33, meaning that it received only a third of the campaign attention (in terms of ads and campaign events) that was merited by its population.

FairVote projects that Michigan is more likely to be a spectator state than a swing state in the 2016 presidential election. Campaigns target states based on whether they determine that campaign activity might make the difference between winning and losing the state. Even though Republican nominee Mitt Romney's father had been a three-term governor of Michigan and even though neither Barack Obama nor Joe Biden campaigned in the state after the conventions, Obama won by a comfortable margin of 9.5%. The Democratic nominee has won the state for six consecutive presidential elections, with margins ranging from a low of 3.4% to a high of 16.4%.

"Swing states" are states that have a partisanship balance between 47% and 53%.³ In 2012, Michigan's partisanship was 53.04%, falling outside of the range of partisanship that would make Michigan a "swing state." Furthermore, its 53.04% partisanship puts it even farther from being a "tipping point state" – that is, a state where its outcome has the potential to change who

¹ See *How the 2012 Presidential Election Has Strengthened the Movement for the National Popular Vote Plan* at <http://www.fairvote.org/assets/Uploads/RichieLevien-PSQ-article.pdf>

² Our Attention Index measures campaign attention using expenses on TV advertisements and the number of campaign events that occur in the state. If a state receives the amount of attention it deserves, it will receive an Attention Index score of one. If it receives less attention than deserved, it will receive a score of zero to one, making it a spectator state. If it receives more attention than deserved, it will receive a score greater than one, making it a battleground state. In 2012, 35 states received less than one-hundredth of the campaign attention warranted by their population.

³ Partisanship is based on percentage that the Democratic and Republican candidates won, relative to the national outcomes. Because Libertarian Gary Johnson was not on the Michigan ballot in 2012, we rely on the Democratic-centric partisanship for Michigan, looking at how well the Democratic candidate did. Obama won 54.04% of Michigan, 3.04% more than he won nationwide. Thus, the Democratic partisanship was 53.04%. The Republican partisanship is always 100% minus the Democratic partisanship.

The Democratic-centric partisanship is also preferable in Michigan's case. The Libertarian candidate, Gary Johnson, appeared on all states' ballots except in Michigan and Oklahoma, likely pulling away Republican votes in all states except for those two. For this reason, we expect Michigan's Republican partisanship to be slightly inflated above the national average. The Democratic-centric partisanship avoids this source of error.

wins the presidency. Instead, a Republican victory in Michigan in 2016 almost certainly would only occur when the Republican nominee has won an electoral vote landslide.

The Democratic-leaning swing states, in order of partisanship (from closest-to-even balance to more strongly Democratic), are as follows: Virginia, Colorado, Pennsylvania, New Hampshire, Iowa, Nevada, Wisconsin, and Minnesota. Although all these states lean Democratic, they are all less Democratic than Michigan – even Minnesota, which has not been won by a Republican nominee since Richard Nixon’s landslide in 1972.

To win the presidency in 2016, Republicans need to win all the states that lean Republican in their partisanship and only one of the Democratic-leaning states (two of those states if one of those states is New Hampshire). When deciding where to put limited resources, the Republican nominee will have far more inviting targets than a state that Democrats have won in every election since 1988 and won by an average of 13 percentage points in presidential elections in 2008 and 2012.

As a result, under current Electoral College rules it is unlikely that Michigan will draw significant campaign attention in 2016. Indeed, depending on the outcome in the state in 2016, Michigan could quite possibly move to join the 35 states that received Attention Index measures of 0.01 or less in 2012 – that is, states that received less than a hundredth of the attention warranted by their population size. Take Missouri for example, which once was a true swing state, but in 2012 had an attention index of 0.00.

(2) HB 5974’s impact on Michigan’s position in presidential elections.

As this testimony demonstrates, the current electoral system leaves Michigan relatively unimportant in the eyes of presidential campaigns – and on the cusp of joining the majority of states that are completely ignored in modern presidential elections. While the Electoral College vote allocation rule in HB 5974 is novel in how it seeks to reward political activity in states that are not close in the statewide vote, it would be unlikely to improve Michigan’s relevance in presidential elections.

HB 5974 proposes a new formula for allocating electoral votes. Rather than having the winner of the statewide popular vote win all of Michigan’s electoral votes, victory in the state would mean winning one more than half of the state’s electoral votes, meaning nine of Michigan’s 16 electoral votes. The candidate would then win an additional electoral vote for every 1.5% won above 50% of the two-party statewide vote. The second-place finisher would win the rest of the state’s electoral votes.

In 2012, for example, Barack Obama won 54.8% of the two-party statewide vote, with Mitt Romney winning 45.2%. Obama would have won nine electoral votes for winning the statewide vote and an additional three electoral votes for winning 4.8% above 50% of the two-party vote (one electoral vote for each 1.5% raise in his vote share).⁴ Obama’s total number of electoral votes therefore would have been 12, and Romney would have been awarded the remaining four electoral votes for being the second-place winner.

⁴ Obama needed 4.5% to win the three electoral votes. He would have needed 6% to win four electoral votes.

This plan succeeds in representing voters from both of the major two parties in the state. However, it still leaves Michigan with a smaller number of swing electoral votes than at least eight other states. FairVote calculated swing votes for this plan based on how many electoral votes could possibly change if Obama had won or lost three percentage points of the two-party statewide vote – with three percentage points being a very generous definition of what might be affected by campaign activity. If Obama’s share of the vote had declined by three percentage points, his two-party vote percentage in Michigan would have been 51.8%, and he would have won 10 electoral votes, a net loss of two. If Obama had increased his share of the vote by three percentage points, his two-party vote percentage would have been 57.8%, and his final electoral vote count would have been 14, a net gain of two electoral votes. In total, Michigan would have had at most four swing votes under this plan even assuming – unrealistically – that campaign activity could result in a shift of three percentage points in either direction.

If Michigan alone adopts this system of allocating electoral votes, it would find itself among “swing states” – but with at most four electoral votes in play and more realistically only two. As a result, the usual swing states would continue to overshadow Michigan. Nine swing states would continue to have more swing electoral votes than Michigan’s two. Those states would include Florida (29), Pennsylvania (29), Ohio (18), North Carolina (15), Virginia (13), Minnesota (10), Wisconsin (10), Colorado (9), Nevada (6), Iowa (6) and New Hampshire (4).

Despite this fact, there are scenarios where HB 5974 could make Michigan a “tipping point state” in 2016. For instance, if you sum the electoral votes in the 19 states that Democrats have won six straight times, Democrats start a close presidential election with a relatively strong base of 242 electoral votes. If you add Florida’s 29 electoral votes to that total, it grows to a winning majority of 271 electoral votes. If Democrats also won New Hampshire for the fourth straight time, they would have 275 electoral votes.

But suppose HB 5974 were law and the Republican nominee were able to win 47.1% of the two-party vote in Michigan, under H.B. 5874 the Republican would win six electoral votes – and suddenly go from losing the presidency by 12 electoral votes to earning a 269-269 electoral vote tie and having the Republican-run House of Representatives pick the president. Although the odds of this scenario or a similar scenario involving more states are low, they are plausible if the 2016 presidential election were nationally very close.

(3) How HB 5974 rules work if applied nationally,

If HB 5974 had been applied nationwide in the 2012 presidential elections, Obama would have won 287 electoral votes (53.3% of electoral votes), and Romney would have won 251 (46.7% of electoral votes). This Electoral College outcome would be far closer to the national popular vote, which Obama won by four percentage points, than the actual electoral vote split of 62% to 38%.

But presidential elections are more about electing presidents than about electing members of the Electoral College. Margins in the Electoral College are far less relevant than who wins and loses – and how candidates campaign in their efforts to win. And here, the rules of HB 5974 fall short, especially when contrasted with better alternatives.

First, the candidate with the most popular votes in all 50 states and the District of Columbia might lose the election. Even if electoral vote percentage skews will be lessened, that most

fundamental skew of a “wrong way winner” remains possible. Our simulation of a tied vote in the 2012 presidential election indicates that Mitt Romney would have won – and still would have won even if Barack Obama had won a narrow victory in the popular vote.

Second, in our simulation of the rule in 2012, nearly half of states – 24 in all, with a total population of more than 50 million people (and more than 41 million eligible voters) – would have remained spectator states. They would have had zero swing votes, making them as irrelevant in the eyes of presidential campaigns as they are today.

The states without swing votes tend to be small in population. In the 24 states that would not have had any swing votes in our simulation, the median number of electoral votes is 4.5. Of our nation’s 15 smallest population states (including the District of Columbia), 14 would have lacked even a single swing electoral vote. In the two states with the maximum of five swing votes, Pennsylvania and Ohio, the median number of electoral votes is 19, nearly two and a half times the national median of eight electoral votes.

The reason that the proposed legislation would disadvantage small population states is that it would be much harder for trailing candidates to win a single electoral vote. In states with three electoral votes, a candidate would need to win 48.5% of the two-party statewide vote in order to win one electoral vote. In states with four electoral votes, a candidate would need to win 47% of the two-party vote – meaning that the state would need to be a swing state under the current system. In large states, trailing candidates would have much easier access to winning a single electoral vote. For example, a candidate would have to win only 23% of the two-party vote to win an electoral vote in Texas and only 9.5% to win an electoral vote in California.

In short, the Michigan plan, if applied nationwide, would continue to skew the amount of attention a state would receive. Nearly half of all states would remain spectator states, and the millions of people living within those states would remain unable to influence the outcomes of presidential elections.

Simulations of statewide applications of HB 5974 demonstrate potential of partisan bias: To test the impact of HB 5974 if its electoral vote formula were used in all states, we conducted two additional simulations. The simulations demonstrate that HB 5974 could distort election results.

In the first such simulation, we looked at the hypothetical result of Obama and Romney tying at 50% of the two-party vote nationwide. In 2012, Obama won the two-party vote nationwide by nearly four percentage points, so for each state, we subtracted 1.97% from Obama’s two-party percentage and added 1.97% to Romney’s two-party percentage. In total, Obama would then have won 267 electoral votes, and Romney would have won 271 electoral votes, meaning that Romney would have won such a tied election. While these Electoral College results are close, they indicate that it is likely that one side would have had a slight advantage and be able to win the presidency despite a loss in the popular vote.

In the second additional simulation, we looked at the hypothetical results if Obama’s and Romney’s two-party percentages had been switched in 2012, meaning that Romney would have won by nearly four percentage points. For each state, we subtracted 3.93% from Obama’s two-party percentage and added 3.93% to Romney’s two-party percentage. With Romney winning by the exact same margin as earned by Obama in 2012, Romney would have won 315 electoral

votes and Obama would have won only 223 electoral votes. This contrasts with the hypothetical results under Obama's and Romney's actual two-party win percentages in 2012 in which Obama won by 287 electoral votes to 251 electoral votes.

In short, the proposed Michigan plan suffers from bias. This bias is not as severe as the bias if all states allocated electoral votes by congressional district – a system that would have comfortably elected Romney in 2012 despite his loss by four percentage points in the popular vote – but it clearly exists. As occurs with most formulas for distributing states' electoral votes, the final electoral vote winner might not be the national popular preference for candidates.

(4) Why the national popular vote interstate compact is the best Electoral College reform and why Michigan's winner-take-all rule should not be defended

FairVote agrees that the current system for allocating electoral votes is flawed and that Michigan is not receiving the attention it deserves from presidential campaigns. But voters deserve a plan that allows every vote to matter equally. FairVote supports adopting a national popular vote for president through state legislation.

States have the power to establish a national popular vote for president. The national popular vote interstate compact is designed to guarantee that the president-elect wins the most votes in all 50 states and the District of Columbia.⁵ Ten states and D.C. have approved the plan, with a total of 165 electoral votes. Once passed in states with a majority of electoral votes, or 270 electoral votes total, the agreement is activated for the next presidential election.

The national popular vote plan would increase the fairness of elections nationwide. All voters in all states would have the potential to shape the outcome equally, and no voter would have unfair influence based on where he or she lives. Because candidates would have to appeal to voters nationwide, they would compete across the nation, not just in a few swing states.

Moreover, the national popular vote plan would specifically benefit Michigan. Michigan would receive the campaign attention it deserves based on its population, not its "swing state" status or its partisanship relative to other states.

Responding to defenses of the winner-take-all rule: Despite sharing some of the concerns about HB 5974 expressed by its opponents, we do not defend the current system for allocating electoral votes and wish to correct the record on certain points. For example, Sue Smith, the president of the League of Women Voters of Michigan, testified last month against HB 5974. I would like to make four points in response to her defense of Michigan having a winner-take-all voting rule.

First, Michigan has not exclusively used a winner-take-all rule for allocating electoral votes on a continuous basis since its first presidential election in 1836. Michigan, in fact, allocated electoral votes by congressional district in 1892.

Regardless historical precedent is not a sufficient justification for Michigan's winner-take-all rule for allocating electoral votes. The implication that a statewide winner-take-all rule is the "right" method for allocating electoral votes is contradicted by the fact that our original 13 states

⁵ See the website of the National Popular Vote organization for more information: NationalPopularVote.com

used a wide range of methods during the nation's early decades. Some of our nation's finest constitutional thinkers, such as James Madison, were highly critical of the statewide winner-take-all rule. In an 1823 letter, Madison in fact backed a constitutional amendment that would have prohibited the winner-take all rule.⁶ States settled on the winner-take-all rule primarily for partisan and parochial interests, not the national interest.

Second, having a winner-take-all rule is no guarantee of campaigns giving attention to Michigan's voters and "unique issues, such as the auto industry and the Great Lakes." As detailed earlier, Michigan already is earning less attention from candidates than its population warrants and, if the current system is not reformed, is on the cusp of joining the 35 states that consistently get no attention whatsoever in presidential elections.

Third, the Constitution clearly delegates to state legislators the power to allocate electoral votes, and states repeatedly have used that power over the years. Never once has a change in how a state allocates electoral votes been done by a referendum, as proposed by Sue Smith. While such a method to change the distribution of electoral votes would be legal, it is certainly not necessary.

Fourth, the answer to the problem of today's presidential election system is not to defend the winner-take all rule, but instead to support a national popular vote for president. Indeed, the League of Women Voters of the United States in 2010 adopted a position in favor of the National Popular Vote plan, and in several states, state Leagues have been at the forefront of efforts to adopt the plan.

Conclusion

FairVote's analysis demonstrates the shortcomings with HB 5974, the proposed legislation to change how electoral votes are allocated. If applied in Michigan alone, HB 5974 would be unlikely to lead to Michigan earning the attention it deserves. If its electoral vote formula were applied nationwide, HB 5974 would allow a "wrong way winner" who has lost the popular vote and would leave many states (including 14 of our 15 smallest population states) without any swing electoral votes, resulting in campaigns continuing to ignore them entirely. The proposal therefore fails to solve the problems with the current Electoral College system.

What we need is a presidential election system that results in competition in all corners of the nation, makes all voters equally relevant, and ensures election of the candidate who best reflects the popular will. I urge the committee to give serious consideration to the adoption of the plan that best achieves these goals: the national popular vote plan for president.

⁶ McCarthy, "How the Electoral College Became Winner-Take-All," *FairVote Blog*, 22 Aug. 2012, Online at: <http://www.fairvote.org/research-and-analysis/blog/how-the-electoral-college-became-winner-take-all/>.