February 1, 2023

Testimony in support of HF 642, Freiberg, Bahner, Long, Kraft, Greenman, Curran and Brand

From: Mark Bohnhorst: retired attorney, concerned citizen, independent researcher and author. Minneapolis, District 61B

To: Rep. Mike Freiberg, Chair, Elections Finance and Policy, chief author

Rep. Emma Greenman, Vice Chair, co-author

Rep. Paul Torkelson, Ranking Member

Leader Jamie Long, 61B, co-author

Dear Chair Freiberg, Vice Chair Greenman, Ranking Member Torkelson, and Leader Long:

I am a retired public sector attorney (16 years, So. Minn. Regional Legal Services; 24 years, U. of Minnesota Office of the General Counsel). I have been studying and writing about the electoral college since November 2016, when the Minneapolis Star Tribune published a full commentary in which I voiced support for the NPVIC.

I have organized two, three-hour forums on presidential elections, one in August 2020 hosted at Dorsey & Whitney and one in September 2022 hosted by Mitchell Hamline Law Review. Each featured leading scholars and advocates, including Dr. John Koza, Prof. Alexander Keyssar, and Jesse Wegman (NYT Editorial Board). I am lead author of two recent law review articles—one on presidential election reform (Lewis & Clark Law Review, Summer 2022) and one on the gross historical errors in the Independent State Legislature Doctrine history (forthcoming in Mitchell Hamline Law Review). I am also coauthor with St. Olaf History Professor Michael W. Fitzgerald of an article that is under peer review at a history journal. The article explores Reconstruction’s overlooked history of conflict and proposed reform regarding the electoral college. Last week I gave a 1 ½ hour talk on the Electoral College as part of the Ramsey County Library/U of Minn. Osher Lifelong Learning Institute “Tuesdays with a Scholar” series.

I am writing for four purposes.

One, I wish to voice my continued support for the NPVIC. The reasons for support are well known, and I will not repeat them here.

Two, I wish to suggest one small revision (which is nonetheless of some importance). I believe the 6 month withdrawal period should be one year. This change would assure stability in the presidential election process during the presidential election year. Without the change, a member of the Compact could withdraw as late as mid-July and transform the election from NPV to battleground state. The change could be made as a separate measure, to take effect if and only if states with at least 270 electoral votes that have joined the NPVIC have also agreed to the change. I do not believe any current member would object; the change might be made within a year. Correcting this error would demonstrate the ease with which the NPVIC can be revised if needed.

Three, I wish to address one objection to NPVIC regarding RCV—specifically, that in an election with a strong third party, in some states one of the two leading candidates may come in third and receive zero popular votes. This can be easily solved if RCV states specify that RCV does not apply to presidential elections that are based on NPV.

Four, I wish to suggest that the Committee can address the severe partisan divide over this issue by supporting measures that have universal approval. One of these is a state constitutional amendment to assure that in Minnesota the people shall always choose the presidential electors. I believe this should be on the ballot in 2024. A side benefit is that such an amendment repudiates of the bogus Independent State Legislature Doctrine. It thus assures that Minnesota, in joining the NPVIC, is not unwittingly giving aid and comfort to the “plenary power” myth.

In a related vein, I suggest the Committee consider supporting a very simple amendment to the US Constitution that also should have universal support. The amendment would provide (i) that the people shall elect the presidential electors, and (ii) that Congress shall have power to provide uniform rules for presidential elections. Just such an amendment was proposed and debated in January and February 1869, and it was approved by more than 2/3 of the Senate. In one of the nation’s most bitterly partisan eras, it had strong support from both Republicans and Democrats. It was one of only seven amendments in US history to receive the required 2/3 support; yet, it has been completely overlooked in the debate and by most scholars. I would suggest the Committee support a resolution asking that Minnesota’s delegation study and consider supporting such an amendment.

In sum, Minnesota can lead the nation by taking the following actions: (i) adopt the NPVIC; (ii) adopt a minor companion measure to move the termination date from 6 months to one year; (iii) adopt RCV for presidential elections in general, but specify that RCV does not apply to elections run under NPV; (iv) adopt a state constitutional amendment assuring the people shall elect the electors; and (v) support adoption of an amendment to the U.S. Constitution that specifies the people shall elect the electors and empowers Congress to prescribe the manner of conducting presidential elections.

Thank you for the opportunity to share these views.

Mark Bohnhorst

Minneapolis

District 61A