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## **Electoral College Reform in Pennsylvania**

**Written Testimony by FairVote's Rob Richie on SB. 1282, Printer's Numbers 1633**  
*Senate State Government Committee Hearing, October 4, 2011*

Thank you to the committee for holding this important hearing and for my opportunity to testify. Although sympathetic to concerns about Pennsylvania's current law for allocating all electoral votes to the statewide popular vote winner, I strongly oppose the proposed legislation to award most of Pennsylvania's electoral votes based on the popular vote outcome in each congressional district. When adopted in all states, the congressional district system takes us farther from the goal of ensuring that the winner of the national popular vote is elected president. When adopted in Pennsylvania alone, it takes us farther from the goal of ensuring that the winner of Pennsylvania's statewide popular vote wins most of the state's electoral votes.

As background on me, I have been executive director of FairVote, The Center for Voting and Democracy since 1992 and am a proud former Pennsylvania voter, having graduated from Haverford College. FairVote is a nonprofit, nonpartisan organization governed by the principle that a representative democracy should respect every voice and 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 nearly 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.

This legislation would not achieve its purported goal of making all votes matter in every election. Drawing from our recent report *Fuzzy Math: Wrong Way Reforms for Allocating Electoral College Votes*, I will contrast the congressional district proposal with both your state's current rules and with other Electoral College reform proposals: dividing electoral votes based on the proportion of each candidate's share of the statewide popular vote and guaranteeing that the White House always goes to the candidate who wins the most votes across the entire nation through adoption of the National Popular Vote plan for president.

Relying on FairVote's extensive research into presidential elections since 1960, I will focus in particular on whether each proposal has a positive or negative impact on these four goals:

- Uphold will of the majority
- Make all votes matter
- Keep elections in the hands of voters
- Establish a fair playing field

For Pennsylvanians, the congressional district plan is less likely to achieve each of these goals than the status quo. In contrast, other reform proposals would advance these goals.

## **Brief description of each Electoral College method**

***Status quo winner-take-all rule:*** As with 47 other states and the District of Columbia, Pennsylvania allocates electoral votes on the basis of the winner-take-all unit rule: the winner of the statewide popular vote earns all of that state's electoral votes even if that vote share is barely ahead of the second-place candidate.

Although not the norm in early president elections, nearly every state today awards all of its electoral votes to the winner of the statewide popular vote. The winner-take-all rule means that candidates have an incentive to campaign in a state only if they are not comfortably ahead or hopelessly behind. Today, it means that at most only a third of states have a chance to be battlegrounds going into an election, with the real number of swing states likely being fewer than ten. Pennsylvania has consistently been seen as such a battleground, but former battlegrounds like Illinois, Delaware, New York and Texas can attest to how such status can be fleeting.

In the last five presidential elections, the Democratic nominee for president has won all of Pennsylvania's electoral votes with an average vote share of 50.06% of the popular vote – an outcome presumably helping to explain why SB 1282 has drawn support. Unfortunately, this concern is directed toward a congressional district allocation proposal that fails to achieve its purported public interest objective.

***Congressional district proposal:*** Under the congressional district system for allocating electoral votes, each U.S. House district in Pennsylvania would elect one presidential elector, while the statewide popular vote winner would earn two U.S. Senate electors. Although this plan is more likely to result in a state like Pennsylvania awarding its electoral votes to more than one candidate, there is no guarantee that the electoral vote share will reflect the state's popular vote share.

***Proportional allocation of electoral votes:*** Proportional allocation of electoral votes would divide a state's electoral votes among presidential candidates on the basis of each candidate's share of the statewide popular vote (as is common in electing convention delegates in presidential primaries). The proportion of electoral votes earned by a candidate would need to be rounded off to the nearest whole number in order to preserve the indivisibility of a single electoral vote, as having human electors is mandated under the federal constitution.

As an example of how this system works, consider a small state like Delaware with three electoral votes, where a 50.1 percent popular vote share would theoretically translate into just over 1.5 electoral votes and an 83 percent vote share would translate into just under 2.5 electoral votes. Given the need for whole electoral votes, however, both percentages would be rounded to two electoral votes under most formulas used to seek proportionality. These numbers mean that as long as a candidate's popular vote share is more than 50% and less than 83%, that candidate will win two electoral votes. His or her strongest opponent will earn one electoral vote if finishing with anywhere between 17% and 49.9%.

***National Popular Vote plan for president:*** The National Popular Vote plan would guarantee the Presidency to the candidate who receives the most popular votes in all 50 states and the District of Columbia. It achieves this outcome while still preserving state power over how to allocate electoral votes in the future. By adopting the National Popular Vote bill, states enter into an interstate compact in which they commit to awarding all of their electoral votes to the winner of the national

popular vote. The compact takes effect only when the enacting states collectively possess a majority of electoral votes. The National Popular Vote plan has been enacted by states with a total of 132 electoral votes— 49% of the 270 electoral votes needed to activate it.

**Representative Democracy Goal #1: Uphold will of the majority**

An electoral system should accurately reflect voter intent. It should bring us closer to the goal of ensuring that any candidate who wins a majority of votes nationwide is elected president. Furthermore, any candidate who wins a majority of votes statewide in Pennsylvania should more electoral votes than other candidates.

*Congressional district proposal and upholding will of the majority:* When adopted in all states, the congressional district system takes us farther from the goal of ensuring that the winner of the national popular vote is elected president. When adopted in Pennsylvania alone, it takes us farther from the goal of ensuring that the winner of Pennsylvania's statewide popular vote wins most of the state's electoral votes.

Let’s start with the potential impact of the congressional district system if enacted nationally. The following table summarizes the results of the presidential elections of 1968, 1972, 1976, and 2000, which are representative examples of how the system would work nationally. Our table lists the actual votes won by the candidates as well as the distribution of Electoral College votes under the congressional district system.

**Table 1. Electoral Vote Distribution under Congressional District System**

Year	1968			1972		1976		2000	
Candidate	Nixon	Humphrey	Wallace	Nixon	McGovern	Ford	Carter	Bush	Gore
Popular Vote	31,783,783	31,271,839	10,144,376	47,168,710	29,173,222	39,148,634	40,831,881	504,601,110	51,003,926
% Total	43.42%	42.72%	13.53%	60.67%	37.52%	48.02%	50.08%	47.87%	48.38%
<b>Electoral Vote Distribution (Unit Rule)</b>									
Electoral Vote	301	191	46	520*	17	240*	297	271	266*
% Total	55.95%	35.50%	8.55%	96.65%	3.16%	44.8%	55.2%	50.37%	49.44%
<b>Electoral Vote Distribution (Congressional District System)</b>									
Electoral Vote	292	183	56	478	60	268	270	288	250
House-Senate-DC	228-64	154-26-3	46-10	88.84%	11.15%	214-54	221-46-3	228-60	207-40-3
% Total	53.7%	34.4%	10.4%	88.85%	11.15%	49.8%	50.2%	53.53%	46.47%

1 – In both 1972 and 1976, a Republican elector did not vote for the Republican nominee. In 2000, one Democratic elector did not vote for the Democratic nominee.

The chart shows how the congressional district system can distort the national popular vote. In the 1968 elections, for example, Richard Nixon led Hubert Humphrey by 0.7 percent in the popular vote share, but had a 20.95% lead under the current rules of the Electoral College. Using the congressional district system, Nixon’s Electoral College lead would still have been 19.3%.

In 1972, Nixon won a landslide victory over George McGovern. His popular vote lead was 23.15%, which translated into an Electoral College lead of 93.5% under current state rules. Under the congressional district system, he would have won the Electoral College by 77.7% – smaller than with the unit rule allocation, but still considerably inflated compared to the popular vote difference.

Some advocates of the congressional district proposal argue that less distortion in Electoral College margins in landslide elections like 1972 is important, but it in fact has no impact on who becomes president nor on public perception of the fairness of the elections. Far more important is when there is a distortion in nationally competitive elections that might flip who wins the presidency, and it is in exactly such elections that the district system would be most problematic.

In the election of 1976, for example, Jimmy Carter led Gerald Ford by 2.1% in the popular vote, and by 10.4% under the current Electoral College rules. Under the congressional district system, however, Carter's Electoral College majority would have been reduced to only 0.4%. The outcome nearly would have been thrown to Congress, and Ford would have won without the three electoral votes Carter earned in the District of Columbia due to the 23<sup>rd</sup> amendment to the Constitution.

In 2000, George Bush lost the popular vote to Al Gore by 0.52% and won under current Electoral College rules by 0.93%. With the congressional district method of allocation, however, Bush would have defeated Gore by more than 7%. Indeed, given where each major party draws its support and the partisan skew in both number of congressional districts and number of states won in nationally close presidential elections, the Republican Party would likely win any election decided by less than 5% in the national popular vote.

If the congressional district system is done only in Pennsylvania, its impact is less clear on the election of the candidate who wins the national popular vote. It will depend on which candidate wins electoral votes in Pennsylvania that otherwise would have been lost under the winner-take-all rule and how that candidate fared nationally. In 2008, for example, John McCain likely would have lost by 18 electoral votes if he had won the national popular vote by less than 1.1%. (This is based on adjusting every state's popular vote margin by the same change in the national percentage). Earning 10 or more electoral votes in Pennsylvania would have given McCain a victory that he otherwise would have lost. In 2000, however, the system would have sharply increased George Bush's Electoral College victory despite the national popular vote outcome.

What can be said definitively, however, is that the congressional district proposal could make it far more possible for a candidate to win most of Pennsylvania's electoral votes even while losing its popular vote. Such an outcome will depend on the way district lines are drawn, which candidate wins the statewide vote and how large their margin in the statewide vote.

Consider North Carolina as an example of potential distortions. North Carolina has seriously considered adoption of the congressional district allocation plan in 2001 and in 2007. In both years, the proposal passed the state senate, then controlled by Democrats, but did not pass the state house of representatives. If it had passed into law, however, the new redistricting crafted this year would have had a remarkable impact. If such a plan were in effect in 2012, the Republican nominee for president would likely carry 10 of the state's 13 electoral districts and win 10 of the state's 10 electoral votes even if losing the statewide popular vote by a landslide of 57% to 43%.

***Status quo and upholding will of the majority:*** When the national election is decided within a national popular vote margin of 1%, it basically is a matter of luck which party carries the Electoral College. All past projections are theoretical, as having a national popular vote in place would have changed the campaign tactics of the campaign, but note that: 1) in 2000, George Bush won an Electoral College majority while losing the popular vote by more than half a million votes; 2) in 2004, John Kerry would have won an Electoral College majority over George Bush if fewer than

60,000 votes for Bush had flipped to Kerry, despite Bush’s advantage in the national popular vote of more than three million votes; 3) in 2008, Barack Obama likely would have won an Electoral College majority even if losing the popular vote by nearly two million votes. While there is no partisan pattern to these advantages in any given election, there almost always is such advantage.

**Proportional allocation of electoral votes and upholding will of majority:** The table on the next page summarizes the raw number and percentage share of popular and electoral votes for candidates in the 1960, 1968, and 2000 elections. It shows what the distribution of electoral votes would have been under the whole number proportional allocation system if applied in all states.

**Table 2. Electoral Vote Distribution under Whole Number Proportional System**

Year	1960			1968			2000		
Candidate	Kennedy	Nixon	Others*	Nixon	Humphrey	Others*	Bush	Gore	Nader
Pop. Vote	34,220,984	34,108,157	503,341	31,783,783	31,271,839	10,144,376	50,460,110	51,003,926	2,883,105
% Total	49.72%	49.55%	0.73%	43.42%	42.72%	13.53%	47.87%	48.38%	2.73%
<b>Actual Distribution of Electoral College Votes (Unit Rule)</b>									
EC Vote	303	219	15	301	191	46	271	266*	0
% Total	56.42%	40.78%	2.79%	55.95%	35.50%	8.55%	50.37%	49.44%	0
<b>Distribution of Electoral College Votes under WNP System</b>									
EC Vote	270	261	6	235	225	78	262	262	13
% Total	50.28%	48.60%	1.12%	43.68%	41.82%	14.50%	48.7%	48.7%	2.42%

\* In 1968 George Wallace received the bulk of these votes. In 2000, one Gore elector abstained from voting in Washington, D.C.

In the 1960 election, Kennedy had a 0.17% lead over Nixon in the national popular vote. Under the winner-take-all unit rule system, his votes translated into a 15.64% lead in the Electoral College. Using the whole number proportional system, on the other hand, Kennedy would have led by 1.68% of electoral votes.

In the 1968 election, Nixon won by a margin of 0.7%, but led Humphrey by a 20.95% vote share in the Electoral College, with George Wallace trailing in third with 46 electoral votes. Under the proportional system, Nixon’s Electoral College lead would have been 1.86% -- and denied him the majority of electoral votes necessary to avoid a contingent election decided by bargaining among electors or in Congress. In the 2000 election, Bush lagged behind Gore by 0.52% in the popular vote, but had a lead of 0.93% in the Electoral College. Under the proportional system, on the other hand, Gore and Bush would have tied at 262 Electoral College votes each, not a majority.

In each of these three cases the proportional system fares better than the current unit rule in terms of achieving a closer approximation of the popular vote share in the Electoral College. But it certainly does not ensure that an election’s outcome will always be in keeping with the popular vote. Any election where the winner falls short of 50% of electoral votes is likely be resolved in Congress, with the U.S. House picking the President based on one vote per state and the U.S. Senate picking the vice-president. Congress could choose to ignore the popular vote and simply vote for candidates based on party – a problematic outcome that underscores the problem with an approach that makes it seem like presidential elections are primarily about fair representation of electors when in fact they should be about a fair method of electing a single president.

**National Popular Vote plan and upholding majority rule:** Once activated by passage in a sufficient number of states, the National Popular Vote plan by definition will guarantee election of the winner of the national popular vote in all fifty states and the District of Columbia.

## **Representative Democracy Goal #2: Make all votes matter**

As the presidency is the only office accountable to all Americans in elections, candidates for that office should have incentives to pay attention to voters' concerns in all parts of the country. But the congressional district system and proportional allocation systems both maintain the greatest flaw in current laws governing allocation of electoral votes: candidates would have no reason to campaign for the votes of most Americans.

***Congressional district proposal and making votes matter:*** For most voters, having a vote that matters means having the potential to be courted by presidential candidates. That in turn means that your vote matters most when you vote in a race that is competitive. Under the congressional district system, competitiveness can be measured in terms of district partisanship: the greater the number of competitive or swing districts, the greater would be the overall competitiveness of the election.

But in 2000, a year when the national popular vote was very close, the presidential vote was within 2 percent in only 6.7 percent of the congressional districts (29 out of 435). The difference was four percent or less in barely one out of eight districts (55 out of 435). In short, the vast majority of congressional districts are non-competitive in presidential elections. Only the most aggressive partisan gerrymandering to foster competitiveness – and ignoring other criteria like compactness and the Voting Rights Act — would change that really in any significant way.

If votes in presidential elections were allocated on the basis of congressional districts, then the incentive for politically motivated gerrymandering in states would be even greater, resulting in elections that could easily end up being even less competitive than under the current unit rule approach. Although majority parties might try to stretch their advantage farther, putting the interests of their party's presidential candidate over the interests of particular incumbents, it is more likely they would try to create districts that generally give their party at least 56 percent to 58 percent of the vote – comfortable, but not so comfortable that their party's votes are unnecessarily wasted.

As one example of how congressional districts might affect competitiveness, consider North Carolina's latest redistricting plan. Not a single one of its 13 new congressional districts has a "partisan voting index" within 5% of being balanced between the parties. In other words, any election that was won nationally by less than 10% of the popular vote would likely not have even one competitive congressional district in North Carolina.

***Status quo and making all votes matter:*** FairVote has issued a series of reports that are highly critical of the current presidential election system's impact on most Americans. Pennsylvania is one of the states favored by the current system as far as campaign attention. Although that status can be fleeting, its name was mentioned more than once in the bullet points we issued in our December 2008 report on the 2008 presidential elections:

- Of all 300 campaign events by major party presidential candidates tracked by the *Washington Post* between September 5 and November 4, 2008, 57% took place in only four states, representing just 17% of the nation's eligible voters: Ohio, Florida, Pennsylvania and Virginia.

- 54.5% of all ads by the presidential campaigns, as tracked by CNN from September 24 to November 4, aired in those same four states.
- More than 98% of all campaign events and more than 98% of all campaign spending took place in only 15 states representing 36.6% of the nation's eligible voter population, effectively sidelining nearly two-thirds of all Americans.
- Voter turnout in those 15 contested states was 67%, while turnout in the remaining states was 61%. Voter turnout declined in more a third of states despite the public's high level of interest in the nation's first open-seat presidential election in half a century.
- Ohio and the 12 smallest states both have eight and a half million eligible voters, but Ohio had 62 campaign events (more than a fifth of all events) and the small population states had a total of 12, all in New Hampshire.

***Proportional allocation of electoral votes and making all votes matter:*** A key to understanding the operation of the whole number proportional approach is that a given number of electoral votes in a state corresponds to a range of percentage share of the popular vote, and a candidate will win the same number of electoral votes in a state regardless of where his or her popular vote share lies within the corresponding range. For example, in states with three electoral votes, a candidate will win two and only two votes if his or her popular vote share is anywhere between 50.1% and 83.3%.

The popular vote range corresponding to electoral votes varies from state to state, depending on a state's total number of electoral votes. However, for all but the largest states (those with more than 12 congressional districts and 14 electoral votes) the ranges are quite wide, and even the largest population states are unlikely to have campaign activity result in shifting more than one electoral vote.

Most elections are won by narrow margins, and it is a steep challenge for candidates to increase their vote share in a state beyond small percentage points. In the battleground states under the proportional allocation system, a candidate might win one, and only one, more electoral vote. In all the other states, the percentage jump in popular vote share required in order to increase a candidate's tally by a single electoral vote will be so large as to effectively place these states beyond the reach of that candidate and, hence, make them non-competitive.

Furthermore, candidates may cede campaign activity in the biggest population states on this list of potentially competitive states, as the cost of shifting 2.5% of the vote in a state like Pennsylvania would be much more than the cost of gaining 2.5% in a smaller population state. The big winners, then, would be relatively small population states that happen to be near a breakpoint to win one more electoral vote. Big population states that theoretically could swing one more electoral vote may end up largely ignored by the candidates.

The whole number proportional system is prone to counterintuitive results due to its lack of responsiveness to small shifts in popular vote share. Consider small states with an even number of Electoral College votes. In a state like Hawaii with four electoral votes, any shift in popular vote share within the range of 37.5% -62.5% would have the exact same result: an even division of electoral votes.

In other words, even if a party increases its popular vote share from, say, 40 percent to 60 percent, its share of electoral votes will not change and will in fact be the same as that of the other party, making the state completely irrelevant from a campaign perspective. If one candidate were ahead in Hawaii by 56 percent to 44 percent in the polls, the state definitely would be ignored. Even if the trailing candidate's backers remarkably turned the result around so that they won the state 51 percent to 49 percent, it would have no impact on each candidate winning two and only two electoral votes.

***National Popular Vote plan and making all votes matter:*** In an election decided by a national popular vote, every vote would be of equal value in determining the outcome of the election. Candidates would spend more time and resources in areas where there are more resources, but they would be foolish to spend a disproportional amount of time and resources on these areas. When every vote counts, every voter needs to be courted to some degree in every competitive election.

### **Representative Goal #3: Keep elections in the hands of voters**

One of our current system's lurking problems is that a presidential election may not be decided by voters. If a candidate fails to win an absolute majority of votes in the Electoral College, the election becomes "contingent" and is thrown to Congress. The U.S. of Representatives picks the president on the basis of "one state, one vote," with no winner until a candidate secures the support of 26 state delegations. The U.S. Senate separately elects the vice-president.

These rules lead to two areas of potential corruption of popular intent in the election. First, if there is a tie in the Electoral College (as would have occurred in 2004 with a switch of a total of 21,000 popular votes in three closely balanced states) or more than two candidates win electors (as happened in 1968 when George Wallace won several southern states), then there could be negotiations behind closed doors that could swing the presidency.

Former Pennsylvania presidential elector James Michener was so concerned about the potential of a contingent election in 1968 that he made plans to encourage fellow electors committed to Hubert Humphrey to throw their support to Richard Nixon if Nixon were to win the popular vote, but be forced to negotiate with Wallace to earn an Electoral College majority (as Nixon would have known that Congress would likely have elected Humphrey due to Democrats holding a healthy majority of U.S. House congressional delegations at the time).

Second, in presidential elections decided by Congress, there would likely be a political firestorm if Congress voted along partisan lines against the popular vote winner – and our nation would risk the potential of an awkward, potentially destabilizing outcome if the U.S. House chose one party's nominee for president, and U.S. Senate chose another party's nominee for vice-president.

***Congressional district proposal and keeping elections in hands of voters:*** The congressional district proposal would generally have little impact on the potential of an election not producing a majority winner in the Electoral College. Such an outcome would only increase if an independent candidate secured support primarily in certain individual districts, but not statewide – for instance, a candidate appealing strongly to city voters, but not to most voters living outside of cities.

As with the current system, however, if a strong third party or independent candidates starts winning states, it is all too possible for the election not to be settled by the voters.

***Status quo and keeping elections in hands of voters:*** Although we have not had a contingent election since 1824, the current system is highly vulnerable to not being resolved by the voters, especially with the kind of volatile electoral environment that we see today where a strong independent candidacy is possible. It can happen due to a strong independent or third party candidate winning states, as George Wallace did in 1968, when a shift of less than 2% of the vote in California from Nixon to Humphrey would have denied Nixon an electoral vote majority. It also can happen when there is a tie in the Electoral College, as could have happened in 1968.

The current system also magnifies of impact of close votes in swing states. The fact is that in most states, there is not enough time to resolve a Florida 200-type close election without the courts effectively deciding the presidency. The 1876 election was decided by the highly partisan decisions of an election commission more than the voters who had backed the candidate who lost in the Electoral College by one vote.

***Proportional allocation of electoral votes and keeping elections in hands of voters:*** The proportional allocation system would make it nearly certain that any close election with a relatively strong third party or independent candidate (one winning more than 5% of the vote) would block an Electoral College majority. In 1968, for example, Richard Nixon's electoral vote share would have been only 235 votes, with Hubert Humphrey following at 225 and George Wallace with 78 votes. In 2000, George Bush and Al Gore would have tied at 262 votes each, with the remaining votes going to Ralph Nader. Similar results likely would have occurred in several other election in the past century including in elections won by Woodrow Wilson in 1912, Harry Truman in 1948 and Bill Clinton in 1992.

***National Popular Vote plan and keeping elections in hands of voters:*** The National Popular Vote plan guarantees that the winner of the national popular vote in all fifty states and the District of Columbia is elected president in every election. As with elections for governor in nearly every state, the candidate with the most popular votes would be sure to win.

#### **Representative Goal #4: Establish a fair playing field for parties**

Electoral reform proposals may have a clear impact helping or hurting a major party. Although ideally the topic of partisan impact could be avoided, it is an inevitable part over debate over changes to the electoral process. It indeed is rare for prominent leaders of a party to champion a reform that clearly would provide an advantage to another party.

Having a partisan bias in not itself a reason to block reform, however. Suppose, for example, that woman voters in 1916 were seen as likely to vote heavily for one party. Even though it is likely that each major party's partisans would have factored that partisan impact into their stance on women's suffrage, it would not change the fact that supporting woman's suffrage was the right step to take for representative democracy.

But in elections for the presidency, a reform ideally would avoid any transparent partisan impact. That impact inevitably will drown out considerations of the reform's merits –and create greater

voter distrust over the process unless the proposed change is clearly justified by upholding indisputable goals of representative democracy.

***Congressional district proposal and a fair playing field:*** As detailed earlier, the congressional district system takes us farther from the goal of ensuring that the winner of the national popular vote is elected president and farther from the goal of ensuring that the winner of Pennsylvania's statewide popular vote wins most of the state's electoral votes. From a public interest perspective, it is highly problematic that both of these advantages only accrue to one party.

First, congressional districts are nationally skewed in favor of Republicans. This is due almost entirely to the fact that the Democratic vote is relatively concentrated in those geographic areas where Democrats are in the majority, while Republican support is more evenly spread across non-Democratic strongholds. For example, Bill Clinton won at least 26 percent of the vote in every congressional district in the nation while winning 49 percent overall in 1996, while in 2004 George Bush won only single digits in some congressional districts while winning 51 percent of the vote.

This skew partially explains why Nixon won 52.9 percent of the congressional districts in 1968 with 43.4 percent of the national popular vote, while Humphrey won just 36.2 percent of congressional districts with 42.7 percent of the national popular vote. Similarly, Bush carried 228 of the 435 congressional districts in 2000, whereas Gore carried only 207 districts that year despite the fact that Gore received 543,816 more popular votes nationwide than Bush. In other words, the bias in congressional district wins distinctly would favor the Republican candidate in nationally competitive elections.

The Republican geographical bias in congressional districts became even more pronounced after the 2000 census. The congressional district boundaries that were in place at the time of the 2000 presidential election were, of course, the ones that were adopted in the early 1990s using data from the 1990 federal census. When the results of the 2000 presidential election are viewed from the perspective of the up-to-date congressional districts based on data from the 2000 federal census (i.e., those first used in the 2002 congressional elections), George Bush carries 241 (55 percent) of the 435 congressional districts, compared to Al Gore's 194 districts. In the 2004 elections, Democrat John Kerry carried Michigan, winning 51 percent of the statewide popular vote, but he carried only five of 15 congressional districts. If Michigan used the congressional district system, Republicans would have taken ten of the state's seventeen electoral votes.

In 2008, there were five states won by the Democratic nominee Barack Obama in which his Republican opponent, John McCain, carried more congressional districts: Indiana (three for Obama, six for McCain), Florida (ten for Obama, 15 for McCain), Ohio (eight for Obama, ten for McCain), Colorado (three for Obama, four for McCain) and Pennsylvania (nine for Obama, ten for McCain).

If congressional district allocation is only done in certain states, its impact is obviously dependent on which states implement it and which do not. If congressional district allocation is only done in the state of Pennsylvania, the Republican Party would earn a clear advantage. Although congressional district lines are not yet finalized, it is anticipated that Republicans will have district partisan advantage in two-thirds of the state's House districts -- meaning that its presidential nominee could win 12 of the state's 20 electoral votes even when losing the statewide popular vote by several percentage points. This outcome is not just a theoretical possibility: the statewide popular vote margins in four of the last five presidential elections in Pennsylvania likely would

generate such an unrepresentative division if they were repeated in 2012 and the congressional district allocation system were in place.

With congressional district allocation, there is no counterbalancing public interest argument for reform to this partisan bias. Going to congressional districts will have little effect on how many votes matter nor bring us closer to the goal of ensuring that candidate with the most support in the national popular vote is elected.

***The Status quo and a fair playing field:*** As detailed earlier, the status quo rules are likely to favor one candidate or another in any given election, but at this point in history, it is not clearly which party is favored going into the 2012 election. That uncertainty may change in the future, which is one more reason to reform the status quo before any such enduring bias becomes apparent and creates partisan roadblocks to reform – and in turn causes Americans to lose confidence in the fairness of their representative democracy.

***Proportional allocation of electoral votes and a fair playing field:*** Proportional allocation of electoral votes has little bias in the contest between the major parties in an election. It does, however, make it more likely that third party and independent candidates will be able to block an Electoral College majority for any one candidate. If elections were consistently decided in Congress, the party with stronger control of Congress would gain an advantage – in 1968, for example, Democrats would have had the votes to elect Hubert Humphrey over George Wallace.

***National Popular Vote plan and a fair playing field:*** Some observers have wrongly suggested that the National Popular Vote plan would advantage the Democratic Party, but all evidence suggests that both parties would be able to compete on an equal footing in a national popular vote for president. The major parties have split the national popular vote in the past two presidential elections, past eight presidential elections, past twelve elections and past sixteen elections. For every popular vote landslide by a Democrat like Lyndon Johnson or Franklin Roosevelt, there has been a popular vote landslide by Republicans like Ronald Reagan or Richard Nixon.

## **Conclusion**

FairVote's analysis demonstrates fundamental problems with both the congressional district and proportional allocation systems of allocating Electoral College votes. Some suggest these approaches as alternatives for reforming the winner-take-all unit rule system that has so distorted candidate attention and upset the principle of majority rule. However, neither proposal resolves the problems of the unit rule, winner-take-all system – they merely lead to a different manifestation of the same basic weaknesses, and add new complications.

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. For reformers in states, I believe there is no real choice. I urge the committee to reject the congressional district system and give serious consideration to adoption of the plan that best achieves these goals: the National Popular Vote plan for president.