

## **Testimony before the Pennsylvania Senate State Government Committee**

Luke Bernstein, Deputy Chief of Staff

Office of the Governor

October 4<sup>th</sup>, 2011

*Electoral College Reform: SB 1282*

---

Chairman McIlhinney, Chairman Williams, and members of the committee:

My name is Luke Bernstein, Deputy Chief of Staff to Governor Tom Corbett. On behalf of the Corbett administration, thank you for allowing me the opportunity to offer remarks before you today about Senator Pileggi's legislation, Senate Bill 1282, which would enhance how Pennsylvania allocates its electoral votes in a Presidential election.

As you are all well aware, right now, Pennsylvania is one of 48 states that allocate our electoral votes in a winner-take-all manner. Senator Pileggi's legislation changes this to what is known as the "Congressional District Method" of allocating electoral votes. Currently, two other states, Maine and Nebraska, utilize this method. In such a method, the presidential candidate who wins each respective congressional district picks up the electoral vote for that congressional district. The winner of the statewide popular vote would be granted the remaining two electoral votes. If enacted, Pennsylvania would be the third state to allocate electoral votes based on the congressional district method.

There is an ongoing dialogue in America about the Electoral College and what reforms, if any, need to be made. Senator Pileggi's legislation is the product of that conversation here in Pennsylvania specifically as it relates to the direction that is best for Pennsylvanians. In order to determine the direction we are going, it is important to look back and have a basic understanding of the origin and development of the Electoral College.

The United States Constitution is a document that was ultimately achieved because of a series of grand compromises. One of these compromises, developed by the Constitutional Congress' Committee of Eleven and approved on September 7<sup>th</sup>, 1787, was how the President of the new

nation would be elected. On one hand, some of our founders supported the President being elected by a popular vote. On the other hand, some supported the President being chosen by the Congress. Ultimately, the compromise was made where electors, equal in number to the whole number of Senators and Representatives to which the State is entitled in Congress and *chosen in a manner as each state legislature may direct*, would cast their vote for President and Vice-President. This compromise was so widely accepted that it was given little attention or discussion during the ratification debates which led Alexander Hamilton to observe that the compromise was if “not perfect, it is at least excellent.”

Think about this compromise for a moment. Each state’s legislature – those of you sitting before me today -- and no one else -- have the privilege and responsibility to determine the fate of how presidential electors are chosen. In fact, in 1874, a U.S. Senate Committee reviewing the Electoral College observed, “The appointment of these electors is thus placed absolutely and wholly within the legislatures of the several states. They may be chosen by the legislature, or the legislature may provide that they shall be elected by the people of the state at large, or in district;...and it is, no doubt, competent of the legislature to authorize the Governor, or the Supreme Court of the state, or any other agent of its will, to appoint these electors.” Furthermore, several Supreme Court decisions have spoken directly to this specific privilege granted in the U.S. Constitution to state legislatures. One cited the above 1874 Senate Committee report when it spoke specifically to a state which changed from a winner-take-all system to the congressional district method system.

In 1890-91, in advance of the 1892 presidential election, Democrats took control of the Michigan State Legislature and altered how Michigan allocated its electoral votes. Ultimately, this change was challenged on the basis that voting for electors by congressional district allegedly interfered with the franchise rights granted by the 14<sup>th</sup> Amendment. Some legislators have even written to the Governor making this very same allegation. However, the Supreme Court rejected this argument outright, noting that citizens all had the same rights to vote as any other citizen in the same congressional district and that the Constitution never granted citizens the right to directly elect Presidential electors. The Michigan Democrats’ plan withstood the court challenge and presidential candidate Grover Cleveland, won 5 of the state’s 14 electoral votes.

I want to be clear as to why Governor Corbett supports Senator Pileggi's proposal. The integrity and weight of an individual's vote is something that must be preserved and protected. Allocating electoral votes based on congressional districts is a step toward better protecting the integrity of an individual's vote for President. Every presidential election, millions of Pennsylvania voters, both Democrats and Republicans, do not have their voice heard when Pennsylvania's electors cast their vote for President.

The reality is, whether or not you want to admit it, the operation of a winner-take-all system results in effective massive disenfranchisement of voters who support losing candidates. We need not look too far back in our history to see evidence of this. In 1992, George H.W. Bush won all 25 of Florida's electors after winning 40.9% of the state's popular vote. Conversely, Bill Clinton won all 54 of California's electors after winning 46% of the state's popular vote. The same can be true when a candidate barely wins the popular vote. In Georgia, Bill Clinton carried the popular vote by 13,714 votes. However, this paper-thin margin was not reflected in granting Clinton all 13 of Georgia's electors. Fast forward to 2000, when George W. Bush won Florida by 537 votes. For weeks, the entire election outcome was uncertain, and the entire western world hung in the balance awaiting the results. It must certainly be asked if it was fair for President Bush to receive all 25 of Florida's electoral votes after winning statewide by such a small margin.

Here in Pennsylvania, in 1988, Michael Dukakis received 48.39% of the vote when he had nearly 2.2 million voters cast their ballots in favor of his candidacy for President. However, George H.W. Bush received 50.7% of the vote when 2.3 million voters cast their ballots in favor of his candidacy. Nearly 2.2 million people cast their vote for Dukakis, yet he received zero electoral votes. The difference of approximately 100,000 votes was worth 25 electoral votes. In 2004, John Kerry captured all 21 of Pennsylvania's electoral votes when he only won the state by a 50.96% to 48.46% margin – a difference of 145,000 votes. That is essentially a difference of 15 votes in each of Pennsylvania's more than 9,000 precincts.

What is more staggering is looking at the electoral difference by congressional districts. In 1988, Dukakis won the 2<sup>nd</sup> Congressional District by a margin of 79.36% to 19.64%. The people of the 2<sup>nd</sup> Congressional district of Pennsylvania did not have their voices heard despite Dukakis winning that district by a 4 to 1 margin as it yielded him zero electoral votes. In 2004, George W. Bush received 67.11% of the vote of the 9<sup>th</sup> Congressional District. These voters, like those in the 2<sup>nd</sup> Congressional District in 1988, did not have their voices heard as Bush did not win any electoral votes in Pennsylvania.

Furthermore, the localization of a national election is something that benefits all Pennsylvanians. Affording voters an opportunity to feel more connected and consequential in a Presidential election on a local scale will have a meaningful impact on our civic discourse in a Presidential campaign season. The fact is, what may be best in Scranton may not be best in Smethport, what is best in Erie may not be best in Ephrata, and what is best in Tamaqua may not be best in Ford City. This proposal accounts for that diversity. We need to let each voter and each region of this state choose which candidate they think best represents their interests. This proposal forces all Presidential candidates to make the case as to why they are the best choice, not just for Pennsylvania as a whole, but for Scranton, Smethport, Erie, Ephrata, Tamaqua, Ford City, and every municipality in between.

Governor Corbett's support of Senator Pileggi's proposal is simple. It is important to protect the integrity of an individual's vote for President across this entire Commonwealth. Pennsylvania's electoral vote should be more representative of the diversity of Pennsylvania's popular vote while still maintaining the principles of federalism that the Electoral College provides for and upholding the Constitutional compromise that led to the creation of the Electoral College. This legislation accomplishes that goal but, as equally important, it truly transforms a national election into a local neighborhood discussion, debate, and discourse and ultimately a decision for who will best serve that area.

I would like to close by responding to some observations, criticisms, and reactions that have surfaced since this proposal was first unveiled.

- To those who say this is a partisan power grab, I ask, why have I read of Democrats and Republicans both opposing it and supporting it? If a Democrat is accusing supporters of this bill of a partisan power grab, what do they call it in Nebraska where they are fighting to retain the Congressional district method - - where President Obama used it to his advantage in 2008?
- To those who say it desecrates 224 years of history, I would kindly suggest a history lesson is in order. The Electoral College system currently in place is far different from that originally put forth by the Founders. For instance, popular vote wasn't even used to choose the electors in most states until the 1830s. Furthermore, when the electoral process was originally established, a minority of the states used a winner-take-all system. To say this proposal desecrates history without understanding historical facts is the type of political rhetoric that prevents us from having a constructive debate on the issue.
- To those who say Pennsylvania will lose clout if this proposal becomes law, I will testify that the Corbett administration is standing up for the clout of Pennsylvanians...including the millions of Pennsylvanians who in past presidential elections didn't have their voices heard and the millions who could vote in future presidential elections without having their voice heard. When others talk about "clout" they are talking about keeping Pennsylvania as a big prize in the Electoral College sweepstakes game that presidential candidates play as opposed to protecting the integrity of the vote of ALL Pennsylvanians.
- To those who say this is all a plan to get President Obama out of the White House, I would suggest they review the historical impact of this legislation – there are only a small handful of elections in this nation's history where this legislation would have made a noticeable difference. The difference that will be noticeable is when all Pennsylvanians go to the polls in a Presidential election knowing their vote will matter much more in electing a President than it did before.
- To those who say Pennsylvania shouldn't do this without other large states also doing it, I would respond by saying that we would welcome other states in this conversation. Other states should consider this reform, but it is their individual decision to make, just like we would not have them make this decision for us. History has proven that Pennsylvania is a welcome home for turning points in America. From the founding of this nation in Philadelphia, to saving this nation in Gettysburg, to building this nation from Pittsburgh

in the Industrial Revolution, we should not shy from this turning point and being a leader again when leading means doing what is in the best interest of all of the people in this great Commonwealth.

Thank you for inviting our administration to testify today. I urge this committee's positive consideration of SB 1282.