Testimony of

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to the

Veterans and Legal Affairs Committee
Maine Legislature

Re: LD 252
An Act to Withdraw from the National Popular Vote Compact

April 14, 2025

Chairman Hickman, Chairwoman Supica, members of the committee:

Thank you for the opportunity to submit written testimony in relation to this legislation. We deliver this testimony in our personal capacities, not as representatives of the universities we are affiliated with. These remarks are neither in explicit support nor opposition but are intended to provide relevant information on the role of the Electoral College and the potential impact of the National Popular Vote Interstate Compact, if it ever materializes. These remarks are based on our original academic research. It is our hope that this information will be useful.

It is well known that the Electoral College does not necessarily elect the winner of the popular vote. In recent years, this happened in 2000 and 2016, and this is often used to criticize the present system. Contrary to the common misperception, this is not unique to the United States, and there are many democratic countries that use indirect election to elect the head of the government. For instance, in the United Kingdom, the prime minister is elected by members of the House of Commons. As a result, twice in the 20th century the prime minister represented a party that lost the popular vote: in 1951, Winston Churchill became the prime minister despite

Labour party candidates getting more votes, and in February 1974, Harold Wilson was elected prime minister even though more people voted for Tories than for Labour. In Canada, Justin Trudeau was re-elected prime minister in 2019 and 2021 even though more voters voted for the Conservative party. Other countries, such as France or Mexico, elect the president in a direct election. In other words, both direct elections (the popular vote) and indirect elections (such as the Electoral College system) are consistent with democratic institutions.

However, our research shows that the Electoral College system has a distinct advantage: it does a better job deterring and minimizing election fraud. This is not to say that we believe there are instances of major fraud in the U.S. elections, certainly not at the scale that may have changed the election outcomes in recent years. In contrast, our work suggests that the very reason that election fraud, if any, has been minimal and inconsequential is precisely because of the Electoral College system.

To see the reason, note that in economics, we view individuals' actions as rational and calculated – and starting with Nobel Prize winner Gary Becker's seminal work, this is applied to people thinking about violating the law. An individual may engage in election fraud if two conditions are met: first, conducting fraud helps their preferred candidates win, and second, the individual has reasonable expectation to evade the legal consequences of fraud. The Electoral College system effectively ensures that these two conditions are never met at the same time. To help a candidate win, one must conduct fraud in one of the battleground states. However, in battleground states, local political power and government positions are often divided between members of both parties and thus supporters of different candidates, which means that there is a high probability that local officials – at different levels – would be highly motivated to investigate and punish fraud, rather than look the other way. Conversely, states where local government positions are typically taken by members of one party, and where supporters of that party could hope that suspicious activities would be overlooked and not investigated further, are almost certainly reliably red or reliably blue states in national elections and are therefore places where conducting fraud does not make sense.

Imagine, however, the situation if the National Popular Vote Interstate Compact is enacted, and the President is elected based on popular vote. In this case, for example, individuals seeking to conduct fraud that would help, say, a Republican candidate would not need to do so in battleground Georgia or Wisconsin. They would do so in West Virginia and Tennessee, where surprisingly high support of a Republican candidate would not raise suspicion and the officials' incentives to spend time and effort looking for fraud would be minimal. The same logic applies to individuals seeking to help a Democratic candidate. The potential incentives for conducting vote fraud would therefore increase; there would undoubtedly be instances of fraud that are

uncovered and reported, and even if fraud is not large enough to change the outcome, the public trust in election integrity would diminish further.

This argument applies not only to instances of election fraud, which is outright unlawful, but also to means of political competition that may be legal but are nonetheless questionable. Among such methods are various ways to disenfranchise voters of the other party, for example, by manipulating locations and hours of voting precincts. Doing so in battleground states, where both parties are well represented in the legislature and government offices in general, may be difficult. In states that are dominated by one party, doing so is much easier, but under the Electoral College it is also pointless (if the dominant party's candidate wins 60% of the vote, there is no reason to depress turnout to achieve a 70% margin). The National Popular Vote Interstate Compact will, of course, exacerbate the incentives for either party to engage in such questionable actions.

We would like to emphasize that the possibility of election fraud in the U.S. is not something that only exists in the minds of academics – and a few notable politicians. Both parties routinely express significant concerns about disenfranchisement and fraud. Consider, for example, the debate about voter ID laws. Democrats are concerned that such laws will disenfranchise citizens without an ID; Republicans are concerned that lack of such laws disenfranchises citizens by increasing the chance that noncitizens would vote. Clearly the possibility of disenfranchisement and fraud is on the minds of members of both parties, and in our view, it is the structure of the Electoral College that has been keeping fraud, if any, at a minimal level despite all these fears.

While the debate about the Electoral College and the National Popular Vote Interstate Compact is inherently complex, we very much hope that you will keep this argument about integrity of elections and voters' trust in the institution of elections in mind when considering this bill. We are happy to provide additional information on this topic, and we can be reached at g-egorov@kellogg.northwestern.edu (Georgy Egorov) or ksonin@uchicago.edu (Konstantin Sonin). Thank you.