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NOMINATION AND ELECTION OF PRESIDENT
AND VICE PRESIDENT AND QUALI-
FICATIONS FOR VOTING

APPENDIX TO
HEARINGS

BEFORE THE

SUBCOMMITTEE ON
CONSTITUTIONAL AMENDMENTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

S.J. RES. 1, S.J. RES. 2, S.J. RES. 4, S.J. RES. 9,
S.J. RES. 12, S.J. RES. 16, S.J. RES. 17, S.J. RES. 23,
S.J. RES. 26, S.J. RES. 28, S.J. RES. 48, S.J. RES. 96,
S.J. RES. 102, S.J. RES. 113, AND S.J. RES. 114

PROPOSING AMENDMENTS TO THE CONSTITUTION RELATING
TO THE METHOD OF NOMINATION AND ELECTION OF
THE PRESIDENT AND VICE PRESIDENT

AND

S.J. RES. 14, S.J. RES. 20, S.J. RES. 54, S.J. RES. 58,
S. J. RES. 67, S.J. RES. 71, S.J. RES. 81, AND
S.J. RES. 90

PROPOSING AMENDMENTS TO THE CONSTITUTION RELATING
TO QUALIFICATIONS FOR VOTING

HELD

MAY 23, 26, JUNE 8, 27, 28, 29, AND JULY 13, 1961

PART 4

Appendix and Index

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CONTENTS

Duties and Powers of Presidential Electors, by Mollie Z. Margolin, American Law Division, Legislative Reference Service, Library of Congress, dated June 23, 1961-----	Page 715
The Electoral Process and the Power of the States, by Donald M. Wilkinson, Jr., reprinted from the American Bar Association Journal, March 1961-----	725
Will the South Decide the '60 Election?, excerpts from an article entitled "Presidential Elections; A Study of the Appointment and Function of Presidential Electors," by Hall E. Timanus, reprinted from U.S. News & World Report, July 11, 1960-----	732
Irresponsible Government, by David Lawrence, reprinted from U.S. News & World Report, December 12, 1960-----	737
Electing a President Still as Uncertain as Ever, by J. R. Wiggins, reprinted from the Washington Post, December 11, 1960-----	738
A New Course for the Electoral College, by James MacGregor Burns, reprinted from the New York Times Magazine, December 18, 1960-----	740
Evils of the Mundt-Coudert Plan, Evils of the Lodge-Gossett Plan, excerpts from a speech by Hon. Paul H. Douglas, a U.S. Senator from Illinois, delivered in the U.S. Senate, March 26, 1956-----	744
The Ideal Method of Selecting the President of the United States, by Frederic R. Coudert, Jr., reprinted from "Selecting the President: The Twenty-Seventh Discussion and Debate Manual (1953-1954)"-----	777
Presidential Elections, 1788-1928, an excerpt from "Political Parties and Opinions, 1788-1930," reprinted from Atlas of the Historical Geography of the United States, by Charles O. Paullin-----	783
Proposed Amendments to the Constitution of the United States during the First Century of Its History (excerpts concerning choice of President and Vice President), by Herman V. Ames, reprinted from the Annual Report of the American Historical Society, 1896-----	804
The Resolution of Electoral Deadlocks by the House of Representatives, by Paul J. Piccard, reprinted from "Selecting the President: The Twenty- Seventh Discussion and Debate Manual (1953-54)"-----	826
Residence Requirements for Voting, by Walter Kravitz, History and Government Division, Legislative Reference Service, Library of Con- gress, dated December 7, 1960-----	844
The Iron Curtain Around the Ballot Box, by Eugene Burdick, reprinted from Good Housekeeping, July 1960-----	857
State Action To Lower the Voting Age, 1943-1960, by Walter Kravitz, History and Government Division, Legislative Reference Service, Li- brary of Congress-----	859
Specifications for a Model State Presidential Primary Law, by Paul T. David (Brookings Institute, April 1956)-----	867
Toward a Model State Presidential Primary Law (excerpts), by Manning J. Dauer, reprinted from the American Political Science Review, March 1956-----	873
Performance and Potential of Presidential Primary Laws, by Richard H. Hansen, reprinted from Nebraska Law Review, 1960-----	884
The Convention System of Ratification, excerpt from an unpublished manuscript by Paul T. David, dated August 16, 1960-----	939
Library of Congress study on effects of abolishing presidential electors----	942
Index-----	953

APPENDIX

APPENDIX

NOMINATION AND ELECTION OF PRESIDENT AND VICE PRESIDENT AND QUALIFICATIONS FOR VOTING

APPENDIX

DUTIES AND POWERS OF PRESIDENTIAL ELECTORS

(By Mollie Z. Margolin, legislative attorney, American Law Division,
Legislative Reference Service, Library of Congress, June 23, 1961)

OUTLINE OF CONTENTS

Duties and powers under United States Constitution.
Article II, section 1, clause 2.
Twelfth amendment.
Duties enumerated.
Right to pledge their vote.
Must an elector keep his pledge.
Historical background.
State law.
Nomination.
Pledge of electors.
Special instructions to electors.
Table—Nomination and election of Presidential electors—State law.

DUTIES AND POWERS UNDER UNITED STATES CONSTITUTION

Article II, section 1, clause 2

Article II of the United States Constitution provides:

"Each State shall appoint, in such manner as the legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector."

Twelfth amendment

The twelfth amendment to the Constitution of the United States provides: "The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President * * *."

Duties enumerated

The duties imposed upon the Presidential electors are clearly outlined in the twelfth amendment to the United States Constitution, *supra*: (a) To meet in their respective States; (b) to vote by ballot for President and Vice President of the United States (one of whom, at least, shall not be an inhabitant of the same State with themselves); (c) to name in their ballots the person voted for

as President; (d) to use separate ballots for President and for Vice President; (e) to make lists of persons voted for as President; (f) to make separate lists for President and for Vice President; (g) to enter number of votes on such lists; (h) to sign, certify, and transmit sealed such lists to Washington, D.C., addressed to the President of the Senate.

Right to pledge their votes, as interpreted by U.S. Supreme Court

"* * * We consider the argument that the twelfth amendment demands absolute freedom for the elector to vote his own choice, uninhibited by a pledge. It is true that the amendment says the electors shall vote by ballot. But it is also true that the amendment does not prohibit an elector's announcing his choice beforehand, pledging himself. The suggestion that in the early elections candidates for electors—contemporaries of the Founders—would have hesitated, because of constitutional limitations, to pledge themselves to support party nominees in the event of their selection as electors is impossible to accept. History teaches that the electors were expected to support the party nominees. Experts in the history of government recognize the long standing practice. Indeed more than twenty states do not print the names of the candidates for electors on the general election ballot. Instead, in one form or another, they allow a vote for the presidential candidate of the national conventions to be counted as a vote for his party's nominees for the electoral college. This long continued practical interpretation of the constitutional propriety of an implied or oral pledge of his ballot by a candidate for elector as to his vote in the electoral college weighs heavily in considering the constitutionality of a pledge, such as the one here required, in the primary.

"* * * Surely one may voluntarily assume obligations to vote for a certain candidate * * *

"We conclude that the twelfth amendment does not bar a political party from requiring the pledge to support the nominees of the national convention. Where a state authorizes a party to choose its nominees for elector in a party primary and to fix the qualifications for the candidates, we see no federal constitutional objection to the requirement of this pledge" (*Ray v. Blair*, 1951, 343 U. S. 214, 223-231).

As far back as 1892, in the case of *McPherson v. Blacker* (146 U. S. 1, 36), the Court stated:

"* * * Doubtless it was supposed that the electors would exercise a reasonable independence and fair judgment in the selection of the Chief Executive, but experience soon demonstrated that, whether chosen by the legislatures or by popular suffrage on general tickets or in districts, they were so chosen simply to register the will of the appointing power in respect of a particular candidate. In relation, then, to the independence of the electors the original expectation may be said to have been frustrated. Miller on Const. Law, 149; Rawle on Const. 55; Story Const. § 1473; The Federalist, No. 68. But we can perceive no reason for holding that the power confided to the States by the Constitution has ceased to exist because the operation of the system has not fully realized the hopes of those by whom it was created * * *."

Must an elector keep his pledge

Does an elector who is pledged to one Presidential candidate, either by having filed papers so pledging himself or by having his name associated with such Presidential candidate on the general election ballot, have the power to cast his vote for another Presidential candidate in the electoral college?

In the election of 1796, although two Federalist electors were elected in Pennsylvania, one of these electors voted for Thomas Jefferson who was a Republican. Nevertheless, such a vote was legal, was uncontested, and was counted for Jefferson. A description of the incident is contained in "A History of the Presidency from 1788 to 1897" (1916), by Edward Stanwood, at pp. 50-51:

"One vote for Jefferson in Pennsylvania deserves notice, since it is believed to have been given by the only elector in the history of the country who has ever betrayed the trust reposed in him by those who supported him. The closeness of the vote in Pennsylvania already has been recorded, and the fact that two Federalist electors slipped in. One of the two voted for Jefferson and Pinckney. The treachery of this elector was the subject of an exceedingly plain spoken communication in the 'United States Gazette' from an exasperated Federalist. 'What!' he exclaimed. 'Do I chuse Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be President? No! I chuse him to act, not to think.' * * * 'At the election of 1796 the people had enjoyed the privilege of choosing the electors by popular vote' (id., p. 60).

Again in 1820, William Plumer, an elector from New Hampshire cast his vote for John Quincy Adams for President, instead of for James Monroe as was expected. (See "The Electoral Vote For John Quincy Adams in 1820," by C. O. Paullin, *Amer. Hist. Rev.*, vol. 21, p. 318 (January 1916).) This vote was considered valid and was counted for Adams. For a history of the different methods used for appointing electors from 1788 to 1892, see *McPherson v. Blacker* (146 U. S. 29, 36).

Although no case on this point has ever reached the courts, the Supreme Court of the United States did make a statement on the subject in *Ray v. Blair* (343 U. S. 214, 230 (1951)):

"However, even if such promises of candidates for the electoral college are legally unenforceable because violative of an assumed constitutional freedom of the elector under the Constitution, Art. II, § 1, to vote as he may choose in the electoral college, it would not follow that the requirement of a pledge in the primary is unconstitutional * * *."

From this statement we may conclude that although a pledge by an elector would be unenforceable, such a pledge is not unconstitutional.

HISTORICAL BACKGROUND

The following excerpts from weighty documents may serve to portray how the electoral system worked from its inception:

"Under the Constitution electors are to vote for two persons, one of whom does not reside in the State of the electors; but it does not require a designation of the persons voted for. Wise and virtuous as were the members of the Convention, experience has shown that the mode therein adopted cannot be carried into operation; for the people do not elect a person for an elector, who, they know does not intend to vote for a particular person as President. Therefore, practically, the very thing is adopted, intended by this amendment" (11 *Annals of Congress* 1289-1290, 7th Cong., 1st Sess. (1802)).

"In the first election held under the constitution, the people looked beyond these agents [electors], fixed upon their own candidates for President and Vice President, and took pledges from the electoral candidates to obey their will. In every subsequent election, the same thing has been done. Electors, therefore, have not answered the design of their institution. They are not the independent body and superior characters which they were intended to be. They are not left to the exercise of their own judgment; on the contrary, they give their vote or bind themselves to give it, according to the will of their constituents. They have degenerated into mere agents, in a case which requires no agency, and where the agent must be useless if faithful, and dangerous, if he is not. See 2 *Story on the Constitution* (5th ed., 1891) § 1463" (S. Rept. No. 22, 19th Cong., 1st sess. (1826), p. 4).

"In the three elections of 1788-89, 1792 and 1796 there was a liberal scattering of votes, 13 persons receiving votes in 1796; but in 1800 there were only five names voted on. As early as 1792 an understanding was established between the electors in some of the different States that they should combine on the same man; and from 1796 on there were always, with the exception of the two elections of 1820 and 1824, regular party candidates. In practice most of the members of the electoral colleges belonged to a party, and expected to support it; and after 1824 it became a fixed principle that the electors offered themselves for the choice of the voters or legislatures upon a pledge to vote for a pre-designated candidate" (III *Cyclopedia of American Government* (Appleton, 1914), "Presidential Elections," by Albert Bushnell Hart, p. 8).

In 1876, James Russell Lowell declined to cast his electoral vote for Tilden instead of for Hayes as he had pledged he would. He wrote to Leslie Stephen as follows:

"In my own judgment I have no choice, and am bound in honor to vote for Hayes, as the people who chose me expected me to do. They did not choose me because they had confidence in my judgment, but because they thought they knew what that judgment would be. If I had told them that I should vote for Tilden, they would never have nominated me. It is a plain question of trust" (Horace Elisha Scudder, "James Russell Lowell" (Boston, 1901), II, 216-217).

STATE LAW

Nomination

The methods of nominating Presidential electors differ in the various States. *Conventions.*—Of the 50 States studied, in the following States electors are

nominated by State conventions of the political parties: Alaska, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Iowa, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma,¹ Rhode Island, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

State committees.—In the following States, electors are nominated by the State committee of the political party: Arkansas, Georgia, Idaho, Massachusetts, New York, Oregon, South Carolina, South Dakota, and Tennessee.

Primary.—The law calls for primaries in Arizona and Kansas. In Alabama there is no statutory requirement for a primary, the method for nominating Presidential electors being left to the party organization. However, in 1960, a primary was held and candidates were chosen therein for Presidential electors.

In Delaware, Presidential electors are nominated by party organization which chooses either the convention method or the State committee method.

In Florida, the Governor nominates such electors on the recommendation of the State executive committee of each political party.

In Kentucky, Presidential electors are chosen either at a State convention or by primary, according to party rules. Democrats used convention method in 1960.

In Louisiana, the manner of nominating electors is within the discretion of the State central committee of the political party but nomination is generally by Party State convention called by such committee.

In Pennsylvania, Presidential electors are nominated by the Presidential nominee of each political party.

Pledge of electors

Primaries.—In the States which nominate electors in primaries, the nomination papers filed by or in behalf of candidates for Presidential electors contain wording from which a pledge to vote for the party's Presidential candidate may be implied.

In Alabama, in the 1960 primary several candidates for Presidential electors were pledged to the national party Presidential candidate, while others ran "unpledged." Several of each category were finally nominated.

In Arizona and Kansas the electoral candidate's nomination papers contain a statement that such candidate is considered "as representing the principles of said party."

In Oklahoma a person nominated as a candidate for Presidential elector by the State convention of a political party takes and files an oath or affirmation to support such party's candidates for President and Vice President.

Others.—In Florida, where the Governor nominates the candidates for Presidential electors on the recommendation of the State executive committee of each political party, the Governor must nominate only persons who have taken an oath to vote for their party's Presidential candidate.

In Oregon where the State central committee of the political party nominates the candidates for Presidential elector, "each candidate for presidential elector so selected shall pledge himself, if elected, to vote in the electoral college for the candidate of his party for President and Vice President."

In Pennsylvania, where electors are nominated by the Presidential nominee, it would be apparent that such electors must have pledged their loyalty to such presidential nominee or he would not have selected them.

Presidential short ballot.—By authorizing the use of the so-called Presidential short ballot, where the names of the Presidential and Vice Presidential candidates are printed on the general election ballot in lieu of the names of Presidential electors, 33 States have implied that they expect the presidential electors, if elected, to vote for the Presidential candidate whose name appears on the ballot in their party column. The laws of these States contain a provision to the effect that a vote cast for the candidates for President and Vice President is deemed to be a vote cast for the electors of that party which such Presidential and Vice Presidential candidates represent: Alaska, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York (where voting machines or short ballots are authorized), North Carolina, Ohio, Oregon, Pennsylvania,

¹ Constitutional amendment of art. 3, sec. 5 in November 1960.

Rhode Island (in voting machines), Texas, Utah, Washington, West Virginia, and Wisconsin.

Ballots containing Presidential candidates and electors.—The same inference of a pledge may be made from a ballot which contains the name of a group of Presidential electors, headed by the names of the Presidential and Vice Presidential candidates; Arizona, Idaho, Kansas, Louisiana, Mississippi, Montana, New York (in precincts which have no voting machines and do not authorize short ballots), North Dakota, Oklahoma, Rhode Island (voting machines should be equipped both ways), South Carolina (if requested in certification), South Dakota, Tennessee, Vermont, Virginia, and Wyoming.

Ballots containing electors only.—In only three States does the law provide for the names of unpledged electors on the general election ballot: Alabama (those who have been chosen in the primary as "unpledged"), Arkansas, and Georgia. Several other States have laws which appear to contain provisions under which the Presidential electors will not have to vote in the electoral college for the party Presidential candidate selected at the national convention. (See our report, "Nomination and Election of Presidential Electors in Certain States," by Mollie Z. Margolin, July 22, 1960.) This should not be confused, however, with the idea that such electors are voting contrary to the instructions of the electorate. For those States have provisions whereby the general election ballot will plainly show whom the electors are pledged to, or whether they decided to remain unpledged, and although the electoral vote of a major political party may thereby be split, nevertheless the voters will have the opportunity to express their choice of a Presidential candidate by voting for certain groups of electors.

Special instructions to electors

The laws of several States contain specific instructions to the elected Presidential electors:

Alaska.—"The electors shall proceed to cast their votes for the candidates for the office of President and Vice President of the party which selected them as candidates for electors. * * *"

California.—"The electors when convened, if both candidates are alive, shall vote for those persons for President and Vice President who are the candidates of the political party which they represent, one of whom at least is not an inhabitant of this State."

Colorado.—"Each elector of President and Vice President shall be required to vote for the pair of Presidential and Vice Presidential candidates who received the highest number of votes at the preceding general election in Colorado."

Florida.—"* * * but the names of the actual candidates for President and Vice President for whom the electors will be expected to vote if elected, are printed on the ballot. * * *" [Italic is author's.]

Hawaii.—"The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice President * * * who are the candidates of the political party which they represent, one of whom at least is not an inhabitant of this State."

Idaho.—Presidential electors " * * * shall be bound to vote for the party candidate for President and Vice President, respectively, whose name appears at the head of the party ticket."

Michigan.—"Those candidates for electors of President and Vice President of this State shall be deemed elected whose names have been certified to the secretary of state by that political party receiving the greatest number of votes for said office the ensuing November election."

New Mexico.—"The Presidential elector nominees of the party whose nominees for President and Vice President of the United States receive the highest number of votes at the general election shall be deemed the elected Presidential electors. * * *"

New York.—Lists of nominations published shall not contain the names of Presidential electors but such candidates shall be described as a specified number of Presidential electors "nominated to support the party candidates, naming them for the office of President and Vice President."

Oklahoma.—Every person nominated as a Presidential elector by the State convention of a political party shall take and file an oath to support the Presidential and Vice Presidential candidates of such party. Violation of such oath by failure to vote or by voting for other persons than the party's candidates is deemed a misdemeanor.

Oregon.—"Each candidate for Presidential elector so selected shall pledge himself, if elected, to vote in the electoral college for the candidate of his party for President and Vice President."

Tennessee.—" * * the words at the head of the group of electors * * * reveal the name of the candidates for President and Vice President * * * whom such group of electors is pledged to support."

Virginia.—"The electors selected by the State conventions * * * shall be expected to vote in the electoral college for the nominees of any national convention to which the said State convention elects delegates unless said candidates for electors shall be instructed by a State convention at least 60 days before the general election in November that they are expected to vote for other persons; in which event any person or persons duly authorized so to do as a national representative of the party holding such national convention may certify to the State board of elections under the same terms and with the name of the political party and the names of the candidates for President and Vice President for whom they are expected to vote in the electoral college."

TABLE OF STATE LAWS

Following is a table of State laws, entitled "Nomination and Election of Presidential Electors—State Law." This table is an outline of the laws of each State as they pertain to the method of nominating electors, their actual or implied pledges to support Presidential candidates in the electoral college, a description of the appearance of their names on the general election ballots, and any special instructions to such electors contained in the law.

Nomination of presidential electors—State law

NOMINATION

State	In primary			By State committee of political party	By State party convention
	Nominated	Pledged in nomination papers	Unpledged		
Alabama (Code 1940, 1955 and 1957 Supp. Title 17 §§ 336, 337, 155, 226)	X ¹	X	X		
Alaska (Election Code 1960, § 6.02)					X
Arizona (Rev. Stats. 1956 §§ 16-301 to 16-305, 16-502, 16-503, 16-844, 16-845)	X	X			
Arkansas (Laws of 1959, Act No. 300)				X	
California (Election Code 1955 and Supp. §§ 2810, 3804, 3805, 3829, 10555)					X
Colorado, (Rev. Stats. 1953 §§ 49-5-1, 49-9-1, 49-20-1, Acts of 1959, ch. 116)					X
Connecticut (Gen. Stats. 1958 § 9-175, § 9-176)					X
Delaware (Code 1953, Title 15, §§ 3301, 4502, 5704, 5706, 4303)				X or X	
Florida (Stats. Ann., 1959 Supp. §§ 103.021, 103.051)				X ^{2,3}	
Georgia (Code, 1936, Ann. and 1958 and 1959 Supps. § 34-2511, § 34-2513, § 34-2502, § 34-2514 (temporary law))				X	
Hawaii (Rev. Laws, 1955, § 11-91, as amended by Act of 1959, 1st Ex. Act No. 9 (S. B. No. 12), §§ 11-39.5, §§ 11-221)					X
Idaho (Code 1947, § 34-1503, 1959 Supp. § 34-904)				X	
Illinois (Rev. Stats. 1959 ch. 46, §§ 7-9(b), (c), 21-1(a), (b), 21-4)					X
Indiana (Burns Stats. 1949, §§ 29-3703, 29-3902 to 29-3907)					X
Iowa (Code 1950 §§ 43.109, 49.32, 54.2, 54.7, 54.8)					X
Kansas (Gen. Stats. 1949 §§ 25-101, 25-202, 25-218, 25-205, 25-206, 25-213, 25-603, 25-802)	X	X			
Kentucky (KRS 118.090, 118.170, 120.020)					X ¹
Louisiana (Rev. Stats., 1950 and 1959 Supp., Title 18, § 18-621, 18-622 to 18-624, 18-671, 18-1353)	(⁴)	(⁵)	(⁶)	(⁷)	(⁸)
Maine (Rev. Stats. 1954 and 1959 Supp., ch. 4, § 16, Ch. 5 §§ 77, 78, 81, 82)					X
Maryland (Ann. Code, 1957 Art. 33, §§ 83, 153-156)					X ¹
Massachusetts (Gen. Laws, Ann. (West, 1958) ch. 53, § 8, ch. 54 §§ 43, 148, 1959 Supp. § 43A)				X	
Michigan (Stats. Ann. 1956 §§ 6.1611, 6.1686, 6.1041 to 6.1047, 1959 Supp. § 6.1042, 6.1697)					X
Minnesota (Laws 1959, ch. 675, art. III, § 20, art. IV § 42(a), art. VII § 7, art. IX §§ 3 to 8)					X
Mississippi (Code 1942 Ann., 1957 Recomp. §§ 3107, 3107.5, 3300)					X

Nomination of presidential electors—State law—Continued

NOMINATION

State	In primary			By State committee of political party	By State party convention
	Nominated	Pledged in nomination papers	Unpledged		
Missouri (Rev. Stat. 1949 §§ 120.840, 128.040 to 128.130, 111.420)					X
Montana (Rev. Code, 1947 and 1959 Supp. §§ 23-1006, 23-1112, 23-2101 to 23-2111)					X
Nebraska (Rev. Stat. 1943, reissue of 1952, 1957 Cum. Supp. §§ 32-504, 32-513, 32-535, 32-556, 32-428, 32-496, 32-4, 104, 32-546 to 32-549, 32-4, 101)					X
Nevada (Rev. Stat. §§ 298.020, 296.175, 298.030 to 298.080)					X
New Hampshire (Rev. Stat. Ann., 1955, §§ 56:62, 58:1 to 58:8, 59:3, 65:5 to 65:8)					X
New Jersey (Rev. Stats. 1937 and 1959 Supp. §§ 19:13-15, 19:13-17, 19:14-8-1, 19:36-1 to 19:36-3)					X
New Mexico (Stat. Ann., 1953 and 1959 Supp. §§ 3-10-1 to 3-10-3, 3-11-40)					X
New York (Election Law (McKinney's) 1949 and 1959 Supp. §§ 131(1) 81, 107, 120, 212, 241, 259, 261, 277, 290, 292, 293)				X	
North Carolina (Gen. Stats. 1943 1952 Recomp. §§ 163-117, 163-108, 163-110)					X
North Dakota (Rev. Code 1953, 1957 Supp. §§ 16-0502, 16-0503, 16-1716, 16-1804, 16-1105, 16-1106)					X
Ohio (Rev. Code, Page's 1953 and 1959 Supp. §§ 3513.11, 3505.10, 3505.39 Const. Amend. art. V § 2a)					X
Oklahoma (Const. art. 3 § 5; and Rev. Stats. 1955, Title 26 §§ 519-522, as added by Laws 1961, H.B. No. 538)					X. ⁹
Oregon (Rev. Stats. §§ 248.010, 248.080, 248.310, 248.355, 250.110)				X ³	
Pennsylvania (Stats. Ann., Purdon's, 1938, and 1959 Supp., Title 25 §§ 2878, 2913, 2963, 3056, 3063, 3166, 3191 to 3194)		(⁹)	(⁹)	(⁹)	
Rhode Island (Gen. Laws (1956) 1959 Supp., § 17-12-13, 17-19-3(d), 17-4-10 to 17-4-12)					X.
South Carolina (Code (1952) § 23-261, §§ 23-308, 23-309, 23-558 to 23-560)				X	
South Dakota (Code 1939 and 1952 Supp. § 16.0240, Laws 1955, ch. 55; Code §§ 16.1101, 16.1105, 16.1203, 16.1602, 16.1603)				X	
Tennessee (Code Ann., 1955 and 1959 Supp. §§ 2-801, 2-1205, 2-403, 2-1210, 2-413)				X ¹⁰	
Texas (Election Code 1951 and 1959 Supp. Arts. 13.38, 11.02, 11.03, 6.05, 11.05)					X.
Utah (Code Ann., 1953 §§ 20-3-8, 20-4-3, 20-3-39, 20-9-2, 20-9-3, 1959 Supp. § 20-7-5)					X.
Vermont (Stats. Ann., 1958, Title 17 §§ 721, 794, 1756)					X.
Virginia (Code, 1950 and 1958 Supp. §§ 24-290.6, 24-290.1, 24-361, 24-290.4, 24-290.6, 24-9)					X.
Washington (Rev. Code § 29.71.020 to 29.71.050)					X
West Virginia (Code Ann., 1955 §§ 68, 90, 97, 43)					X
Wisconsin (Stat. Ann., West's 1957 §§ 5.36(1), 6.23, 9.04, 9.06)					X
Wyoming (Stats. Ann., 1957 §§ 22-101, 22-301, §§ 22-303, 22-304)					X.

See footnotes at end of table.

Nomination of presidential electors—State law—Continued

ELECTION

State	Names on general election ballot			Special instructions (to electors)
	Presidential candidates only ¹¹	Presidential candidates and electors ¹¹	Electors only	
Alabama (Code of 1940, 1955 and 1957 Supp. Title 17 §§ 336, 337, 155, 226).			X	
Alaska (Election Code 1960 §§ 6.04, 6.05, 6.09).	X ¹²			At the electoral college, the electors shall "cast their votes for the candidates for the office of President and Vice President of the party which selected them as candidates for electors."
Arizona (Rev. Stats. 1956 §§ 16-301 to 16-305, 16-502, 16-503, 16-844, 16-845).		X		
Arkansas (Laws of 1959 Act No. 306).			X	
California (Election Code 1955 and Supp. §§ 2810, 3804, 3805, 3829, 10555).	X ¹²			The electors, when convened, if both candidates are alive, shall vote for those persons for President and Vice President who are the candidates of the political party which they represent, one of whom at least is not an inhabitant of this State.
Colorado (Rev. Stats. 1953, §§ 49-5-1, 49-9-1, 49-20-1, Acts of 1959, ch. 116).	X ¹²			"Each elector of President and Vice President shall be required to vote for the pair of Presidential and Vice Presidential candidates who received the highest number of votes at the preceding general election in Colorado."
Connecticut (Gen. Stats. 1958, § 9-175, § 9-176).	X ^{12 13}			
Delaware (Code 1953, Title 15 §§ 3301, 4502, 5704, 5706, 4303).	X ¹²			
Florida (Stats. Ann., 1959 Supp. §§ 103.021, 103.051).	X ¹²			"* * * but the names of the actual candidates for President and Vice President for whom the electors will vote if elected, are printed on the ballot * * *."
Georgia (Code, 1936, Ann., and 1958 and 1959 Supps. § 34-2511, § 34-2513, § 34-2502, § 34-2514 (temporary law)).			X	
Hawaii (Rev. Laws, 1955, § 11-91, as amended by Act of 1959, 1st Ex. Act No. 9 (S.B. No. 12), § 11-39.5, § 11-221).	X ¹²			"The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice President * * * who are the candidates of the political party which they represent one of whom, at least, is not an inhabitant of this State."
Idaho (Code 1947 § 34-1503, 1959 Supp. § 34-904).		X		Presidential electors shall be bound to vote for the party candidate for President whose name appears at the head of the party ticket.
Illinois (Rev. Stats. 1959, ch. 46 §§ 7-9 (b), (c), 21-1 (a), (b), 21-4).	X ¹²			
Indiana (Burns Stats. 1949 § 29-3703, 29-3902 to 29-3907).	X ¹²			
Iowa (Code 1950, §§ 43.109, 49.32, 54.2, 54.7, 54.8).	X ¹²			
Kansas (Gen. Stats. 1949, §§ 25-101, 25-202, 25-218, 25-205, 25-206, 25-213, 25-603, 25-892).		X ¹²		
Kentucky (KRS 118.090, 118.170, 120.020).	X ¹²			
Louisiana (Rev. Stats., 1950 and 1959 Supp., Title 18, §§ 18:621, 18:622 to 18:624, 18:671, 18:1383).	(¹⁴)	X ^{14 15}	(¹⁴)	
Maine (Rev. Stats. 1954, and 1959 Supp. ch. 4 § 16, ch. 5 §§ 77, 78, 81, 82).	X ¹²			
Maryland (Ann. Code, 1957, art. 33 §§ 83, 153-156).	X ¹²			

¹¹ See footnotes at end of table.

Nomination of presidential electors—State law—Continued

ELECTION

State	Names on general election ballot			Special instructions (to electors)
	Presidential candidates only ¹¹	Presidential candidates and electors ¹¹	Electors only	
Massachusetts (Gen. Laws. Ann. (West, 1958) ch. 53 §§ 43, 148, 1959 Supp. § 43A).	X ¹²	-----	-----	"Those candidates for electors of this State shall be deemed elected whose names have been certified to the secretary of state by that political party receiving the greatest number of votes for said office at the ensuing November election."
Michigan (Stats. Ann. 1956 §§ 6.1611, 6.1686, 6.1041 to 6.1047; 1959 Supp. § 6.1042, 6.1697).	X ^{12 16}	(16)	(16)	
Minnesota (Laws 1959, ch. 675 art. III § 20, art. IV § 42(a), art. VII § 7, art. LX §§ 3 to 8).	X ¹²	-----	-----	
Mississippi (Code 1942 Ann., 1957 Recomp. §§ 3107, 3107.5, 3300).	-----	X ¹⁷	(17)	
Missouri (Rev. Stat. 1949 §§ 120.840, 128.040 to 128.130, 111.420).	X ¹²	-----	-----	
Montana (Rev. Code, 1947 and 1959 Supp. §§ 23-1006, 23-1112, 23-2101 to 23-2111).	-----	X ¹²	-----	
Nebraska (Rev. Stat. 1943, reissue of 1952, 1957 Cum. Supp. §§ 32-504, 32-513, 32-535, 32-556, 32-428, 32-496, 32-4, 101, 32-4, 104, 32-546 to 32-549).	X ¹²	-----	-----	
Nevada (Rev. Stat. §§ 298.020, 296.175, 298.030 to 298.080).	X ¹²	-----	-----	
New Hampshire (Rev. Stat. Ann., 1955, §§ 56.62, 58.1 to 58.8, 59.3, 65.5 to 65.8).	X ^{12 15}	(18)	(18)	
New Jersey (Rev. Stats. 1937 and 1959 Supp. §§ 19-13-2, 19-13-4, 19-13-17, 19-14-8-1, 19-36-1 to 19-36-3).	X ^{12 19}	(19)	(19)	
New Mexico (Stat. Ann., 1953 and 1959 Supp. §§ 3-10-1 to 3-10-3, 3-11-40).	X ¹²	-----	-----	"The Presidential elector nominees of the party whose nominees for President and Vice President of the United States receive the highest number of votes at the general election shall be deemed the elected Presidential electors."
New York (Election Law (McKinney's) 1949 and 1959 Supp. §§ 131(1), 81, 107, 120, 212, 241, 259, 261, 277, 290, 292, 293).	X ^{12 20}	X ¹²	-----	
North Carolina (Gen. Stats. 1943, 1952 Recomp., §§ 163-117, 163-108, 163-110).	X ¹²	-----	-----	List of nominations published shall not contain names of Presidential electors but such candidates shall be described as a specified number of Presidential electors nominated to support the party candidates naming them, for the office of, President and Vice President.
North Dakota (Rev. Code 1953, 1957 Supp. §§ 16-0502, 16-0503, 16-1716, 16-1604, 16-1105, 16-1106).	-----	X	-----	
Ohio (Rev. Code, Page's 1953 and 1959 Supp. §§ 3513.11, 3505.10, 3505.39, Const. Amend. art. V § 2a).	X ¹²	-----	-----	
Oklahoma (Rev. Stats. 1955, § 521 as added by Laws 1961, H.B. No. 538 § 3).	-----	X ¹²	-----	

See footnotes at end of table.

Nomination of presidential electors—State law—Continued

ELECTION

State	Names on general election ballot			Special instructions (to electors)
	Presidential candidates only ¹¹	Presidential candidates and electors ¹¹	Electors only	
Oregon (Rev. Stats. §§ 248.010, 248.080, 248.310, 248.355, 250.110).	X ¹²	-----	-----	"Each candidate for Presidential elector so selected shall pledge himself, if elected, to vote in the electoral college for the candidates of his party for President and Vice President."
Pennsylvania (Stats. Ann., Purdon's, 1938, and 1959 Supp., Title 25 §§ 2878, 2913, 2963, 3056, 3063, 3166, 3191 to 3194).	X ^{12 21}	(²¹)	(²¹)	
Rhode Island (Gen. Laws (1956) 1959 Supp., § 17-12-13, 17-19-3(d), 17-4-10 to 17-4-12).	X ^{22 23}	X ²⁴	-----	
South Carolina (Code (1952) §23-261, §§23-308, 23-309, 23-558 to 23-560).	-----	X ²⁵	(²⁵)	" * * * the words at the head of the group of electors * * * reveal the name of the candidates for president and vice-president * * * whom such group of electors is pledged to support."
South Dakota (Code 1939 and 1952 Supp. §16.0240a, ¹ Laws 1955, ch. 55, Code §§16.1101, 16.1105, 16.1203, 16.1602, 16.1603).	-----	X ²⁶	-----	
Tennessee (Code Ann., 1955, and 1959 Supp. §§2-801, 2-1205; 2-403, 2-1210, 2-413).	-----	X ¹²	-----	
Texas (Election Code 1951, and 1959 Supp. arts. 13.38, 11.02, 11.03, 6.05, 11.05).	X ¹²	-----	-----	There shall be printed on ballot underneath the party name in parentheses the word "Electors for * * * President * * * for Vice President" with blanks filled in with names of candidates for President and Vice President "for whom said candidates for electors are expected to vote in the electoral college. * * *" "The electors selected by the State conventions * * * shall be expected to vote in the electoral college for the nominees of any national convention to which the said State convention elects delegates unless said candidates for electors shall be instructed by a State convention at least 60 days before the * * * election * * * that they are expected to vote for other persons. * * *"
Utah (Code Ann., 1953, §§ 20-3-8, 20-4-2, 20-4-3, 20-3-39, 20-9-2, 20-9-3, 1959 Supp. § 20-7-5).	X ¹²	-----	-----	
Vermont (Stats. Ann., 1958, Title 17 §§ 721, 794, 1756).	-----	X ²⁷	-----	
Virginia (Code, 1950, and 1958 Supp. §§24-290.6, 24-290.1, 24-361, 24-290.4, 24-290.5, 24-290.6, 24-9).	-----	X ¹²	-----	
Washington (Rev. Code § 29.71.020 to § 29.71.050).	X ¹²	-----	-----	
West Virginia (Code Ann., 1955 §§ 68, 90, 97, 43).	X ¹²	-----	-----	
Wisconsin (Stat. Ann. West's 1957 §§ 5.36(1), 6.23, 9.04, 9.06).	X ¹²	-----	-----	
Wyoming (Stats. Ann., 1957, §§ 22-101, 22-301, 22-303, 22-304).	-----	X	-----	

¹ No statutory requirement for primary. Party organization decides method.² Governor shall nominate electors upon recommendation of State executive committee, and shall nominate only persons who have taken an oath to vote for their party's Presidential candidate.³ Pledged.⁴ Electors are chosen at convention or primary, according to party rules.⁵ Candidates for Presidential electors to support candidate for President nominated by national party convention but not endorsed by State central committee of party may be nominated by petition signed by 1,000 qualified voters.⁶ Manner of nominating electors is discretionary with State committee of political party.

Footnotes continue on top of next page.

⁷ State convention shall "nominate or provide for the nomination of candidates for Presidential electors. * * *

⁸ Every person nominated as a Presidential elector by the convention of a political party must file an oath to support such party's candidates for President and Vice President.

⁹ Electors are nominated by the nominee of each political party for President.

¹⁰ By party organization.

¹¹ Presidential and Vice Presidential candidates.

¹² A vote for candidates for President and Vice President shall be counted as a vote for the candidates for Presidential electors of such Presidential candidate's party.

¹³ Discretionary with Secretary of State. He may place Presidential candidate's name on ballot in lieu of names of electors.

¹⁴ There may be 2 or 3 slates of candidates and electors; 1 endorsed by State central committee, 1 to support national candidate if not endorsed by State central committee, and 1 composed of independent electors.

¹⁵ Unless Presidential candidate requests that his name be omitted.

¹⁶ Office title, however, reads: "Electors of President and Vice President of the United States."

¹⁷ May have 2 groups of electors, 1 headed by national party candidates for President, and 1 under heading "Unpledged."

¹⁸ Office title, however, reads: "Electors of President and Vice President of the United States."

¹⁹ Office title reads: "Presidential electors for."

²⁰ Where voting machines or short ballots are authorized.

²¹ Office title on ballot is "Presidential electors."

²² However, means must be furnished whereby the voter can cast a vote in part for the candidates for Presidential electors of one party, and in part for those of one or more other parties or in part or in whole for persons not nominated by any party.

²³ In voting machine.

²⁴ Law provides that names of the Presidential electors selected at party State convention shall be placed on ballot labels for the forthcoming election (§ 17-12-13), but voting machine may also be provided with one device for each party for voting for all Presidential electors of that party by one operation, and a ballot therefor containing only the words "Presidential electors for" preceded by the name of the party and followed by the names of the candidates thereof for the offices of President and Vice President. * * * (§ 17-19-3(d)).

²⁵ Names of Presidential candidates may be printed above names of electors if so requested in certification or petition.

²⁶ A voter is not required to vote a party ticket.

²⁷ The names of the candidates for President and Vice President may be added to the party designation on the ballot, which must show the names of the electors of the party.

(The following is reprinted from the American Bar Association Journal, vol. 47, p. 251, March 1961:)

THE ELECTORAL PROCESS AND THE POWER OF THE STATES

(By Donald M. Wilkinson, Jr., of the New York Bar (New York City))

Every 4 years considerable attention is directed to the wholly unique process of selecting the President of the United States. It seems appropriate at this time to consider the constitutional aspects of this—the electoral process—and the consequent, although not widely realized, power of the states to control it.

"APPOINTMENT" OF ELECTORS

The second clause of section 1 of article II of the Constitution provides: "Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress * * *." The twelfth amendment to the Constitution, having superseded another paragraph of that clause, sets forth the procedure whereby the "appointed" electors select a President.

Section 2 of article I of the Constitution provides for popular election of Representatives, and the seventeenth amendment has made a similar provision with respect to Senators. It is clear that the framers of the Constitution did not have in mind the selection of a President in the same manner. When the Constitution was drafted, the subject of the proper method of choosing a President gave rise to a divergence of views, and the second clause of section 1 of article II appears to represent both a compromise of these views and a retreat from the problem, granting to the respective State legislatures the power to appoint, in whatever manner they might deem proper, electors who in turn select a President. And the case of *McPherson v. Blaker*¹ confirms this. There the court upheld the "appointment" of electors by the State of Michigan as a result of popular elections on a districtwide basis, but went on to recognize the wide scope of State power in this field. Reference was made to the following earlier, and apparently acceptable, procedures for the choice of electors: by the

¹ 146 U.S. 1 (1892).

legislature itself on joint ballot; by the legislature through a concurrent vote of the two houses; by vote of the people for a general ticket; by vote of the people in districts; partly by the people voting in districts and partly by the legislature; and by the legislature from candidates voted for by the people in districts.

There is a clear distinction between the right to vote for a Presidential elector and the right to vote for Members of Congress. The former is a right granted by the individual State;² the latter, a federally derived right.³ The voter at a congressional election derives his right from section 2 of article I of the Constitution⁴ in the case of an election of Representatives and from the seventeenth amendment to the Constitution⁵ in the case of an election of Senators. Yet it is within the power of each State to prescribe suffrage qualifications for all popular elections.⁶ However, such State power in the case of congressional elections is indirect, for the Constitution specifically provides that suffrage qualifications must be the same as those for "electors of the most numerous branch of the State Legislature."⁷ There is no similar constitutional requirement if states choose to "appoint" Presidential electors by popular election and a State could in such case prescribe suffrage qualifications different from those governing elections of Congressmen and State legislators.

Certainly, however, the power of the States to appoint Presidential electors is not unlimited.

LIMITATIONS ON RIGHT OF STATES TO RESTRICT SUFFRAGE

If election by the people is the method of "appointment" chosen, the fifteenth and nineteenth amendments clearly impose limitations on the State in question in the framing of suffrage qualifications.

Although at the time of its adoption the fourteenth amendment was not considered restrictive of the power of the States to set up voting qualifications,⁸ certain decisions indicate that it is now not without impact in this field. In two of the celebrated "white primary" decisions, *Nixon v. Herndon*⁹ and *Nixon v. Condon*,¹⁰ the Supreme Court, after having disposed of the "state action" question, ruled that the procedure in question was unconstitutional as a violation of the 14th amendment. In the former, the Court, speaking through Mr. Justice Holmes, said:

"We find it unnecessary to consider the Fifteenth Amendment, because it seems to us hard to imagine a more direct and obvious infringement of the Fourteenth."¹¹

In the latter, through Mr. Justice Cardozo:

"The fourteenth amendment, adopted as it was with special solicitude for the equal protection of members of the Negro race, lays a duty upon the court to level by its judgment these barriers of color."¹²

In the more recent case of *Davis v. Schnell*,¹³ where a Federal district court invalidated a literacy test as a suffrage requirement, it did so on the ground that in application it conflicted with the "equal protection" clause of the fourteenth

² *In re Green*, 134 U.S. 377 (1890).

³ *Ex Parte Yarborough*, 110 U.S. 651 (1884); *Wiley v. Sinkler*, 179 U.S. 58 (1900); *Swafford v. Templeton*, 185 U.S. 487 (1902); *U.S. v. Classic*, 313 U.S. 299 (1941).

⁴ "The House of Representatives shall be composed of members chosen every second year by the people of the several States * * *."

⁵ "The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof. * * *"

⁶ *Minor v. Happersett*, 21 Wall. (88 U.S.) 162 (1874); *Williams v. Mississippi*, 170 U.S. 213 (1898); *Pope v. Williams*, 193 U.S. 621 (1904); *Guinn v. United States*, 238 U.S. 347 (1915); *Breedlove v. Suttles*, 302 U.S. 277 (1937); *Pirtle v. Brown* (6th Cir. 1941), 118 F. 2d 218, *certiorari denied*, 314 U.S. 621 (1941).

⁷ Article I, § 2; seventeenth amendment.

⁸ Cooley, "Constitutional Limitations," pp. 16-17. Note also the following statement by the Supreme Court: "The fifteenth amendment does not confer the right of suffrage upon any one. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property, or education. Now it is not." *United States v. Reese*, 92 U.S. 214 at 217 (1875).

⁹ 273 U.S. 536 (1927).

¹⁰ 286 U.S. 73 (1932).

¹¹ *Nixon v. Herndon*, *supra*, note 9 at 540.

¹² *Nixon v. Condon*, *supra*, note 10 at 89.

¹³ 81 F. Supp. 872 (S.D., Ala., 1949), *affd. per curiam*, 336 U.S. 933 (1949).

amendment as well as the fifteenth amendment.¹⁴ Although it seems quite clear that the same decision would have been reached in these cases on the basis of the fifteenth amendment alone, it is noteworthy that the impact of the fourteenth amendment in cases dealing with State action with respect to the voting process is now judicially established. We have no reason to doubt that its effect will reach beyond the fifteenth and nineteenth amendment limitations.¹⁵ Consider the following language of the Court in *Pope v. Williams*:¹⁶

"The question might arise if an exclusion from the privilege of voting were founded upon the particular State from which the person came, excluding from that privilege, for instance, a citizen of the United States coming from Georgia and allowing it to a citizen of the United States coming from New York or any other State. In such case an argument might be urged that, under the fourteenth amendment of the Federal Constitution, the citizen from Georgia was by the state statute deprived of the equal protection of the laws. Other extreme cases might be suggested. We neither assert nor deny that in the case supposed the claim would be well founded that a Federal right of a citizen of the United States was violated by such legislation, for the question does not arise herein * * *"

With the expansion of the scope of the fourteenth amendment since *Pope v. Williams*, there seems little doubt as to how the Court would resolve such a controversy today. In any event it would seem that judicial interpretation of the fourteenth amendment has rendered the fifteenth, and perhaps even the nineteenth, amendment superfluous insofar as State action is concerned.

LIMITATIONS ON STATE CONTROL OF ELECTION MACHINERY

Part and parcel of the power of each State to "appoint" Presidential electors is the right to regulate election machinery if it chooses to "appoint" by virtue of a popular election. Here too the Federal Constitution imposes restraints.

In *MacDougall v. Green*,¹⁷ the Progressive Party attacked the provision of the Illinois Election Code which required that a petition to form and to nominate candidates for a new political party be signed by 25,000 voters, including at least 200 from each of at least 50 of the 102 counties in the State. The requirement was upheld on the ground that it served a legitimate legislative purpose. Nevertheless, here again it was tacitly conceded that a meritorious question had been raised under the "equal protection" clause of the fourteenth amendment. And the limitations in this field imposed by the fourteenth amendment necessarily apply to all State regulation of election machinery, whether Federal or State offices are at stake.

It has been suggested that State regulation of election machinery must necessarily fall in the face of conflicting congressional action.¹⁸ Federal authority to impose paramount sanctions is sought in the first clause of section 4 of article I of the Constitution which provides: "The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to places of choosing Senators." Speculative as is the conclusion that Congress might garner broad authority to regulate election procedures from such a clause, it is indeed questionable whether this would be authority for congressional regulation of machinery effecting State "appointment" of presidential electors.¹⁹

¹⁴ And where the court has refused to invalidate tests of this nature it has recognized that meritorious issues under the fourteenth amendment and the fifteenth amendment were raised. *Williams v. Mississippi*, supra, note 6; *Trudeau v. Barnes* (5th Cir. 1933) 65 F. 2d 563, certiorari denied, 290 U.S. 659 (1933); *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45 (1959).

¹⁵ And the growing importance of the "equal protection" clause makes this question more than academic. See Tussman and ten Broek, "The Equal Protection of the Laws," 37 Calif. L. Rev. 341-81 (1949); and consider the subsequent development of the clause reflected by the school segregation cases.

¹⁶ Supra, note 6 at 634.

¹⁷ 335 U.S. 281 (1948).

¹⁸ "The Right To Form a Political Party," 43 Ill. L. Rev. 832 (1949). See also *U.S. v. Classic*, supra, note 3; *Lassiter v. Northampton County Board of Elections*, supra, note 14.

¹⁹ Since Presidential electors perform a Federal function, Congress, in the exercise of its power to preserve the departments and institutions of the Government from impairment or destruction, may enact legislation safeguarding elections of such officers from the improper use of money to influence the result. *Burroughs v. United States*, 290 U.S. 534 (1934). For statutory provisions imposing criminal sanctions on conduct in connection with elections, see 2 U.S.C.A. 241-256; 18 U.S.C.A. 591-612.

LIMITATIONS ON CHOICE OF "APPOINTMENT" PROCESS

Granting the paramount authority of the respective States to choose the method of "appointment" of Presidential electors but taking into account the established impact of the equal protection clause of the fourteenth amendment as a limitation on the function of the popular election process, it is quite likely that such a clause, in the event the question ever arises, would be held to be a limitation on the State "appointment" process generally and that any discriminatory "appointment" procedure would be struck down. *McPherson v. Blacker*, however, is clear authority that the fourteenth amendment has not "frozen" the popular election as the only proper method of "appointment" of Presidential electors.²⁰

Perhaps one question of practical concern is whether a State may set up a discriminatory districting system and "appoint" electors on the basis of popular elections on a districtwide basis. In *Colegrove v. Green*,²¹ on an attack of a districting system for the election of Members of the House of Representatives, the Court ruled that no justiciable controversy was presented, that such was a political question which must be dealt with by the Congress under its authority to secure fair representation by the States and by the House itself under the power conferred upon it to be the judge of the elections and qualifications of its members.²² Apart from the substantial limits imposed upon the rule of *Colegrove v. Green* by *Gomillion v. Lightfoot*,²³ a decision of the Court in its current term, it is doubtful that the absence of similar constitutional provision with respect to the elections and qualifications of Presidential electors renders State action free from limitation. Rather, it seems likely that any patently discriminatory plan would be struck down by the ubiquitous equal protection clause. There seems little doubt that this clause of the fourteenth amendment constitutes a limitation on the respective State legislatures in all of the process of "appointment" of Presidential electors.

THE PRESENT SYSTEM

Today, all States have chosen to "appoint" Presidential electors by means of a statewide popular election.²⁴ Prior to the election, each political party certifies its slate of nominated electors to the appropriate State official.²⁵

²⁰ "If because it happened, at the time of the adoption of the fourteenth amendment, that those who exercised the elective franchise in the State of Michigan were entitled to vote for all the Presidential electors, this right was rendered permanent by that amendment, then the second clause of art. II has been so amended that the States can no longer appoint in such manner as the legislatures thereof may direct; and yet no such result is indicated by the language used nor are the amendments necessarily inconsistent with that clause. * * * There is no color for the contention that under the amendments every male inhabitant of the State being a citizen of the United States has from the time of his majority a right to vote for Presidential electors." *McPherson v. Blacker*, supra note 1 at 38.

²¹ 328 U.S. 549 (1946).

²² Constitution art. I, secs. 4-5.

²³ 364 U.S. 339 (1960). A complaint alleging that a local act redefining the municipal boundaries of Tuskegee, Ala., had as its purpose the removal from the city of substantially all Negro voters was held to have stated a cause of action. *Colegrove v. Green* was distinguished as involving an alleged discriminatory apportionment resulting from legislative inaction. While the decision of the Court in *Gomillion v. Lightfoot* rested on the fifteenth amendment, Mr. Justice Whittaker, in concurring, felt that the "equal protection" clause of the fourteenth amendment was determinative.

²⁴ Nebraska and New Mexico, in lieu of providing for the direct election of electors, provide for administrative appointment of electors of the party of Presidential and Vice Presidential candidates successful at the polls. Rev. Stat. Neb. § 32-4.104, § 32-546; N.M. Stat. (1953) 3-10-2.

²⁵ In the State of Pennsylvania, the nominee for President of the national convention of each party nominates the slate of electors for his party. 25 Pa. Stat. Ann. § 2878. Within existing constitutional provisions, this would appear to be the most effective restraint on the exercise of elector discretion.

The artificial nature of the function of the elector is illustrated by the fact that statutes in 32 States²⁶ require or permit the names of the party candidates for President and Vice President to appear on the ballot in lieu of the names of the nominees for the office of elector.²⁷ In 14 other States²⁸ the names of the prospective electors, together with the names of the candidates, appear on the ballot. In the former States a vote for particular candidates is deemed a vote for their party's slate of electors.

The States of Arkansas and Georgia until recently dealt with the issue in a manner similar to the States first above referred to. However, Arkansas²⁹ in 1959 and Georgia³⁰ in 1958 enacted legislation providing that only the names of the respective parties and nominees for electors were to appear on the ballot, specifically providing that the names of the candidates for President and Vice President were not to appear on the ballot. Although this legislation is obviously intended to limit the control of the National Democratic Party, its effect is to return a measure of importance to the office of Presidential elector.

STATE CONTROL OF PRESIDENTIAL ELECTORS

Each State has the power to require reasonable qualifications of candidates for State office.³¹ Clearly, arbitrary and unreasonable qualifications, those not designed to serve a legitimate purpose, could be successfully contested as violative of the fourteenth amendment. Since it has been determined that a Presidential elector, although he performs a Federal function, is a State officer,³² no distinction can be imagined which would support any different treatment of State power to require qualifications of Presidential electors subject to the same limitation.³³ And the possibility of qualifications varying from State to State would be no basis for the denial of State power.

Is the forfeiture of elector discretion a legitimately imposed qualification? If so, is it enforceable?

In *Ray v. Blair*³⁴ the question arose whether the Alabama State Democratic

²⁶ Laws of Alaska, 1960, ch. 83, secs. 3.03, 6.05; Calif. Elections Code, Ann. §§ 3804, 3805; Colo. Rev. Stat. (1953) 49-9-1; Conn. Gen. Stat. Ann. § 9-175 (optional with secretary of state); 15 Del. Code Ann. 4502, 4951, 5704; Fla. Stat. Ann. §§ 103.021, 103.11; Ill. Ann. Stat. ch. 46, § 21-1; Ind. Stat. Ann. § 29-3902; Iowa Code Ann. §§ 49.32, 54.2; Ky. Rev. Stat. Ann. § 118.170; La. Stat. Ann.-Rev. Stat. 18: 1168 (voting machine, but voter must be accorded means to split vote); Me. Rev. Stat. (1954), c. 5, §§ 77, 78; Ann. Code Md. art. 33, §§ 94, 154; Mass. Gen. Laws Ann. c. 54, §§ 43, 78; Mich. Stat. Ann. §§ 6.1706, 6.1045; Minn. Stat. Ann. § 208.04; Ann. Mo. Stat. § 111.420; Rev. Stat. Neb. § 32-422; Nev. Rev. Stat. 296.175, 298.020; N.H. Rev. Stat. 5933; N.J. Stat. Ann. 19.14-8.1; N.M. Stat. (1953) 3-10-2; Cons. Laws N.Y. Election Law § 248 (voting machine, but see § 259, where device must be furnished whereby voter may split vote or write in candidates for elector); Gen. Stat. N.C. §§ 163-108, 163-155; Ohio Rev. Code § 3505.10; 25 Pa. Stat. Ann. § 2963; Gen. Laws R.I. (1959 Supp.) § 17-19-3 (voting machine, but means must be furnished to split vote or write in candidates); Stat. Tex. Ann. Election Code, arts. 6.05, 11.02; Utah Code Ann. § 20-7-5; Rev. Code Wash. 29.71.020; W. Va. Code (1955) § 97; Wis. Stat. Ann. 6.23, 11.03, 9.04.

²⁷ In *Thomas v. Cohen*, 146 Misc. 836, 262 N.Y.S. 320 (1933) and *State v. Myers*, 132 Ohio 18, 4 N.E. (2d) 397 (1936), the constitutionality of such a requirement was unsuccessfully contested. But re the former, see note 44.

²⁸ Ariz. Rev. Stat. (1956) § 16-845; Idaho Code § 34-904; Kan. Gen. Stat. (1949) § 25-603; Miss. Code Ann. § 3107.5 (also permits any political party to enter slate of unpledged electors); Rev. Code Mont. (1947) § 23-2101; N.D. Rev. Code (1943) 16-1106; 26 Okla. Stat. Ann. § 513; Ore. Rev. Stat. 250:110; Code Laws S.C. § 23-309 (names of Presidential and Vice Presidential candidates included at option of party); S.D. Code (1939) § 16.1195; Tenn. Code Ann. § 2-1210; 17 Vt. Stat. Ann. § 794 (names of Presidential and Vice Presidential candidates added at option of party); Code of Va. (1960 Supp.) § 24 § 290; Wyo. Stat. (1957) § 22-301. Where paper ballots are used in the States of Louisiana and New York, the names of the candidates for President and Vice President appear on the ballot with the names of the candidates for the office of elector; La. Stat. Ann.-Rev. Stat. 18:624; Cons. Laws N.Y. Election Law § 107 (must also provide separate column for write-in candidates).

²⁹ Arkansas Statutes (1959 Supp.) §§ 3-325, 3-328.

³⁰ Ga. Code Ann. §§ 34-2508 et seq. (temporary legislation expiring in 1962).

³¹ In a per curiam decision in *Gerende v. Board of Suprs. of Elections of Baltimore*, 341 U.S. 56 (1951), the court upheld a Maryland law requiring candidates for public offices in the State to take an oath that they are not engaged in an attempt to overthrow the Government by force or violence.

³² In *re Green*, supra, note 2; *McPherson v. Blacker*, supra, note 1.

³³ Many States require that its electoral slate include at least one resident from each congressional district.

³⁴ 343 U.S. 214 (1952).

Executive Committee might, pursuant to statutory authority, exact from candidates for nomination as Presidential electors a pledge to aid and support the nominee of the National Convention of the Democratic Party. In a 5 to 2 decision, the Court upheld the requirement of the pledge but refused to say that it would be enforceable, not refuting the contention that there existed "an assumed constitutional freedom of the elector under the Constitution, art. II, § 1 to vote as he may choose in the electoral college."³⁵ However, it would seem that if the pledge were valid, but unenforceable, its only value would derive from the extent to which, by indirection, it accomplished a variance from the "assumed constitutional freedom" and this was the basis of the dissent.

In the States of Alaska,³⁶ California,³⁷ Idaho³⁸ and Maryland,³⁹ the electors are required by law to vote for the Presidential and Vice Presidential candidates of the party which they represent.⁴⁰ In Virginia, the electors are by statute⁴¹ "expected" to vote for the nominees of the national convention of their party unless the State convention instructs otherwise, in which case the national convention may certify a slate of electors which is "expected" to so support its candidate. Oregon requires that each elector, prior to his nomination, must pledge to vote for the party nominees,⁴² and Alaska, in addition to the above stated requirement, requires that each party exact from its electors a pledge to vote for the party candidates.⁴³ And there is little doubt but that the parties themselves, independent of statutory requirement, exert efforts to limit elector discretion. It would appear, however, that the overtones of *Ray v. Blair* cast some doubt as to the effectiveness, in the last analysis, of these State and party requirements.

It has been suggested that, even absent legislative direction with respect to the vote of electors, the historical development of the function of the elector is such that he could now by law be compelled to cast his vote for the candidates of his party.⁴⁴ Aside from the doubt raised by *Ray v. Blair* as to the availability of this remedy, the conclusion seems doubtful without some finding that the State legislature has so expressed its will.

And where the State legislature has affirmatively indicated that a vote for a particular slate of electors is in no way to be interpreted as an endorsement of particular Presidential and Vice Presidential candidates, clearly, the elector would not be bound to so cast his vote.

CONCLUSION

The recent Arkansas and Georgia legislation and the closeness of the 1960 election suggest an interesting possibility. If any election were close enough so that unpledged or renegade electors could prevent either of the two major parties from obtaining a majority in the electoral college by casting their ballots for a third slate of candidates, the selection of a President would, under the twelfth amendment, be thrown into the House of Representatives. The House would then vote by State from among the three candidates receiving the highest number of electoral votes. The selection of a Vice President would be made by the Senate (voting by Members) from the two leading candidates. In both cases, election

³⁵ Ibid. at 220.

³⁶ Laws of Alaska, 1960, c. 83, § 6.09.

³⁷ Calif. Elections Code Ann § 10555.

³⁸ Idaho Code § 34-904.

³⁹ Ann. Code. Md., art. 33, § 156.

⁴⁰ In 1951 Alabama repealed a 1945 law requiring electors to vote for the party nominees. The exaction of a pledge by the parties, which created the *Ray v. Blair* controversy, is apparently still authorized. Code of Alabama, tit. 17, § 345.

⁴¹ Code of Va. § 24-290.6.

⁴² Ore. Rev. Stat. 249.240.

⁴³ Laws of Alaska, 1960, c. 83, § 6.04.

⁴⁴ "The electors are expected to choose the nominee of the party they represent, and no one else. So sacred and compelling is that obligation upon them, so long has its observance been recognized by faithful performance, so unexpected and destructive of order in our land would be its violations, that the trust that was originally conferred upon the electors by the people, to express their will by the selections they make, has, over these many years, ripened into a bounden duty—as binding upon them as if it were written into the organic law. The elector who attempted to disregard that duty could, in my opinion, be required by mandamus to carry out the mandate of the voters of his State." *Thomas v. Cohen*, *supra*, note 27 at 841, 326. Compare, however, the statement of the court in *State v. Hummel*, 150 Ohio 127, 80 N.E. 2d 899 at 909 (1948): "Ohio is entitled to 25 Presidential electors to be elected at the 1948 general election. Each one of the 25 elected may vote as he pleases for any person eligible for the office of President or Vice President of the United States. It is only by force of a moral obligation, not a legal one, that the Presidential electors pledged to certain candidacies fulfill their pledges after election."

must be by a majority. In the event the House, whether because of loss of votes due to divided State delegations or because of support for the third candidate, could not cast 26 votes for one of the candidates, the Vice President selected by the Senate would serve as President until the House could take action,⁴⁵ which conceivably might never occur during the ensuing 4 years.

Clearly, the dissent in *Ray v. Blair* is correct in concluding that the prevalence of pledges of Presidential electors would strip the office of all freedom of action. But this, absent these pledges, with little exception, has been, to modern memory, the history of the electoral college and perhaps the majority decision can be justified in that it takes judicial notice of the mere formalism of the electoral college and much can be said for preventing the electoral college device from frustrating the will of the people. But the dissent seems on sound grounds questioning whether this is a basis for constitutional interpretation. Perhaps the time has come for the Congress and the people, via the constitutional amendment process, to take "judicial notice" of the fiction known as the electoral college.

None can deny that conditions existing at the time of the adoption of the Constitution which discouraged its framers from lodging the choice of the Executive with the people no longer exist and that the choice of a President under any new system must result from a popular election.

The first solution that comes to mind is the complete abolition of the electoral system and the selection of a President and Vice President at a nationwide popular election. However, the practicalities of the situation require us to dispense with this rather summarily. The present system accords to the less populous States a disproportionately greater voice in the electoral college and it is wishful thinking to suppose that they would surrender this.

What clearly could be accomplished is the death of the office of elector itself and the birth of popular participation in the selection of a President and Vice President as a constitutional right. Only very occasional support for the principle of elector discretion is observed and every State today "appoints" electors at a popular election. The President and Vice President could be chosen by electoral votes, the allocation of which would be automatically determined by the various State popular elections.

Any amendment should also abandon, or at least vary to achieve a more equal representation of the popular voice, the present function of the House of Representatives and the Senate. If abandoned, the new system would necessarily entail election by a plurality of electoral votes.

Insofar as the distribution of electoral votes among the candidates is concerned, perhaps the suggestion with the greatest support is that the Constitution be amended so that the electoral vote in each State be distributed to the candidates in proportion to their success at the polls.⁴⁶ It is pointed out that this would eliminate the longstanding lack of attention given by candidates as well as officeholders, to the "sure" States and bring down to realistic proportions the importance of the few "pivotal" States. A few problems, however, come to mind.

While it is true that under such a system a third-party candidate could not swing the entire electoral vote of a State from one to the other of the principal candidates, it is quite possible that the proportionate distribution of electoral votes feature (with its necessary concomitant, election by plurality) would nurture the development of many "third" parties.

Further, only the most undesirable aspect of the Federal feature of the present system would be retained, if not accentuated. Nevada would still have a disproportionately strong voice in the selection of a President but it would not speak with one voice as the State of Nevada. Absent the latter, there is little, if any, justification for the former. And inasmuch as the "single-party" States are by and large within the smaller State group, the influence of such a group would be increased relative to that of the more populous States where a close division between the two major parties would prevent any sizable swing of electoral votes.⁴⁷

Perhaps a new constitutional scheme for the selection of a President and Vice President, representing a compromise between a completely proportionate

⁴⁵ Twentieth amendment, § 3.

⁴⁶ Kefauver, "Proposed Changes in the Presidential Election System," 1 Vand. L. Rev. 396 (1948); Vandenbosch, "The Need for Some Constitutional Changes," 37 Ky. L. J. 343 (1949); Wechsler, "Presidential Elections and the Constitution: A Comment on Proposed Amendment," 35 A.B.A.J. 181 (1949).

⁴⁷ See Wechsler's article, *supra*, note 46.

allocation of electoral votes and the retention of all aspects of the Federal feature, is in order. A portion of each State's electoral votes, for example, one-third, could be cast for the candidate receiving the greatest number of votes at the popular election while the balance could be allocated on a proportionate basis.⁴⁸ To be of any significance insofar as the smaller States are concerned this would, of course, require a proportionate increase in the number of each State's electoral votes. It would seem that this solution would do less violence to established sets of relative values and at the same time be less unpalatable to those States content with the present, not wholly satisfactory, system for the distribution of electoral votes.

(The following is reprinted from U.S. News & World Report, July 11, 1960, p. 100:)

WILL THE SOUTH DECIDE THE '60 ELECTION?—IN DEADLOCKED ELECTION, SOUTH'S POWER "WOULD BE FORMIDABLE"—"ELECTORAL VOTE: SOUTH'S ONLY EFFECTIVE WEAPON"

It isn't being talked up now, but—
Keep an eye on key States of the South, once the national conventions are over.

Strategy is all set, if 1960 nominees are unacceptable to the Southerners.

Strategy: Throw the election into the House of Representatives, where the South could hold the balance of power. Is that far fetched? A switch of only 20,361 votes from Truman to Dewey in 1948 would have done just that.

Heart of the Southern plan is the use of Presidential electors. A Southern lawyer in this study tells how it might work, and what the South expects to win with it.

Following are excerpts from an article, "Presidential Elections; A Study of the Appointment and Function of Presidential Electors," written by Hall E. Timanus, a member of a prominent law firm in Houston, Tex.:

We in the South are engaged in a great constitutional struggle to preserve our way of life, not in some trivial game. Every known stratagem is being employed against the South in this struggle, including appeals to our strong sense of loyalty to the Democratic Party. To prevail, we must be prepared, if the need is felt, to utilize any legal weapon available. To use the electoral system as a weapon, if this decision be made, would merely be calling to our aid provisions of the Constitution of the United States designed to accomplish our aim, namely, the election to the highest office in our Nation of the best qualified man. * * *

The Constitution of the United States provides that the person elected President of the United States must receive a majority of the whole number of electors appointed [that is, the electors chosen by voters in the general election].

Since the total number of electors to be appointed (elected) by the 50 States of the Union this November will be 537, a person to be elected President must receive the electoral vote of a minimum of 269 electors. The 11 Southern States will appoint the following number of electors:

Alabama-----	11	North Carolina-----	14
Arkansas-----	8	South Carolina-----	8
Florida-----	10	Tennessee-----	11
Georgia-----	12	Texas-----	24
Louisiana-----	10	Virginia-----	12
Mississippi-----	8		

Between them, these States will appoint a total of 128 electors. What a political weapon these electors represent.

⁴⁸ In the interest of preventing an undue fragmentation of the two-party system, Wechsler favors a proposal of Senator Norris to require a successful candidate to receive 35 percent support in the electoral college and, absent such support, selection by a majority of the members of Congress on joint ballot; supra, note 46. This would seem to be a sound feature of any amendment.

Let us suppose, for the sake of argument, that this November the States of Alabama, Arkansas, Georgia, Louisiana, Mississippi and South Carolina elect 57 free electors, unpledged to any presidential candidate, as their laws apparently now permit; that the State of Virginia, as its laws apparently now permit, elects 12 electors pledged to a Virginia Democrat; that the State of Texas, as its laws now permit, elects 24 electors pledged to a presidential candidate nominated by the State Democratic convention—being some presidential candidate other than the one nominated by either of the two major political parties on the national level—who may or may not be the same presidential candidate as the one to whom the Virginia electors may be pledged; and that the States of Florida, North Carolina, and Tennessee, in accordance with their respective laws, elect 35 electors pledged to vote for some presidential candidate or candidates other than the presidential candidates nominated by the two major political parties on the national level, who may or may not be the same candidate or candidates as the one or ones to whom Virginia and Texas electors may be pledged.

Under such circumstances, if, as a result of the outlined actions of the 11 Southern States, all presidential candidates, including those nominated by the Democratic National Convention and the Republican National Convention, fail to receive the requisite 269 electoral votes needed for election, but one or more of said candidates needs 57 or fewer electoral votes for election, 57 free and unpledged electors from the States of Alabama, Arkansas, Georgia, Louisiana, Mississippi and South Carolina would represent the balance of power and could determine the next President.

This would put tremendous bargaining power in the hands of these free electors, and, in exchange for their electoral votes, they might exact from a presidential candidate needing their votes for election concessions and promises on issues, appointments and other things favorable to the preservation of our Republic and to the South.

For instance, they might win a promise from such candidate that, upon becoming President, he would appoint as Attorney General of the United States, a key official in enforcing so-called civil rights laws in Federal courts, a person friendly to the South, and, as Justices of the Supreme Court of the United States, a number of appointees from the South having substantial previous judicial experience and holding traditional views on southern problems and the proper exercise of judicial restraint in connection therewith.

On the other hand, if the free electors holding the balance of power are unable to strike any bargain with a candidate for President needing their electoral votes for election regarding such concessions and, consequently, determine to cast their electoral votes for some different candidate for President, thereby preventing any candidate from receiving enough electoral votes for election, or if none of the presidential candidates have enough electoral votes after the November elections which, combined with the votes of the free electors, would result in a majority of the whole number of electors appointed, then, as provided by the Constitution of the United States, the choice of the President would be made by the U.S. House of Representatives.

In this event, the bargaining power of the 11 Southern States would be even more impressive.

The Constitution of the United States provides that, in the event no person voted for as President shall receive a majority of the whole number of electors, the U.S. House of Representatives shall choose immediately, by ballot, the President from the three persons voted for as President having the highest number of electoral votes. In so choosing the President, the vote in the House of Representatives shall be taken by States, the representation of each State having one vote, and a majority—26—of all the States shall be necessary to a choice.

The U.S. Supreme Court, in *McPherson v. Blacker*, commenting on this provision of the Constitution, stated that "in case of a failure in the election of President by the people, the House of Representatives is to choose the President; and 'the vote shall be taken by States, the representation from each State having one vote.' The State acts as a unit, and its vote is given as a unit, but that vote is arrived at through the votes of its representatives in Congress elected by districts."

HOW SMALLER STATES GAIN POWER

Since each State has but one vote when it devolves on the U.S. House of Representatives to choose a President, it is obvious that the power and influence of the smaller States is greatly increased in the selection of the President over what it is in the electoral college. For example, in the electoral college, the State of New York has 45 electoral votes, whereas Mississippi has only 8; but, in the House of Representatives, Mississippi has an equal vote to that of New York in choosing the President. By way of a further example, California has 32 electoral votes, whereas Arkansas has only 8 in the electoral college; but, in the House of Representatives, both Arkansas and California have an equal vote, one vote each, in choosing the President. In the House of Representatives, the bargaining power of the 11 Southern States, if they acted in unison, would be formidable.

In order to visualize better how the choice of the President by the House of Representatives is made, let us assume, for the moment, that as a result of the election this coming November no person voted for by the electors for President receives a majority of the electoral votes and, consequently, the election is thrown into the House of Representatives. Further, let us assume that the three persons voted for by the electors for President receiving the highest number of electoral votes are the nominee of the Democratic National Convention and the nominee of the Republican National Convention and the person receiving the electoral votes of the 57 free electors of the 6 Southern States named hereinabove.

The choice for President would be from among these three persons.

Assuming also that the representation in the House of Representatives from the regions of the Nation outside the Southern States and the border States would be fairly evenly divided between Democrats and Republicans—which would seem to be a valid assumption when one considers that after the congressional elections in 1958 the division in the House of Representatives from all States, outside the Southern and border States, was 149 Democrats and 142 Republicans—the Southern States, with the border States of Kentucky, Maryland, Missouri, Oklahoma, and West Virginia, would have the balance of power in choosing the President and could strike bargains for votes to win concessions, such as agreements on legislation, appointments and other things favorable to the Republic and the South.

This is the kind of raw political power which politicians understand. It would make the South the most powerful minority bloc in the United States and restore it to the position of political power it once held in this Nation, from which position it jealously guarded the sacred institutions of our constitutional Republic.

It may be asked whether the House of Representatives has ever chosen the President of the United States. The answer is an emphatic "yes," once in 1801 and again in 1825. Furthermore, the election of the President came closer to being thrown into the House of Representatives in 1948 than most people realize and most Democratic and Republican politicians want to admit.

The first time the House of Representatives chose a President of the United States occurred in an election between Thomas Jefferson and Aaron Burr.

The electoral vote for each was equal, as a consequence of which, no choice having been made by the people, the House of Representatives proceeded on Wednesday, February 11, 1801, in the manner prescribed in the Constitution, to the choice of a President.

On the first ballot, eight States voted for Jefferson, six States voted for Burr, and the votes of two States were divided. The balloting continued until Tuesday, February 17, 1801, when the 35th ballot, as had all the previous ballots, resulted the same as the first. The House then proceeded to the 36th ballot, and, it having been concluded, the Speaker declared that, the votes of 10 States having been given for Jefferson, the votes of four States for Burr, and the votes of two States in blank, Thomas Jefferson, of Virginia, had been, agreeably to the to the Constitution, elected President of the United States for the term of 4 years commencing on the 4th day of March 1801.

Again, in 1825, it having been determined that neither person voted for as President had received a majority of the votes of the electors, it devolved on the House of Representatives of the United States to choose a President from the three highest on the list of those voted for by the electors for President, which three were Andrew Jackson, 99 electoral votes; John Quincy Adams, 84 electoral

votes; and William H. Crawford, 41 electoral votes. The number of electoral votes necessary to elect was 131.

A member from each State, making 24, were appointed tellers, who, having examined the ballots, announced that the votes of 13 States had been given for John Quincy Adams; the votes of seven States for Andrew Jackson; and the votes of four States for William H. Crawford.

The Speaker then declared that John Quincy Adams, having received a majority of the votes of all the States of the Union, was duly elected President of the United States for 4 years to commence on the 4th day of March 1825.

STRATEGY THAT ALMOST WORKED IN 1948

With regard to the presidential election in 1948, it will be recalled that in that year Harry S. Truman was the presidential candidate of the Democratic Party, Thomas E. Dewey of the Republican Party, and J. Strom Thurmond of the States' Rights Democrats.

It was the purpose of Thurmond in running for President to throw the election into the U.S. House of Representatives.

Truman was elected President, receiving 303 electoral votes. Dewey received 189 electoral votes. Thurmond received 38 electoral votes from the States of Alabama, Louisiana, Mississippi, and South Carolina plus 1 from Tennessee. The number of electoral votes necessary to win was 266, a majority of the 531 electoral votes then in the electoral college.

Truman received 37 more electoral votes than he needed for election.

However, Truman carried two key States, one of which in particular was considered fairly safely Republican, in which a switch of a very few votes would have landed them in Dewey's column rather than in Truman's and would have thrown the election into the House, as planned by Thurmond. These States were Illinois and Ohio.

In Illinois, with 28 electoral votes, Truman received 1,994,715 popular votes and Dewey 1,961,103. Truman carried the State by 33,612 votes out of 3,955,818 popular votes cast for himself and Dewey. A switch of 16,807 popular votes from Truman to Dewey would have given the 28 electoral votes of Illinois to Dewey.

In Ohio, with 25 electoral votes, Truman received 1,452,791 popular votes and Dewey 1,445,684. Truman carried the State by 7,107 votes out of 2,898,475 popular votes cast for himself and Dewey. A switch of 3,554 popular votes from Truman to Dewey would have given the 25 electoral votes of Ohio to Dewey.

If the total of the 28 electoral votes of Illinois and the 25 electoral votes of Ohio, 53 electoral votes, is deducted from the total electoral votes Truman received, 303, Truman's total electoral votes is thereby reduced to 250, less than a majority of all the electoral votes necessary to elect in 1948.

If the total of said electoral votes of Illinois and Ohio, 53, is added to the total electoral votes Dewey received, 189, Dewey's total electoral votes is thereby increased to 242, also less than the majority of all electoral votes necessary to elect in 1948.

The effect then of the switching of the electoral votes of Illinois and Ohio, if the results of the election in 1948 had been as here recast, would have been to throw the election of President into the House of Representatives. When one realizes that 48,489,217 popular votes were cast in the 1948 presidential election for all presidential candidates and that a switch of a total of only 20,361 popular votes from Truman to Dewey in Illinois and Ohio, as hereinabove illustrated, would have spelled success for the Thurmond strategy and doubtless changed the course of history to the advantage of the South, one is less inclined to write off the present movement in the South to deadlock the presidential election this year.

CONCLUSION

For many years prior to 1936, the one-party South had a major voice in the political life and affairs of our Nation. This was due, primarily, to the two-thirds rule which was in effect in Democratic National Conventions for over 100 years. Under the two-thirds rule, candidates were required to receive two-thirds of the votes in a Democratic National Convention in order to be named the convention's nominees for President and Vice President of the United States. The rule assured that the views of all areas and sections of

the United States would be respected in a national convention and that the nominees of the convention, in the main, would speak for all Democrats, united. Largely because of this, in the Southern States at any rate, the practice of nominating Democratic candidates for appointment (election) in such States as electors pledged or otherwise morally committed in advance to vote in the electoral college for the presidential and vice presidential candidates nominated at the Democratic National Convention grew.

At the Democratic National Convention held in Philadelphia in 1836, the two-thirds rule was abrogated, and majority rule in the choice of candidates for President and Vice President was adopted.

SHIFT OF POWER TO NORTH

Since then, the control of the Democratic National Conventions has moved primarily to the heavily populated States of New York, Pennsylvania, Michigan, Ohio, Illinois, and California, and in recent national conventions these States have dominated the choice of Democratic nominees for President and Vice President and dictated the political philosophies expressed in the Democratic platforms.

Support of States' rights, a historic Democratic principle, no longer finds expression in national Democratic platforms. Since then, also, disunity, discord, and strife have become the order of the day in Democratic National Conventions. Nationally, Democrats are rent and torn asunder by profound sectional and philosophical political differences.

The abolition of the two-thirds rule by the Democrats was urged in the name of more democracy, as represented by rule by a simple majority. However, we need only look at our beloved Constitution of the United States to discover that our Founding Fathers found it wise to require decisions on many important affairs of government—and certainly no decision could be more important than the nomination of a candidate for President of the United States, probably the most powerful office in the world today—to be made by two-thirds of those deciding.

For example, by the provisions of the Constitution, no person shall be convicted by the Senate of the United States on an impeachment without the concurrence of two-thirds of the members present; each House of Congress may, by the concurrence of two-thirds, expel a member; bills returned with objections by the President—vetoed—may be passed by two-thirds of both Houses of Congress and become law; the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; the Congress, when two-thirds of both Houses shall deem it necessary, shall propose amendments to the Constitution; on the application of the legislatures of two-thirds of the several States, Congress shall call a convention for proposing amendments to the Constitution; and a quorum of the House of Representatives for the election of President when the election devolves upon the House shall consist of a member or members of the House from two-thirds of the States.

It would be difficult to find more valid support for the restoration of the two-thirds rule in Democratic National Conventions than in the provisions of the Constitution itself. The rule in fairness and justice should be restored.

Unless and until the two-thirds rule is restored in Democratic National Conventions, the Southern States, if they hope to protect their way of life and this constitutional republic, will be literally forced, this year and in the future, to employ the only really effective political weapon they have available to them, namely, their electoral vote, for the purpose of bargaining for favorable concessions and promises on issues, appointments, and other things vitally necessary to the South. There is no other practical course short of abject surrender of their cherished ideals and principles.

(The following is reprinted from U.S. News & World Report, December 12, 1960, p. 124:)

IRRESPONSIBLE GOVERNMENT

(By David Lawrence)

The Nation is accepting with a strange complacency the conduct of the recent election for the Presidency.

Charges of fraud and irregularity in the counting of the ballots have been serious enough to require official investigations. But, distressing as it is for the world to be reading of such imputations of dishonesty, the real shame is that in the United States our elections are conducted under a provision of the Constitution which has long outlived its usefulness.

For, under article II and the twelfth amendment, we are told that a President and Vice President are to be elected by the "electors" chosen in each State. But there is not a word in the Constitution that binds those electors to vote for the party nominees who have received the highest number of votes in their respective States.

We observed in the South this year tickets of electors in certain States described as "unpledged." Some were elected on that basis.

What most people today do not realize, however, is that no elector is constitutionally bound to vote for the candidates for President and Vice President who have, respectively, received the highest number of votes in his State. Only an "unwritten amendment," as it has sometimes been called, has given us the present system whereby the electors usually pay heed to the wishes of the voters themselves. Six States have passed laws instructing electors to vote for the candidates of their political parties.

Since the early 1800's the electors have customarily been pledged by the party organizations to vote for the nominees of the party whether chosen by national convention or otherwise. But this is an unofficial action by a political party. Nowhere in the Constitution are political parties or organizations or the convention system even mentioned.

The Constitution does provide for a vote by the House of Representatives in the event that the electors do not give a majority to any candidate. When this happens, the Members of the House from each State must decide for themselves which candidate to support. Each State delegation has a single vote and casts one ballot. Whoever got a majority of these 50 votes would today be elected President, and the Senate, using the same method, would select the Vice President.

It is always possible for enough electors to cast or withhold their votes so that no candidate has a majority in the electoral college, and thus throw the election into the House of Representatives.

What a travesty this is on so-called democracy! How can the wishes of the people be recognized when an irresponsible faction in a few States can override or ignore the votes of the people?

What is needed is a constitutional amendment that requires the electors to vote in the electoral college for the candidates of the party they represent.

There have been various reforms suggested from time to time which would permit the electoral vote in each State to be split so that each elector would represent only the majority in a congressional district, with two electors "at large" representing the State as a whole.

Certainly such a system would strengthen the position of the political parties and tend to emphasize party responsibility.

But even such a reform would not achieve the desired goal—responsible government. Under the parliamentary system, each district elects a member of the National Legislature and each party selects its own leader from among those members. The "opposition" picks its own "shadow Cabinet" which, through day-by-day contact with the existing government, is kept constantly informed. Within 48 hours after an election the new government, which has already set up its entire Cabinet, usually takes over the whole executive machinery. Continuity is assured—something of transcendent importance in a nuclear age.

The Prime Minister is a member of both the executive and the legislative branches. His removal can be demanded at any time by a majority vote of the Parliament. If he refuses to resign and asks for a general election, then the people decide whether he is right or wrong by electing new members or reelecting the incumbents. The leader of the party in control of the new Parliament is the Prime Minister.

This is responsible government. The people at any time can express themselves on the issues and on the man they wish to lead them. There are some defects in the system, as, for instance, the lack of safeguards against the excessive power of the minority through "splinter" parties, a factor that caused the French recently to revamp their system.

But whether we should adopt a modified form of the parliamentary system or modernize our electoral system, certainly there is need for a thorough examination by Congress of this whole question so that by constitutional amendment we may be relieved of our present system of irresponsible government.

(The following is reprinted from the Washington Post, Dec. 11, 1960:)

ELECTING A PRESIDENT STILL AS UNCERTAIN AS EVER

(By J. R. Wiggins, executive editor, Washington Post)

The President of the United States began concentrating troops in and about Washington to be prepared for any emergency. The Louisville Courier-Journal announced that 100,000 unarmed citizens would march on the Nation's Capital to maintain their rights. Congressmen of both parties stormed that they would fight before they would compromise. It was asserted that 145,000 disciplined troops were ready to go into action.

In the words of at least one major historian, the country was "on the verge of civil war." One Member of Congress tearfully predicted to another that "we shall be cutting one another's throats in this Chamber before the 4th of March."

That was the situation following the disputed Hayes-Tilden election of 1876. It arose out of the uncertainties produced by the Nation's method of electing a President. The immediate crisis was surmounted by the appointment of an extraordinary commission to settle the disposition of disputed electoral votes. Hayes finally was declared elected 185 to 184 electoral votes, although Tilden had a popular majority of 4,300,590 to 4,036,298.

"DEPENDENT" PRESIDENCY

At the next sitting of Congress, the great crisis was fresh in the minds of Senators and Representatives, but every attempt to amend the fundamental election process failed—as every subsequent attempt has failed. Legislators who had peered into the very abyss over which the election process suspended the country could not bring themselves to alter that apparatus.

Nor have they been able to do so since. The Presidency still remains dependent upon the uncertain operation of an electoral system that never operated exactly as intended.

Uncertainty continues to this day as to what Congress, gathered to count the electoral vote, can do if a State withholds its vote entirely. There also is uncertainty as to how far the Federal Government can go in punishing fraud or delay participated in by the chief officials of a State.

VARIOUS PANACEAS

There has been a variety of solutions to these difficulties. In 1821 (and again in 1881), Congress used the curious formula of declaring, by resolution, a contested result both ways, concluding by saying that in either case the total result would be the same.

In the Hayes-Tilden dispute, the electoral commission emphatically declined to go behind the formal certification of the elected officers of the States. As Edward Stanwood put it in his book on the Presidency (1912):

"Since the electors of President and Vice President are State officers whose appointment is certified by the Governor: who meet, discharge their one duty, and adjourn, within the State and under State authority, it follows that a fraud perpetrated with the connivance of the chief officers of a State is subject to no effective revision."

The uncertainties produced by another close popular election vote and another hard contest for an electoral majority have renewed examinations of the electoral college. The popular vote cast last month seems likely to be the closest since the Cleveland-Harrison race of 1888 (5,540,309 to 5,439,853).

The electoral vote is, of course, yet to be decided, but it seems unlikely to rival the 185-to-184 vote of 1876. The electoral system which gives to each State the number of votes it has in Congress and leaves the casting of those votes (so

far as Federal law is concerned) to the whim of the individual electors makes the electoral vote, at this point, beyond ascertainment.

THE MORTON PLAN

The hazards of this system were abundantly foreseen before the worst electoral crisis of our history, in 1876. In 1873, Senator Oliver P. Morton attempted a comprehensive revision of the whole process.

He wished to have the President elected by direct vote of the people, by congressional districts, one vote to a district, with the person having the highest vote in each State obtaining two presidential votes from the State at large. The person getting the most presidential votes was to be President. In cases of a tie within a State, the votes "at large" would be divided.

Further, Congress, by the Morton plan, would have had "the power to provide for holding and conducting the elections of President and Vice President, and to establish tribunals for the decision of such elections as may be contested."

It was a proposal for making presidential elections national elections in every sense and direct elections as well, except for his ingenious "at large" device, which was designed to preserve the proportionate strength of the smaller States that existed under the old system. Its most unusual contribution, however, was the utter elimination of the electors with their undefined degree of discretion (except where State law defines it).

AGAIN IN CONGRESS LAP

Congress wasn't ready for so sweeping a reform in 1873. It was no more ready for it in 1877, in the wake of a national commotion that verged on civil war. Nor was it ready for milder improvements, dozens of which were put forward in the session that commenced in October 1877.

Will it be ready for substantial modification of the electoral college now, after an election whose precise results have been kept in uncertainty for weeks?

No more now than in 1876 does anyone know how much discretion an elector has in many States. Nor are authorities any better informed of what happens if a State chooses to certify no electors before the day when the President of the Senate reads off the electoral tally.

It is to be said in the system's behalf that in spite of the constant threat of crisis, no real crisis has developed since the "crime of '76." The reproach of frustrating the popular will also lies against the system for the second Cleveland race (he got 5,540,000 votes to 5,439,853 but received 168 electoral votes to 233), but even that contest did not disturb the Nation's peace.

LEGAL LOOPHOLES

Failure of States to certify their vote has been a more frequent defect than most citizens realize. In the very first national election, New York's Legislature could not agree on electors and so the New York vote was not cast. The Confederate States cast no electoral votes in 1864. Mississippi, Texas, and Virginia had no electoral votes in 1868. In 1872, the votes of Arkansas and Louisiana were rejected.

Present law provides for certification of the electors but does not provide any legal remedy in case a State does not present its votes. It is unclear what might be done if a partisan State government simply refused to certify a victory for an opposing party. (It has been suggested that disqualification of the State for the next election might be an effective penalty that would induce a State to act.)

RECENT EFFORTS

Reforms given most consideration in recent years have included the proposal of Senator Karl Mundt, Republican, of South Dakota, who put forward in substance the old Morton plan of 1873 with the States choosing their electors as they choose their Senators and Congressmen.

Another proposal, the Lodge-Gossett resolution plan, would abolish the electors and divide the electoral votes that the States have under the present system in proportion to the popular vote.

The Mundt plan would maintain the hazards of the independent electors; but both plans would preserve the advantage that small States otherwise would lose through direct election according to popular vote.

"It is to be hoped," wrote Edward Stanwood in summarizing the 1876 contest, "that the patriotism of the American people and their love of peace may never again be put to so severe a test as was that to which they were subjected in 1876 and 1877."

The hope remains, but the Congress of the United States is yet to do anything to make the hope any brighter than it was 90 years ago.

(The following is reprinted from the New York Times Magazine, December 18, 1960:)

A NEW COURSE FOR THE ELECTORAL COLLEGE

(By James MacGregor Burns¹)

Tomorrow, groups of electors will meet in the various State capitals of the Union to cast their ballots for President of the United States of America. In Washington, at 1 p.m. on January 6, page boys will carry the sealed ballots, packed in mahogany boxes, to the rostrum of the House of Representatives and officials will solemnly count them before a bored joint session of Congress. John F. Kennedy and Lyndon B. Johnson will then be officially declared the next President and Vice President of the United States.

And so once again we will see America's oldest political "puppet show"—the electoral college—in action. For, after a century and a half of almost ceaseless criticism, it is still a fixture of our political system.

Most Americans, regardless of party, are agreed on the failings of the electoral college. It is unfair, inaccurate, uncertain, and undemocratic. Unfair, because the presidential candidate losing a State by even a close margin forfeits all of that State's electoral votes. Inaccurate, because in most elections the winner's electoral votes are inflated grotesquely out of proportion to his popular vote. Uncertain, because Presidential electors are not legally bound to vote for the candidate who carries the State. And undemocratic, because if no candidate wins a majority of the electoral college the verdict is rendered in the House of Representatives, where each State delegation, no matter how large, casts but a single vote in choosing among the three top candidates.

If Americans are so widely agreed on the defects of the electoral college, why has it not been reformed? Because it is, actually, more than a mere puppet show. It is deeply mired in the power politics of the Nation's parties, groups, and sections. What looks like an ungainly mechanical contrivance affects who get what out of our political system and when and how they get it.

The political conflict surrounding the electoral college can be seen most clearly if we consider the major reforms that have been advanced and why various groups oppose them.

(1) *Direct popular election.*—Under this plan the whole electoral college system would be abolished and the President would be elected directly by a plurality of all the voters in the Nation.

This reform has no chance of adoption because of opposition from the small States. They are opposed because they would be deprived of their present electoral college advantage of having at least three electors (equal to their two Senators and one Representative) no matter how small their population. Under this setup, they have a greater percentage of the electoral college vote than they would have of the popular vote. And they could probably muster enough strength among themselves to defeat the constitutional amendment necessary for reform, since passage of an amendment requires the support of legislatures or conventions in three-quarters of the States.

This reform is also opposed by those who believe in our basic constitutional scheme of having national elections conducted by States. These opponents do not want the President directly elected by a popular national majority because it smacks too much of naked majority rule.

(2) *District system.*—This proposal would retain the electoral college but would do away with the present system under which the electors of each State vote as a unit. Under the present system each party nominates a group of electors equal in number to the State's Congressmen and Senators. The people then vote on a statewide basis for either party's slate of electors.

¹ Professor of political science at Williams College, author of "Roosevelt: The Lion and the Fox."

Under the district system electors would be chosen by congressional districts in each State, except for two electors (equivalent to the two Senators) who would still be selected on a statewide basis. Thus, a State would pick two at-large electors and the voters in each congressional district of the State would choose one Presidential elector who would be pledged to vote for a specific candidate.

This plan stands little chance of success because of the historic conflict between conservative, rural, mainly Republican forces and liberal, urban, mainly Democratic groups. The latter would flatly oppose it because many congressional districts, as a result of gerrymandering (the careful rigging of district lines for partisan advantage by State legislatures), underrepresent labor and liberal and urban—in short, Democratic—voters. It is bad enough, these Democrats assert, for Congress to be gerrymandered to overrepresent conservatism. Why should Presidential elections be gerrymandered, too?

(3) *Proportional representation*.—This scheme, which has received wide support in Congress in recent years, would abolish the present "winner-take-all" arrangement in the electoral college. Instead, each candidate would receive exactly the same proportion of electoral votes as he received of the popular vote in each State.

This plan has as little chance as the district system, and for much the same reason. Liberals feel they have a great stake in the present winner-take-all device, for they believe that it compels presidential candidates to try especially hard to carry pivotal Northern States. To carry these States such candidates must appeal to various groups, such as labor, Negroes, or Jews, who are believed by politicians to hold the balance of power in the States and who tend to be liberal. In short, the electoral college forces the parties, whether Democratic or Republican, to choose liberal candidates for the Presidency and to present a liberal platform.

Conservatives dislike the winner-take-all system for the very same reason the liberals like it. Southerners are especially hostile. "Is it fair, is it honest, is it democratic, is it to the best interest of anyone, in fact," demanded a Texas Congressman a few years ago, "to place such a premium on a few thousand labor votes, or Italian votes, or Irish votes, or Negro votes, or Jewish votes, or Polish votes, or Communist votes, or big-city-machine votes, simply because they happen to be located in two or three large, industrial, pivotal States?"

This criticism leaves the liberals cold. Since congressional districts are gerrymandered in a conservative direction, they argue, why should not the electoral college be "gerrymandered" in the opposite direction, through the increased influence of the liberal blocs? Liberals grant that the two types of gerrymandering push President and Congress further apart in what should be the cooperative job of governing the Nation. But they see no reason to close the gap at the expense of making the President as conservative as Congress tends to be.

How these opposing forces become stalemated over electoral college reform was well illustrated in 1956, the last time Congress seriously considered a basic overhaul of the system. To make the story rather intriguing, at least from our vantage point today, the main advocate of electoral reform was Senator Henry Cabot Lodge of Massachusetts and the main adversary was Senator John F. Kennedy from the same State.

Lodge himself was not in the Senate then; he had lost his seat in the Upper House to Kennedy 4 years earlier. But Lodge had become so identified with the proportional representation reform that his sponsorship and his earlier arguments carried great weight in the debate.

And the proponents of Lodge's plan had immensely strengthened its prospects by combining it, in one ungainly package, with, the district system reform. Under the proposed constitutional amendment State legislatures would have the power to choose either the proportional representation method or the district method.

By March 1956, when the Senate began debating electoral college reform, this package proposal was being sold as a cure-all to a variety of groups. Southern Democrats were told it would give them greater influence in their party (because of the big electoral percentage that Democrats would rack up in the South). Conservatives were promised that northern voting blocs would be curbed (by ending the winner-take-all device).

Independent voters were told that third parties would be treated more fairly (because they would get their due share, however small, of the electoral vote). Many liberals felt that, at least, the dangerous failings of the electoral college

would be ended. So wide was the support for the package proposals that 53 Senators cosponsored it on the floor.

Strongly backed by Paul Douglas of Illinois, Herbert Lehman of New York, and other Senators from Northern states, Kennedy spearheaded the counter-attack against the package proposal. Did the Massachusetts Senator believe at that time that someday he might be the beneficiary, as a Presidential candidate of the winner-take-all system?

Possibly, but it is more likely that he was thinking of the forthcoming 1956 campaign, since he had some hope of being Adlai Stevenson's running mate. Certainly he could not have dreamed that the present system would save him from a razor-thin victory that might well have paralyzed our government during a critical transition period. What he did know in March 1956 was that the opposition's package proposal threatened the influence of the urban vote in the electoral college and hence the prospects of any liberal Democratic contender for the Presidency.

Kennedy and his backers routed the opposition. The bill not only failed to gain the necessary two-thirds support in the Senate but also failed to retain the support of 10 of the original sponsors—9 Republicans and 1 Democrat.

The outcome was a tribute to Kennedy's emerging skills as a political leader, but it also proved that even a package reform, attracting many Southern Democrats and Northern Republicans, could not pass the Senate. And if it had, it would probably have failed to gain two-thirds support in the House, where city Representatives could have stopped it.

The lesson is very clear: there is little hope for a major overhaul of the electoral college. The opposing groups are simply too strong. Each of them gets enough out of the present system to be willing to settle for it when the chips are down. And even if some group was outvoted in Congress, it could always thwart a constitutional amendment in over a dozen State legislatures.

Does this mean that no change is possible? Not at all. **In place of a major overhaul, the machinery of the electoral college needs two simple but vital repairs if it is not to become badly jammed someday and throw our whole system of government into a crisis.**

The defects in the machinery are, first, the ambiguous role of the Presidential electors themselves; and, second, the constant threat that no presidential candidate may receive a majority in the electoral college and hence the election will go into the House of Representatives.

The modern role of Presidential electors is supposed to be clear cut. Originally intended to be high-minded men who would seek the best President without a lot of politicking, they were soon converted by the political parties into rubber stamps for the winning party in each State. If the rubber stamps today were really dependable, they might serve satisfactorily as automatic registering devices. The problem is that they are not always willing to be rubber stamps.

The trouble started in 1820 when one William Plumer of New Hampshire voted in the electoral college for John Quincy Adams, even though pledged to vote for his opponent, James Monroe. Plumer's reason was an impeccably patriotic one; only George Washington, he said, "deserved a unanimous election." He got away with it—and set a precedent for future electors to ignore their pledges.

Evidently no one took advantage of the precedent for a great many years; but in 1948 one Preston Parks of Tennessee got himself chosen as candidate for elector by both the Democratic Party in the State and by the States' Rights Party. Vehemently opposed to President Harry S. Truman's civil-rights program, Parks warned that if elected he would vote for the States' Rights candidate, J. Strom Thurmond, and not for Mr. Truman. Truman defeated the Dixiecrats in the State overwhelmingly—but Parks ignored the popular mandate and voted for Thurmond as he had said he would.

Parks "revolt." Profs. Austin Ranney and Wilmoore Kendall have concluded, "did not, of course, affect the actual outcome of the electoral college's decision; had it done so, it would presumably have raised issues of an extremely dramatic character. But the next Parks' revolt *might* affect the outcome, and it is well for students of the American political system to keep themselves reminded that the electoral college, however innocuous in the typical election, involves areas of indeterminacy that are potential dynamite."

It is high time to get rid of this dynamite. Some progress has been made. State parties, according to a Supreme Court decision, now have the right to require electors to promise to vote for the party's nominee. But this is only a

half-step, for whole State parties—especially Southern Democratic State parties hostile to the national Democratic Party's civil-rights stand—may raise hob with the system by allowing the electors to vote against the party candidate. This problem may become acute during the 1960's as the civil-rights struggle becomes more and more heated.

The solution is simple, although it may sound rather drastic—abolish membership in the electoral college while retaining the electoral votes. In other words, merely count up each candidate's electoral votes after the election (as we do anyway) and let this stand as the result, without any electoral college formalities in the State capitals or in Washington.

Such a change should not arouse much opposition because, unlike a basic overhaul of the whole electoral college system, it would not affect the power of big groups. To be sure, some southerners hoping to exploit present ambiguities might be opposed, but they probably would not be strong enough to mobilize much opposition in Congress or even in the necessary number of State legislatures.

For the same reason, it may be possible to tackle the other urgent problem: the present requirement that if no presidential candidate gains an electoral majority, the election goes to the House. Again, the solution is simple but drastic—abolish this provision entirely and let the candidate who receives the most electoral votes, whether plurality or majority, win the election.

This change has been opposed on the grounds that it would foster third parties, since no party would need to receive an electoral majority. On the contrary, it is the present system that encourages third parties to hope that they might hold the balance of power in the electoral college and in the House, where they could bargain for their special interests. The real protection of the two-party system is the existence of strong executive posts, such as President and Governor, around which parties polarize and which force third parties to amalgamate with major parties in order to achieve some of their desired ends.

Nor does it do any harm for a President to enter the White House with only a plurality rather than a majority of the popular vote. This was the case with Lincoln, Wilson, and Truman, among others, and their leadership and authority to govern seemed to be unaffected by their plurality status.

To those deeply concerned about the electoral college these two changes may seem like a rather modest agenda. But unless we lower our sights, we run the risk of losing even these limited but necessary improvements in the fight that would be set off among power groups if we insisted on more sweeping changes.

Moreover, this counsel for limited improvement is only for the short run; in the long run, given the right political conditions, it might be possible to abolish both the conservative bias in Congress and the liberal bias of the electoral college, with the result that President and Congress could work in closer harmony because they responded to a more nearly common alignment of the electorate.

In the meantime, the job of practical improvement urgently awaits action. Americans must persuade their elected officials to press for immediate constitutional reform. Perhaps the needed changes could be combined with other essentially noncontroversial measures in one "housekeeping" amendment that would renovate other faltering parts of our constitutional system—for example, the still unmet problem of Presidential disability. In any event, limited electoral college reform may now have a better chance of adoption than ever before. In Kennedy's hairbreadth victory we have just had an alarming near-collision with the eccentricities of the system; after years of ignoring warnings, people are now somewhat aroused.

Moreover, the President-elect has long known of the need for these limited changes. In 1956, after helping to block major changes, he suggested to an opposition leader that both sides could now go ahead on the less controversial reforms. His opponent replied that he believed so strongly in basic changes in the system that he did not care to proceed on the two "minor changes."

Mr. Kennedy was a very junior Senator at the time and there was not much he could do. But as President, and with strong backing from the people, he could again take up this pressing task of electoral college reform with much better prospects for success.

(The following is excerpted from a speech delivered in the U.S. Senate on March 26, 1956, by Senator Paul H. Douglas of Illinois (vol. 102, Congressional Record, pt. 4, 84th Cong., 2d sess., pp. 5554

to 5569). These excerpts were selected by counsel, at the direction of the chairman, as containing pertinent material not otherwise presented in the course of the hearings:)

III-2. EVILS OF THE MUNDT-COUDERT PLAN

The Mundt-Coudert plan provides that one presidential elector shall be chosen in each congressional district and the remainder in the State at large. In 1952, for example, Adlai Stevenson carried 6 congressional districts in California and, consequently, would have garnered 6 of California's 32 electoral votes; President Eisenhower won a popular plurality in the other 24 districts and, therefore, would have received 24 electoral votes plus 2 additional ones for carrying the State.

It is popularly believed that the proposal before us would abolish the electoral-college system. Senator Mundt's plan would do nothing of the kind. Rather than abolish our 48 electoral colleges, it would create 430 more electoral colleges—1 in each congressional district. It would not abolish the winner-take-all rule. The presidential candidate with the popular plurality in a district would receive 100 percent of that district's electoral vote. The winner would take all in the congressional district. In short, the Mundt-Coudert plan would extend the evils of the Georgia county-unit system to presidential elections, the only difference being that the congressional district rather than the county would be the basic unit. In short, this proposal does not do the things it is purported to do:

First. It does not abolish our electoral colleges. It simply multiplies their number.

Second. It does not abolish the so-called winner-take-all rule. It simply transfers the application of this rule from the State to the congressional district.

Third. It does nothing to correct the disparity caused by allocating electoral votes among the States on the basis of representation in the Senate and House of Representatives. Each State would continue to have a number of presidential electors equal to the whole number of Senators and Representatives to which the State is entitled. Today, the 9 States having over half of the population cast 18 of the 96 electoral votes based on senatorial seats, while the other 78 are controlled by the 39 States having less than half of the population. The proposal before us does not change this situation.

Fourth. The Mundt-Coudert plan does not correct the discrepancy between the popular and electoral vote, which is caused by the great variation in voter participation between the States, to which I have already referred. In my home State of Illinois in 1952, for example, 1 electoral vote represented 165,965 popular votes in contrast to 1 of Mississippi's which represented only 35,692 popular votes. Enforcement of the second section of the 14th amendment, not the Mundt-Coudert or Lodge-Gossett plan, is the remedy for this situation.

Fifth. The Mundt-Coudert plan would not have changed the outcome of a single election since 1916. In every case, the Mundt-Coudert plan would have given the necessary 266 electoral votes to the candidate with the popular plurality.

Mr. President, I ask unanimous consent to have printed in the Record at this point as a part of my remarks a table headed "Comparison of the Mundt-Coudert System With the Present Electoral System in the Presidential Elections, 1916-52."

There being no objection, the table was ordered to be printed in the Record, as follows:

Comparison of the Mundt-Coudert system with the present electoral system in the presidential elections, 1916-52

Year	Electoral votes won under present system			Distribution of electoral votes under Mundt-Coudert plan			
	Republican	Democratic	Other	Republican	Democratic	Other	Uncertain ¹
1952.....	442	89	0	375	156	0	0
1948.....	189	303	39	193	299	39	0
1944.....	99	432	0	166	292	0	73
1940.....	82	449	0	135	321	0	75
1936.....	8	523	0	41	412	0	78
1932.....	59	472	0	85	363	0	83
1928.....	444	87	0	349	104	0	78
1924.....	382	136	13	291	145	15	80
1920.....	404	127	0	311	129	0	91
1916.....	254	277	0	175	267	0	89

¹ The reason for listing some electoral votes as "uncertain" is that a tabulation of the presidential vote in these congressional districts has never been made. These "uncertain" electoral votes are almost entirely in big-city districts, where it is most difficult to tabulate the popular vote by congressional districts because the city and even some wards and precincts are divided between several congressional districts.

Source: Hearings on S.J. Res. 3, 84th Cong., 2d sess., p. 339.

Mr. DOUGLAS. Having looked at the things the Mundt-Coudert plan would not do, let us now look at some of the things it would do—at some of the evils it would cause:

First. Adoption of the Mundt-Coudert plan would deprive the bulk of our people of the political education which a presidential campaign affords. Advocates of this resolution argue that its adoption would spread the campaign to every corner of the Nation. But would it? There are rarely more than 100 marginal congressional districts. This means that the presidential campaign would be confined to less than 100 districts. Do the advocates of this plan seriously contend that presidential candidates would actually campaign in the congressional districts of Alabama or Vermont?

Second. The Mundt-Coudert plan would enhance the power of the South in national politics by placing the South in a balance-of-power position. Under the present system, the 11 Southern States held a balance of power in only 2 of the past 10 elections—in 1916 and 1948. Under the Mundt plan, however, southern electoral votes would have been necessary for victory in 3, 4, or 5 of these last 10 elections—in 1916, 1944, 1948, and perhaps in 1932 and 1940 as well.

Mr. President, I ask unanimous consent to have printed in the Record at this point as a part of my remarks a table headed "Electoral Vote Margin of Winner."

There being no objection, the table was ordered to be printed in the Record, as follows:

Electoral vote margin

[Electoral votes in excess of the 266 necessary for victory]

Year	Present system		Mundt-Coudert plan	
	National margin of winner	Southern electoral votes for winner	National margin of winner ¹	Southern electoral votes for winner
1952.....	176	57	109	48
1948.....	37	88	33	81
1944.....	106	127	18-102	125
1940.....	183	124	145-230	123
1936.....	257	124	140-224	123
1932.....	206	124	97-180	122
1928.....	178	62	83-161	48
1924.....	116	0	25-105	2
1920.....	138	12	45-136	9
1916.....	11	126	1-90	123

¹ Because the popular vote for President has not been tabulated in a number of congressional districts, the margin under the Mundt-Coudert plan can be given only in terms of a maximum and a minimum. In 1944, for example, Roosevelt would have had an electoral vote margin of at least 18 and no more than 102 under the Mundt-Coudert plan.

Source: Hearings, op. cit., p. 340.

Mr. DOUGLAS. These figures explain precisely why some southerners are pushing for a change in our electoral system. In the past four Congresses, a number of southern Senators and Representatives have frankly stated that electoral change is favored in the South because it would make unnecessary the solicitation of minority votes in northern cities and, thereby, increase the voice of the South in the Democratic Party. Their views were neatly summarized in the Macon (Ga.) News—which, incidentally, is an extremely good newspaper—which spoke editorially as follows:

"Dividing a State's electoral vote on the basis of its popular vote would take from Walter White [of the National Association for the Advancement of Colored People] his ability to manipulate the votes of the mere 3 million Negroes living outside the South for a boasted control of 17 States and the Presidency."

The Vernon (Tex.) Times told its readers:

"If the Republican Party succeeds in having the Gossett-Lodge resolution adopted * * * that will put an end to the bipartisan contest for Negro votes in pivotal States and eliminate the so-called civil rights issue from national politics."

Now, I have a special word for the Republicans supporting this measure. A number of them are probably thinking that it would enable a Republican presidential candidate to gain some electoral votes in the South. I suggest that this measure would put the South in a position so that it could mold the Democratic Party in its own image. Naturally, we northern Democrats do not relish this prospect. But I want to tell my Republican friends that, if the South could dominate the Democratic Party, the Republican presidential candidate would lose rather than gain southern votes.

One thing is certain: Adoption of this formula would shift the balance of power within each of our political parties. In the Democratic Party, the South would have the controlling voice. I think this would likely mean at least three parties, namely, a Southern Democratic Party, a Northern Liberal Democratic Party, and a Republican Party. In the Republican Party, the conservatives would likely gain a stronger voice because of the decreased importance of the large States and big cities where liberal Republicanism is now largely found.

I wish to make an exception of the Senator from North Dakota, Mr. Langer, who, on domestic matters, I believe, possesses one of the finest voting records in the Senate. However, he realizes that he has been, so to speak, a lonely figure in the past few years. Republican progressivism in the Western States, which was so strong 30 years ago, has greatly decreased. On domestic matters, the big States have a much more liberal attitude within the Republican Party than the States west of the Mississippi, or perhaps west of the Allegheny. The third party is likely to consist of liberal Democrats and Republicans in the North. This would mean a breakdown of our two-party system—two conservative parties and one liberal party. If this developed and three presidential candidates were in the race, no candidate would receive a majority of the electoral vote, and, under this proposal, the election would be thrown into the Congress, where no one party would have a majority. Imagine the strategic position of Southern Representatives in Congress trying to make deals with the two other parties.

There is still another, but I think a less likely, possibility. A Democratic Party under greater southern domination would lose considerable northern support, which would probably be channeled into the third party I've already mentioned. The Republicans, however, might find it necessary and expedient to bid for this northern support, a contingency which would likely strengthen the voice of liberal forces in the Republican Party. I cannot believe that the authors of the Mundt-Coudert plan want us to adopt a system which might force a political realignment, which in turn might strengthen the liberal elements in their own party.

I suggest that adoption of this proposed constitutional amendment would promote a political realignment of some sort. I am not sure, however, that it would promote a political realignment of the sort the conservatives desire. As I shall show, I think probably it would. In any case, if political realignment is the real purpose of electoral change, let us debate the merits of a political realignment rather than sneak realignments in under the cloak of "electoral reform."

Third. The Mundt-Coudert system would decrease the voice of the large States in presidential elections. I have already indicated the disadvantages under which the large States now operate in our Federal system. Their voice is small in the Senate; they are underrepresented in the electoral college to the extent that electoral votes are based on senatorial seats; their voice in the constitutional amendment process is small; and so forth. The general ticket system is the one device which gives these States some voice in national politics. A presidential candidate will seek the votes of the people living in the large States, because they control a large bloc of electoral votes. President Eisenhower campaigned in Texas in 1952, because a popular plurality in that State meant 24 electoral votes in the Republican column. This was a prize worth seeking. If the Mundt-Coudert plan had been effective in 1952, however, Eisenhower's electoral vote margin in Texas would have amounted to 8 rather than 24. I suggest that presidential candidates would have paid less heed to the desires of Texas if they had known that their net gain in that State would be less than 10 instead of 24 electoral votes.

In 1952, the 9 States having over half the population—50.6 percent—contributed 237 electoral votes to the victorious presidential candidate. This was the prize which made it worthwhile for the presidential candidates to heed the voices of the voters in the large States. If the Mundt-Coudert plan had been operative in 1952, however, Eisenhower's electoral vote margin in these 9 States would have been reduced from 237 to 117. In other words, the victorious candidate's net electoral vote gain in these 9 States would have been reduced 50 percent; the prize would have been worth only half as much. This is why adoption of the Mundt-Coudert plan would reduce the importance, and hence the voice, of our most populated States in presidential elections.

Mr. President, I ask unanimous consent that a table I have prepared be printed in the Record at this point.

There being no objection, the table was ordered to be printed in the Record, as follows:

Electoral votes of 9 States containing more than half of the total population of the United States

State	Electoral vote margin in 1952		
	Present system	Lodge-Gossett	Mundt-Coudert plan
1. New York.....	45	5.355	17
2. California.....	32	4.352	20
3. Pennsylvania.....	32	1.856	12
4. Illinois.....	27	2.673	13
5. Ohio.....	25	3.400	17
6. Texas.....	24	1.536	8
7. Michigan.....	20	2.280	12
8. New Jersey.....	16	2.368	10
9. Massachusetts.....	16	1.392	8
Total.....	237	25.212	117

Mr. DOUGLAS. Mr. President, in 1952, the 39 States having less than half of the population controlled 294 electoral votes. Under the general ticket system, this represented a margin of 294. If the Mundt-Coudert plan had been operative in 1952, the margin of 294 would have been reduced by less than 25 percent.

Mr. President, I ask unanimous consent that a table I have prepared be printed in the Record at this point.

There being no objection, the table was ordered to be printed in the record, as follows:

Electoral votes of 39 States containing less than half of the total population of the United States

State	Electoral vote margin in 1952		
	Present system	Lodge-Gossett plan	Mundt-Coudert plan
1. Alabama.....	11	3,256	11
2. Arizona.....	4	.664	4
3. Arkansas.....	8	.968	6
4. Colorado.....	6	1,278	6
5. Connecticut.....	8	.944	8
6. Delaware.....	3	.117	3
7. Florida.....	10	1,000	4
8. Georgia.....	12	4,728	12
9. Idaho.....	4	1,540	4
10. Indiana.....	13	2,223	11
11. Iowa.....	10	2,820	10
12. Kansas.....	8	3,064	8
13. Kentucky.....	10	.010	4
14. Louisiana.....	10	.580	8
15. Maine.....	5	1,610	5
16. Maryland.....	9	1,044	7
17. Minnesota.....	11	2,232	7
18. Mississippi.....	8	1,664	6
19. Missouri.....	13	.208	5
20. Montana.....	4	.772	4
21. Nebraska.....	6	2,304	6
22. Nevada.....	3	.684	3
23. New Hampshire.....	4	.872	4
24. New Mexico.....	4	.444	4
25. North Carolina.....	14	1,092	6
26. North Dakota.....	4	1,704	4
27. Oklahoma.....	8	.736	6
28. Oregon.....	6	1,296	6
29. Rhode Island.....	4	.076	2
30. South Carolina.....	8	.112	2
31. South Dakota.....	4	1,544	4
32. Tennessee.....	11	.053	1
33. Utah.....	4	.712	4
34. Vermont.....	3	1,299	3
35. Virginia.....	12	1,548	8
36. Washington.....	9	.864	9
37. West Virginia.....	8	.304	4
38. Wisconsin.....	12	2,676	10
39. Wyoming.....	3	.768	3
Total.....	294	49,810	222

Mr. DOUGLAS. Mr. President, a fourth evil of the Mundt-Coudert plan is that it would reduce the voice of the large cities in presidential elections. This is especially true if the State legislatures continue to gerrymander the States to the disadvantage of the metropolitan areas. Let me take my own State, for example. Under the present system, every popular vote in Illinois has equal value in determining the presidential race in our State. If the Mundt-Coudert plan became operative, however, a popular vote in Chicago's 13th Congressional District would have only about half the weight of one popular vote in the 20th District downstate. The 13th and the 20th Districts would each be entitled to one district electoral vote under the Mundt-Coudert plan; but 466,064 people live in Chicago's 13th District, whereas only 281,468 live in the 20th District downstate.

According to the 1950 census, there are 14 cities outside the South each having more than a half million inhabitants. From 1932 through 1948 the Republicans were often able to roll up a plurality or even a majority outside the big cities; but their margin was often insufficient to offset the large Democratic margin in the big cities. In 1948, for example, Dewey won a popular margin of 167,224 in downstate Illinois. But Truman's margin of 200,836 in Cook County gave him all of Illinois' 28 electoral votes under the present system. Thus, these 28 electoral votes were determined by the big-city margin.

Mr. President, I ask unanimous consent that a table I have prepared be printed in the Record at this point.

There being no objection, the table was ordered to be printed in the Record, as follows:

Electoral votes determined by large-city vote margins in presidential elections, 1932-52

Year	11 States' electoral vote ¹	Electoral votes determined by big-city margins
1952.....	242	None.
1948.....	241	Democratic, 78; Republican, 0.
1944.....	241	Democratic, 152; Republican, 0.
1940.....	242	Democratic, 124; Republican, 0.
1936.....	242	Democratic, 47; Republican, 0.
1932.....	242	Democratic, 64; Republica, 0.

¹ The 11 States and 14 cities are: Los Angeles and San Francisco, Calif.; Chicago, Ill.; Baltimore, Md.; Boston, Mass.; Detroit, Mich.; Minneapolis, Minn.; St. Louis, Mo.; New York City and Buffalo, N.Y.; Cleveland, Ohio; Philadelphia and Pittsburgh, Pa.; and Milwaukee, Wis.

Source: Hearings, op. cit., p. 340.

Mr. DOUGLAS. Mr. President, the Mundt-Coudert plan is devised to take the big city out of this strategic position. The party which failed to carry the large cities would usually gain more electoral votes in the big-city States under the Mundt plan than under the present system.

Mr. President, I ask unanimous consent that a table I have prepared be printed in the Record at this point.

There being no objection, the table was ordered to be printed in the Record, as follows:

Distribution of electoral votes in 11 northern and border States¹ having a central city of one-half million or more inhabitants

[Votes under Mundt-Coudert plan in parentheses; others are votes under present system]

Year	Republican	Democratic	Other	Uncertain
1952.....	242 (185)	0 (57)	-----	-----
1948.....	109 (116)	132 (125)	-----	-----
1944.....	37 (92)	204 (89)	-----	(60)
1940.....	19 (72)	223 (106)	-----	(64)
1936.....	0 (27)	242 (146)	-----	(69)
1932.....	36 (53)	206 (115)	-----	(74)
1928.....	215 (145)	18 (22)	-----	(66)
1924.....	220 (147)	0 (5)	13 (13)	(68)
1920.....	233 (152)	0 (2)	-----	(79)
1916.....	170 (101)	63 (53)	-----	(79)

¹ The 11 States are: California (Los Angeles and San Francisco), Illinois (Chicago), Maryland (Baltimore), Massachusetts (Boston), Michigan (Detroit), Minnesota (Minneapolis), Missouri (St. Louis), New York (New York City and Buffalo), Ohio (Cleveland), Pennsylvania (Philadelphia and Pittsburgh), and Wisconsin (Milwaukee).

Source: Hearings, op. cit., p. 341.

Mr. DOUGLAS. Mr. President, this balance of power position held by certain large cities, which in the past has enabled these cities to help to determine from 47 to 152 electoral votes, gave them an important voice in national politics. It helped to compensate for the cities' under-representation in our national and State legislative bodies. It forced presidential candidates at least to pay some attention to the needs and problems of metropolitan populations, whose needs and interests are all too often ignored by Congress and the State legislatures.

A number of Republicans have doubtless been attracted to the Mundt-Coudert plan on the mere assumption that a Republican presidential candidate would benefit from reducing the electoral power of the large cities, which have usually turned in Democratic pluralities during the past 24 years. I would like to point out to my Republican friends, however, that big-city margins did not deprive Eisenhower of a single electoral vote in 1952. Moreover, voting patterns change. In general, Republican gains over the past 15 years have been greater in cities and urban areas than in rural areas. This is partially shown by 2 tables which I ask unanimous consent to have printed in the Record.

There being no objection, the tables were ordered to be printed in the Record, as follows:

GOP percentage of the major-party vote in the 14 cities having at least ½ million inhabitants

	President				Congress, 1954
	1940	1944	1948 ¹	1952	
Los Angeles.....	38.9	40.4	43.1	52.1	51.0
San Francisco.....	39.7	39.1	45.8	53.5	² 38.8
Remainder of California.....	43.2	44.8	48.9	58.4	47.6
Chicago.....	41.5	38.6	41.4	45.6	40.0
Remainder of Illinois.....	54.0	56.3	56.7	61.5	59.4
Baltimore City.....	36.0	40.8	43.9	48.2	³ 34.5
Remainder of Maryland.....	46.0	54.2	54.3	60.5	52.0
Boston.....	36.7	37.7	27.7	40.4	⁴ 29.3
Remainder of Massachusetts.....	48.6	49.0	47.1	56.9	50.7
Detroit.....	37.0	35.0	36.7	39.5	33.7
Remainder of Michigan.....	53.4	54.3	55.8	62.4	57.2
Minneapolis.....	44.1	41.8	41.2	50.8	49.7
Remainder of Minnesota.....	49.0	37.6	39.9	56.7	45.9
St. Louis City.....	41.9	39.6	35.2	38.0	40.9
Remainder of Missouri.....	49.2	51.0	43.3	54.0	45.2
New York City.....	38.8	38.3	35.4	44.6	⁵ 34.6
Buffalo.....	45.5	44.4	40.7	50.4	60.8
Remainder of New York.....	59.3	59.0	59.3	67.5	62.9
Cleveland.....	30.1	32.1	34.0	40.1	45.2
Remainder of Ohio.....	50.1	52.5	51.0	58.6	56.6
Philadelphia.....	40.0	41.1	48.4	41.6	42.7
Pittsburgh.....	38.4	39.2	38.3	43.9	47.6
Remainder of Pennsylvania.....	49.4	51.9	53.6	57.0	51.9
Milwaukee.....	35.9	38.3	37.9	48.5	38.6
Remainder of Wisconsin.....	52.1	54.0	49.0	64.1	57.2

¹ Henry Wallace considered 3d majority-party candidate in 1948.

² No Republican candidate in 1 of 2 San Francisco districts.

³ No Republican candidate in 1 of 3 Baltimore districts.

⁴ No Republican candidate in 1 of 3 Boston districts.

⁵ No Republican candidate in 1 of 22 New York City districts.

See also Gallup's Political Almanac, 1952, pp. 26-38.

Republican percentage of major-party vote in presidential elections

Year	New England		Mid-Atlantic	East Central		West Central	Mountain		Pacific	South	United States
	Cities ²	Outside cities ³		Cities ²	Outside cities ³		Cities ²	Outside cities ³			
1896	---	---	---	---	---	---	---	---	---	---	---
1900	---	---	---	---	---	---	---	---	---	---	---
1904	---	---	---	---	---	---	---	---	---	---	---
1908	---	---	---	---	---	---	---	---	---	---	---
1912 ¹	---	---	---	---	---	---	---	---	---	---	---
1916	---	---	---	---	---	---	---	---	---	---	---
1920	---	---	---	---	---	---	---	---	---	---	---
1924 ¹	---	---	---	---	---	---	---	---	---	---	---

Year	New England		Mid-Atlantic		East Central		West Central		Mountain		Pacific		United States
	Cities ²	Outside cities ³	Cities ²	Outside cities ³	Cities ²	Outside cities ³	Cities ²	Outside cities ³	Cities ²	Outside cities ³	Cities ²	Outside cities ³	
1928	40.1	59.1	---	---	---	---	---	---	---	---	---	---	---
1932	38.3	54.0	---	---	---	---	---	---	---	---	---	---	---
1936	33.5	51.0	---	---	---	---	---	---	---	---	---	---	---
1940	37.6	50.7	---	---	---	---	---	---	---	---	---	---	---
1944	38.0	51.2	---	---	---	---	---	---	---	---	---	---	---
1948 ¹	34.1	51.7	---	---	---	---	---	---	---	---	---	---	---
1952	44.5	60.5	---	---	---	---	---	---	---	---	---	---	---

¹ Republican percentage of 3-party vote. In 1948, Wallace's Progressive Party was considered a 3d major party outside the South and the States Rights Party was considered a 3d major party in the South.

² Cities with 100,000 or more inhabitants in 1950. There were 13 such cities in New England, 21 in Middle Atlantic, 18 in the East Central, 10 in the West Central, 3 in the Mountain, and 12 in the Pacific States, totaling 77 outside of the South. There are 29 in the Southern States, totaling 106 in the 48 States.

³ Area outside the cities mentioned in the above note:

New England: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Middle Atlantic: Delaware, Maryland, New Jersey, New York, Pennsylvania, and West Virginia.

East Central: Illinois, Indiana, Michigan, and Ohio.

West Central: Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.

Mountain: Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.

Pacific: California, Oregon, and Washington.

South: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.

Source: Hearings, op. cit., p. 346.

Mr. DOUGLAS. Mr. President, the Republicans' big-city gains would show up even more clearly in the two above tables I have inserted if it had been possible to compile the statistics on the basis of the standard metropolitan area rather than on the basis of the central city. For the Republican Party has gained heavily in the suburban areas around the central city, such as Westchester, Nassau, and Suffolk Counties in New York.

In my own State there are suburbs west of Chicago and north of Chicago and in the quasi-suburban counties of DuPage and Lake, where the same appears to be true.

In contrast, Republican strength has been declining in a number of rural areas. These declines have been especially significant in the dairy and less prosperous farm regions of the Middle West. In short, an electoral system which might have enlarged the Republican electoral vote in 1932, 1936, 1940, 1944, and 1948—all elections which the GOP would have lost in any case—might very well make the Republican presidential candidate its victim in the next five presidential elections.

I believe, Mr. President, that reduction of the large cities' voice in presidential elections would be a real evil for a number of reasons.

CRITICISM OF CITIES NOT WHOLLY JUSTIFIED

A great deal of unfavorable publicity has been put forth with regard to the big cities. Much of it is unjustified. In the first place, we should judge not the absolute amount of crime or juvenile delinquency which takes place in a city, but the relative amount, in proportion to population. If we take the relative amount, we find that the cities do not do badly at all. In fact, they do better than some areas in the countryside. Mere size itself seems to be unesthetic, and evils which are ignored in the countryside are reprobated in the city.

When I was a member of the City Council of Chicago, as a part of my duties I specialized in the disposition of waste and garbage. The amount of garbage per person is not greater in the city than it is in the small town. However, since there are only a few people in the small town, the garbage can be disposed of without bringing esthetic blemishes upon the countryside. However, the disposal of the garbage of three and a half million or eight million people creates a very difficult problem, and is one which exposes a city to condemnation, which is not fair.

If I may indulge in a literary aside, that is the very fact why I have never thought Rabelais a particularly humorous writer, because the functions which he described on the part of a giant are to me extremely repulsive, even though for a child that would not be the case.

CITIES AN INFLUENCE FOR TOLERANCE

In our big cities, Americans of various races, religions, and ethnic origins all live side by side as close neighbors, and worship together. It is true that in the beginning there is a certain amount of hostility, but the hostility soon changes to acceptance, then to toleration, then to understanding, and finally to cooperation and to fellowship. The broadmindedness and tolerance which emanates from our cities is a leaven in each of our political parties. To deprive our two great parties of the broadminded and tolerant influence of the cities would be a severe blow to our national progress. Moreover, the general ticket system forces both major parties to recognize the legitimate interests of the minority groups which are concentrated in our metropolitan areas. I am not arguing that minority groups in pivotal States should have undue influence in national party councils. I am simply arguing that consideration of their legitimate interests incorporates these groups into the national community and makes our two party system possible. This means that most members of the group are willing to compromise with other conflicting groups within a major party. Most members of such a group do not at present feel the need to form special interest parties to protect their interests. This means that the so-called radical elements are forced to moderate their extreme demands and seek terms of accommodation with other groups inside one or the other of our two major parties. In this way, we have avoided the creation of numerous political parties to represent the many different racial, religious, economic, and other minority groups in the Nation. Through our two broad-based political parties we have been able to incorporate the members of these minority groups into our national life. Under the proposal before

us, the major parties would tend to give less attention to the legitimate interest of these minority groups; and this in turn would weaken our two-party system. Minority groups in pivotal States do not now have undue influence in presidential elections or on national policy. The fact is that neither major party can afford to yield to the extreme demands of a minority lest it lose its broad support throughout the Nation. I am afraid that some of those who advocate this constitutional amendment do so, not because they wish to free the major parties from giving undue consideration to minority groups, but because they wish the two major parties almost completely to ignore these groups.

Let me quote from the Wichita Daily Times of November 28, 1948:

"Southerners in Congress, laying plans for quieting the loud voices of racial and labor minorities in the Democratic Party, have high hopes of putting the Gossett-Lodge constitutional amendment through Congress. * * * Southerners were the first to rally in large numbers behind the amendment following President Truman's civil-rights recommendations. They argued that if the President had not felt he needed the Negro vote in Harlem, Chicago, and Philadelphia to win the huge electoral votes of New York, Illinois, and Pennsylvania, the message would have never been written."

Our two-party system will surely break down if our two major parties do not represent the various economic, racial, religious, social, sectional, and other groups in the Nation. Today, neither major party closes its doors to any significant element in our population. Both major parties recognize and protect the legitimate interests of such groups. We are a heterogeneous people and must adjust the conflicting interests of our people. These adjustments are made within each of our major parties. This system has made liberty, democracy, and domestic order possible, because Americans know that neither party is a serious threat to the interests of any group.

This proposed constitutional amendment is pushed by those who object to compromising with other interests within their own party. Conservative rural Republicans hope to devise an electoral system which will free them from having to compromise with liberal Republicans from urban industrial areas inside the Republican Party. Southern Democrats hope to devise an electoral system which will free them from the necessity of compromising with the liberal northern Democrats inside the Democratic Party. These conservatives are so sure they are right, and I do not question their sincerity, that they are ready to turn their backs on the democratic process of compromise. They want to free themselves from the necessity of forming majorities by compromise between minorities. They are looking for an electoral system which will enable them to force their policies on the rest of the Nation.

At this point, I should like to call attention to a quotation of Judge Learned Hand, one of the noblest of Americans, to the effect that the spirit of liberty is the spirit which is not too sure it is right. Any change in our electoral system, which would make our two major parties less sensitive to the vital interests of any important segment of our population, will undermine the two-party system. Any change in our electoral system, which will free even a majority from the obligation of compromising with other groups within the party will undermine our system of free government based on popular consent.

AMENDMENT COULD LEAD TO FURTHER RESTRICTIONS OF THE FRANCHISE

A fifth evil which will arise from adoption of the constitutional amendment proposed here is that it would probably lead to additional restrictions on the franchise in the "safe States."

A popular vote in a "safe" State is, on the average, worth approximately three popular votes in the larger States. In some cases, the disparity is even greater than 3 to 1. I have already placed in the Record tables showing voter participation in previous elections. In 1952, for example, one electoral vote in Illinois stood for 165,965 popular votes in contrast to one of Mississippi's, which represented only 35,692 popular votes.

This inequity is roughly compensated for under our present system, which gives the large State's entire electoral vote to the candidate receiving a plurality of the popular vote in that State. The Mundt-Coudert plan would eliminate this compensating factor by dividing the State's electoral votes. In this way, the relative importance of the "safe" States would be increased and the relative importance of the two-party States would be diminished. The incentive of the dominant party in such a State to keep that State "safe" would be tremendous.

The dominant party in such a State would do everything in its power to preserve its advantage. This is especially true in the Southern States, where the franchise is already severely restricted by statute and extra-legal practices. We know that the dominant party would not voluntarily lift these restrictions and thereby extend the franchise to those who might use the vote to threaten the power of those now in control. On the contrary, the dominant party would probably use its present power to guarantee its continued dominance through further restriction of the franchise.

Proponents of this measure claim that adoption of the plan would enlarge the vote in the Southern States. They argue that presidential elections would become real contests in the South if a Southern State's electoral vote could be divided between the two major candidates. Republicans would come to the polls, the argument continues, because their votes would no longer be futile, and Democrats would come to the polls because their votes would no longer be superfluous. This, I believe, was former Senator Lodge's argument back in 1950. But what are the facts? The voting pattern of the South has been remarkably uniform ever since the end of reconstruction. Popular participation in elections in the South is lower than elsewhere in the Nation. Even if one compares the primary vote in the South to the general election vote in the other 37 States, the number of Southerners going to the polls is relatively low. As a matter of fact, in the South as a whole participation in a presidential election is usually greater than participation in the largest primaries. I have introduced material to that effect, showing figures for 1952. For example, the 1942 primaries were supposed to have turned out the largest primary vote in the South in many years.

Mr. President, I ask unanimous consent to have printed in the Record at this point figures showing that the primary vote was smaller than was the presidential vote.

There being no objection, the table was ordered to be printed in the Record, as follows:

State	For single office receiving highest statewide vote in 1942 primaries		Total vote for presidential electors	
	Office	Total votes	1940	1944
Alabama.....	Governor.....	279,454	294,219	244,743
Arkansas.....	Attorney General.....	228,414	200,743	212,954
Florida.....	U.S. Representative.....	258,668	485,492	482,592
Georgia.....	Governor.....	301,686	312,539	328,111
Louisiana.....	U.S. Senator.....	321,041	372,305	349,383
Mississippi.....	do.....	133,449	175,824	180,080
North Carolina.....	do.....	320,755	822,648	790,554
South Carolina.....	do.....	234,942	99,830	103,375
Tennessee.....	Governor.....	297,197	522,823	510,792
Texas.....	U.S. Senator.....	983,512	1,041,168	1,150,330
Virginia.....	U.S. Representative.....	41,318	346,607	388,485
Total.....		3,400,436	4,674,198	4,741,399

Source: Statistical Abstract of the United States 1943, pp. 234, 237; *ibid.*, 1944-45, pp. 251, 257; and 44 American Political Science Review 98 (March 1950).

Mr. DOUGLAS. Yes, Mr. President; advocates of this electoral change tell us that more southerners would vote in the presidential elections if this change were adopted. In support of this statement, they tell us that more southern voters participate in primaries, where the ballot really counts, than in general elections which are a foregone conclusion. But I have already put into the Record facts from the 1952 election which show conclusively that this is not true.

These figures indicate that having one's vote count is not so effective in bringing southerners to the polls. Moreover, comparing voter participation in the South with voter participation in the so-called one-party States outside the South would indicate that mere political apathy in a one-party State is not the only cause for low popular participation in southern elections.

I suggest that restricted franchise is an important factor in explaining why so few southerners vote in presidential elections. If a proposal were adopted so that a State's electoral vote could be divided, southern Democratic legislatures would almost surely tighten suffrage qualifications to guarantee continued control by those southerners who are now in the saddle. Remember that democracy met

the agrarian and Populist challenge with a program of systematic disfranchisement through literacy tests and cumulative poll taxes.

I have gone into the question rather thoroughly, and I find that after the Populist movement was started, bringing in poor farmers and poor Negroes and creating an alternative party, we found expansion of the poll tax, the literacy test, the grandfather clause, and all these other measures that tend to restrict the franchise so as to perpetuate one-party control.

Mr. LANGER. Mr. President, will the Senator from Illinois yield?

Mr. DOUGLAS. I yield.

Mr. LANGER. Is it not true that at one time the Populist Party was very strong in the South?

Mr. DOUGLAS. Yes, indeed. Tom Watson was once a Senator from Georgia and the leader of the Populist Party in the South. The Populist Party was strong in Georgia, Texas, North Carolina, and South Carolina. At one time it looked as though it would be the second party in the South.

Mr. LANGER. But the people got rid of it, just as the distinguished Senator said a few moments ago.

Mr. DOUGLAS. I have stated one of the ways.

THE POSSIBILITY OF UNPLEDGED ELECTORS

A sixth evil which will arise from adoption of the Mundt-Coudert plan is that it would open the door to the possibility of unpledged electors. Under this measure, an elector would be freed from casting his electoral vote for the presidential candidate selected by the voters unless that elector were specifically pledged to that presidential candidate. Some advocates of the Mundt-Coudert plan have said that adoption of the district system would mean abolition of the presidential short ballot, that the names of the candidates for district elector rather than the names of the presidential candidates would appear on the ballot in the popular election, that a presidential elector would be thought of as a lawful public officer and as a candidate in his own right rather than a symbol of his party's presidential candidate, and that the electoral college would become a deliberative body which would elect the President. Mr. President, at least some of the advocates of the Mundt-Coudert plan envisage that their plan would take election of the President out of the hands of our people. They argue that the district system would put an end to popular election of the President. They want to reverse 165 years of democratization in the process by which the President is elected.

Lines 11 to 13 on page 4 of the substitute amendment say:

"Any candidate for elector who before the [popular?] election has pledged his vote for President or Vice President to a specific person shall, if elected, cast his vote for such person."

This language might be held to repeal the custom by which an elector is bound to vote for the candidate on whose ticket he was elected. There have been only 2 exceptions to this rule:

First. One elector in New Hampshire in 1824—See volume 42, *American Political Science Review*, pages 527 to 528, note 24.

Second. One elector in Tennessee in 1948. But this elector was pledged to Thurmond, ran on both the Truman and Thurmond tickets, was elected on the Truman ticket, and cast his ballot for Thurmond in conformity with his pledge—volume 44, *American Political Science Review*, pages 86–87.

It might be argued that this amendment would repeal the binding custom by specifically stating that "pledged" electors are bound. It is silent as to other electors. This could be said to mean that other electors are not bound. The pertinent rule or guide to statutory construction is that in case of an enumeration in a constitution or statute, all things not enumerated are excluded. (*Expressio unius est exclusio alterius*.) Since pledged electors are enumerated, unpledged electors may be said to be excluded. Citations for this rule: J. D. Sutherland, *Statutory Construction* (1943), volume II, section 4915, page 412; Earl Crawford, "The Construction of Statutes" (1940), section 195, page 334.

Unless the proposed amendment is clarified and strengthened on this point, the adoption of it might well weaken the existing practice and binding custom which, as the junior Senator from Massachusetts, Mr. Kennedy, has pointed out, has so effectively resulted in over 12,000 electors following the will of the voters of their States.

In order to really understand the possibilities, which I hope and believe to be wrong, of the Mundt-Coudert plan, every one of us should read a book published in 1953, "The American Electoral College"—Caldwell, Idaho; Caxton Printers—written by Roger Lea MacBride, who advocates adoption of the Mundt plan precisely to end the popular election of the President. On pages 78-79, MacBride says that adoption of the district system would be the first step toward restoring the electoral college as a deliberative body. He advocates that, once this step is taken, party nominating conventions be prohibited, and that the duly chosen electors meet in convention for the nomination of presidential candidates, after which the electors would return to their States and cast their electoral votes. Mr. MacBride says:

"Any revival of the electoral college as a body to choose a President, influenced but not governed by the desires of the qualified voters, will await a general recognition of the desirability of such an institution. Adoption of the district system may increase the probability of such a development, and it is with this possibility in mind that I became fully and firmly convinced that the district system should and will be adopted into the Constitution."

Mr. President, if adoption of the Mundt-Coudert plan means that we would revive the electoral college as a deliberative body and take the right to elect a President away from the people, let us debate the real issue: Are we ready to turn the clock of democratic progress back 165 years?

Are we ready to repeal not only the 20th century, but the 19th century, as well, and go back into the womb of the 18th century?

PLAN WOULD PROMOTE GERRYMANDERING

A seventh evil which would arise from adoption of the Mundt-Coudert plan is that it would promote further gerrymandering. The gerrymandering problem is even now a serious one although a few States have equalized congressional districts during the past 20 years.

Let us look at a few examples from the 84th Congress. In Texas, as we have pointed out, the largest district has a population of 806,701 and the smallest only 227,735; in Georgia, the figures are 618,431 and 246,227; Michigan, 525,334 against 178,251; Illinois, 466,064 and 281,468; South Dakota, 493,641 and 159,099; Ohio, 545,644 and 226,341; New York, 393,130 and 297,131.

Let us examine this problem of gerrymandering in relation to the Mundt-Coudert plan. Advocates of the plan have said that gerrymandering can be easily remedied and that, therefore, the district system should not be rejected on this ground. Past experience and political realism indicate that the contrary is true. Robert G. Dixon, professor of political science at the University of Maryland, and an expert on this subject, says:

"The problem of gerrymandering is serious and virtually insurmountable."

Mr. President, I ask unanimous consent that a portion of the testimony given by Professor Dixon in the hearings on the bill, beginning on page 197, may be printed at this point in the Record.

There being no objection, the portion of the testimony was ordered to be printed in the Record, as follows:

"It may be conceded that under article I, section 4, of the Constitution—

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

"Congress has power to regulate congressional districting by the States, and perhaps to draw the district lines itself. On this point the Supreme Court said in *Smiley v. Holm* (285 U.S. 355, 366-367 (1932)):

"In exercising this power, the Congress may supplement these State regulations or may substitute its own. It may impose additional penalties for the violations of the State laws or provide independent sanctions. It has a general supervisory power over the whole subject."

"Presumably the Congress would have a similar regulatory or plenary power over the districts in which presidential electors were to be chosen, and if there were any doubt on this score it could be resolved by definite constitutional provision.

"Past experience indicates, however, that the fundamental problem is not one of power to correct gerrymandering but rather of willingness to exercise that power and to back it up with effective sanctions.

"From the census of 1870 to the census of 1910 the Federal reapportionment acts require the State legislatures to devise districts of equal population and contiguous territory, and after the census of 1900 the requirement of compactness was added. And yet, during this period, even though it preceded the big wave of urbanism, there were important disparities of population between districts inside many of the States. That the disparities were not greater than they were is to be attributed not so much to an attempt to abide by the equality requirement as to the fact that urbanism had not reached full flower.

"Examples of population disparities between districts under the 1910 census as given in Schmeckebier's 'Congressional Apportionment' (Washington, D.C., Brookings Institution, 1941) are the following: Colorado, largest district, 228,444 and smallest district, 134,469; Connecticut, 250,182 and 190,403; Illinois, 349,883 and 167,634; Louisiana, 234,382 and 165,563; New York, 300,000 and 194,708; Ohio, 264,297 and 164,474. A list covering all the States for the year 1897 is found in appendix I to Justice Frankfurter's opinion in *Colegrove v. Green* (328 U.S. 549, 557-559 (1946)).

"One method of compelling compliance with congressional regulations in this field would be for the House of Representatives to refuse to seat Congressmen from improperly devised districts. The House has never done this, although as Schmeckebier notes, the matter at least was discussed on 3 occasions: 1843, when 4 States did not use districts at all; 1901, a Kentucky district, and 1910, a Virginia district. In view of the interminable wrangles and interstate reprisals which would flow from a serious attempt of the House of Representatives to police a districting formula, this sanction appears inadvisable. The vital task of legislating might suffer.

"Can the Federal courts be looked to for help in enforcing statutory or constitutional formulas for districting? Under present precedents the answer appears to be in the negative. In 1932 two Federal district courts invalidated State districting laws in Mississippi and Kentucky for noncompliance with the standards fixed in the congressional statute of 1911. But the Supreme Court reversed. The majority placed the decision on the ground that the 1911 law had expired, thus leaving open the question of whether the Federal courts would enforce congressional standards for districting. But four members of the Court, Justices Brandeis, Stone, Roberts, and Cardozo, would have dismissed the suit for want of equity (*Wood v. Broom* (287, U.S. 1 (1932)); *Mahan v. Hume* (287, U.S. 8 (1932))). The question left open by *Wood v. Broom* now appears to be settled by the later cases of *Colegrove v. Green* (328 U.S. 549 (1946)) and *South v. Peters* (339 U.S. 276 (1950)).

"For discussions of *Colegrove v. Green* see Burdette, 'The Illinois Congressional Redistricting Case,' the American Political Science Review, volume 40 (October 1946), pages 958-962; note, 'Constitutional Right to Congressional Districts of Equal Population,' Yale Law Journal, volume 56 (1946), pages 127-139.

"*Colegrove v. Green* was a suit in Federal district court for a declaratory judgment that Illinois congressional districts were in violation of the Federal Reapportionment Act of 1911 and the Federal Constitution, and for an order restraining the holding of the 1946 congressional election on the basis of these districts.

"The district court dismissed on authority of *Wood v. Broom*. The Supreme Court affirmed in a 4 to 3 decision. Three members of the majority, speaking through Justice Frankfurter, placed the affirmance on the broader ground of nonjusticiability; that is, resorted to the doctrine of political questions. Justice Frankfurter said that this issue was of a peculiarly political nature and therefore not mete for judicial determination (p. 552).

"Further, he said:

"'Nothing is clear than that this controversy concerns matters that bring courts into immediate and active relations with party contests. From the determination of such issues this Court has traditionally held aloof. It is hostile to a democratic system to involve the judiciary in the politics of the people. And it is not less pernicious if such judicial intervention in an essentially political contest be dressed up in the abstract phrases of the law' (pp. 553-554).

"*South v. Peters* involved a challenge of the Georgia county unit system under the 14th and 17th amendments. In a per curiam rejection of the challenge the Supreme Court said:

"'Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a State's geographic distribution of electoral strength among its political subdivision' (p. 277).

"It is also axiomatic that a court will not issue a mandamus or an injunction compelling a legislature to act or to desist. *Fergus v. Marks* (321 Ill. 510, 152 N. E. 557 (1926)) ; *McChord v. Louisville & N. R. Co.* (183 U. S. 483 (1902)). On the general doctrine of political questions in the Federal courts see Post, 'The Supreme Court and Political Questions' (Baltimore: Johns Hopkins Press, 1936). Also in point are Harris, 'The Judicial Power of the United States' (Louisiana State University Press, 1940) and my own 'The Doctrine of Separation of Powers and Federal Immunity Statutes,' to appear this spring in the April and June issues of the *George Washington Law Review*. * * * I feel that the district system should be postponed—perhaps forever. The problem of gerrymandering, and by this I include of course the so-called silent gerrymander, i. e., that slow strangulation of metropolitan political strength by simple failure to redistrict, is a virtually insoluble problem. The Federal judiciary will not, and probably should not, interfere even to enforce constitutional mandates.

"The legislatures have the power, indeed, have always had the power. But the power of the rural and small-city legislative majorities naturally has not been modified by a desire for political immolation. It would be quixotic to expect otherwise, now or in the future. Likewise, it is unlikely that the problem of the gerrymander will be solved by mass population movement within the foreseeable future."

Mr. DOUGLAS. In summary, Mr. President, as Professor Dixon has said, Congress has never enforced effectively, and probably never will enforce penalties in an effective way. Moreover, we cannot look to the courts for relief, because the Supreme Court has ruled in *Colegrove v. Green* that the gerrymander question is political and, therefore, non justiciable. This alone is a sufficient reason for rejecting the Mundt-Coudert plan.

IT WOULD HANDICAP REPUBLICANS

An eighth evil which would arise from operation of the Mundt-Coudert plan is that it creates all sorts of anomalies. First of all, the plan would tend to favor the party which failed to carry the State in the popular election. In 1952 for example, Eisenhower carried Tennessee, but he would have received only 5 electoral votes to Stevenson's 6. In 1948 Mr. Truman carried California and Ohio; but Mr. Dewey would have captured a majority of electoral votes in each of these States. Application of the Mundt-Coudert formula to the statistics for the last 10 elections produces dozens of anomalies similar to these examples.

The Mundt-Coudert plan, like the Lodge-Gossett plan, would make presidential elections closer contests by enlarging the electoral vote of the candidate who was defeated in the popular election.

Mr. President, I ask unanimous consent to have printed at this point in the Record a table of statistics which I have prepared on the electoral vote margin.

There being no objection, the table was ordered to be printed in the Record, as follows:

Electoral vote margin

Year	Present system	Mundt-Coudert plan	
		Minimum	Maximum
1952.....	353	219	219
1948.....	114	106	106
1944.....	333	61	199
1940.....	367	111	261
1936.....	515	293	449
1932.....	413	195	361
1928.....	357	167	323
1924.....	246	66	226
1920.....	277	91	273
1916.....	23	3	181

NOTE.—Because the popular vote for President has not been tabulated in a number of congressional districts, the electoral vote margin under the Mundt plan can be given only in terms of a minimum and maximum. In 1944, for example, Roosevelt would have had at least 37 and perhaps as many as 205 more electoral votes than Dewey would have had.

Source: Hearings, op. cit., p. 341.

Mr. DOUGLAS. Mr. President, at best, this situation would merely enlarge the electoral vote consolation prize of the defeated candidate. At worst, it would enlarge the electoral vote of the candidate defeated in the popular election to the point that he could snatch electoral victory from the jaws of popular defeat. Perhaps, equally as bad, it would enlarge the electoral vote of the popularly defeated candidate sufficiently to throw the election into the Congress.

In speaking about the eighth evil of the Mundt-Coudert plan, let me say a word about how the plan might operate to the advantage of one party and the disadvantage of the other. In general, I think the plan would benefit almost nobody except the South. In Democratic years, we would trade large blocs of electoral votes for nothing. In Republican years, the Republican candidate would trade large blocs of northern electoral votes for a mere handful in the South. In 1952, for example, Eisenhower would have lost 58 northern and 9 southern electoral votes. In 1924, Mr. Coolidge would have traded somewhere between 95 and 177 northern electoral votes for 3 or 4 southern electoral votes.

This all brings me to a point about which I have heard much, namely, that the amendment before us would greatly handicap the Republican Party in years when the GOP polls a national plurality in the popular election. I am not here to promote the interests of the Republican Party. But I am here to defend our two-party system, and the Republican Party is a vital part of that system. I think there is a very real possibility that this plan would deprive the Republican Party of the presidency in years of Republican popular victory, because they would trade such large blocs of electoral votes in the North for so few in the South. The Lodge-Gossett plan is likely to be more unfair than the Mundt plan in this respect. I think, however, that the Mundt plan would also handicap the Republican candidate in this respect even though a majority of northern States have Republican legislatures which could further gerrymander the northern State in favor of the Republican Party.

THIRD-PARTY COMPLICATIONS

Let us look at this formula if a third-party complicated the situation. If a third-party candidate drew popular votes mainly from the Democratic candidate, such as Wallace did in 1948, the Republican could win more electoral votes under the present system than under either the Mundt-Coudert or Lodge-Gossett plans. For the present system allows the Republican to garner all of a State's electoral votes by polling a mere plurality of the popular vote. In 1948, for example, Dewey's 46.3 percent of the popular vote in New York gave him all 47 of that State's electoral votes. Under the Mundt-Coudert plan, however, Dewey would have received only 24 to Truman's 23 electoral votes. Under the Lodge-Gossett plan, he would have had a margin of only four-tenths of an electoral vote—21.6 to Truman's 21.2 and Wallace's 3.9.

Conversely, if there were a third-party candidate who drew a sufficient number of popular votes from the Republican candidate in normally Republican areas to reduce the Republican to second or third place, as La Follette did in some areas in 1924, the Republican would likely gain more electoral votes under the proposed amendment than under the present system. The Lodge-Gossett plan would benefit the Republican most if the third-party candidate's strength were spread throughout the State so that the Republican could carry only a few if any congressional districts. In Wisconsin, for example, in 1924, Coolidge was able to win a popular plurality in probably no more than one and certainly no more than three congressional districts. Consequently, he would have received 1, 2, or 3 electoral votes under the Mundt plan but would have received 4.9 electoral votes under the Lodge-Gossett plan and actually received none under the present system.

If a third-party candidate's strength were concentrated in only certain congressional districts in a normally Republican State, however, the Mundt plan would give the Republican more electoral votes than would the Lodge-Gossett plan. The result in Minnesota in 1924 gives an example. La Follette carried at least 2 and no more than 4 congressional districts and, consequently, would have received 2-4 electoral votes to Coolidge's 8-10. But Coolidge's 8-10 electoral votes under the Mundt plan would have been cut to 6.2 votes, and La Follette would have received 5.0 electoral votes under the Lodge-Gossett plan.

In considering the Mundt-Coudert plan, we are actually operating in the dark. The presidential vote has never been completely tabulated by congressional districts except for the two most recent elections.

On this point, let me quote from the testimony of Dr. Ruth Silva, professor of political science at the Pennsylvania State University. Professor Silva is the most skilled expert on the whole subject. I am quoting from the hearings, starting on page 342:

"It is actually impossible to tell exactly how the Mundt plan might work, how it might affect party alinement in general, or how it might affect the fate of either major party until a more thorough statistical analysis has been made. This, in turn, will require a tabulation of the popular vote cast for each presidential candidate in each congressional district. It will also require making a statistical analysis of other elections. We need to know how the plan would operate if the South were not solid. Therefore, we should apply the Mundt-Coudert formula to the elections of 1864, 1868, 1872, and 1876. We should know exactly what would happen under the Mundt-Coudert plan if there developed a third-party which drew on Republican strength. Therefore, we should apply the Mundt formula to the elections of 1912 and 1924. Certainly, we ought to know how the Mundt formula would operate if there were a third-party candidate who drew votes from the Democratic candidate in nonmetropolitan areas. Therefore, the formula should be applied to the election of 1892. Perhaps we should also know how the Mundt formula would have operated in the election of 1824.

"If the Mundt-Coudert plan should be adopted without first applying the formula to a sufficient number of past elections to get some idea how the plan would work under various conditions, we are likely to find that we have opened a political Pandora's box. We have been told, however, that it is not necessary to tabulate the popular vote cast for each presidential candidate in each congressional district in order to apply the Mundt formula to past elections. For, one witness has said, we may safely assume that each political party would have elected one presidential elector for each House seat won. As a matter of fact, elaborate tabulations of electoral votes under the Mundt plan have been made on the basis of this assumption. In the following table is reprinted a part of such a tabulation:

"Year	Republican	Democratic	Other	Total
1952-----	299 (375)	231 (156)	1 (0)	531
1948-----	203 (193)	289 (299)	39 (39)	531
1944-----	214	315	2	531
1940-----	182	344	5	531
1936-----	92	426	13	531
1932-----	128	398	5	531
1928-----	349	181	1	531
1924-----	317	207	7	531
1920-----	375	155	1	531
1916-----	251	273	7	531

"NOTE.—Electors assumed elected where parties' representatives were elected and States were carried by presidential candidates. (Congressional Directories and World Almanacs, 1935 and 1945 editions, the New York Times on 1948 election. Hearings on S.J. Res. 8, Senate Committee on the Judiciary, 83d Cong., 1st sess., p. 217.

"The figures for 1952 and those in parentheses were supplied by Ruth C. Silva. The figures in parentheses are electoral votes won under Mundt-Coudert plan on the basis of tabulations of the actual popular vote for President in congressional districts.

"It is submitted that tabulations such as the ones presented in the above table are not a satisfactory substitute for tabulating the actual vote cast for each presidential candidate in each congressional district. The weakness of assigning electoral votes on the basis of House seats won is shown in the assignment of electoral votes to third-party presidential candidates. In 1948, Thurmond would have received only eight electoral votes for carrying four States according to the method used in the table. Yet 39 electoral votes were assigned to Thurmond in the table for no reason consistent with the method. This method of assigning electoral votes on the basis of House seats won means the assigning of electoral votes to third parties which had no presidential candidates. It means the assigning of electoral votes to third parties which actually endorsed a major party's presidential candidate. Such electoral votes, it seems, should be assigned to the major party endorsed.

"The fallacy of assigning electoral votes on the basis of congressional seats won is clear in 1952, when the presidential and congressional candidates of different parties carried 84 congressional districts. Thus, there would have been

84 errors in assigning electoral votes on the basis of House seats won. Some of these errors cancelled each other out, however, so that only 76 errors remained in the 1952 total given in the table. In 1948, the presidential and congressional candidates of different parties carried 100 congressional districts.

"In defense of tabulating the electoral vote under the Mundt formula for past elections on the basis of House seats won, it has been said: 'The assumption regarding district presidential electors is based on the fact that in New York and some other States the name of the party's candidate for district elector would appear on the voting machines right next to that of the party's candidate for Representative in Congress, the offices being arranged on the party's row on the voting machine in descending order from the statewide to the smallest constituency. * * *

"'At first blush it may seem that the * * * (tabulations) should be based on the popular vote for President in congressional districts. However, reflection from common knowledge will support the view that such a basis would be a distortion due to the mere mechanics of ballot and voting-machine arrangements of candidates.'

"The mere mechanics of ballot and voting-machine arrangements of candidates will not insure that a party's candidate for Representative in Congress and its candidate for district elector will run together like siamese twins if the Mundt plan were adopted for the following six reasons:

"1. Actually, 27 States controlling 363 electoral votes use the so-called presidential short ballot. In these 27 States the only change the Mundt plan would make would be that a popular vote for a presidential candidate would be tabulated as a vote for his party's candidate for district elector and its two or more candidates for electors at large instead of being tabulated as a vote for each of his party's candidates for elector in the entire State. If there is anything in the Mundt-Coudert plan which would require abolition of the presidential short ballot, adoption of the plan would reduce rather than increase the democratic character of presidential elections.

"2. In 18 States controlling 252 electoral votes, candidates are arranged on the ballot according to the offices they seek rather than according to party affiliation. In all of these States except Pennsylvania, the voter would have to select his party's candidate for Congress and its candidate for district presidential elector from two separate groupings on the ballot. In Pennsylvania, the voter may vote a straight-party ticket by marking a single X in the party square or circle. Therefore, we cannot safely tabulate the electoral vote for past elections under the Mundt plan on the basis of House seats won.

"3. All ballots are not arranged to encourage straight-party voting. In 17 States using the office-block type of ballot plus 5 States using the party-column or party-row ballot, there is no party square or circle on the ballot or party lever on the voting machine to encourage or facilitate straight-party voting. These 22 States control 256 electoral votes. This fact too shows the fallacy in tabulating electoral votes on the basis of congressional seats won.

"4. At least one State (Michigan) facilitates splitting the ticket between the presidential candidates and the congressional-State ticket by providing the voter with a separate presidential ballot or a separate presidential lever on voting machines.

"5. In New York, the name of the party's candidate for district elector probably would not appear on the voting machine right next to the party's candidate for Representative in Congress. The State legislature would probably continue to consider the presidential candidate as the leader of the statewide ticket and not merely as a candidate in the congressional district. As a matter of fact, many State officials doubtless hope to slide into office on the coattails of a popular presidential candidate. Consequently, the State law would probably continue to place the presidential candidate at the top of the ticket before the other statewide candidates and would not move his name down on the ballot to the district level.

"6. Under the Mundt-Coudert plan, the voter would be voting for at least three candidates for presidential elector—one in his congressional district and at least two in the State at large. Therefore, even under the New York State law mentioned above, it is likely that the courts would decide that the statewide electors were controlling and thus that the presidential candidate should be placed at the head of the ticket rather than next to the district congressional candidate.

"These six points are quite irrelevant, of course, if adoption of the Mundt-Coudert plan meant abolition of the presidential short ballot and if it meant that the presidential elector were thought of as a lawful public officer and a candidate in his own right rather than a symbol for the presidential candidate. (See a recent Ohio ruling to this effect, 150 Ohio St. 127). Some advocates of the Mundt plan have said that adoption of the Mundt plan would mean these things. In fact, one advocate of the Mundt plan wrote a book supporting adoption of the district system for choosing presidential electors and making the electoral college a deliberative body which would elect the President (Roger Lea MacBride 'The American Electoral College' (Caldwell, Idaho, Caxton Printers, 1953))."

Professor Silva has presented a sufficient amount of data to prove to me that we have no idea what we are playing with when we consider adoption of the Mundt-Coudert plan. Indeed, I agree with Representative Joe Martin and the Senator from New Jersey, Mr. Case, that we would be opening a political Pandora's box.

III—3. EVILS OF THE LODGE-GOSSETT PLAN

The other head of the two-headed hydra is the Lodge-Gossett plan. This plan would divide a State's electoral vote among the presidential candidates in proportion to their popular vote in that State. In 1952, for example, President Eisenhower in Pennsylvania polled 52.738 percent of the popular vote and won all 32 of Pennsylvania's electoral votes. Under the Lodge-Gossett formula, Eisenhower would have received only 52.738 percent, or 16.876 of Pennsylvania's electoral vote. This plan sounds reasonable on the face of it—so reasonable that I voted for this plan myself back in 1950. More careful study of the Lodge-Gossett plan, however, shows that it is full of snares and gimmicks—evil snares and gimmicks.

The Lodge-Gossett plan has many of the evils of the Mundt-Coudert plan:

First. It decreases the power of the large States. The electoral votes margin in New York, for example, would be reduced from 45 to something between one one-thousandths and 3 electoral votes.

Second. It would reduce the voice of urban areas in presidential elections and, consequently, in national politics.

Third. It would stack the cards against the Republican candidate, in my judgment. In translating popular votes into electoral votes, it would consistently magnify the Democratic vote and minimize the Republican vote.

Fourth. It would enhance the importance of the South in presidential elections and, consequently, in national politics.

Fifth. It would encourage further restriction of the franchise in the solid States.

Sixth. It would encourage disputed elections.

Now, I want to spell out these last four evils of the Lodge-Gossett plan—that it would handicap the Republican Party, put the South in the saddle, encourage restriction of the franchise, and promote election disputes.

It is true that there is now a disparity between the popular and electoral vote under the present system. In 1952, for example, President Eisenhower polled 55 percent of the popular vote, but carried 39 States and received 83 percent of the electoral vote. This exaggeration of the electoral vote is by no means an evil; in these troubled times, I think there is great psychological value in the electoral system which represents a fairly close victory as decisive. We Americans pride ourselves on accepting the result of a democratic election. That is, in part, a consequence of our electoral college system which magnifies the difference between the winner and the loser in the popular election—I think that is a good argument, although I personally favor a direct, popular election of the President. But the disparity between the electoral vote and the popular vote is caused by at least three factors in our present electoral system.

First is the allocation of electoral votes among the States on the basis of congressional representation. This magnifies the power of the small States. Today, the 9 most populous States, which have 51 percent of the population, have only 18 of the 96 electoral votes based on representation in the Senate. The other 39 States have the remaining 78 of these electoral votes. In 1948, for example 1 electoral vote in California represented 395,040 people, in contrast to 1 of Nevada's electoral votes, which represented only 46,667 people. The Mundt-Coudert, Lodge-Gossett resolution does nothing to correct the anomalies caused by allocating electoral votes among the States on the basis of congressional representation. New York, with a population of more than 81½ times that of Nevada, would

continue to have only 15 times as many electoral votes as Nevada has—Statistical Abstract of the United States, 1955, page 15.

The second cause for discrepancy between the popular and electoral vote is the assignment of electoral votes to the States without regard to the popular vote. In 1952, for example, 1 electoral vote in Illinois represented 166,000 popular votes, whereas 1 electoral vote in Mississippi represented only 36,000 popular votes.

Therefore, 1 vote in Mississippi was worth 4.6 as much as 1 vote in Illinois; in Alabama, 4.3 times as much as 1 vote in Illinois; in South Carolina, 3.9; in Arkansas, 3.3; in Virginia, 3.2; in Georgia, 3.0; in Louisiana, 2.5; in Tennessee, 2.0; in Texas and North Carolina, 1.9; and in Florida, each vote was worth 1.7 times as much as a vote in Illinois. In the South as a whole, 1 vote in the 1952 presidential election was worth 2.5 times the value of 1 vote in Illinois.

I ask unanimous consent to have printed at this point in the Record a table showing the number of popular votes per electoral vote in 1952.

There being no objection, the table was ordered to be printed in the Record, as follows:

Number of popular votes per electoral vote in 1952

11 Southern States:		32 Northern States—Con.	
Average	66,863	Kansas	112,000
Alabama	38,727	Massachusetts	148,938
Arkansas	50,625	Minnesota	125,364
Florida	98,900	Nebraska	101,667
Georgia	54,667	New Hampshire	68,250
Louisiana	65,200	New Mexico	59,750
Mississippi	35,692	North Dakota	67,500
North Carolina	86,500	Oregon	115,833
South Carolina	42,625	Rhode Island	103,500
Tennessee	81,182	Utah	82,500
Texas	86,500	Washington	122,556
Virginia	51,667	Wyoming	43,000
5 Border States:		Arizona	65,250
Average	116,875	Colorado	105,000
Kentucky	99,300	Delaware	58,000
Maryland	100,222	Illinois	165,965
Missouri	145,538	Iowa	126,900
Oklahoma	118,625	Maine	70,400
West Virginia	109,250	Michigan	139,950
32 Northern States:		Montana	66,250
Average	133,490	Nevada	27,333
California	160,688	New Jersey	151,250
Connecticut	137,125	New York	158,400
Idaho	69,000	Ohio	148,040
Indiana	150,385	Pennsylvania	143,156
		South Dakota	73,500
		Vermont	51,333
		Wisconsin	133,917
		United States	115,917

Tabulated from data in Statistical Abstract of the United States, 1955, pp. 332 and 334.

Mr. DOUGLAS. Mr. President, the amendment before us would do nothing to remedy this cause for disparity between the popular and electoral vote. An electoral vote in the 32 Northern States would continue to represent twice as many popular votes as a Southern electoral vote.

The third cause for the discrepancy between the popular and electoral vote is the present general ticket system, whereby the candidate with the popular plurality in a State receives all of that State's electoral vote. This third cause for disparity would be changed by the Mundt-Coudert, Lodge-Gossett plan. Now, under the Lodge-Gossett plan, the Democrats could win more electoral votes per million popular votes than could the Republicans. When the Republicans poll enough votes in the North to obtain a national plurality in the popular election, the present system allows the GOP to acquire large blocs of Northern electoral votes to offset the Democratic advantage in the South. The point is that, with our sectional pattern of politics and our 48 different sets of suffrage qualifica-

tions, the general ticket system in Republican years corrects the disparity caused by magnifying the electoral power of the South. By abolishing the general ticket system, the Lodge-Gossett plan would correct that part of the disparity between the popular and electoral vote which favors the Republicans when they win the popular election, without correcting that part of the disparity which favors the Democrats. Although I am not here to further the interests of the Republican Party, I do not want to adopt a system which would deny them the presidency when they poll a majority of the popular vote. I want to play under fair rules. I do not want the Democrats to win the game with loaded dice, nor the Republicans, nor States' Righters, nor any group or faction. Advocates of the Mundt-Coudert, Lodge-Gossett plan say a great deal about how the general ticket system denied the presidency to the candidate with the most popular votes in 1824, 1876, and 1888. These three cases, and a number of others, require examination.

Critics of the present electoral college system claim that the general ticket system defeated Andrew Jackson, the peoples' choice in 1824, and gave victory to John Quincy Adams in the electoral college. The answers to this are three:

One. We do not know that Jackson was the people's choice in 1824 for the following reasons:

There was a four-way split in the popular vote, and Jackson polled only 43 percent of that vote.

And in six States, which contained one-fourth of the population of the United States, the legislature appointed the electors, and no popular votes were cast.

In North Carolina, approximately 5,000 votes which were probably pro-Adams were cast for the Jackson-Adams fusion ticket and are incorrectly credited to Jackson.

Furthermore, a very small proportion of the adult population voted in the 18 States where popular elections were held.

Also, Adams ran against Jackson in only 11 of the 18 States where popular elections were held. We have no way of knowing what the popular election returns might have been if Jackson had run against Adams in a 2-way contest in all 24 States.

Two. Jackson did better in the 18 States where popular elections were held under the system used than he would have under the Lodge-Gossett formula. Jackson's electoral vote margin in these 18 States would have been only 11.6 under the Lodge-Gossett plan instead of 36 under the system used. Thus, Jackson would have been worse off by 24.4 electoral votes if the Lodge-Gossett plan had been used in 1824.

Three. Adams was elected in the House of Representatives, not in the electoral college. There were at least five factors other than the general ticket system which contributed to Jackson's defeat in 1824:

The Constitution requires that a candidate receive a majority of the electoral vote in order to win the presidency but Jackson received only 38 percent of the electoral vote.

Another factor which contributed to Jackson's defeat was the constitutional provision for election by a "lame duck" House of Representatives in which voting was by States. Moreover, even if the Members of the House had voted as individuals rather than by States, Adams would still have had a plurality—but not a majority—in the House.

A third factor which may have helped Adams win the Presidency was the political maneuvering in the House. On the other hand, one might well argue that this maneuvering redounded to Jackson's advantage.

Still a fourth factor which contributed to Jackson's defeat was the fact that Clay threw his support in the House to Adams.

Finally, the electors chosen by districts and those appointed by the State legislatures favored Adams over Jackson, a fact which suggests that the Mundt-Coudert plan would have defeated Jackson more decisively.

These five factors, rather than the general ticket system, defeated Jackson in 1824. In summary, Jackson would have had less than a majority of the electoral votes under the present proposal and the election would have been thrown into Congress. The votes in the House were 87 for Adams, 71 for Jackson, and 54 for Clay. It is mere optimistic speculation to assume that the 54 votes for Clay and the 48 senatorial votes would have been cast so as to have given Jackson the requisite 131 votes.

I ask unanimous consent to have printed at this point in the Record a table showing the popular vote, the electoral vote, and the vote in the House in the election of 1824.

There being no objection, the table was ordered to be printed in the Record, as follows:

Election of 1824

Candidate	Popular vote	Electoral vote					Vote in House	
		GT	D	L	Total	L-G plan	Members	States
Adams.....	114,023	37	11	36	84	62,399	87	13
Jackson.....	152,901	75	9	15	99	73,984	71	7
Crawford.....	46,979	24	1	16	41	31,997	54	4
Clay.....	47,217	16	17	4	37	21,792	-----	-----
Uncertain.....	-----	-----	-----	-----	-----	71,000	-----	-----
Total.....	361,120	152	38	71	261	261,172	212	24

GT—Electors chosen by general ticket system.

D—Electors chosen in districts.

L—Electors appointed by State legislatures.

L-G—Electoral vote under Lodge-Gossett formula.

Sources: Edward Stanwood, *A History of the Presidency* (Boston, 1904), pp. 133-140; *Historical Statistics of the United States* (Washington, 1949), p. 288.

Mr. DOUGLAS. Mr. President, critics of the present electoral college system claim that the general ticket system defeated Samuel J. Tilden, the people's choice at the polls, and gave victory in the electoral college to Rutherford B. Hayes in 1876.

The general ticket system seems to have had little to do with the election of 1876. Fraud and violence attended the popular voting in both North and South. The methods by which Tilden won his popular plurality are not above reproach. Hayes probably would have won a free popular election, but an honest count of the votes actually cast would have given the Presidency to Tilden. Actually, nobody knows how Tilden would have fared under the Mundt-Coudert plan, since the presidential vote in 1876 has never been tabulated by congressional districts. Probably the most that can be said for the Lodge-Gossett plan in connection with 1876 is that it would have permitted Tilden's spurious plurality to have won the Presidency for him.

There are at least seven factors other than the general ticket system which contributed to Tilden's defeat in 1876.

First, the failure of the Democrats in their efforts to bribe a Hayes elector to vote for Tilden.

Second, two electoral colleges met in Oregon because the Democratic Governor used highhanded methods against the Republican electors chosen at the popular election.

Third, in South Carolina, the Democrats complained because the Army of Reconstruction was stationed near the polls. The Democrats refused to recognize the choice of Republican electors, saying there had been no free election. Therefore, two electoral colleges met in this State as well.

Fourth, in Florida, the number of legal votes cast for electors was in dispute. There were two sets of election returns and allegations of fraud and manipulation of returns on both sides.

Fifth, in Louisiana, there was anarchy—two Governors, two returning boards, two sets of returns showing different results, and two electoral colleges.

Sixth, The carpetbaggers, scalawags, and Union Army seemed to have perpetrated fraud and intimidation for the Republicans, while Dixie Democrats used Ku Klux Klan methods to intimidate Republican voters.

Seventh, The Electoral Commission, consisting of 8 Republicans and 7 Democrats, gave the Presidency to Hayes by a vote of 8 to 7.

In summary, Tilden was defeated, not by the general ticket system, but by disputed election returns and by a Republican majority on the Electoral Commission which settled the disputed returns. Although nobody knows how the Mundt-Coudert plan would have operated in 1876, one thing is sure: The Lodge-Gossett plan is no guaranty against disputed election returns. Indeed, the operation of the Lodge-Gossett formula is likely to increase the possibility of contested returns. For elections would become closer contests as a result of dividing the electoral votes in each State. In 1900, for example, there would have been a margin of only one-tenth of an electoral vote. Thus, a few hundred popular votes, properly distributed, could determine the outcome. Such a situation is quite likely to give rise to election disputes, recounts, fraud, and

precisely the sort of thing that confused the picture in 1876—Haworth, "The Hayes-Tilden Disputed Election of 1876." Cleveland, 1906; United States Electoral Commission, "The Electoral Count of 1877, Washington," 1877.

Critics of the general ticket system are on a little firmer ground when they point to the election of 1888. If the Lodge-Gossett plan had been in effect and if its operation had not altered the popular vote, Grover Cleveland's popular margin of 95,713 would have put him in the White House. Remember, however, that Cleveland did not poll a majority of the popular vote, only 48.678 percent; and his popular margin was less than 1 percent. Moreover, application of the Lodge-Gossett formula to the popular vote in 1880, 1892, 1896, 1900, 1908, 1912, 1924, and 1948 would have given no candidate a majority of the electoral votes; and the election would have been thrown into Congress. In two of these elections, 1880 and 1896, the Republican, who won the popular plurality, would have received fewer electoral votes than would his Democratic rival. In four of these elections—1896, 1900, 1908, and 1924—the Republican candidate polled not merely a popular plurality but an absolute majority of the popular vote.

A few simple calculations show that the Lodge-Gossett plan will handicap the Republicans as long as the South remains comparatively solid and southern suffrage continues to be restricted. The difference between each major party's percentage of the popular vote and its percentage of the electoral vote under the Lodge formula is revealing.

I ask unanimous consent to have printed at this point in the Record a table relating to this question.

There being no objection, the table was ordered to be printed in the Record as follows:

DEMOCRATIC PARTY

Year	Lodge-Gossett plan, electoral vote	Popular vote	Difference
	<i>Percent</i>	<i>Percent</i>	
1880.....	49.295	48.225	+1.070
1884.....	50.000	48.842	+1.158
1888.....	50.599	48.658	+1.941
1892.....	45.653	46.119	— .466
1896.....	49.508	46.824	+2.684
1900.....	48.591	45.530	+3.061
1904.....	37.605	37.597	+ .008
1908.....	46.977	43.051	+3.926
1912.....	46.460	41.821	+4.639
1916.....	53.540	49.265	+4.275
1920.....	40.038	34.666	+5.372
1924.....	36.045	28.828	+7.217
1928.....	43.616	40.793	+2.823
1932.....	61.695	57.411	+4.284
1936.....	64.087	60.194	+3.893
1940.....	58.380	53.847	+4.533
1944.....	55.499	51.644	+3.855
1948.....	49.190	49.363	— .173
1952.....	45.469	44.377	+1.092

REPUBLICAN PARTY

1880.....	47.453	48.308	—0.855
1884.....	47.307	48.215	— .008
1888.....	46.334	47.817	—1.483
1892.....	41.937	43.100	—1.163
1896.....	48.166	50.934	—2.768
1900.....	48.613	51.609	—3.086
1904.....	56.408	56.412	— .004
1908.....	47.785	51.581	—3.796
1912.....	21.450	23.178	—1.728
1916.....	41.827	46.058	—4.231
1920.....	56.478	61.237	—4.759
1924.....	48.738	54.054	—5.316
1928.....	54.972	58.110	—3.138
1932.....	35.706	39.651	—3.945
1936.....	33.070	36.539	—3.469
1940.....	40.414	44.770	—4.356
1944.....	42.147	45.869	—3.722
1948.....	41.902	44.988	—3.086
1952.....	54.531	54.879	— .348

LODGE-GOSSETT FAVORS DEMOCRATS

Mr. DOUGLAS. Mr. President, as I look at these Lodge-Gossett figures for the last 19 elections, I notice that, in 17 of the 19 elections, the Democratic candidate would have received a larger electoral vote under the Lodge-Gossett plan than he was entitled to by his percentage of the popular vote. Conversely, the Republican's portion of the electoral vote would have been smaller than his portion of the popular vote in all 19 elections.

The Lodge-Gossett formula would handicap the Republicans because the Democrats could secure large blocs of electoral votes in the South, where relatively few popular votes will capture an electoral vote. In contrast, the Republicans would have to win the bulk of their electoral votes in the North, where more popular votes are required to gain an electoral vote. As shown in this table, which I shall ask to have inserted in the Record, Democratic leverage under the plan varies directly with southern solidarity and/or inversely with southern participation in the popular election. In other words, the more solid the South is and the fewer the southerners who vote in the popular election, the more the Lodge-Gossett formula will magnify Democratic strength.

I ask unanimous consent to have the table printed in the Record at this point. There being no objection, the table was ordered to be printed in the Record, as follows:

Year	Democratic advantage taken from the previous table	Southern solidarity (in percentage) ¹	Comparative southern popular participation ²
1880.....	+1,070	59.75	75.74
1884.....	+1,158	61.41	73.92
1888.....	+1,941	63.45	69.33
1892.....	- 466	61.47	70.31
1896.....	+2,684	66.33	65.58
1900.....	+3,061	66.27	53.76
1904.....	+ 008	70.33	40.43
1908.....	+3,926	68.02	42.88
1912.....	+4,639	70.94	43.19
1916.....	+4,275	74.73	42.54
1920.....	+5,372	67.55	41.22
1924.....	+7,217	70.36	36.63
1928.....	+2,823	57.18	38.62
1932.....	+4,284	83.27	40.66
1936.....	+3,893	83.07	39.18
1940.....	+4,533	80.44	40.18
1944.....	+3,855	73.66	41.28
1948.....	- 173	45.03	43.91
1952.....	+1,092	53.16	57.65

¹ "Southern solidarity" is an average percentage of the popular vote polled by Democrats in the Southern States, weighting each State according to its electoral vote. This method must be used because it makes a great difference whether the Democrats poll 95 percent of the popular vote in a State with 3 or 23 electoral votes. The rank-difference coefficient of correlation between southern solidarity and Democratic advantage under the Lodge-Gossett plan is 0.588. The 11 Southern States are Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

² Popular participation in the South compared to that in other States is a relation between the percent of the national popular vote polled in the South and the percent of the total electoral vote cast by the South. Popular participation in the South for 1924, for example, was measured as 36.63 percent, which means that, if the election had been determined by the nationwide popular vote regardless of State lines, the South would have had only 36.63 percent of the power she actually had in choosing the President. The rank-difference coefficient of correlation between Democratic advantage under the Lodge-Gossett plan and popular participation in the South is negative 0.568; the coefficient of multiple correlation between Democratic advantage, southern solidarity, and comparative southern popular participation (R1.23) is 0.684 (hearings, p. 336).

Mr. DOUGLAS. Mr. President, the Republican disadvantage under the Lodge-Gossett formula is not due to the magnified electoral power of the small States which results from giving the constant two electoral votes to all of the States and from giving one additional elector to Delaware, Nevada, and Wyoming, which do not always have the population quota requisite for the election of one Representative in all other States. Actually, the small States' electoral vote is usually rather evenly divided between our two major parties. If the magnified electoral power of the small States were the cause of the Republican handicap under the Lodge plan, we could expect the Democratic advantage to increase in proportion to the number of States carried under the Lodge formula. Actu-

ally, the correlation is so small as to indicate neither a direct nor inverse relation between the Democratic advantage and the number of States carried under the Lodge plan. Prof. Ruth Silva found the rank-difference coefficient of correlation for the Republicans to be only negative 0.063 and only positive 0.114 for the Democrats—volume 44, *American Political Science Review*, page 94, note.

It is revealing to compare electoral-vote percentages under the Lodge formula with popular-vote percentages for a period when the South was not so solid.

I ask unanimous consent to have printed at this point a table on that matter.

There being no objection, the table was ordered to be printed in the Record, as follows:

DEMOCRATIC PARTY

Year	Percent of electoral vote under Lodge plan	Percent of popular vote	Deviation
1864.....	44.292	44.940	-0.648
1868.....	45.986	47.332	-1.346
1872.....	43.470	43.823	-.353
1876.....	50.976(?)	50.933(?)	+ .043

REPUBLICAN PARTY

1864.....	55.708	55.060	+0.648
1868.....	54.014	52.668	+1.346
1872.....	56.011	55.621	+ .390
1876.....	47.995(?)	47.951(?)	+ .044

Silva, 44 *American Political Science Review* 96.

Mr. DOUGLAS. Mr. President, to the elections of 1864, 1868, 1872, and 1876, we may add two others. The Democrats would have suffered a disadvantage under the Lodge formula in 1892, when the Populists polled a sizable part of a relatively large popular vote in the South, and in 1948, when the States' Rights Party invaded southern democracy.

The reason for the Republican handicap under the Lodge-Gossett plan can be seen in the 1952 election. President Eisenhower received more popular votes than did any presidential candidate in American history. Although he would have been elected under the Lodge-Gossett plan—288,457 electoral votes to Stevenson's 240,241—the Lodge formula would have defeated him in spite of his popular majority, if the South had continued its customary voting habits in 1952. The average number of electoral votes given to the Republican candidate by the 11 Southern States under the Lodge formula in 8 previous elections, 1916 to 1948, was 27.9. In 1952, however, Eisenhower would have received 59.8 electoral votes in the 11 Southern States. Thus, Eisenhower's share of the southern electoral votes was 32 more than the average of previous Republican candidates. If 26 of these 32 electoral votes had gone to Stevenson, in conformity with tradition, Stevenson would have been elected with 266,241 electoral votes to Eisenhower's 262,457. In 1952, one southern electoral vote represented 66,863 popular votes. Therefore, Stevenson could have won an additional 26 Southern electoral votes by polling approximately 1,738,000 more popular votes in that area. The Lodge-Gossett plan would have allowed such a shift of 1,738,000 popular votes from Eisenhower to Stevenson in the South to have elected Stevenson, although Eisenhower still would have had a nationwide popular margin of nearly 3 million. In other words, the Lodge-Gossett formula would have defeated Eisenhower, the candidate who had an absolute majority of the popular vote.

One of the authors of this plan, former Senator Lodge, has said that the plan would not harm the Republican Party, because it would have given Thomas E. Dewey more electoral votes in 1948 than he actually received. Yes, it would have enlarged Dewey's electoral-vote consolation prize; but he would have lost the election nevertheless. Actually, the Lodge formula would also have given the Republican candidates more electoral votes in 1884, 1892, 1912, 1932, 1936, 1940, and 1944—all elections which they would have lost in any case. The same would be true for the Democrat in those elections in which the Democrat met

popular defeat—Hearings on House Joint Resolution 2, 81st Congress, 1st session, page 99. In general, it would enlarge the vote of the losing candidate; and in the case of a popularly defeated Democrat, it would enlarge his electoral vote sufficiently to endanger a Republican electoral victory in spite of the Republican popular victory.

LODGE-GOSSETT WOULD NOT PROMOTE TWO-PARTY SYSTEM IN THE SOUTH

Sponsors of this resolution have objected to applying the Lodge-Gossett or Mundt-Coudert formula to the statistics of past elections. "The candidates, the issues, and the popular vote would have been different," they say, "if our proposal had been in operation." This may be true: there might have been three rather than two, major party candidates; the problems of the large States and big cities might have been ignored; and at least two of the candidates might have been more conservative—one might even have been a South Carolinian. I am not willing to agree, however, that the Lodge-Gossett plan would produce a Republican-Democratic two-party system in the South.

The Republicans have no power in southern legislatures to enfranchise the Negroes and poor whites. As a matter of fact, I believe that those who now control southern legislatures would tighten up suffrage qualifications if they were threatened with a split in a State's electoral vote. Surely, those in control of southern legislatures would not extend the franchise to people who would use the vote to threaten their supremacy. In any case, as I said before, southern legislatures met the agrarian and populist challenge with a program of systematic disfranchisement.

Sponsors of this resolution claim that more southerners would vote in presidential elections because operation of the Lodge-Gossett plan would miraculously create real contests in the South. In other words, they argue that there are a number of southern Republicans who just do not bother to vote under the present system but who would vote in huge numbers if the Lodge plan were adopted. Well, first of all, I think southern legislatures would adopt the Mundt plan, rather than the Lodge plan, for reasons which I shall explain later.

Moreover, where would Republican votes come from in the South? I suppose the Republican Party might appeal to the southern racist who may not bother to vote now. That, however, would endanger the GOP's liberal and Negro support in the rest of the Nation. Can you not just imagine, Mr. President, what would happen to the Republican Party in the North if its presidential candidate approved racial segregation in order to woo southern voters. The other possibility is that the Republican Party might appeal to southern Negroes and poor whites. The trouble is that most of these people cannot vote. Furthermore, appeal to southern Negroes and liberals would alienate the conservatives to whom Republican economic and fiscal policy is most likely to appeal. Would not the Democratic South have trapped the Republican Party in a real box? Really, does not it sound foolish to speculate about where the Republicans can win more votes in the South? I think it does, because all of us are political realists enough to know that adoption of the Lodge plan will not produce southern Republicans.

During hearings on the Lodge-Gossett plan in the last four Congresses, several southerners said that adoption of the Lodge plan would not enlarge the Republican percentage of the southern vote. If this is true, as I believe it is, and if southern participation in popular elections remains limited, as I believe it will, then the Republican Party would be almost forced to try to decrease the South's voice in the electoral college, through enforcement of the second section of the 14th amendment. I think the Republican Party would be forced to this is a matter of sheer self-defense.

In the absence of action to reduce the southern electoral vote, adoption of the Lodge-Gossett plan would increase the importance of the South in national politics. I have before me some figures showing the southern electoral vote and the margin of electoral victory in the past 19 elections. I ask unanimous consent that this table be printed in the Record.

There being no objection, the table was ordered to be printed in the Record, as follows:

The southern electoral vote and the margin of victory in presidential elections, 1880-1952

Year	Present system			Lodge-Gossett plan		
	Winner	Electoral votes in excess of majority	Southern votes for winner	Winner	Electoral votes in excess of majority	Southern votes for winner
1880-----	Republican---	29	0	(1)	-9.4	56.8
1884-----	Democrat---	18	107	Democrat----	0	65.7
1888-----	Republican---	32	0	do-----	2.4	67.9
1892-----	Democrat---	54	112	(1)	-19.3	68.9
1896-----	Republican---	47	0	(1)	-2.2	74.3
1900-----	do-----	68	0	(1)	-6.2	34.6
1904-----	do-----	4	0	Republican---	30.5	29.5
1908-----	do-----	79	0	(1)	-10.7	33.1
1912-----	Democrat---	169	126	(1)	-18.8	89.4
1916-----	do-----	11	126	Democrat----	18.8	94.2
1920-----	Republican---	138	12	Republican---	34.4	40.0
1924-----	do-----	116	0	(1)	-6.7	31.1
1928-----	do-----	178	62	Republican---	26.4	53.4
1932-----	Democrat---	206	124	Democrat----	62.1	103.3
1936-----	do-----	257	124	do-----	74.8	103.0
1940-----	do-----	183	124	do-----	44.5	99.7
1944-----	do-----	166	127	do-----	29.2	93.5
1948-----	do-----	37	88	(1)	-4.3	57.2
1952-----	Republican---	176	57	Republican---	23.0	59.8

¹ Election by Congress: 1880, 1892, 1896, 1900, 1908, 1912, 1924, and 1948. This table was taken from p. 338 of the hearings but adapted to fit the Mundt-Lodge-Gossett substitute, which requires a majority of the electoral vote in order to be elected. The 11 Southern States are: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Tennessee, and Virginia.

DANIEL PROPOSAL INCREASES POWER OF SOUTH

Mr. DOUGLAS. Mr. President, these statistics show that, under the present system, the 11 Southern States held a balance of power in only 4 of the last 19 presidential elections—only in 1884, 1892, 1916, and 1948. In contrast, the Daniel version of the Lodge-Gossett plan, with the majority electoral-vote requirement, would have made southern electoral votes absolutely necessary for victory in every election except the one in 1904. In all the other elections, the withholding of southern electoral votes from the popular victor would have meant his certain defeat in the electoral college.

This would give to a minority—southern whites—an influence in presidential elections which would far exceed the influence of any metropolitan minority today. The fact is that Republicans and northern Democrats would be at the mercy of the South in national politics.

THE LOST-VOTE FALLACY

Sponsors of the Mundt-Lodge-Gossett resolution make a great deal out of what they call "lost votes" or votes "counted for the opposition." The argument runs something like this: Stevenson polled 90,000 votes in South Dakota, but all of South Dakota's electoral votes were cast for Eisenhower. Therefore, they argue that Stevenson's 90,000 votes were lost or counted for Eisenhower. Under their resolution, however, Eisenhower's 55 percent of the popular vote in the Nation might well have been lost if the Lodge formula had been used in the 39 Eisenhower States and the Mundt formula had been applied in the 9 Stevenson States, with Congress deciding who should be the President. What of the defeated majority with 55 percent of the popular vote?

I cannot be disturbed over this argument of lost votes. I think it is naive and without reason or logic. In every election, where there can be only a single winner, all votes cast for the losing candidate can be labeled either "lost" or "counted for the winner." The Mundt-Coudert plan would merely transfer the winner-take-all rule from the State level to the congressional district. The votes cast for the candidate who failed to carry the congressional district could be called either "lost" or "counted for the candidate" who did carry the district.

The Lodge-Gossett plan would merely transfer these so-called lost votes from the State to the national level. As former Senator Homer Ferguson has said, "the truth is that no votes are lost when validly cast in an election. They are actually counted toward the final decision; and, if insufficient for victory, they have simply exhausted their power as votes."

III-4. FIFTY PERCENT OF ELECTORAL VOTE NEEDED TO ELECT

In the substitute Daniel-Mundt-Kefauver amendment, Mr. President there is one provision which is perhaps the most dangerous proposal to our electoral system which has been seriously offered in many years. That is the proposal that if any candidate fails to receive a majority of the electoral vote, the Congress will meet to decide the issue. The language of the proposal reads as follows:

"The person having the greatest number of votes for President shall be the President, and the person having the greatest number of votes for Vice President shall be the Vice President, if such number be a majority of the whole number of electoral votes."

UNDER PRESENT PROPOSAL ALMOST HALF OF ELECTIONS SINCE 1880 WOULD HAVE BEEN DECIDED BY CONGRESS

Mr. President, I believe the method by which this amendment proposes to settle the election of a President, once it is thrown into Congress for decision, is an improvement over the present system in which each State is given one vote in the House. What the proponents of the proposal have overlooked—or perhaps some of them have not overlooked it—is that almost half the elections since 1880 would have been thrown into Congress for decision, if the Lodge-Gossett amendment had been operating. Furthermore, Mr. President, had the plan been in operation in these years, third parties would have been in a much stronger strategic position than at the present time, and one can only be led to the belief that all or almost all of the elections would have been decided by the Congress.

Mr. President, this on the face of it is such a ridiculous proposal that this fact alone should lead the Senate at least to recommit the proposal until the Committee has had time to study its full implications.

Now for the proof.

First, Mr. President, I ask unanimous consent to have printed in the Record a table which shows the total popular vote and the actual electoral vote by number and percentage for the Democrats and Republicans from the election of 1880 to that of 1952.

There being no objection, the table was ordered to be printed in the Record, as follows:

Popular vote and electoral vote of presidential candidates, 1880-1952

Year	Popular vote				Actual electoral vote							
	Republican		Democratic		Republican		Democratic		Other			
	Number (1,000)	Percent	Number (1,000)	Percent	Number	Percent	Number	Percent	Number	Percent		
1880-----	4,454	48.3	4,445	48.2	214	58.0	155	42.0	-----	-----		
1884-----	4,852	48.3	4,874	48.5	182	45.4	219	54.6	-----	-----		
1888-----	5,444	47.8	5,540	48.7	233	58.1	168	41.9	-----	-----		
1892-----	5,191	43.1	5,554	46.1	145	32.7	277	62.6	22	5.0		
1896-----	7,036	50.9	6,468	46.8	271	60.6	176	39.4	-----	-----		
1900-----	7,220	51.7	6,358	45.5	292	65.3	155	34.7	-----	-----		
1904-----	7,629	56.4	5,084	37.6	336	70.6	140	29.4	-----	-----		
1908-----	7,679	51.6	6,409	43.1	321	66.5	162	33.5	-----	-----		
1912-----	3,484	23.2	6,286	41.8	8	1.5	435	81.9	88	16.6		
1916-----	8,534	46.1	9,128	49.3	254	47.9	277	52.1	-----	-----		
1920-----	16,147	60.2	9,141	34.1	404	76.1	127	23.9	-----	-----		
1924-----	15,725	54.1	8,387	28.8	382	71.9	136	25.6	13	2.5		
1928-----	21,391	58.1	15,016	40.8	444	83.6	87	16.4	-----	-----		
1932-----	15,762	39.7	22,822	57.4	59	11.1	472	88.9	-----	-----		
1936-----	16,680	36.5	27,477	60.2	8	1.5	523	98.5	-----	-----		
1940-----	22,304	44.8	26,827	53.8	82	15.4	449	84.6	-----	-----		
1944-----	22,066	45.9	24,777	51.6	99	18.6	432	81.4	-----	-----		
1948-----	21,999	45.0	24,106	49.4	189	35.6	303	57.1	39	7.3		
1952-----	33,779	54.9	27,315	44.4	442	83.2	89	16.8	-----	-----		

Mr. DOUGLAS, Mr. President, we should note that in the elections of 1880, 1884, 1888, 1892, 1912, 1916, and 1948 the Presidents were elected with less than a majority of popular votes cast for all candidates. Because of the existing electoral system, however, less than a majority of the popular vote, nevertheless, produced a sizable majority in the electoral vote.

Thus Garfield, in 1880, with 48.3 percent of the popular vote to 48.2 percent for Hancock, won by an electoral margin of 214 to 155, or by 58 percent to 42 percent in the electoral college. In 1884 Cleveland received 48.5 percent of the popular vote to Blaine's 48.3 percent; but Cleveland had an electoral margin of 219 to 182, or 54.6 percent to 45.4 percent. In 1888, of course, Harrison, with fewer popular votes than Cleveland—he received 47.8 percent to Cleveland's 48.7 percent—nonetheless, received 233 electoral votes to Cleveland's 163, or 58.1 percent to 41.9 percent of the electoral vote. In 1892 Cleveland received 46.1 percent of the popular vote to 43.1 for Benjamin Harrison and won by 277 to 145 in the electoral college, or by 62.6 percent of the electoral votes, to 32.7 percent of the electoral votes for Harrison. James P. Weaver, the Populist candidate, received over 1 million votes, about one-ninth of the total, but got only 22 electoral votes, or one-half of 1 percent.

Further, in 1912, Woodrow Wilson won only 41.8 percent of the popular vote, but 81.9 percent of the electoral vote, because of the Taft-Roosevelt split in the Republican Party. In 1916 Wilson got less than 50 percent of the popular vote, 49.3 percent; and Hughes received 46.1 percent. Wilson won the election with 277 electoral votes to 254 for Hughes or by a 52 to 48 percent margin in the electoral college.

Finally, in 1948, President Truman got only 49.4 percent of the popular vote to Dewey's 45 percent; yet President Truman won in the electoral college by 303 to 189, with another 39 votes going to Thurmond. Truman's electoral percent was 57.1 to 35.6 for Dewey and 7.3 percent for Thurmond.

PRESENT SYSTEM PRODUCES DECISIVE RESULTS

The point of these figures, Mr. President, is this—and I do not rise to blame the system, but to praise it—that without the present electoral system, which produces decisive electoral victories with only small popular victories, the office and power and prestige of the Presidency would suffer irremedial harm. Our people would be less willing to accept electoral decisions. The President would be in a weak position. The country would be divided and there would be constant and continuous bickering over the results. I believe it is a healthy thing to have the winner receive an electoral vote larger than his popular majority or plurality. I believe this is good; and without it there would have been great division in the country in almost all the elections in which the popular vote was close or in which the winner received only a plurality rather than a majority.

Mr. DUFF. Mr. President, will the Senator from Illinois yield?

Mr. DOUGLAS. I am glad to yield to the very able Senator from Pennsylvania.

Mr. DUFF. Is not one of the great difficulties of this proposal that at a time when decisiveness is necessary in a critical world situation, we might very well have a critical world situation and also a lack of decision in the United States, when decision is vital to the welfare of the free world?

Mr. DOUGLAS. The Senator from Pennsylvania is exactly correct. Even if the election were not thrown into the Congress, if the vote were close, the prestige of the incoming administration would be damaged. If the election were thrown into the Congress, particularly if there were a third party, no one would be able to state what would happen, and the Government would be greatly weakened. The Senator from Pennsylvania is completely correct.

I rise to point this out, Mr. President, because of what I believe is an irremedial flaw in the plan produced by the Senators from Texas, South Dakota, and South Carolina. When we have opposed this plan on grounds that the Mundt-Coudert half of it, based on the unit vote in congressional districts, would introduce into the presidential electoral system the same unfair and unrepresentative features which already exist in the way in which congressional districts are apportioned we have been told that the Mundt-Coudert portion of it probably would not be accepted by many States. Thus, it is claimed that the Lodge-Gossett or proportional system would be almost the universal choice of the individual States.

Personally, I do not agree with that point, inasmuch as I believe that the States would choose the plan most advantageous to each of them, and that States would in fact, shift back and forth to further the designs of the party or

regime in control in each of the States. Although as a matter of fact, later I hope to demonstrate that probably the pressures which would be applied would be such that a majority of the States would choose the Mundt-Coudert system, nevertheless suppose we accept the verdict that the Senator from Texas has advanced, namely, that the Lodge-Gossett or proportional system would be used by almost all States. I do not think that would happen, but let us assume that it did happen. In that event, I believe it would bring even more devastating results than those which would be brought about by the Mundt-Coudert system, as now proposed.

LODGE-GOSSETT METHOD UNWORKABLE

First, all of us know that under the Lodge-Gossett system the electoral vote, at least for the two large parties, would parallel the popular vote more closely than would occur under the present system. For example, in 1952 the popular vote was divided 54.879 percent for Eisenhower, and 44.377 percent for Mr. Stevenson. Under the Lodge-Gossett proportional method of dividing the electoral vote, Eisenhower would have received 54.531 percent of the electoral vote, and Stevenson 45.467 percent of the electoral vote. Actually, Candidate Eisenhower received 442 electoral votes to 89 for Governor Stevenson, or 83 percent of their number.

Therefore, under the Lodge-Gossett system, the electoral vote parallels rather closely the popular vote. Since 1880, under the Lodge-Gossett plan, the greatest deviation of the electoral vote from the actual popular vote for the Democrats would have been plus 7.2 percent in 1924; and for the Republicans, minus 5.3 percent in the same year. In most elections, however, the deviation of electoral vote percentage from the popular vote percentage under the Lodge-Gossett method would have been only 1 to 2 to 3 percent.

In the hearings on page 335, in the very brilliant testimony of Dr. Ruth Silva, there is a table which applies the Lodge-Gossett method to all the presidential elections beginning with the one in 1880. The table applies the Lodge-Gossett system to our vast elections. I ask unanimous consent that the table be inserted at this point in the Record, as a part of my remarks.

There being no objection, the table was ordered to be printed in the Record, as follows:

Year	Democratic Party			Republican Party		
	Lodge-Gossett plan electoral vote percent	Popular vote percent	Difference	Lodge-Gossett plan electoral vote percent	Popular vote percent	Difference
1880.....	49.295	48.225	+1.070	47.453	48.308	-0.855
1884.....	50.000	48.842	+1.158	47.307	48.215	- .908
1888.....	50.599	48.658	+1.941	46.334	47.817	-1.483
1892.....	45.653	46.119	- .466	41.937	43.100	-1.163
1896.....	49.508	46.824	+2.684	48.166	50.934	-2.768
1900.....	48.591	45.530	+3.061	48.613	51.699	-3.086
1904.....	37.605	37.597	+ .008	56.408	56.412	- .004
1908.....	46.977	43.051	+3.926	47.785	51.581	-3.796
1912.....	46.460	41.821	+4.639	21.450	23.178	-1.728
1916.....	53.540	49.265	+4.275	41.827	46.058	-4.231
1920.....	40.038	34.666	+5.372	56.478	61.237	-4.759
1924.....	36.045	28.828	+7.217	48.738	54.054	-5.316
1928.....	43.616	40.793	+2.823	54.972	58.110	-3.138
1932.....	61.695	57.411	+4.284	35.706	39.661	-3.945
1936.....	64.087	60.194	+3.893	33.070	36.539	-3.469
1940.....	58.380	53.847	+4.533	40.414	44.770	-4.356
1944.....	55.499	51.644	+3.855	42.147	45.869	-3.722
1948.....	49.190	49.363	- .173	41.902	44.988	-3.086
1952.....	45.469	44.377	+1.092	54.531	54.879	- .348

Mr. DOUGLAS. Mr. President, in her testimony on the same page, however, Dr. Silva points out that in 17 of the 19 elections since that date, the Democratic Party candidates would have received a greater electoral vote than the one they were entitled to by the percentage of the popular vote. She says also that—

"In contrast, the formula would have consistently given the Republicans a smaller electoral vote than they were entitled to by their percentage of the popular vote."

Mr. President, after Senate Joint Resolution 31 has been reported, we have now been offered, in its stead, a new formula. It includes, among other new provisions, the language that if no candidate receives a majority—not a plurality, but a majority—of the electoral vote, the election will be decided by the Congress.

Under the original Lodge-Gossett proposal, as amended by my former colleague from Illinois, Senator Lucas, the figure was 40 percent, but such strenuous objections were made that, since third parties under the plan would receive a close approximation of electoral votes to popular votes, the plan would promote third parties and splinter parties, that this new provision of a clear majority—50 percent or more of the electoral vote—was substituted for the 40 percent provision.

Mr. President, if we apply this 50 percent formula—which now is a part of the Daniel-Mundt-Thurmond substitute—it is clear from the facts which were placed before the Judiciary Committee, and from the table on page 335 of the hearings, that at least 8, and possibly 9, of the last 19 presidential elections would have been thrown into the Congress for decision. That, I submit, Mr. President, would be an intolerable situation. It is clear, too, that knowing that this would so easily be possible, third parties would be more powerful, and would hold the balance of power in almost all our elections.

But I wish to give the proof of the fact that 8 and possibly 9, of 19 elections since 1880 would have been decided by the Congress under the present proposal, before I point out the disastrous consequences of such a system.

Under the Lodge-Gossett plan, with the provision that a candidate must receive one-half of the electoral vote, or else the decision will be thrown into the Congress, stalemated elections would have been produced in 8 elections since 1880. In those elections, under the Lodge-Gossett formula the following percentages of the electoral vote would have been received by the candidates of each party:

Year	Democratic candidate electoral vote percent	Republican candidate electoral vote percent
1880:-----	49.295	47.453
1892:-----	45.653	41.937
1896:-----	49.508	48.166
1900:-----	48.591	48.613
1908:-----	46.977	47.785
1912:-----	46.460	21.450
1924:-----	36.045	48.738
1948:-----	49.190	41.902

Source: Hearings, p. 335.

In 1884, the Democratic candidate, President Cleveland, would have received a bare 50 percent of the electoral vote, under the Lodge-Gossett system, to 48.21 percent for Blaine, his Republican opponent. It is not clear whether 50 is a majority; and perhaps this election, too, would have been thrown into the Congress for decision.

EVEN WITH A POPULAR MAJORITY FOR A PRESIDENT, FOUR ELECTIONS WOULD HAVE BEEN THROWN INTO THE CONGRESS

In four of those elections—those of 1896, 1900, 1908, and 1924—the Republican candidate received more than half the popular vote; the percentages were 50.9, 51.7, 51.6, and 54.1. But, first, because the Lodge-Gossett system would make the electoral vote percentage very close to the popular vote percentage, rather than to exaggerate the electoral vote, as at present; and, second, because it would consistently give the Republican Party a somewhat smaller electoral vote than its percentage of the popular vote, those four elections would have been thrown into the Congress under the provision in this substitute that will happen unless a candidate receives an electoral-vote majority. And, of course, that is in addition to the other four elections since 1886 which would have been thrown into the Congress for decision—elections in which the winning candidate did not receive a majority of the popular vote, and would not have received a majority of the electoral vote under the Lodge-Gossett plan.

I repeat, Mr. President, that under the Lodge-Gossett system, as now proposed, eight elections, and possibly nine, would have been decided by the Congress since the election of 1880.

The proponents will say that we are not to use history if it helps us to show what a ridiculous and senseless proposal we have before us, although I must say that the proponents have not hesitated to call upon the past when discussing what they regard as the faults in the present election system. What is sauce for the goose is certainly sauce for the gander.

PROPOSED SYSTEM A BOON TO THIRD PARTY

But I would say that if this system had been in effect, and knowing that any candidate would have had difficulty in getting a majority of the electoral vote, and knowing especially that the Republican vote would consistently be under-represented by the Lodge-Gossett method, there would have been a field day for third party or States-rights parties or States-righters running under a Democratic label in the South. This effect of the 50 percent proposal may, in fact, be the reason why some have insisted upon raising the requirement from 40 percent to 50 percent. It would give a third party, especially in one-party States and States where a very small electorate has disproportionate power, the opportunity to throw almost any presidential election into Congress, for decision.

When this compromise was brought forward, one of two things happened: either, the full implications of this 50 percent provision were not realized by its proponents—in which case the Senate should vote overwhelmingly to reject this dangerous and ridiculous substitute amendment; or the advocates of this amendment knew full well the implication of this provision in their substitute, in which case the substitute should be defeated overwhelmingly by the Senate as unworkable, unreasonable, and a greater threat to our Presidential election system than any which has yet occurred in the history of our Republic.

PROPOSAL WOULD PROMOTE UNPLEDGED ELECTORS

There is yet another provision of the substitute amendment which should be examined closely. It is the provision which states that—

"Any candidate for elector who before the election has pledged his vote for President or Vice President to a specific person shall, if elected, cast his vote for such person."

On first reading, Mr. President, this provision appears to be an improvement over our present system, under which, as we know, electors can, and have, failed to vote for the presidential candidate of their party, although that has happened on only rare occasions.

However, when reviewed in the context of the Lodge-Gossett, Mundt-Coudert arrangement, this is, in fact a very dangerous provision.

Third parties and regional parties, under the substitute proposal, would have a controlling influence in every election. Knowing this, there is nothing in this language to prevent—and indeed the substitute amendment would encourage—electors running unpledged. This would give them an influence over the electoral vote which unpledged delegations now have in closely contested national party conventions, with which I think the Senator from Pennsylvania, Mr. Duff, is somewhat familiar.

I think we should not suppress, as Senators, what as men we know to be true; namely, if either Democratic or Republican Party platforms or party candidates, took stands on issues such as civil rights, labor legislation, or progressive social legislation, groups in both parties who disagree with such issues not only could, but probably would, keep electors in their States unpledged, thus giving them controlling influence over an election and throwing it into the Congress.

This would also be true, but somewhat less true, of dissident groups on the left as well as on the right. I say this because the Lodge-Gossett or proportional system gives much greater influence to third parties in one-party States than to third parties in the large two-party States. For example, even though the proponents of Lodge-Gossett claim that it would fairly distribute the electoral vote in proportion to the popular vote, this is not true. In 1948, the two third-party candidates received almost precisely the same popular vote. Thurmond got 1,169,021 votes and Wallace got 1,157,172 votes. In that election Thurmond received 39 electoral votes and Wallace none. Under the Lodge-Gossett proportional method, which is supposed to remedy such situations, Thurmond

would have received 38.6 electoral votes, or 7.3 percent of the total number, and Wallace 9.4 electoral votes or 1.8 percent of the total. Thus, even this proportional system gives much greater weight to a third party in one-party States than to third parties in large two-party States. Of course this is true, also of the vote of the two major parties—i.e., the one-party States would have the whip-hand.

PROPOSAL WOULD PROMOTE PARLIAMENTARY SYSTEM

There is yet another consequence which follows from the Lodge-Gossett proposal. I have shown that 8 and possibly 9 of the last 19 presidential elections would have been decided by Congress under its 50 percent provision. This means that congressional candidates would be running not only as representatives of their districts, but as presidential electors. In this respect this provision would change, completely, the American system and make it far more like the parliamentary system where the personalities of the local candidates and the local issues they represent, are much less important than the national party label. This might be good or bad, depending on one's point of view, but it would be a logical consequence of the substitutes now before us.

Now, Mr. President, if we are going to have a parliamentary system, let us debate that and decide that on its merits, but let us not drag it in by the back door as it would be dragged in under the provisions of this substitute amendment.

PROPOSAL RISKS DISASTER

Let us look further as to the consequences of throwing almost all elections into Congress for decision.

First of all, the will of the people would be frustrated. Many, and in fact most, of the presidential candidates who received a majority of the popular vote, would find that notwithstanding their popular majority Congress itself would have to determine the election. That is a much greater evil than any supposed evil which now exists in the electoral system.

Second, there would always be an 8 weeks delay before the public knew the outcome of our Presidential elections—that is from the election date in November until the Congress met in January. This type of delay and uncertainty, which would occur every 4 years, would strain our presidential election system beyond the breaking point. The budget would be delayed, there would be no time for the candidates to determine the personnel they desired to serve with them, there would be trades and bargains for every conceivable post, position, and benefit desired by this or that powerful group in Congress, and all three candidates would be operating in a vacuum, not knowing whether they or their opponents were to be the President. We would have a Hayes-Tilden circus in every election. This general indecisiveness could bring down the system. Third, it is quite clear that in any election, the man with the third highest popular vote would continue to remain in a strong position even after his clear defeat at the polls. With stalemates between the two front runners, the third party candidate would be in a position not unlike that now held in party conventions by the dark horse candidate when the two front runners are deadlocked. If not chosen as President, he would dictate who would be President.

Fourth, and perhaps the most dangerous implication is that this process would, as the Senator from Pennsylvania has observed, weaken the presidential leadership which is imperative at this stage in our history. In almost any election, the winning candidate would be dependent on Congress for his election. Think of the concessions he would have to make to group after group. Think what effect this would have on the general concept of division of power between three equal institutions—the Presidency, the Congress, and the judiciary. Congress would dominate. The President would be in its control and power. And given the groups and regions which would have the decisive and controlling influence in the Congress, this could only mean a weakening of the progress at home and a return to isolationism abroad.

Mr. President, under this amendment and its clear implications and consequences, our Nation would be courting internal disaster in a time of external peril, if we were to be so foolish as to pass it with a two-thirds vote of the Senate.

(The following is reprinted from "Selecting the President: The Twenty-Seventh Discussion and Debate Manual" (1953-54), vol. 1, edited by Bower Aly:)

THE IDEAL METHOD OF SELECTING THE PRESIDENT OF THE UNITED STATES

(By Frederic R. Coudert, Jr.†)

There can be few more fascinating subjects for consideration than the ideal method of selecting the President of the United States, without regard for any purely practical situations. There is, of course, an ideal way of selecting the President. That is the basis of a proposed amendment to the Constitution of the United States, which I first introduced in the House of Representatives in March, 1949, and in each succeeding Congress. It is sponsored in the Senate by Senator Karl Mundt of South Dakota.

The ideal is the archetype, the most perfect in all of the circumstances concerned. It is not mere fancy, or imagery, rooted in the gossamer of illusion, or in wishful thinking. Rather, the ideal is rooted firmly in the rich soil of the Wisdom of the Ages, which has nourished all of the earthly blessings men have been able to earn for themselves.

Selecting the President, in the context of subject, and for this article, means the steps of nominating and of electing the President.

In particular, the office of President of the United States, developed out of our own political heritage, is rooted in the heritage of ideas, principles and practices that came to culmination in the Constitution. It is no reflection on the Founding Fathers, the authors of the Constitution, to say that they merely re-arranged familiar things in a new light. The new light was their genius; and true genius was required to take the familiar things apart, re-erect them on a new foundation and, at the same time, build a structure at once so perfectly proportioned and balanced that, in a half-dozen generations, their handiwork grew into the most powerful Nation mankind has known. The Founding Fathers were political architects and builders. But they did not make the material with which they worked. They did understand it.

In this light, to consider the ideal way of selecting the President is, indeed, a fascinating undertaking.

To begin at the beginning, we must consider, in proper perspective, "all of the circumstances concerned" out of which the ideal method of selecting the President will naturally flow. This involves a brief description of the American Political System, a brief outline of its origins and development, the place of the office of President in the larger scheme, and some comments on the party system. From this the ideal way of selecting the President of the United States will stand out in bold relief.

At the outset, let us exclude, as inapplicable to the subject, the concepts, principles and practices of those European political systems founded on the Roman Law. For, as Roscoe Pound, then Dean of the Harvard Law School, observed in his introduction to "Americans on Guard":

"There are two traditions of adjusting relations and ordering conduct in the World of today, the Roman and the English. * * * The one is solicitous for efficiency of official action and subordinates thereto the securing of individual interest. The other is solicitous for the individual and imposes checks and limitations upon officials to safeguard individual interests. * * *

"It is no accident that where one tradition obtains there are autocracies while in the domain of the other there are democracies. Nor is it an accident that the great English-speaking lands, deriving their political ideas from England, are federally organized. *A federal polity cannot be an autocracy.* * * *

"We inherited the idea of government according to law from the struggle between courts and crown which established the supremacy of the law against the Stuart Kings. * * * Thus far our whole political and legal development has conformed to it. * * *

†The Honorable Frederic R. Coudert, Jr., is Member of Congress from the Seventeenth District of New York. The article here presented was written in response to the editor's invitation for Mr. Coudert to address himself to the question, "Neglecting all purely practical considerations, what would be the ideal method of selecting the President of the United States?"

"Today ideas of public law imported from Continental Europe are being taught and urged against our American legal-constitutional polity. * * * We are told that the separation of powers * * * are not more than an eighteenth-century political fashion. * * * In the rise of absolutism throughout the World, we, too, show signs of becoming infected." [Emphasis supplied.]¹

The American Political System is unique among all others in history. In part, it may be likened to a Tree of Liberty—root, trunk and branch, blossom and fruit. The fruits are the Blessings of Liberty and the roots are the People of the United States. Equally important—perhaps more important is the soil into which the roots are sunk. For this soil is the body of ideas fundamental to the very existence of American institutions and their upholding traditions.

The Constitution of the United States is the capstone of the American Political System. It is the instrument by which the people in the States created a government for the United States, deriving its just powers from the consent of the governed. Its primary purpose is the protection of personal Liberty,² the sum total of human rights—from the beginning to the end. No other government was ever formally dedicated to this purpose.

The political structure or form of government in the United States can be described as a limited dual-sovereignty in a federal-union of States, with a separation therein of the delegated powers of sovereignty, Executive, Legislative and Judicial. Here it should be noted that while the powers delegated to governments by the people are sovereign powers, the whole sovereign power of the people is not delegated. They have kept for themselves full sovereignty in the moral realm of personal Liberty.

Sovereignty is the power to declare, and enforce, the law. In unitary governments, like those of Continental Europe, which are founded in the Roman Law, there is only one sovereign government in a country and its sovereignty is complete, unlimited and undivided. It is very easy to see and to understand. The legislative body is the sovereign. It chooses the executives (cabinet) from its own membership; and courts are administrative rather than independent judicial bodies. In practice, European governments exercise the powers of sovereignty to declare the law in advance, as a guide to human conduct (legislative); administratively, in the daily conduct of the public business (executive); and in cases in court (judicial). For these are the functions of government, to the extent of the objects of government. With them the objects of government are all-inclusive, extending to every person and every thing. As I said above, such a governmental structure is easy to comprehend. The legislative power is dominant; and it derives its authority (office) from the voters.

Against the stark simplicity of the structure of European governments, the structure of our Federal Government is somewhat complex. Let me offer an extract from "The Federalist No. 39" by James Madison.³ Madison was describing the elements of the new government proposed in the Constitution, then under consideration; and in the very terms used by the anti-Federalists in their campaign of opposition. It is most helpful in understanding the ideal way of electing the President. Madison wrote:

"In order to ascertain the real character of the government, it may be considered in relation to the foundations on which it is to be established; to the sources from which its ordinary powers are to be drawn; to the operation of those powers, to the extent of them; and to the authority by which future changes in the government are to be introduced. [Constitutional amendments.]

"* * * the Constitution is to be founded on the assent and ratification of the people. * * * Not as individuals composing one entire nation, but as composing the independent states to which they belong. * * * The act, therefore, establishing the Constitution will not be a national, but a federal act * * * it is to result neither from a majority of the people of the Union, nor from that of a majority of the States. It must result from the unanimous assent of the several States that are parties to it. Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority. * * * Each State, in ratifying the Constitution, is considered as a sovereign body. * * * In this relation, then, the new Constitution will, if established, be a federal, and not a national constitution."

¹ "Americans on Guard," by O. R. McGuire, A.M., S.J.D., LL.D. (Washington, D.C.: American Good Government Society, 1943).

² Liberty, as seen here, is endowed by God in His creation of man and thus is within the realm of the moral law. The field of license is outside the moral realm. Liberty is used exclusively in both the Declaration of Independence and the Constitution.

³ "The Federalist," Modern Library Edition (New York: Random House).

"* * * The House of Representatives will derive its powers from the people of America; and the people will be represented in the same proportion, and on the same principle, as they are in the legislature of a particular State. So far the government is national, not federal. The Senate, on the other hand will derive its powers from the State, as political and coequal societies; and these will be represented on the principle of equality in the Senate, as they now are in the existing Congress. So far the government is federal, not national. The executive power will be derived from a very compound source. The immediate election of the President (by Electors) is to be made by the States in their political characters. The votes allotted to them are in a compound ratio, which considers them partly as distinct coequal societies, partly as unequal members of the same society. From this aspect of the government, it appears to be of a mixed character, presenting at least as many federal as national features.

"* * * as it relates to the operation of government * * * the Constitution * * * falls under the national, not the federal character * * * the operation of the government on the people, in their individual capacities, in its ordinary and most essential proceedings, may, on the whole, designate it, in this relation, a national government.

"* * * it changes its aspect again * * * in relation to the extent of its powers. The idea of a national government involves in it * * * an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. * * * In this relation, then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. * * *

If the sole basis of choice between a complex Federal government and a simple unitary national government were simplicity and ease of understanding, the thoughtless would always choose the simpler one. Fortunately, the less thoughtful make their choice on the basis of results. On this basis, the Blessings of Liberty, under our seemingly complex governmental system, have so far exceeded the promises—even the hopes—of the Founding Fathers, that there can be but few, even today, who would consolidate us into one government, and reduce the State governments to the status of provincial satrapies. If this, then, is to be the choice, the ideal way of selecting the President is beginning to take shape. It must fit in with, and be in balance with, the different parts of our complex federal-national system.

Before advancing that thought farther at this point, let us go back to the roots of the ideas and the practices that came to fulfillment in the Constitution of the United States, the materials with which the Founding Fathers built such a remarkable political edifice.

Here we meet two views. The first one is that the thirteen Colonies rebelled, threw out King George III's royal governors, voluntarily came together in the Continental Congress as sovereign states, won the War of Independence, perfected the Union by adoption of the Constitution, and went on from then to now. This is an heroic view and, in the main, is true. However, in Law, especially in the Law of Nations, there is a different picture.

The Colonial governments in rebellion were *de facto* (of fact) governments but not governments *de jure* (of law). The War of Independence was not concluded with the surrender of Lord Cornwallis at Yorktown. It was concluded by the Treaty of Paris in 1783, by which King George III of Great Britain transferred his lawful rights in and over the thirteen colonies in North America to the Thirteen States of the United States of America. The Treaty of Paris made the thirteen *de facto* governments into thirteen governments *de jure*.

Article 1st of the Treaty of Paris reads:

"His Britannic Majesty acknowledges the United States, viz. New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free sovereign and independent states; that he treats them as such; and for himself, his heirs and successors relinquishes all claims to the government, proprietary and territorial rights of same, and every part thereof. * * *

But where did the King of England get his rights to govern the Colonies? The answer in part is that the colonists came to North America under the sponsorship of the English King, brought English Law and political ideas with them, and settled on land which had been claimed for England. That is the

legitimate aspect of the business. The newcomers were not immigrants, in that they had to make no change in sovereign allegiance, but were settlers or colonists, expanding the realm of their sovereign.

The English Kings reigned under the monarchical principle, which, at the time of the Separation of the Colonies from Great Britain, had developed into a hereditary right of the eldest son, the Crown Prince, to succeed to the throne. In a much closer way than many might admit, the title of king may be compared to the Constitutional powers of the office of President of the United States.

In the early Middle Ages, beginning with the Fifth Century, the monarchical principle among the Germanic peoples meant that the kin-right of families made the members eligible for election as king. Once elected, the king had a divine right to rule. He had the divine sanction by his birth and the peoples' sanction by election. Much, much later this hereditary right to be among those eligible for election to kingship became a hereditary right of a son to succeed. But this did not increase the powers of the king. For the king was under the law.

The purpose of this brief inquiry is to show that the Chief Executives, in our earliest heritage, more than fifteen centuries ago, were beneath the Law. What follows is from a magnificent work of Professor Fritz Kern, "Kingship and Law in the Middle Ages."⁴ This work was translated from the German by Professor S. B. Chrimes, of the University of Glasgow, who also contributed an Introduction.

Professor Chimes says, "We are encouraged to believe that the origins and foundations of our (English) Constitution were as peculiar to England as its later developments, which is not the case" (p. xiii).

The fuller view, which unfolds the relation of the powers of Germanic kings in the Middle Ages with those of our President in the Twentieth Century, is stated thus, by Professor Kern:

"A. The rights of the monarchy were derived not only from the king's independent, hereditary and divinely endowed title, but also from an act of the community—from kin-right and consecration on the one hand, and from popular election on the other.

"B. The monarch is above the community, but the law is above the monarch. In the language of the Germanic peoples, this means that, although the promulgation and enforcement of the law belongs to the king, the declaration of what the law is belongs to the community * * *

"C. If the theoretical limits of autocracy are clearly defined in this way, it is none the less true that the sovereignty of the people is excluded. The people participate in the appointment of the king, but the monarch's power is not simply a mandate conferred on him by the community. The people share in making the law, which is above the king * * * whilst from the standpoint of Germanic law, the people lack the essential constituent of sovereign power to enforce the law * * * Neither the rule of a monarch whose powers were limited by law, nor the active legislative cooperation of the community * * * was regarded as 'sovereign' in the modern sense. Sovereignty, if it existed at all, ruled over both king and community."

The law which the Germanic kings promulgated and enforced existed long before they came to power, for " * * * medieval law must be 'old' law and must be 'good' law * * * If law were not old and good law, it was not law at all, even though it were formally enacted by the State." Today, we would call such a law "unconstitutional."

But to go on with the medieval thought: "The fundamental idea remains the same: the old law is the true law. According to medieval ideas, therefore, the enactment of new law is not possible at all; and all legislation and legal reform is conceived of as the restoration of the good old law which has been violated." * * * Right and law are restored as they had been in the good old days of King Eric (in Sweden), of Edward the Confessor (in Anglo-Norman England), of Charles the Great (among the French and Germans, or of some mythical law-giver.)

There were three degrees of popular participation in the medieval monarchies of the Germanic peoples: "The first is tacit consent, here the king acts formally alone, and so 'absolutely' in form but not in substance. The second degree is advice and consent; the third the judicial verdict."

⁴ "Kingship and Law," by Fritz Kern, professor in the University of Bonn. (Oxford, England: Basil Blackwell).

With us, the President acts "formally and alone" in executing the powers of his office; he acts with the "advice and consent" of the Senate in making appointments and in ratifying treaties. But our independent courts render the judicial verdict. All of these are functions of the delegated sovereign powers of the Constitution.

During the Sixteenth Century, Roman Law was "received" in the Germanic countries of continental Europe as the basic law of the land and gave strength to the doctrine of Divine Right of Kings and of "absolutism." Now that the kings have departed, these political ideas are the basis of the totalitarian state. Roman Law was not "received" in England. English lawyers and judges were able to withstand the invasion and keep their kings under the law.

The "old and good law" above is with us today as the "common law," unwritten but vital. It was brought to England by the Anglo-Saxons and brought to North America by English colonists, where it became the basis of the Constitution of the United States. With us, the functions of declaring the law and enforcing the law have been divided—as to objects—between the States and the Federal Government; and in each they have been sub-divided with appropriate powers among the Executive, Legislative and Judicial functions of declaring the law.

Although we have separated the Executive and Legislative powers (functions), they are closely related; for the President shares the Legislative Power to the extent of one-sixth of the Senators and one-sixth of the Representatives, when he disapproves an act of Congress. In fact, for a harmonious relationship, the Executive and the Legislative Powers should have the same political roots, the same base, the same constituency, as was intended when the Founding Fathers, in order to separate the Executive and Legislative Powers at the source, removed the election of the President from a joint session of the Senate and House of Representatives and lodged it in a body of Electors that was the exact counterpart of a joint session of the Congress.

My discussion of law and the ancient powers of the king to declare and enforce it is merely to show that these functions of sovereignty are naturally divisible and ought to be separated as we have separated them. And, also, to show that they are closely related and should derive their power of exercise, election to office, in exactly the same manner. This requires a closer relationship between the election of the President, through Presidential Electors, and the election of the whole Congress.

United States Senators are elected statewide, two in each State; the "Senatorial" Electors are and should be elected in exactly the same way. As for the 435 Electors, which correspond to the 435 members of the House of Representatives, they should be elected in Congressional Districts, or constituencies. This minor change from the present practice of statewide, en bloc election, would bring about the ideal way of electing the President of the United States.

If the "Representative" Electors are to continue to be elected statewide, as they now are, we should bring the elective basis of the Congress into alignment with that of the White House and elect all of each State's Representatives at-large, or statewide, as Senators are elected. For here balance is essential to the ideal, because of the formal separation of two distinctly separate but intimately related functions in the declaration of the law.

The powers of the many established elective offices under the United States and the States have long been fixed. But, overwhelmingly, the persons who fill these offices come to them through the mill of politics, which is as it should be. For, politics is the noblest calling of mankind, even though many active participants do not quite measure up to the standard:

"To gain power, to keep it, and to govern—these are the special business of a politician, just as it is a working bee's business to make honeycomb and honey. But we are entitled to ask—how did he gain power? how did he keep it? what did he do with it when he had it? And the answers to these questions are always mixed up with morals."⁵

Our party system is one of legally organized parties in the States and under state law. While our so-called national parties are lawful, they are extra-legal, in that they are not provided for by Federal law. National party conventions are but the coming together, under rules of their own making, of delegates from the legally constituted state parties. The State delegations, chosen in the States

⁵ Frederick Scott Oliver, "The Endless Adventure" (London: Macmillan and Co., Ltd., 1931), pp. 31-32.

in a variety of ways, are based numerically on the representation of the States in Congress, with bonuses for party achievement, and penalties for singular failure to achieve, in the most recent election.

The power of these state delegations in the conventions are not very closely related to the numbers of delegates involved, but to the political conditions in the respective States. The thing to be done is to nominate candidates for President who can be elected. Nothing is more natural than that the convention delegates from the large, doubtful and pivotal States should have the decisive voice as to the candidate most likely to carry those States. And, remember that there is doubt that any candidate other than their choice can carry a State, a State so necessary to party success that defeat is certain if it is lost. Such a State is the pivot on which turns the election of the President of the United States.

My own State of New York is such a State in the Republican scheme of things. No Republican President has been elected without its electoral vote. Of its importance in the national conventions of both parties, the late Charles D. Hilles, who served as a New York member of the Republican National Committee for twenty years, and who moved in the inner-circle of the party leadership for even more years, could speak with authority based on experience. Mr. Hilles has said :

"New York's power in political conventions, and therefore over the White House, comes not from the size of its delegations in the party National Conventions, which are roughly ten per cent in both instances. *New York's power comes from the fact that its delegations represent 47 (now 45) electoral votes, or nearly twenty per cent of the total number needed to elect a President.* It is this little understood fact that accounts for the almost invariable selection of Presidential nominees from New York or some other large state in sympathy with New York's political attitudes. But New York decides even that." [Emphasis supplied].

A proposed Constitutional Amendment to require that Electors of the President and Vice President be elected in the same manner as their counterparts in the Congress (Senators and Representatives) is pending in the Congress. Senator Karl Mundt of South Dakota is sponsoring it in the Senate and I am sponsoring it in the House. Its effect, if adopted, will be to divide each State's weight in selecting the President on exactly the same political basis as it is now divided in the selection of the members of Congress. Again, the political base of the Executive Power would be the same as the political base of the Legislative Power.

A secondary effect, but equally important, would be on the conduct of party nominating conventions. No longer would there be large, doubtful and pivotal States. All states would be equal with respect to their two "Senatorial" Electors; and the "Representative" Electors would be divisible among the parties according to their strength in the Congressional Districts.

Not only does the Mundt-Coudert Amendment provide an ideal method of selecting the President, it restores political balance between the White House and the Congress; and it is both simple and practical. There is no novel idea or principle in it that might unbalance our Constitutional system. It is electoral reform in the best sense, a mere rearrangement of familiar things.

(The following is an excerpt from "Political Parties and Opinions, 1788-1930," found in *Atlas of the Historical Geography of the United States*, by Charles O. Paullin (1932):)

PRESIDENTIAL ELECTIONS, 1788-1928

[Plates 102-111]

In constructing a series of political maps it is self-evident that the materials upon which they are based should be as uniform as possible. This rule was observed in constructing the maps of this series, but unfortunately for some of the maps, chiefly the early ones, the materials are of considerable diversity. Uniformity in the vote illustrated is prevented by differences in the method of choosing electors, by the loss or the inaccessibility of some of the early returns, and by variations in the vote that is published (see below).

The maps of this series are of three classes: (1) maps showing the electoral vote for President, 1789-1796; (2) maps showing the vote at Presidential and other elections, 1800-1816; and (3) maps showing the vote at Presidential elections, 1820-1928.

Character of Available Election Returns

For the first three elections 1788-1789, 1792, and 1796, the political statistics still in existence are too few and scattering to admit of the construction of maps based upon the vote of the people and of the legislatures for electors. The maps for these three elections are therefore based upon the vote of the Presidential electors. With a few exceptions in connection with the election of 1796 (see pp. 92-93, below) the vote that is mapped is by states.

For the five elections covering the years 1800-1816, owing to the loss or inaccessibility of some of the returns for Presidential elections, the returns of other elections were used to fill the gaps. The maps for these years are therefore based only in part, though chiefly, upon the vote at Presidential elections. With a few exceptions the vote that is mapped is the popular vote, by counties. The exceptions comprise a few cases in which the vote for Presidential electors of one or both houses of some of the state legislatures was used.

The maps covering the years 1820-1928 are based entirely upon the vote at Presidential elections. With a few exceptions they are based upon the popular vote, by counties. The exceptions comprise a few cases for the earlier part of the period in which the vote of one or both houses of the state legislatures was used.

A larger use of the votes of legislatures for electors was prevented by the lack of records giving the vote of each member of the legislature. New York is the only state for which such a vote was found. In several other states it was sometimes possible to ascertain the vote of the members by computation and comparison. According to the New York practice, the election of electors began with the nomination by each house of as many persons as there were electors to be appointed. The two houses then met in joint session and compared nominations. Those persons nominated by both houses were declared to be chosen electors. In case of a disagreement deficiencies were supplied by means of a joint ballot of the two houses (*New York Statutes*, Apr. 12, 1792, Ch. 72; *N. Y. Constitution of 1777*, Section 30). For New York, during the years 1800-1824, the vote mapped is the first vote of the assembly nominating electors. By reason of the small number of counties in Delaware and of their political consistency the vote of the members of the legislature of the state could generally be ascertained. The vote of the legislatures when unanimous presented no difficulty.

The published statistics for Presidential elections, except in some recent state publications, do not give the vote for all the electors. They rarely state what vote they give. Comparisons show that as a rule they give the vote for the leading elector on each ticket—that is, the elector who received the most votes in the state. Sometimes they give the vote for the first elector, who generally is the leading elector; sometimes the average vote for all the electors; and sometimes the vote for the leading elector in each county. The vote for electors at large is more likely to be given than that for other electors.

All the several kinds of votes found in the election statistics were used. As a rule no selection was possible. In recent years, however, when the vote for all the electors is occasionally given, close contests were sometimes decided by averaging the vote. Fortunately, the political complexion of a county was rarely changed by using one vote rather than another. It was the same whether derived

from the vote for the leading elector, the vote for the first elector, or the average vote.

When more than one return for the same election was accessible comparisons were often made with a view to correcting typographical or other errors. Occasionally, in the case of Texas and a few other states, when returns for a county were lacking, its habitual way of voting or the politics of the surrounding area was permitted to determine its political complexion, and the county was mapped accordingly. In general, however, counties for which there were no returns have been left blank. Returns for some of the minor parties, such as the Prohibition party, were sometimes less complete than was desirable; but is it believed that all cases in which minor parties carried a county have been discovered. Several of the minor parties have never carried a county.

Choice of Electors

In the early Presidential elections no uniform method of choosing electors was followed either in the several states or in any one state (with an exception or two). The three most usual methods were: (1) election by the legislature, (2) election by the people in districts, and (3) election by the people on a general ticket. Occasionally two of these methods were combined, as may be seen from the table below. By 1836 all the states except South Carolina, in which the election was by the legislature until the Civil War, had adopted the method that now prevails, that of a popular election on a general ticket. Since that year, with the exception given above, there have been but three instances of an election other than by general ticket. These are Florida in 1868 and Colorado in 1876, in which the elections were by the legislature; and Michigan in 1892, in which the election was by the people in districts, with the exception of two electors who were chosen at large. When the election is by districts the state is divided into electoral districts. Occasionally the electoral and Congressional districts of a state are identical, as was the case in New York in 1828. States in which the election was by general ticket were sometimes divided into districts, with a view to securing a geographical distribution of electors.

Table I, which gives the method of choosing electors during the years 1788-1836, has been compiled chiefly from state statutes and contemporary newspapers.

Geographical Units Used in Constructing the Maps

With a few exceptions the geographical unit employed in constructing the maps for 1789-1796 was the state and in the maps for 1800-1928, the county (or parish, in Louisiana). In mapping the electoral vote for Maryland, Virginia, and North Carolina for 1796 the electoral district was used; and occasionally in mapping the popular vote for the years 1800-1828, when county returns were missing, the electoral or Congressional district was the unit employed. Occasionally the combined vote of some two or three counties, when it was impossible to separate their vote, was mapped.

The county is as a rule the best unit for political purposes. It is common to all the states (except Louisiana, in which the parish corresponds to the county in other states) and is the unit for which election statistics are usually recorded. In New England, however, the town is the more important political unit, but it cannot be shown on maps of small scale. Cities are often more important political units than the counties in which they are situated, but with two exceptions it was not feasible nor desirable to treat them separately from counties. The two exceptions are Baltimore after 1854 and St. Louis after 1876. As these two cities since those years have constituted urban areas distinct from the counties bearing the same names they have been treated separately from their corresponding counties. Boston was treated as a part of Suffolk County; New York, of New York County; Brooklyn, of Kings County; Philadelphia, of Philadelphia County; Baltimore, of Baltimore County for 1800-1852; Chicago, of Cook County; St. Louis, of St. Louis County for 1820-1876; and San Francisco, of San Francisco County. The Virginia cities that form distinct political divisions have been treated as a part of the counties to which they naturally belong.

TABLE 1.—Method of Electing Electors, 1788-1836

Explanation: L. = by legislature; G. T. = by people, on a general ticket; D. = by people, in the state at large; E. = by electors. The number in parentheses following the abbreviation "D." is the number of districts into which the state was divided. As a rule each district elected one elector. Exceptions to the rule that are not obvious are given in the notes. The number in parentheses following the abbreviation "A." is the number of electors elected at large.

	1788-1789	1792	1796	1800	1804	1808	1812	1816	1820	1824	1828	1832	1836
New Hampshire.....	G. T. and L. ¹	G. T. ²	G. T. and L. ¹	L.	G. T.	G. T.	G. T.	G. T.	G. T.	G. T.	G. T.	G. T.	G. T.
Massachusetts.....	D. (8) and L. ³	D. (4) and L. ⁴	D. (14) and L. ³	L.	D. (17) and A. (2)	L.	D. (6) ⁵	L.	D. (13) and A. (2)	G. T.	G. T.	G. T.	G. T.
Rhode Island.....	L.	L.	L.	L.	L.	L.	L.	L.	G. T.	G. T.	G. T.	G. T.	G. T.
Connecticut.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	D. (30) and E. ⁷	G. T.	G. T.
New York.....	L.	L.	L.	L.	G. T.	G. T.	L.	G. T.	G. T.	G. T.	G. T.	G. T.	G. T.
New Jersey.....	L.	L.	L.	L.	G. T.	G. T.	L.	G. T.	G. T.	G. T.	G. T.	G. T.	G. T.
Pennsylvania.....	G. T.	G. T.	G. T.	L.	G. T.	G. T.	L.	L.	L.	L.	G. T.	G. T.	G. T.
Delaware.....	D. (3) ⁸	L.	L.	L.	L.	L.	L.	L.	L.	L.	G. T.	G. T.	G. T.
Maryland.....	G. T.	G. T.	D. (21)	D. (10)	D. (9) ⁹	D. (9) ⁹	D. (9) ⁹	D. (9) ⁹	D. (9) ⁹	D. (9) ⁹	D. (9) ⁹	D. (4) ¹⁰	G. T.
Virginia.....	D. (12)	L. ¹¹	D. (12)	D. (12)	D. (14)	D. (14)	L.	G. T.	G. T.	G. T.	G. T.	G. T.	G. T.
North Carolina.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
South Carolina.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Georgia.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Vermont.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Kentucky.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Tennessee.....	E. ¹²	D. (4)	D. (4)	E. ¹²	D. (2) ¹³	D. (2) ¹³	D. (3) ¹²	D. (3) ¹²	D. (3) ¹³	D. (11)	D. (11)	G. T.	G. T.
Ohio.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Louisiana.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Indiana.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Mississippi.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Illinois.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Alabama.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Maine.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Missouri.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Arkansas.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.
Michigan.....	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.	L.

¹ A majority of the popular vote was necessary for a choice. In case of a failure to elect the legislature supplied the deficiency.

² A majority of votes was necessary for a choice. In case of a failure to elect one or more electors a second election was held by the people, at which choice was made from the candidates in the first election who had the most votes. The number of candidates in the second election was limited to twice the number of the electors wanted.

³ Each of the eight districts chose two electors, from which the General Court (i. e., the legislature) selected one. It also elected two electors at large.

⁴ Two of the districts voted for five members each, and two for three members each. A majority of votes was necessary for a choice. In case of a failure to elect by popular vote the General Court supplied the deficiency. In the election of 1792 the people chose five electors and the General Court eleven.

⁵ A majority of votes was necessary for a popular choice. Deficiencies were filled by the General Court, as in 1792. It also chose two electors at large. In 1796 it chose nine electors, and the people seven.

⁶ One district chose six electors; one, five; one, four; two, three each; and one, one.

⁷ One district elected three electors; two, two electors each; and twenty-seven, one elector each. The thirty-four electors thus elected chose two electors.

⁸ Each qualified voter voted for one elector. The three electors who received most votes in the state were elected.

⁹ During the years 1804-1828 Maryland chose eleven electors in nine districts, two of the districts electing two members each.

¹⁰ One district chose four electors; one, three; one, two; and one, one.

¹¹ The state was divided into four districts, and the members of the legislature residing in each district chose three electors.

¹² Each district elected four electors each.

¹³ Two districts chose five electors each, and one chose four electors.

¹⁴ In 1796 and 1800 Tennessee chose three Presidential electors—one each for the districts of Washington, Hamilton, and Mero. Three "electors" for each county in the state were appointed by the legislature, and the "electors" residing in each of the three districts chose one of the three Presidential electors.

The counties of the United States vary considerably in size. Wide differences of area will be found by comparing with each other the counties of a given state or of different parts of the Union at any one time, or the same counties of a given state or part of the Union at different times. The area of most counties is between 100 and 1000 square miles. A few fall below the former figure, and a considerable number exceed the latter. In 1920 the average area of the counties of the United States was about 990 square miles. In 1800 the average size of the counties of the thirteen original states was not far from that figure, being a little under 1000 square miles. In 1920 the counties of these thirteen states were about half that size. In the same year the average area of the counties in the Pacific and Rocky Mountain states, in which are found most of the large counties of the Union, was about 2960 square miles; while the average area of the counties of New England, exclusive of those of Maine, was about 630 square miles. There have been no great changes since 1920. In 1930 the smallest county in the Union was New York County, New York, with an area of 22 square miles; and the largest, San Bernardino County, California, with an area of 20,175 square miles. There are eight states any one of which is smaller than San Bernardino County. Its area exceeds by 4000 square miles the combined area of Massachusetts, Rhode Island, Connecticut, and Delaware.

When a state is being settled the older or eastern counties are generally smaller than the newer or western ones. The more populous regions as a rule have the smaller counties. The counties in which Boston, New York, Brooklyn, Jersey City, Denver, and San Francisco are situated are exceptionally small—less than 75 square miles. Because of the creation of new counties the average size of counties in most sections of the Union is always decreasing—rapidly when the sections are new, and slowly, later. In New England, however, no new county has been created since 1860. On the other hand, in Georgia, one of the thirteen original states, eleven counties were created between 1905 and 1912. In three states, Connecticut, Rhode Island, and Delaware, no new counties have been created since the eighteenth century.

Counties vary greatly in population. In 1930 most of the counties had a population of from 5000 to 50,000, although there was a considerable number with less than 5000 or with more than 50,000. The counties with less than 5000 people were rural counties and were situated chiefly in the Rocky Mountain and Pacific states. The counties with more than 50,000 people usually contained a large urban population and were situated chiefly in the Eastern and North Central states. In 1930 the most populous county was Cook County, Illinois, with a population of 3,982,000; and the least populous was Armstrong County, South Dakota, with a population of 80. Next to Cook County in population was Kings County, New York, with a population of 2,560,000. Los Angeles County, California, was third, with a population of 2,208,000. Only nine states had total populations greater than that of Cook County. Erie County, New York, was more populous than the states of Arizona, Nevada, and Wyoming combined.

In 1800 the population of most of the counties of the Northern states was from 5000 to 50,000; and of the Southern and Western states, from 1000 to 25,000. In the less populous regions of the West, counties below 1000 were not infrequent. There were a few counties above 50,000. Philadelphia County was the largest, with a population of 81,000.

In 1930 the population was most dense in New York County, where there were 84,878 people to the square mile, and least dense in some of the counties of the Pacific and Rocky Mountain states and Western Texas, where there were fewer than two persons to the square mile. Most counties had a density of from 10 to 100 people to the square mile, although there were many counties below the former figure, chiefly rural counties west of the Mississippi; and not a few counties above the latter figure, chiefly urban counties in the thickly populated regions of the Eastern and North Central states. In 1800, as in 1930, the density of population in most counties was from 10 to 100 to the square mile. Many counties in the West, however, had a density of less than 10 and a few in the East of more than 100 to the square mile. New York County had the greatest density, about 1400 to the square mile. For further information on this subject see p. 48, above, and Plates 76B-79.

Representation of Votes on Maps

The vote that is represented on the maps is the vote for candidates and not necessarily the vote for parties. The vote represented for each of the three classes of maps is as follows: (1) 1789-1796, the electoral vote for Presidential candidates; (2) 1800-1816, the vote for each Presidential or other candidate who carried a county; and (3) 1820-1924, the vote for each Presidential candidate

who carried a county. When only two candidates are running the vote represented is a majority vote. When there are more than two candidates running the plurality vote is represented, which may or may not be a majority.

On each map the vote for candidates is represented by two or more of the six following colors; blue, yellow, red, green, violet, and black. All the territory carried by a candidate at any one election is given the same color. Should a candidate run at more than one election, the territory carried by him at subsequent elections is given the color first assigned to him, unless there is a good reason for changing it, which is the case when he runs as the candidate of a different party. Thus, on the map for 1904 the Roosevelt territory is blue, while on the map for 1912 it is red.

While the vote mapped is that for candidates, care was taken to show as far as possible the vote for parties. Each party therefore has a distinctive color. In the case of party factions which support different Presidential candidates the minor factions, or those which from the point of view of party regularity are "irregular," are represented by some color other than the party color. If for a given election one party accepts the candidates of another party, it has no distinctive color for that election. Parties that do not carry counties are not represented.

Inasmuch as a party with a new name often derives its principles and personnel largely from one or more old parties, it is not always easy to decide whether it is a new or an old party. In reaching a decision no hard and fast rule was applied; appeal to usage and expert opinion were deemed the appropriate method rather than minute investigation.

The principal parties and their corresponding colors are as follows: Federalist, blue; Democratic-Republican, red; Democratic, yellow; National Republican, violet; Anti-Masonic, blue; Whig, green; Free Soil Democratic, red; Know-Nothing, or "American," violet; Republican, blue; Greenback-Labor, green; Populist, green; Socialist, black; and Progressive, red.

Cases of fusion, coalition, party factions, and confusion in party lines sometimes arise which render the representation of votes somewhat difficult. Such cases have been treated in accordance with the following principles:

1. When two or more parties or party factions support the same Presidential candidate their vote is united and is represented by the color of that candidate. They may support the same or different Vice-Presidential candidates, and the same or different electoral tickets.

2. When one party or faction accepts unconditionally the electoral candidates of another party or faction its vote is represented by the color of the Presidential candidate of the party whose electoral candidates it accepted.

3. When each of two or more party factions supports different Presidential candidates the vote of each faction is represented by the color of its candidate.

4. When two or more party factions, supporting different Presidential candidates, enter into an agreement to divide the Presidential electors and support a fusion electoral ticket their combined vote is represented by a combination of the colors of the candidates of the several parties entering into the agreement. The vote for fusion tickets and the vote for "straight" tickets (see, for instance, p. 99, below) are not combined.

5. When two or more parties or party factions, supporting different Presidential candidates, vote for the same electoral ticket with the understanding that the electors, guided by the results of the election, will cast their ballots unanimously for one or the other of the candidates the combined vote of those parties or factions is represented by a combination of the colors of their candidates.

6. When the party allegiance or preference of the electoral candidates on any ticket is divided or uncertain, and when such division or uncertainty causes support for the ticket to be drawn from more than one faction or party, the vote for those candidates is represented by a combination of colors.

The method followed in mapping the vote of members of legislatures was to give the county or other geographical unit represented by the member the color of the candidate for whom he voted. In the case of "plural districts," that is, districts represented by more than one member, the vote of the majority was mapped. Members of plural districts who did not vote were disregarded.

All tie votes, whether occurring in popular elections or elections by the legislature, were decided for purposes of mapping in favor of one or the other of the candidates and were represented on the maps in accordance with such decisions. The tie and the decision are noted in the text below. Ties were sometimes decided by an appeal to the average of the votes for all the electors. When this could not be computed, or was not decisive, they were decided more or less arbitrarily.

Sometimes the decision turned on the political complexion of the adjacent territory.

Islands, both those near the seaboard and those in the interior lakes, were not colored unless they formed counties, or unless they were unusually important. In accordance with these principles the following islands were colored: Nantucket; Marthas Vineyard, or Dukes County; Long Island; Staten Island, or Richmond County; Key West Island, on which Key West, Florida, the county seat of Monroe County, is situated; the islands in Lake Champlain, forming for the most part Grand Isle County, Vermont; Isle Royale, Michigan, in Lake Superior, for the years 1876-1896, when it was a county; North Manitou Island and Beaver Island, in Lake Michigan, for the years 1856-1892, when with the adjacent islands they formed Manitou County, Michigan; and the principal islands forming San Juan and Island Counties, Washington. The proper color of relatively unimportant islands that do not form counties may be ascertained from the color of the counties to which they belong. Thus, the proper color of Block Island is the color of Newport County, Rhode Island; and of Mackinac Island, the color of Mackinac County, Michigan.

Frequently in the early years of a state's history many anomalous conditions respecting counties arise, such as the inclusion within their boundaries of large areas of unsettled territory, the attaching of one county to another, and the creation of a county for a considerable period before its organization. Such anomalies have been dealt with in accordance with the information available. Unsettled or unorganized areas, when of considerable size and admitting of somewhat definite location, have been cut off from the color areas and appear as blank areas on the maps. Occasionally, such blank areas include a few scattering voters, and occasionally color areas include considerable unsettled territory. Non-voting areas are also left blank.

Interpretation of the Maps

When making comparisons users of the *Atlas* should note the complications that arise from variations in the size of counties, in the density of population, in the number of candidates, and in the majority or pluralities received by them.

Since the smaller the unit the larger the showing made on the maps by the minority candidates, those states or parts of states that have small counties, other things being equal, show a relatively larger area for such candidates. The same principle holds in respect to the earlier and the later maps for those states that have decreased the size of their counties. The relation between small units and minority parties may be seen by comparing maps based on counties with maps based on states. Thus a map of the Presidential election of 1912 based on states would show but two states, Vermont and Utah, for Taft, while the map for this election (see Pl. 110B) based on counties shows a much larger area. This relation might also be seen by a comparison of maps of New England based on towns with maps based on counties.

Because of variations in the density of population the larger vote is often represented on the maps by the smaller area. This may be illustrated by the Bryan territory in Massachusetts and Kansas shown on the map for 1900 (see Pl. 109A). The Bryan territory in Massachusetts is that of Suffolk County, in which Boston is situated. The Bryan territories in Kansas cover twenty-two counties, the smallest of which is more than eleven times as large as Suffolk County. Bryan's vote in Suffolk County was 48,000 (plurality 7,000), while his vote in the twenty-two Kansas counties was 29,000 (plurality 300). This is an extreme case, but the disproportion is not so great as a comparison of New York County, in which New York City is situated, with the counties of some of the Western states would show. In making comparisons between eastern and western, or urban and rural, areas account should always be taken of differences in density of population.

Since degrees of majority or plurality are disregarded, the majority or plurality that is represented on the maps may vary considerably. In the case of two candidates the majority may vary from a small fraction over 50 per cent to a small fraction under 100 per cent of the entire vote. In the case of three candidates the plurality represented on the maps may vary from a small fraction over 33½ per cent to a small fraction under 100 per cent. In the case of four candidates the lower limit is a small fraction over 25 per cent. The larger the number of parties and the more nearly equal their votes, the better is the chance that a county will be carried by a plurality that is relatively small in comparison with the total vote. The larger the number of major candidates and the more nearly equal their votes, the better chance has a minor candidate of carrying counties.

For instance, in 1912, when there were three major candidates, Debs (Socialist) carried Burke County, North Dakota (see Pl. 110B), by a vote that was but 29 per cent of the total vote cast in that county. In an election such as that of 1904, in which one of the major candidates received many more votes than the other, the chance of a county being carried by a minor candidate is relatively small.

The variations in majorities and pluralities are as a rule much less than these considerations would lead one to expect. When there are but two major candidates, which with a few exceptions has been the case in Presidential elections, the successful candidate generally receives a majority of all the votes cast in a county. When there are more than two major candidates, however, as in 1912, the successful candidate often receives less than a majority. "Two-party" maps are not strictly comparable with "three-party" maps. In the case of only two major candidates the average county plurality of one major candidate is not likely to vary widely from that of another. The large pluralities of one candidate in some states are likely to be matched by similar pluralities for the other candidate in other states. The great preponderance of the Democratic party in the Southern states, however, tends to raise its average plurality over that of other parties.

As a rule the candidate with the most votes in a state carries most of the counties of that state. In close elections, however, he may carry fewer counties than his opponents. Thus, in 1884 Cleveland, with a plurality of 1047 votes in the state of New York, carried but fifteen of the sixty counties of that state. In 1912 Taft, with a total vote in Tennessee of 59,400, carried six counties, while Roosevelt, with a total vote of 53,700, carried seventeen counties.

By referring to the special text for the several Presidential elections (see pp. 92-104, below) users of the *Atlas* may ascertain from statements respecting the electoral vote the states carried by each candidate, which, together with other information there found, will often enable them to correct some of the erroneous impressions given by the maps.

Boundary Lines

The international, state, and county boundary lines shown upon the maps are, with a few unavoidable exceptions, contemporary lines—that is the lines as they were in the year for which the map is constructed. In respect to disputed lines no invariable rule of representation was applied. Those parts of the northern and northeastern boundary line between the United States and Canada that were disputed are shown on all maps as they were finally settled and as they are today. On the maps for 1789 and 1792 the southern international boundary line of the United States, which was disputed, is that claimed by the United States and defined in the treaty with Spain of 1795. On the maps for 1804 and 1808 the boundary between Louisiana and Spanish Florida is that claimed by Spain. On the maps of 1812 and 1816 the southeastern boundary of Louisiana is that fixed in the acts of 1812 admitting the state and enlarging its limits, and the western boundary of Spanish Florida is that claimed by the United States in Madison's proclamation of 1810 taking possession of West Florida. On the maps for 1789-1800 the northern, western, and southern boundaries of Georgia are those claimed by Georgia, with one exception—namely, on the map for 1800 part of her western and southern boundaries are the lines established by the United States in the act of 1789 organizing Mississippi Territory. Small changes in boundary lines between states, such as those made in the line between Rhode Island and Massachusetts in 1862, are disregarded. For further information respecting boundary lines users of the *Atlas* are referred to the text above, pages 43-45, to the references there given, and to the corresponding maps of the *Atlas*.

The lines within the states separating one color area from another are county boundary lines. These were derived for the most part from contemporary maps of states and occasionally from the statutes establishing or changing county lines. In deriving some of the early lines, however, considerable use was made of modern maps, since these are often based on more detailed and precise surveys and show the lines more accurately than the early maps. In the present state of our knowledge of county boundary lines no method of deriving them is free from occasional inaccuracies. These, however, on maps of small scale are so slight and trifling that they may be disregarded.

The lines within the states separating "unsettled areas" (appearing blank on the maps) from colored or voting areas may be county lines, Indian treaty lines, lines of Indian reservations, or other lines. Often they are drawn arbitrarily and may not appear on other maps.

Sources of Information

The three principal sources of information are as follows: (1) returns of elections, in manuscript, to be found in state archives; (2) returns printed in the official publications of the states; and (3) all other published returns.

A considerable use was made of manuscript returns, especially those of the New England states. It was not possible or feasible, however, to make them the chief source. Many of the early manuscript returns for the Southern and Western states have been lost or destroyed. In respect to the use of such manuscript returns as are still preserved many difficulties presented themselves, not the least of which were the great labor and cost required to explore thoroughly the state archives and to make the necessary copies. Moreover, unless such copies were made with discriminating care they were likely to prove inferior to returns readily accessible in printed form.

A large use was made of the returns found in the official state publications, but it was not possible, had it been desirable, to rely wholly or even chiefly upon them, for not until about 1870 did any considerable number of states begin to publish their election statistics. Neither was it possible nor desirable to rely wholly upon the state publications for the years covered by them, since not all of them are readily accessible and many of their election statistics contain inaccuracies.

The third class of returns are those found in the standard newspaper almanacs or political registers, Matthias's *Politician's Register* (1835), *Niles' Register* (Baltimore, 1811-1849), and contemporary newspapers. These publications are readily accessible in Washington, and the larger part of the returns that were used have been derived from them. By way of supplementing the returns thus derived, especially for purposes of comparison with a view of eliminating inaccuracies, a large use was made of the returns of the other two classes.

So prone are compilers of figures to make errors that it was impossible to place complete reliance on any one source of information or on any one publication. In respect to accuracy the *Tribune Almanac* (New York, 1856-1914) was found to compare favorably with the state publications. An attempt was made to correct the blunders of copyists and typographers by comparing returns, when two or more sets for the same election were available. It was impossible, however, to eliminate all inaccuracies. Fortunately, errors that did not change the political complexion of a county were negligible.

For different periods the sources of information varied somewhat. For the period 1800-1828 the chief sources were: the contemporary newspapers of the several states and of the District of Columbia, for election years; *Niles' Register*, October-December, 1812, 1816, 1820-1824, and 1828 (Vols. 3, 11, 19, 27, and 35); journals of state legislatures; and state archives, the last-named being frequently drawn upon for the New England states. The information for this period was exceedingly scattering, and not a few returns of elections are no longer in existence. No collection of returns by counties for the several states was found except one for the election of 1828, which was printed in the *United States Telegraph* (Washington, D. C.), March 27-April 1, 1829. *Niles' Register* for this period contains much important election news and some scattering returns by counties. All the newspapers in the Library of Congress and a few in other depositories were thoroughly searched. Of those most serviceable the following may be mentioned:

Cahawba Press and Alabama State Intelligencer; *Alabama Republican and Southern Advocate* (Huntsville); *Connecticut Courant* (Hartford); *Connecticut Journal and Columbian Weekly Register* (New Haven); *Delaware Gazette and Delaware State Journal and Statesman* (Wilmington); *National Intelligencer and United States Telegraph* (Washington); *Augusta Chronicle and Georgia Advertiser*; *Savannah Republican*; *Edwardsville (Ill.) Spectator*; *Illinois Gazette* (Shawneetown); *Indiana Gazette* (Corydon and Bloomington); *Indiana Journal* (Indianapolis); *Argus of Western America and The Kentuckian* (Frankfort); *Kentucky Gazette and Kentucky Reporter* (Lexington); *Louisville Public Advertiser*; *Louisiana Courier* (New Orleans); *American Advocate* (Hallowell, Me.); *Eastern Argus* (Portland, Me.); *Maryland Gazette and Maryland Republican* (Annapolis); *Federal Gazette and Baltimore Daily Advertiser*; *Baltimore Patriot and Mercantile Advertiser*; *Easton (Md.) Star*; *Columbian Centinel*, *Independent Chronicle and Universal Advertiser*, *New England Palladium and Commercial Advertiser*, *Patriot and Daily Mercantile Advertiser* (Boston); *Salem (Mass.) Gazette*; *Massachusetts Spy* (Worcester); *Southern Luminary* (Jackson, Miss.); *Missouri Intelligencer* (Franklin); *Independent Patriot* (Jackson, Mo.); *Missouri Gazette and Public Advertiser* and *Missouri Republican* (St.

Louis); *New Hampshire Journal* and *New Hampshire Patriot and State Gazette* (Concord); *New Hampshire Constitutionalist and Weekly Magazine* (Exeter); *New Hampshire Sentinel* (Keene); *New Hampshire Gazette* and *Portsmouth Oracle* (Portsmouth); *Fredonian* (New Brunswick, N. J.); *True American* (Trenton); *Albany Argus*; *New York Daily Advertiser*, *New York American*, *New York Herald*, *National Advocate* (New York); *Catawba Journal* (Charlotte, N. C.); *Carolina Sentinel* (Newbern, N. C.); *Raleigh Register* and *North Carolina Gazette*; *The Supporter and Scioto Gazette* (Chillicothe, Ohio); *Cincinnati Daily Gazette*; *Liberty Hall* and *Cincinnati Mercury*; *Harrisburg Republican*; *Poulson's American Daily Advertiser*, *Aurora* and *General Advertiser*, *Relf's Philadelphia Gazette* and *Daily Advertiser*, *Democratic Press* (Philadelphia); *Newport Mercury* and *Rhode Island Republican* (Newport); *Charleston (S. C.) Daily Courier*; *Knoxville Register*; *Nashville Whig*, *Tennessee Gazette*, *Nashville Republican* and *State Gazette*, *Impartial Review* and *Cumberland Repository* (Nashville); *Vermont Gazette* (Bennington); *Vermont Watchman* and *State Gazette* (Montpelier); *The Washingtonian* (Windsor, Vt.); *Alexandria Herald*; *Norfolk Gazette* and *Public Ledger* and *Norfolk Herald*; *Virginia Argus*, *Richmond Enquirer*, and *Virginia Patriot* (Richmond).

For the year 1832 the sources for 1800-1828 mentioned above were used, but the principal source was the *Politician's Register* (Philadelphia, 1835), by Benjamin Matthias. This contains one of the earliest collections of votes by counties for the several states and, with that for 1828 in the *United States Telegraph*, supplements those in the *Whig Almanac*, which begin with 1836.

For the years 1836-1928 the principal sources were the newspaper almanacs or registers, state publications, state archives, *Niles' Register* (1836-1848), and contemporary newspapers. Of these the source most used was the annual publication that was first issued in 1838 by Horace Greeley under the title *The Whig Almanac and Politician's Register*. The title for 1839-1841 was *The Politician's Register*, and for 1842-1855 *The Whig Almanac and United States Register*. The publication did not appear in 1842. From 1856 to 1914, when it was discontinued, it was issued under the title *The Tribune Almanac and Political Register*. This annual, as its title indicates, specialized in political information, and its election statistics are exceedingly complete, though not without inaccuracies. In using these statistics it is well to remember that the politics of the annual were for the early years Whig and for the later years Republican.

Of others newspaper almanacs the most helpful were the *World Almanac and Encyclopedia* (New York), 1868-1929, the *Chicago Daily News Almanac and Year Book*, 1890-1929, the *Evening Journal Almanac* (Albany), 1861-1896, and the *American Almanac and Treasury of Facts* (New York and Washington), 1880-1889. Of these four the *World Almanac* was most used. It was the principal source for the elections of 1916-1928. It is necessary to remember that its politics are Democratic. The information in these almanacs often supplements that found in the *Tribune Almanac*.

The election statistics of a given Presidential election will first be found as a rule in the almanacs for the year succeeding the year of the election—statistics for the election of 1860 in the almanacs for 1861, of 1864 in the almanacs for 1865, etc. Occasionally, however, they are not published until the second year succeeding the year of the election. Each series of almanacs republishes election statistics for purposes of comparison in the years immediately succeeding the year of their first appearance.

Before 1870 Maine, Massachusetts, Pennsylvania, Wisconsin, Minnesota, and a few other states began the publication of their election returns. Since that date all or nearly all of the remaining states have established this excellent practice. The form of publication is not uniform in the several states nor always in the same state. In general the returns are to be found in legislative manuals, state registers, official directories, year books, blue books, and reports of secretaries of state. Sometimes they are issued separately under the title of election statistics, abstract of votes, returns of general elections, etc. Occasionally states print their election returns for a given year in more than one state publication, and occasionally they fail to print them in any publication, with the result that there is a hiatus in the series. Often they print a given return several times in the same publication. In general the returns appearing in the year of the election or in the following year were used.

Some of the early state manuals and registers must be regarded as only semi-official, since they were privately copyrighted and sold. The returns in the state publications are sometimes less accurate than those in the almanacs. Occasionally, however, they are superior to those in the almanacs and for recent years

sometimes more complete since they may give the vote for each elector. The New England states frequently publish returns both by counties and by towns. All the state publications from their earliest date to 1914 accessible in Washington and a few found in other depositories have been used.

Several of the states have published collections of their election statistics, as may be seen from the following list of those that were used: *Connecticut State Register and Manual*, Hartford, 1889, pp. 394-409—returns for 1856-1888; W. W. Admire, *Political and Legislative Hand-Book of Kansas*, Topeka, 1891, pp. 224-356—returns for 1864-1888; *Michigan Official Directory and Legislative Manual*, Lansing, 1913, pp. 672-691—returns for 1836-1912; *Nebraska Blue Book*, Lincoln, 1901-1902, pp. 173-177—returns for 1868-1900; *New Hampshire Manual of Useful Information*, Manchester, 1889, pp. 240-295—returns for 1852-1888; *South Dakota Legislative Manual*, Pierre, 1913, pp. 293-506—returns for 1892-1912 (same in *Official Vote of South Dakota by Counties*, 1889-1912); and R. D. W. Connor, *North Carolina Manual*, Raleigh, 1913, pp. 983-992—returns for 1836-1912.

ELECTORAL VOTE FOR PRESIDENT, 1789

[Plate 102A]

Ten of the thirteen original states took part in the Presidential election of 1783-1789. Rhode Island and North Carolina had not yet entered the Union, and New York failed to choose electors because of a disagreement of the two branches of her legislature over the method of choice.

With an exception or two, the electors were chosen on January 7, 1789 (the first Wednesday in January), the date fixed by the Continental Congress. In New Hampshire the people voted for electors in December, 1788. Since a majority of votes was required there was a failure to elect, and the legislature of that state chose electors on January 7. In Maryland the election was held during the week of January 7 and extended over a period of several days. At this time the practice of holding elections on more than one day was not uncommon. For details respecting the choice of electors see table above, p. 89.

The electors voted on February 4, 1789 (the first Wednesday in February), and their votes were counted by Congress on April 6. The electoral vote was Washington 69, not voting 4, total 73. Two Maryland and two Virginia electors did not vote. Washington was the only candidate for President. In many of the states, however, there were both Federalist and anti-Federalist electoral tickets.

A map of the election of 1788-1789 based on county returns in the states that chose electors by the people and on the vote of members of the legislature in the states that chose electors by the legislature would in all probability not differ from the map based on the electoral vote.

ELECTORAL VOTE FOR PRESIDENT, 1792

[Plate 102B]

Fifteen states—the thirteen original states, Vermont, and Kentucky—took part in the Presidential election of 1792. The date of the election, fixed by Congress on March 1, 1792, was within the period of November 1-December 4, 1792 (34 days preceding the first Wednesday in December). For details respecting the method of choosing electors see table above, p. 89.

The electors voted on December 5, 1792 (the first Wednesday in December), and their votes were counted by Congress on February 13, 1793 (the second Wednesday in February). The electoral vote was Washington 132, not voting 3, total 135. One elector in Vermont and two in Maryland did not vote. Washington was the only candidate for President. There were, however, contests between the Federalists and anti-Federalists over electoral tickets and the Vice-Presidency.

What was said above in respect to a map of the election of 1788-1789 based on county returns would be true of a similar map of the election of 1792.

ELECTORAL VOTE FOR PRESIDENT, 1796

[Plate 102C]

Sixteen states took part in the Presidential election of 1796, one more than in 1792, the additional state being Tennessee. The date of the election was within the period November 3-December 6. For details respecting the method of choosing electors, see table p. 89, above).

The electors voted on December 7, 1796, and their votes were counted by Congress on February 8, 1797. The Federalist candidate for President was John Adams, of Massachusetts; and the Democratic-Republican candidate was Thomas Jefferson, of Virginia.

The electoral vote was Adams 71, Jefferson 68, total 139. Adams received all the electoral votes of Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Delaware, seven votes of Maryland, and one vote each of Pennsylvania, Virginia, and North Carolina. Jefferson received all the electoral votes of South Carolina, Georgia, Kentucky, and Tennessee, fourteen votes of Pennsylvania, four of Maryland, twenty of Virginia, and eleven of North Carolina. Adams carried seven states, Jefferson four, and four states were divided. Since Maryland, Virginia, and North Carolina chose electors in districts the electoral vote in these states is mapped by districts. In Maryland one elector, who voted for both Adams and Jefferson, has been treated as a Federalist, and his district mapped for Adams. South Carolina's electors voted unanimously for Jefferson and for Thomas Pinckney of that state, the Federalist candidate for Vice-President. Since the Electoral vote of Pennsylvania is divided between the two candidates, and since her electors were chosen on a general ticket, her vote is represented by a combination of the colors of the candidates. Pennsylvania chose two Federalists electors, but one of them voted for Jefferson. The popular vote for electors in Pennsylvania, not quite complete, was: highest Adams elector 12,217, highest Jefferson elector 12,306. Full, though not complete, returns give Adams ten counties and Jefferson eleven counties, including Philadelphia city (*Claypoole's American Daily Advertiser*, Philadelphia, Nov. 19 and 28, 1796). In Georgia, which chose electors on a general ticket, the Federalists carried out of twenty-one counties Richmond County, in which Augusta is situated, and three other up-state counties (U. B. Phillips, *Georgia and State Rights*, Washington, 1902, p. 91). In the New York assembly all the votes, except a few scattering ones, were given for the Adams electors (*N. Y. Assembly Journ.*, Nov. 8, 1796).

PRESIDENTIAL AND OTHER ELECTIONS, 1800

[Plate 102D]

Sixteen states took part in the Presidential election of 1800, the same number as in 1796. Two states (Rhode Island and Virginia) chose Presidential electors by general ticket, three (Maryland, North Carolina, and Kentucky) by districts, one (Tennessee) by special electors, and ten (New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, South Carolina, Georgia, and Vermont) by the legislature (see p. 89, above).

The map for 1800 is based on the vote at the Presidential election in eight states (Rhode Island, New York, Delaware, Maryland, Virginia, North Carolina, Kentucky, and Tennessee) and on the vote at some other election in the eight remaining states. The following elections were used to supplement the Presidential election: gubernatorial elections in New Hampshire and Massachusetts, election for members of the lower house of the legislature in Pennsylvania, and Congressional election in Connecticut, New Jersey, South Carolina, Georgia, and Vermont. In several states (Maryland, North Carolina, Kentucky, Tennessee, South Carolina, Georgia, and Vermont) county returns, owing to their incompleteness, were supplemented with returns for electoral or Congressional districts. In mapping these states, therefore, considerable use was made of geographical units larger than the county.

For New York the vote is that of the assembly (nominating electors), for Delaware that of the legislature, for Tennessee that of special electors, and for the remaining states that of the people. The dates of the several elections are as follows: March, New Hampshire; April, Massachusetts; September, Connecticut and Vermont; October, Pennsylvania, South Carolina, and Georgia; December, New Jersey; and November (Presidential election), the rest of the states.

The Federalist candidate for President was John Adams of Massachusetts; and the Democratic-Republican candidate, Thomas Jefferson of Virginia. The candidates for governor in New Hampshire were John T. Gilman (Federalist) and Timothy Walker (Democratic-Republican); and in Massachusetts, Caleb Strong (Federalist) and Elbridge Gerry (Democratic-Republican). At the Congressional election in Connecticut the leading candidates were Samuel W. Dana (Federalist) and Gideon Granger (Democratic-Republican); and in New Jersey, D. Vroom (Federalist) and James Mott (Democratic-Republican). In South Carolina the successful Federalist candidates for Congress were Benjamin Rager, Thomas Lowndes, and John Rutledge; the successful Democratic-Republican

candidates, William Butler, Thomas Moore, and Thomas Sumter. The successful Congressional candidates in Vermont were Lewis R. Morris (Federalist) and Israel Smith (Democratic-Republican). In Georgia the Democratic-Republican candidates had little opposition. Connecticut, New Jersey, and Georgia elected members of Congress by general ticket, and South Carolina and Vermont by districts.

The vote in the New York Assembly was Adams 39, Jefferson 64, not voting 5, total 108 (*N. Y. Assembly Journ.*, Nov. 6, 1800); and in the Delaware legislature, Adams 20, Jefferson 9, not voting 1, total 30 (*Delaware House Journ.*, Nov. 5, 1800).

In the South Carolina legislature the vote for the highest and the lowest elector on each ticket was as follows: Federalist 69 and 63; Democratic-Republican 87 and 82 (*Amer. Hist. Rev.*, Vol. 4, New York, 1899, p. 120). The popular vote in those state for which it was ascertained is shown in the following table:

TABLE 2.—*Popular Vote in Presidential and Other Elections, 1800*

States	Federalist	Democratic-Republican	Scattering
New Hampshire ¹	10,362 (Gilman)	6,039 (Walker)	361
Massachusetts ²	19,630 (Strong)	17,019 (Gerry)	2,410
Rhode Island ³	1,941 (Adams)	1,684 (Jefferson)	
Connecticut ⁴	6,273 (Dana)	3,012 (Granger)	
New Jersey ⁵	14,118 (Vroom)	14,726 (Mott)	
Virginia ⁶	5,950 (Adams)	21,000 (Jefferson)	

¹ *Massachusetts Spy*, June 18, 1800; ² *Columbian Centinel*, May 31, 1800; ³ *Poulson's American Daily Advertiser*, Dec. 4, 1800; ⁴ *Connecticut Courant*, Oct. 20, 1800; ⁵ *Aurora*, Jan. 10, 1801; ⁶ *Virginia Argus*, Dec. 2, 1800 (returns not quite complete).

The electoral vote was Jefferson 73, Adams 65, total 138. Adams received all the votes of Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, and Delaware, seven votes of Pennsylvania, five votes of Maryland, and four votes of North Carolina. Jefferson received all the votes of New York, Virginia, South Carolina, Georgia, Kentucky, and Tennessee, eight votes each of Pennsylvania and North Carolina, and five votes of Maryland. Adams carried seven states, Jefferson six, and three states were divided.

PRESIDENTIAL AND OTHER ELECTIONS, 1804

[Plate 102E]

Seventeen states took part in the Presidential election of 1804, one more than in 1800, the additional state being Ohio. Six states (New Hampshire, Rhode Island, New Jersey, Pennsylvania, Virginia, and Ohio) chose electors by general ticket, four (Maryland, North Carolina, Kentucky, and Tennessee) by districts, one (Massachusetts) by districts and at large, and six (Connecticut, New York, Delaware, South Carolina, Georgia, and Vermont) by the legislature (see p. 89, above).

The map for 1804 is based on the vote at the Presidential election in all the states except Connecticut, South Carolina, Georgia, and Vermont. For Connecticut the vote at the election for the nomination of state assistants, and for the other three states the vote at the Congressional election, was used. The returns are by electoral districts for Tennessee, partly by electoral districts for Maryland, and partly by Congressional districts for South Carolina and Vermont. There are no detailed returns for Ohio. It was mapped for Jefferson because he received eight-ninths of the votes. The county returns for Georgia are not complete.

For New York the vote is that of the Assembly (nominating electors), for Delaware that of the legislature, and for the remaining states, that of the people. The dates of the several elections are as follows: September, Connecticut and Vermont; October, South Carolina and Georgia; and November (Presidential election), the rest of the states.

The Federalist candidate for President was Charles Cotesworth Pinckney of South Carolina; and the Democratic-Republican candidate, Thomas Jefferson of Virginia. In Vermont the successful candidates for Congress were Martin Chittenden, William Chamberlain, and James Elliot (Federalists) and Gideon Olin (Democratic-Republican); and in South Carolina, William Butler, Levi Casey, Elias Earle, Robert Marion, Thomas Moore, O'Brien Smith, David R. Williams,

and Richard Wynn (Democratic-Republican). In Georgia there was little opposition to the Congressional candidates of the Democratic-Republican party. In Connecticut the leading Federalist candidate for state assistant was William Edmond; and the leading Democratic-Republican candidate, E. Kirby.

In Rhode Island, New Jersey, Virginia, North Carolina, and Kentucky there was little or no opposition to the Democratic-Republican electoral ticket. The vote in the New York Assembly was Pinckney 15, Jefferson 75, not voting 10, total 100 (*N. Y. Assembly Journ.*, Nov. 9, 1804); and in the Delaware legislature, Pinckney 18, Jefferson 5, not voting 7, total 30 (*Delaware House Journ.*, Nov. 12, 1804). The popular vote in those states for which it has been ascertained was as follows:

TABLE 3.—*Popular Vote in Presidential and Other Elections, 1804*

States	Federalist	Democratic-Republican
New Hampshire ¹	8,364 (Pinckney)	9,088 (Jefferson)
Massachusetts ²	25,777 (Pinckney)	29,310 (Jefferson)
Connecticut ³	12,543 (Edmond)	7,990 (Kirby)
New Jersey ⁴	19 (Pinckney)	13,119 (Jefferson)
Ohio ⁴	364 (Pinckney)	2,593 (Jefferson)
Pennsylvania ⁵	1,179 (Pinckney)	22,103 (Jefferson)

¹ *New Hampshire Gazette*, Dec. 4, 1804; ² *Independent Chronicle*, Nov. 22, 1804; ³ *Connecticut Courant*, Oct. 24, 1804 (the vote is for the highest candidate for assistant on each ticket); ⁴ *Aurora*, Dec. 1, 1804; ⁵ *Ibid.*, Nov. 23, 1804.

Oneida County, New York, for which there was a tie vote (Pinckney 2, Jefferson 2) is shown as Democratic-Republican area. A "no return" area is shown in New York.

The electoral vote was Jefferson 162, Pinckney 14, total 176. Pinckney received all the votes of Connecticut and Delaware and two votes of Maryland. Jefferson received nine votes of Maryland and all the votes of the remaining states. Pinckney carried two states, Jefferson fourteen, and one state was divided.

PRESIDENTIAL AND OTHER ELECTIONS, 1808

[Plate 102F]

Seventeen states took part in the Presidential election of 1808, the same number as in 1804. Six states (New Hampshire, Rhode Island, New Jersey, Pennsylvania, Virginia, and Ohio) chose electors by general ticket; four (Maryland, North Carolina, Kentucky, and Tennessee) by districts; and seven (Massachusetts, Connecticut, New York, Delaware, South Carolina, Georgia, and Vermont) by the legislature (see p. 89, above).

The map for 1808 is based on the vote at the Presidential election in all the states except Massachusetts, Connecticut, South Carolina, Vermont, and Ohio. For these states the following votes were used: Massachusetts, vote at the gubernatorial election; Connecticut and Vermont, vote for members of the lower house of the legislature; and South Carolina and Ohio, vote at the Congressional election. The returns for Maryland, North Carolina, South Carolina, and Tennessee are partly by electoral or Congressional districts. The returns for Connecticut and Vermont consist of statements of the number of members of the lower house of the legislature elected by each party from each county.

For New York the vote is that of the Assembly (nominating electors); for Delaware and Georgia, that of the legislature; and for the remaining states, that of the people. The dates of the several elections are as follows: April, Massachusetts and Connecticut; September, Vermont; October, Ohio and South Carolina; and November (Presidential election), the rest of the states.

The Federalist candidate for President was Charles Cotesworth Pinckney of South Carolina. The regular Democratic-Republican candidate was James Madison of Virginia. In New York a Democratic-Republican faction favored George Clinton of that state, and in Virginia a Democratic-Republican faction voted for their fellow Virginian James Monroe. Pinckney was also voted for in Virginia, but he carried no counties. In the New York Assembly the two Democratic-Republican factions voted for a mixed ticket, which, if we may judge from the vote for President in the electoral college, was composed of thirteen Madisonians and six Clintonians. The gubernatorial candidates in Massachusetts

were Christopher Gore (Federalist) and James Sullivan (Democratic-Republican). The Congressional candidates in Ohio were Philemon Beecher (Federalist) and Jeremiah Morrow (Democratic-Republican). The successful Congressional candidates in South Carolina, all Democratic-Republicans, were Lemuel J. Alston, William Butler, Joseph Calhoun, Robert Marion, Thomas Moore, John Taylor, Richard Wynn and Robert Witherspoon.

The vote in the New York Assembly was Pinckney 46, Madison and Clinton 64, scattering 1, not voting 1, total 112 (*N. Y. Assembly Journ.*, Nov. 7, 1808); and in the Delaware legislature, Pinckney 18, Madison 9, not voting 3, total 30 (*Delaware House Journ.*, Nov. 15, 1808). There was little or no regular opposition to Madison in Georgia. The number of Federalist and Democratic-Republican members, respectively, elected to the lower house of the legislature in Connecticut was 139 and 61 (*Connecticut Courant*, Apr. 20, 1808); and in Vermont 109 and 94 (*Public Advertiser*, Oct. 1, 1808). The vote in the Massachusetts legislature for the Pinckney electors was 269. One hundred and thirty Republican members who were present declined to vote (*Aurora*, Nov. 28, 1808). The vote in the Connecticut legislature was Pinckney 149, Madison 44 (*Poulson's American Daily Advertiser*, Nov. 12, 1808). The popular vote in Ohio was Pinckney 1174, Madison 3644 (*Public Advertiser*, Dec. 13, 1808). The popular vote in several of the states was as follows:

TABLE 4.—Popular Vote in Presidential and Other Elections, 1808

States	Federalist	Democratic-Republican	Scattering
New Hampshire ¹	13,945 (Pinckney)	13,644 (Madison)	311
Massachusetts ²	39,643 (Gore)	41,193 (Sullivan)	
Rhode Island ³	3,070 (Pinckney)	2,692 (Madison)	
New Jersey ⁴	14,639 (Pinckney)	18,644 (Madison)	
Pennsylvania ⁵	11,649 (Pinckney)	42,318 (Madison)	3,450 (Monroe)
Virginia ⁶	750 (Pinckney)	15,400 (Madison)	
Ohio ⁷	4,505 (Beecher)	10,309 (Morrow)	

¹ New Hampshire Archives; ² *Columbian Centinel*, June 1, 1808; ³ *Newport Mercury*, Nov. 26, 1808; ⁴ *Public Advertiser*, Nov. 23, 1808; ⁵ *Aurora*, Dec. 16, 1808; ⁶ *Richmond Enquirer*, Nov. 8-25, Dec. 2, 1808 (the returns are not quite complete); ⁷ *Aurora*, Nov. 24, 1808.

Since part of the electors on the Democratic-Republican ticket in the New York Assembly were for Madison and part for Clinton the area carried by that ticket is striped with the colors of these two candidates (see p. 90 above). A tie in Orange County, Vermont, was decided in favor of the Federalists, and a tie in Addison County in favor of the Democratic-Republicans.

The electoral vote was Madison 122, Pinckney 47, Clinton 6, not voting 1, total 176. One Madison elector in Kentucky did not vote. Pinckney received all the votes of New Hampshire, Massachusetts, Rhode Island, Connecticut, and Delaware, two votes of Maryland, and three votes of North Carolina. Madison received all the votes of Vermont, New Jersey, Pennsylvania, Virginia, South Carolina, Georgia, Tennessee, Kentucky, and Ohio, thirteen votes of New York, nine votes of Maryland, and eleven votes of North Carolina. Clinton received six votes of New York. Pinckney carried five states, Madison nine, and three states were divided.

PRESIDENTIAL AND OTHER ELECTIONS, 1812

[Plate 102G]

Eighteen states took part in the Presidential election of 1812, one more than in the election of 1808, the new state being Louisiana. Five states (New Hampshire, Rhode Island, Pennsylvania, Virginia, and Ohio) chose electors by general ticket, four (Massachusetts, Maryland, Kentucky, and Tennessee) by districts, and nine (Connecticut, New York, New Jersey, Delaware, North Carolina, South Carolina, Georgia, Vermont, and Louisiana) by the legislature (see p. 89, above).

The map for 1812 is based on the vote at the Presidential election in New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Tennessee, and Kentucky; on the vote at the Congressional election in South Carolina and Georgia; and on the vote at the gubernatorial elections in Connecticut and Vermont. No returns for North Carolina, Ohio, and Louisiana were found. The returns for Maryland and Tennessee

are chiefly by electoral districts, and those for South Carolina chiefly by Congressional districts.

For New York the vote is that of the Assembly (nominating electors), for New Jersey and Delaware that of the legislature, and for the remaining states that of the people. The dates of the several elections are as follows: April, Connecticut; September, Vermont; October, South Carolina and Georgia; and November (Presidential election) for the rest of the states.

DeWitt Clinton, the leader of a Democratic-Republican faction in New York, was the "regular" Federalist candidate for President. In Virginia the Federalists did not support Clinton but nominated Rufus King of New York, the "straight" Federalist candidate, and voted for him. The regular Democratic-Republican candidate was James Madison of Virginia. In New York a Democratic-Republican faction supported DeWitt Clinton, and in other states he received the support of not a few anti-administration Democratic-Republicans. In contemporary newspapers the Clinton electoral ticket is variously designated as the Federalist, "coalition," or "peace" ticket. The Madison electoral ticket is often called the "war" ticket. On Plate 102G the vote in the New York Assembly of the "straight" Federalists and the vote of the Clinton Democratic-Republicans are shown. For this state the Clinton vote that is mapped is the vote of the Democratic-Republican factionists, for the other states it is the "coalition" vote. The vote of the "straight" Federalists in the New York Assembly is represented on the map by green, the color of King. The Clinton electors were chosen by the legislature as the result of a combination of Federalists and Democratic-Republican factionists.

The candidates for governor in Connecticut were Roger Griswold (Federalist) and Elijah Boardman (Democratic-Republican), and in Vermont, Martin Chittenden (Federalist) and Jonas Galusha (Democratic-Republican). In South Carolina the successful Congressional candidates, all Democratic-Republicans, were John C. Calhoun, John J. Chappell, Langdon Cheves, Elias Earle, David H. Evans, Samuel Farrow, Theodore Gourdin, John Kershaw, and William Lowndes.

There was little opposition to the Democratic-Republican candidates for Congress in Georgia. The vote in the New York Assembly, nominating electors, was "straight" Federalist (King) 58, regular Democratic-Republican (Madison) 23, Democratic-Republican faction (Clinton) 28, not voting 3, total 112 (*N. Y. Assembly Journ.*, Nov. 9, 1812). In the Delaware legislature the vote for electors was Clinton 19, Madison 6, not voting 5, total 30; and in the New Jersey legislature, Clinton 29, Madison 23, not voting 1, total 53 (*Delaware House Journ.*, Nov. 10, 1812; *Minutes of Joint Meeting of N. J. Council and Assembly*, Nov. 6, 1812). In the Presidential election in Pennsylvania the total Federalist majority in the Federalist counties was 2819, and the total Democratic-Republican majority in the Democratic-Republican counties 23,641 (*Aurora*, Nov. 20, 1812).

The vote at the Presidential election in Ohio was Clinton 3301, Madison 7420 (*Federal Gazette and Baltimore Daily Advertiser*, Nov. 21, 1812). The vote of the North Carolina legislature for electors was Clinton 60, Madison 130 (*Charleston Courier*, Nov. 26, 1812). The vote in the Louisiana legislature was 23 to 16 in favor of the Madison electors (*Niles' Register*, Vol. 3, p. 288). The popular vote in several of the states was as follows:

TABLE 5.—Popular Vote in Presidential and Other Elections, 1812

States	Federalist	Democratic-Republican	Scattering
New Hampshire ¹	18,958 (Clinton)	15,842 (Madison)	487
Massachusetts ²	50,254 (Clinton)	27,003 (Madison)	
Rhode Island ³	4,032 (Clinton)	2,654 (Madison)	
Connecticut ⁴	11,721 (Griswold)	1,487 (Boardman)	
Virginia ⁵	4,650 (King)	15,050 (Madison)	

¹ *New Hampshire Sentinel*, Nov. 21, Dec. 5, 1812 (the figures given are based partly upon calculation; the same is true of several other figures for the years 1800-1816); ² *Columbian Centinel*, Dec. 9, 1812; ³ *Newport Mercury*, Nov. 28, 1812; ⁴ *Connecticut Courant*, May 19, 1812; ⁵ *Richmond Enquirer*, Nov. 6, 10, 12, 14, 17, 20, 27, 1812 (the returns are not quite complete).

In the vote of the New York Assembly there were several ties, which have been treated as follows: Westchester County, tie between King and Madison, and Schenectady County, tie between King and Clinton—both shown as King area;

Schoharie County, tie between Clinton and Madison—shown as Madison area; Sullivan and Ulster counties, tie between Clinton and Madison—shown as Clinton area.

The electoral vote was Madison 128, Clinton 89, not voting 1, total 218. One Madison elector in Ohio did not vote. Clinton received all the votes of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Ohio) chose electors by general ticket, three (Maryland, Kentucky, and Tennessee) by districts, and nine (Massachusetts, Connecticut, New York, Delaware, South Carolina, Georgia, Vermont, Louisiana, and Indiana) by the legislature (see p. 89, above).

PRESIDENTIAL AND OTHER ELECTIONS, 1816

[Plate 102H]

Nineteen states took part in the Presidential election of 1816, one more than in the election of 1812, the additional state being Indiana. Seven states (New Hampshire, Rhode Island, New Jersey, Pennsylvania, Virginia, North Carolina, and Ohio) chose electors by general ticket, three (Maryland, Kentucky, and Tennessee) by districts, and nine (Massachusetts, Connecticut, New York, Delaware, South Carolina, Georgia, Vermont, Louisiana, and Indiana) by the legislature (see p. 89, above).

The map for 1816 is based on the vote at the Presidential election in all the states except Massachusetts, Connecticut, and Vermont. For these states the vote at gubernatorial elections was used. The returns of Maryland are chiefly by electoral districts. In the absence of detail returns for several Southern and Western states general statements to the effect that there was no opposition to Monroe have been depended upon.

For New York the vote is that of the Assembly (nominating electors); for Delaware, South Carolina, Georgia, Louisiana, and Indiana that of the legislature; and for the remaining states that of the people. The dates of the several elections are as follows: April, Massachusetts and Connecticut; September, Vermont; December, South Carolina; and November, the rest of the states. The last two dates are of Presidential elections.

The candidate for the Presidency supported by the Federalists was Rufus King of New York. The regular Democratic-Republican candidate was James Monroe of Virginia. In Pennsylvania a Democratic-Republican faction called the "Old School Democrats" nominated and supported an electoral ticket consisting of men who were opposed to the prevailing method of nominating Presidential candidates by caucus, and a part of whom were unfriendly to Monroe. This ticket, which received Federalist support, was unpledged as to candidates (*Aurora*, Oct. 28, 29, Nov. 1, 22, 1816; *Virginia Patriot*, Nov. 6, 1816). In Massachusetts the candidates for governor were John Brooks (Federalist) and Samuel Dexter (Democratic-Republican); in Connecticut, John Cotton Smith (Federalist) and Oliver Wolcott (Democratic-Republican); and in Vermont, Samuel Strong (Federalist) and Jonas Galusha (Democratic-Republican).

There was little or no opposition to Monroe in Rhode Island, New Jersey, Virginia, North Carolina, South Carolina, Georgia, Louisiana, Tennessee, Kentucky, Ohio, and Indiana. In Maryland also there was little opposition to him, although three Federalist electors were chosen. The vote in New York Assembly nominating electors was King 35, Monroe 83, not voting 8, total 126 (*N. Y. Assembly Jour.*, Nov. 8, 1816). In the Delaware legislature the vote for electors was King 18, Monroe 7, not voting 5, total 30 (*Delaware House Jour.*, Nov. 12, 1816). The popular vote in those states for which it has been ascertained was as follows:

TABLE 6.—Popular Vote in Presidential and Other Elections, 1816

States	Federalist	Democratic-Republican	Scattering
New Hampshire ¹	13,180 (King)	15,178 (Monroe)	
Massachusetts ²	49,578 (Brooks)	47,384 (Dexter)	122
Connecticut ³	11,386 (Smith)	10,170 (Wolcott)	203
Pennsylvania ⁴		25,749 (Monroe)	17,537 (Rep. faction)
Vermont ⁵	13,883 (Strong)	17,162 (Galusha)	102

¹ *Portsmouth Oracle*, Nov. 30, 1816; ² *Columbian Centinel*, June 1, 1816; ³ *Connecticut Journal*, May 14, 1816; ⁴ *Aurora*, Nov. 23, 1816; ⁵ *Reporter* (Brattleborough, Vt.), Oct. 22, 1816.

Since several of the electors on the Independent Democratic-Republican ticket in Pennsylvania would have voted for Monroe, the area carried by this

ticket is striped with the colors of the two Democratic-Republican tickets (see p. 90, above). The area carried by the three Federalist electors in Maryland is given the color of King. They did not vote in the electoral college.

The electoral vote was Monroe 183, King 34, not voting 4, total 221. One Federalist elector in Delaware and three in Maryland did not vote. King received the votes of Massachusetts, Connecticut, and Delaware, and Monroe the votes of the remaining sixteen states.

PRESIDENTIAL ELECTION, 1820

[Plate 163A]

Twenty-four states took part in the Presidential election of 1820, five more than in 1812, the additional states being Mississippi, Illinois, Alabama, Maine, and Missouri. Nine states (New Hampshire, Rhode Island, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, Ohio, and Mississippi) chose electors by general ticket, four (Maryland, Kentucky, Tennessee, and Illinois) by districts, two (Massachusetts and Maine) by districts and at large, and nine (New York, Delaware, South Carolina, Georgia, Vermont, Louisiana, Indiana, Alabama, and Missouri) by the legislature (see p. 89, above).

The map for 1820 is based wholly on the vote at the Presidential election—and the same is true of all subsequent maps in this series. There are returns, or other information, respecting the election of 1820 for all the states. For New York the vote is that of the Assembly (nominating electors); for Delaware, South Carolina, Georgia, Vermont, Louisiana, Indiana, Alabama, and Missouri that of the legislature; and for the remaining states that of the people.

In the absence of a detailed vote for several states general statements to the effect that Monroe had no opposition have been depended upon. The election was held on different days in November and early December, 1820. The date in most of the states fell within the first half of November.

James Monroe, with a few exceptions, was supported by both Federalists and Democratic-Republicans. In Rhode Island and New Jersey and in many of the Southern and Western states the successful Democratic-Republican electors had no opposition. In some states or electoral districts rival Democratic-Republican candidates contended for the honor of voting for Monroe. In Massachusetts, Delaware, Maryland, and several other states both Federalist and Democratic-Republican candidates were for Monroe. In Massachusetts a majority of the electors were Federalists, in Delaware the electors were chosen by the Federalist members of the legislature, and in Maryland one Federalist elector was chosen. In two states, Pennsylvania and New York, electors were supported who were opposed to Monroe. The movement against Monroe in these states was in the interest of the candidacy of DeWitt Clinton of New York, and in behalf of anti-slavery principles. For the movement in Pennsylvania see J. B. McMaster, *History of the People of the United States*, Vol. 4, New York, 1895, pp. 516-517, and *Albany Argus*, Oct. 31, 1820; in New York, see *Albany Argus*, Oct. 24, Nov. 10, 1820, *National Advocate*, Nov. 15, 1820, and *Ontario Messenger* (Canandaigua), Nov. 14, 1820.

The vote in the New York Assembly nominating electors was Clinton electoral ticket 53, Monroe 72, not voting 1, total 126 (*N. Y. Assembly Journ.*, Nov. 9, 1820). In Pennsylvania the opposition to Monroe received but little support outside of Philadelphia city and county. The vote in Philadelphia city and its environs was Clinton 1226, Monroe 2430 (*Democratic Press*, Nov. 4, 1820; *Niles' Register*, Vol. 19, p. 190). Outside of Pennsylvania the popular vote possesses little of interest compared with previous elections, as it was all for Monroe and everywhere light. In New Hampshire the average vote for the Democratic-Republican ticket was about 9300, and the scattering vote about 1600 (*New Hampshire Gazette*, Dec. 5, 1820). In Rhode Island the whole number of votes cast was 723 (*Newport Mercury*, Nov. 25, 1820). In Connecticut the highest elector on the Democratic-Republican ticket received 3870 votes; and on the "Federal Caucus Nomination" ticket, 728 votes (*Columbian Register*, New Haven, Dec. 2, 1820).

Since several electors on the Clinton electoral ticket in New York would have voted for Monroe the area carried for these electors is striped with the colors of Clinton and Monroe. Ties between the Clinton and Monroe tickets in the two New York Assembly districts, composed, respectively, of Allegany and Steuben counties and of Cattaraugus, Chautauqua, and Niagara counties, were decided for the purpose of mapping in favor of the Clinton ticket.

Because of the dispute whether Missouri was or was not a state of the Union for the purposes of the Presidential election, the president of the Senate announced the result of the election in alternative form, that is, with Missouri included and with Missouri excluded. With Missouri included, the electoral vote was Monroe 231, John Quincy Adams 1, not voting 3, total 235. One elector from each of the states of Pennsylvania, Tennessee, and Mississippi did not vote. There is no record of the popular vote.

The vote for John Quincy Adams was cast by William Plumer of New Hampshire, chairman of the electoral college of that state. In a letter to his son dated January 8, 1821, he gives his reasons for not supporting the Democratic-Republican candidates in the following words: "I was obliged from a sense of duty and a regard to my own reputation to withhold my vote from Monroe and Tompkins; from the first because he had discovered a want of foresight and economy, and from the second because he grossly neglected his duty" (*Amer. Hist. Rev.*, Vol. 21, 1916, pp. 318-319).

Since Plumer ran upon a Monroe ticket, and since his vote was an expression of his own preference and not that of the electorate, New Hampshire is colored on Plate 103 A solidly for Monroe.

PRESIDENTIAL ELECTION, 1824

[Plate 103B]

Twenty-four states took part in the Presidential election of 1824, the same number as in 1820. Twelve states (New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Virginia, North Carolina, Ohio, Indiana, Mississippi, and Alabama) chose electors by general ticket, five (Maryland, Kentucky, Tennessee, Illinois, and Missouri) by districts, one (Maine) by districts and at large, and six (New York, Delaware, South Carolina, Georgia, Vermont, and Louisiana) by the legislature (see p. 89, above).

For South Carolina, Georgia, and Louisiana there are no returns of the vote of the legislature by members. For New York the vote is that of the Assembly (nominating electors), for Delaware and Vermont that of the legislature, and for the remaining states that of the people. The election was held on different days between October 28 and November 30. In most of the states it was held in the first half of November.

There were four Presidential candidates, John Quincy Adams of Massachusetts, Henry Clay of Kentucky, William H. Crawford of Georgia, and Andrew Jackson of Tennessee. Because of the dissolution of the old parties it is not possible to designate each candidate by a distinctive party name. Not all the candidates ran in every state. Coalition and unpledged tickets were rather common. The following summary, in which a few relatively small or scattering votes are disregarded, shows the candidates in each state: Adams, Jackson, Crawford, and Clay in New York, Pennsylvania, Maryland, Virginia, and Illinois; Jackson, Adams, and Crawford in Tennessee, Alabama, South Carolina, North Carolina, New Jersey, and Delaware; Clay, Jackson and Adams in Ohio, Indiana, Missouri, and Louisiana; Adams and Crawford in Maine, Massachusetts, Rhode Island, and Connecticut; Jackson and Adams in Mississippi; Crawford and Jackson in Georgia; Clay and Jackson in Kentucky; and Adams in Vermont and New Hampshire. The vote in the New York Assembly nominating electors was Adams 50, Crawford 43, Clay 32, Jackson 1, not voting 2, total 128 (*N. Y. Assembly Journ.*, Nov. 10, 1824). All the votes cast by the Vermont legislature were for Adams (*Vermont Gazette*, Nov. 9, 1824). On the convening of the Delaware legislature, in November, 1824, the strength of the candidates was as follows: Adams 14, Crawford 11, Jackson 5 (*New York American*, Nov. 15, 1824). Since the Delaware electors were chosen by a combination of Adams and Crawford members, this state is striped with the colors of these two candidates. In North Carolina a coalition ticket was supported by friends of Jackson and Adams, with the understanding that the electors should vote for the candidate who had the best chance of success. The vote in the South Carolina legislature was Jackson 132, Adams 15, Crawford 10 (*Catawba Journal*, Dec. 14, 1824; *Charleston Courier*, Nov. 29, 1824). The vote in the Georgia legislature was Crawford 121; Jackson 45 (*Augusta Chronicle*, Nov. 10 1824). The vote in the Louisiana legislature was Jackson and Adams ticket 30, Clay ticket 28. Clay was defeated by a combination of the Jackson and Adams members (*Richmond Inquirer*, Dec. 25, 1824).

The votes are shown as follows, New York: Steuben County, tie between Clay and Jackson, for Jackson; Wayne County, tie between Adams and Crawford, for Crawford; Schoharie County, tie between Adams and Crawford, for Adams;

Tioga County, tie between Adams and Clay, for Adams; Suffolk County, tie between Adams and Clay, for Clay; and Oneida County, tie between Crawford and Clay, for Crawford; Virginia: Accomac County, tie between Jackson and Adams, and Wood County, tie between Crawford and Adams, for Adams.

Returns were found for only a few counties of Missouri, and the returns for Kentucky, Tennessee, Virginia, and Illinois, are not complete.

The electoral vote was Jackson 99, Adams 84, Crawford 41, Clay 37, total 261. Jackson received all the votes of New Jersey, Pennsylvania, North Carolina, South Carolina, Tennessee, Mississippi, Alabama, and Indiana, one vote of New York, seven votes of Maryland, three of Louisiana, and two of Illinois. Adams received all the votes of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, twenty-six votes of New York, one of Delaware, three of Maryland, two of Louisiana, and one of Illinois. Crawford received all the votes of Virginia and Georgia, five votes of New York, two of Delaware, and one of Maryland. Clay received all the votes of Kentucky, Ohio, and Missouri, and four votes of New York. The division of votes among the candidates occurred in those states in which the electors were chosen by districts or by the legislature. The popular vote for eighteen states in which the people voted was as follows: Jackson 156,000, Adams 105,000, Clay 47,000, and Crawford 44,000, total 352,000. In determining the popular vote for this and succeeding elections the *Tribune Almanac*, New York, 1856-1914; T. H. McKee, *National Conventions and Platforms*, Baltimore 1901; U. S. *Statistical Abstract* (1912-1930); A. C. McLaughlin and A. B. Hart, *Cyclopedia of American Government*, New York and London, 1914 (Vol. 3, pp. 19-46); and other standard sources have been used. While additional research and more precise computations might slightly change the results, the figures here given are accurate enough for the purpose in view, namely, the indication of the relative strength of candidates and parties. Numerous discrepancies are found in the various published tables of popular votes. Many of these no doubt are caused by taking the vote of different electors to represent the vote for President. In this text the total votes are given in round numbers, and the "scattering vote" is disregarded.

PRESIDENTIAL ELECTION, 1828

[Plate 103C]

Twenty-four states took part in the Presidential election of 1828, the same number as in 1820 and 1824. All the states except New York, Delaware, Maryland, South Carolina, Tennessee, and Maine chose electors on a general ticket. Maryland and Tennessee elected by districts. Maine chose seven electors by districts and two at large. New York chose thirty-four electors by districts, and the thirty-four thus chosen chose two electors. In Delaware and South Carolina the election was by the legislature (see p. 89, above).

The map for 1828 is based upon the popular vote in all the states except Delaware and South Carolina, for which states the vote of the legislature was used. The vote of the Delaware legislature was Adams 19, Jackson 11, total 30 (*Delaware House Journ.*, Nov. 10, 1828). The vote in the South Carolina legislature was unanimous for Jackson, with the exception of the vote for one elector (*Charleston Courier*, Dec. 5, 1828). In Georgia there were two Jackson tickets of nine electors each and an Adams ticket of two or three electors. There was but little opposition to the Jackson tickets. One of the successful electors on one of the Jackson tickets, however, favored Adams and, rather than vote for Jackson, resigned. The legislature filled the vacancy with a Jackson man (*Augusta Chronicle*, Nov. 1, 8, 29, Dec. 17, 1828). There was relatively little opposition to Jackson in Tennessee and Alabama. The elections were held late in October, in November, and early in December but chiefly in the first half of November.

The candidates for the Presidency were John Quincy Adams of Massachusetts and Andrew Jackson of Tennessee. Adams was the candidate of the National Republican party, and Jackson of the "Jackson men," who later were called Democrats and to whom are traced the beginnings of the Democratic party.

Counties or parishes in which there were tie votes are shown as follows: Grant County, Kentucky, for Jackson; and Elizabeth City County, Virginia, and Ascension and Assumption parishes, Louisiana, for Adams.

The electoral vote was Jackson 178, Adams 83, total 261. Jackson received all the votes of Pennsylvania, Virginia, North Carolina, South Carolina, Georgia, Kentucky, Tennessee, Alabama, Louisiana, Mississippi, Ohio, Indiana, Illinois, and Missouri, one vote of Maine, twenty votes of New York, and five votes of

Maryland. Adams received all the votes of Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, and Delaware, eight votes of Maine, sixteen of New York, and six of Maryland. Jackson carried fourteen states, Adams seven, and three states were divided. The popular vote for the twenty-two states in which the people voted was as follows: Jackson 643,000, Adams 507,000, total 1,150,000.

PRESIDENTIAL ELECTION, 1832

[Plate 103D]

Twenty-four states took part in the Presidential election of 1832, the same number as in 1820-1828. All the states chose electors by general ticket except Maryland, in which the election was by districts, and South Carolina, in which the election was by the legislature (see p. 89, above). The elections were held within the period November 1-December 4, but chiefly in the first half of November.

The map for 1832 is based wholly upon the popular vote. Since the vote of South Carolina legislature by members is wanting, that state is left blank. The vote of the legislature by parties was Nullifiers' ticket (also called Anti-Jackson, or Floyd ticket) 99, Union Jackson ticket 32, and State Rights' Dissenters ticket (also for Jackson) 25 (*Southern Patriot*, Dec. 5, 6, 1832).

The candidates for the Presidency were Henry Clay (National Republican) of Kentucky, Andrew Jackson (Democrat) of Tennessee, and William Wirt (Anti-Masonic party) of Maryland. Jackson's popular vote came from all the states in which the election was by the people, and Clay's vote from all such states except Georgia, Alabama, and Mississippi. Wirt's vote came from nine northern states—Vermont, Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, and Ohio. The South Carolina electors voted for John Floyd of Virginia.

In New York, Pennsylvania, and Ohio the National Republicans and the Anti-Masons supported coalition tickets (Charles McCarthy, "Anti-Masonic Party," *Ann. Rept. Amer. Hist. Assn.*, Vol. 1, Washington, 1902, pp. 415-416, 451-452, 528-530, and 550). In Ohio the fusion was not complete, and a few votes were cast for a "straight" Wirt ticket.

Fayette County, Indiana, in which Clay and Jackson received the same number of votes, is shown as Clay area. The returns for a part of Missouri and for several counties in other states are missing.

On the regular Jackson ticket Martin Van Buren of New York was the candidate for Vice-President. In Pennsylvania, however, the Vice-Presidential candidate of the Democrats was William Wilkins of that state. Jackson's running mate on a third ticket was Philip P. Barbour of Virginia. This was a rival of the regular ticket in Virginia, North Carolina, Georgia, Mississippi, and Baltimore County, Maryland. In most counties, outside of Georgia, the Barbour ticket received but few votes. In determining the vote for Jackson the votes for the Van Buren and the Barbour tickets were united.

The electoral vote was Jackson 219, Clay 49, Floyd 11, Wirt 7, not voting 2, total 288. The two electors who did not vote were Clay electors, in Maryland. The vote of South Carolina was for Floyd, and the vote of Vermont for Wirt. Clay received all the votes of Massachusetts, Rhode Island, Connecticut, Delaware, and Kentucky, and five votes of Maryland. Jackson received three votes of Maryland and all the votes of the remaining sixteen states. The popular vote (twenty-three states) was Jackson 707,000, Clay 329,000, and Wirt 255,000, total 1,291,000 (Benjamin Matthias, *The Politician's Register*, Philadelphia, 1835, p. 7). The figures for Alabama and Missouri are incomplete.

PRESIDENTIAL ELECTION, 1836

[Plate 104A]

Twenty-six states took part in the Presidential election of 1836, two more than in the election of 1832, the two additional states being Arkansas and Michigan. All the states chose electors by general ticket except South Carolina, in which state the election was by the legislature. The elections were held within the period November 3-December 6 but chiefly in the first half of November. In many states the date of election was November 7.

The map for 1836 is based entirely upon the popular vote. Since we do not have the vote of the South Carolina legislature by members, this state is left blank. The legislature instructed the electors to vote for Willie P. Mangum of North Carolina. In a legislative caucus a motion to nominate Van Buren was rejected without a dissenting vote, a motion to nominate Harrison was rejected with one dissenting vote, and a motion to nominate White was rejected by a considerable majority (*Southern Patriot*, Charleston, Dec. 7, 1836). A resolution in the house of representatives instructing the electors not to vote for Harrison, White, or Van Buren was adopted by a vote of 89 to 28 (*Charleston Courier*, Dec. 9, 1836).

The candidate of the Democratic Party for the Presidency was Martin Van Buren of New York. The Whig party, which consisted of a combination of factions opposed to Jackson and Van Buren, had three candidates, William Henry Harrison of Ohio, Hugh L. White of Tennessee, and Daniel Webster of Massachusetts. Van Buren's vote came from every state in the Union except South Carolina. Harrison's vote came from Maine, New Hampshire, Vermont, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Kentucky, Ohio, Indiana, Illinois, and Missouri; White's, from Virginia, North Carolina, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Tennessee, Missouri, and Illinois; and Webster's, from Massachusetts. The South Carolina electors voted for Willie P. Mangum of North Carolina.

In Virginia, Illinois, and Missouri the Harrison and White factions supported coalition tickets. In Michigan there was a Van Buren ticket and an "unpledged or Whig" ticket, which carried Genesee, Oakland, and Monroe counties. On the strength of a statement in the *Detroit Daily Advertiser* to the effect that the unpledged or Whig electors were brought forward by the friends of Van Buren and that it was known they would vote for him, these three counties are given to Van Buren (Henry M. Utley to J. F. Jameson, April 10, 1912). In Maine the electors opposing Van Buren were "unpledged." Since they doubtless would have voted for Harrison had they been elected, the area carried by them has been colored for Harrison. Partly with a view to uniting the opponents of Van Buren, the Whig ticket in several states was not designated by the name of the candidate for President but by the name "Whig" or "Opposition."

Livingston Parish, Louisiana, for which there was a tie between White and Van Buren, and Richmond County, New York, for which there was a tie between Harrison and Van Buren, are shown as Van Buren area.

Owing to the dispute whether Michigan was or was not a state of the Union for the purposes of the Presidential election of 1836, Congress announced the result of the election in alternative form. With Michigan included, the electoral vote was, Van Buren 170, Harrison 73, White 26, Webster 14, Mangum 11, total 294. Mangum received the vote of South Carolina; Webster the vote of Massachusetts; White the vote of Georgia and Tennessee; Harrison the vote of Vermont, New Jersey, Delaware, Maryland, Kentucky, Ohio, and Indiana; and Van Buren the vote of Maine, New Hampshire, Rhode Island, Connecticut, New York, Pennsylvania, Virginia, North Carolina, Louisiana, Mississippi, Illinois, Alabama, Missouri, Arkansas, and Michigan. Van Buren carried fifteen states, Harrison seven, White two, and Webster and Mangum one each. The popular vote (twenty-five states) was Van Buren 762,000, Harrison 549,000, White 146,000, Webster 41,000, total 1,498,000.

(The following is an excerpt from "Proposed Amendments to the Constitution of the United States During the First Century of Its History," a prize essay by Herman V. Ames, Ph. D., published in the Annual Report of the American Historical Association, 1896:)

PROPOSED AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

37. CHOICE OF PRESIDENT AND VICE-PRESIDENT

No question gave the framers of the Constitution so much trouble as the question of the method of the choice of the Executive.¹ The Convention after vacillating between several plans, finally fell back upon the system of an indirect election through an electoral college.² This method of choosing the President was without doubt suggested by the system of electing Senators under the constitution of Maryland.³ In that State "the Senators were selected by a body of electors chosen every five years by the inhabitants of the State for this particular purpose and occasion."⁴ The principal considerations which led the members of the convention to favor this system was, on the one hand, their profound distrust of the people and their desire to preserve the relative influence of the States; and, on the other, their fear that if the election should be given to Congress the Executive might become dependent upon the legislative department.⁵ Therefore, they determined to place the election in the hands of a small body of men "to be elected on account of their wisdom and character," who, it was expected, being entirely independent in their action of the people and the Congress, would exercise "discretion and discernment" in the choice of men "preeminent for ability and virtue."⁶ No feature of the new instrument seems to have been contemplated by the framers with so much satisfaction and to have aroused so little opposition in the ratifying conventions as the article providing for the election of President and Vice-President.⁷

¹ Wilson's remark in the Pennsylvania convention, Elliot, II, p. 511; Madison's letter of 1823; *ibid.*, III, p. 332.

² Eleven different methods for selecting the Chief Executive were suggested: (1) By the National Legislature, by Ed. Randolph, Elliot's Debates, I, 144; v. 128. (2) By the State executives, Elbridge Gerry; *ibid.*, I, 167; v. 174. (3) By the Congress constituted as under the Articles of Confederation, William Patterson; *ibid.*, I, 176; v. 192. (4) By electors to be chosen by the people, Alexander Hamilton; *ibid.*, I, 179; v. 205. (5) By electors to be chosen by the people of the several States, Gouverneur Morris; *ibid.*, I, 262; v. 473. (6) By electors to be chosen by the people in districts, James Wilson; *ibid.*, I, 156; v. 143. (7) By electors to be appointed by the State legislatures, Oliver Ellsworth; *ibid.*, I, 211; v. 338. (8) By electors to be taken by lot from the National Legislature, James Wilson; *ibid.*, I, 217; v. 362. (9) By the National Legislature, each State having one vote, Mr. Dayton, *ibid.*, I, 262; v. 473. (10) By direct vote of the people, Mr. Carroll; *ibid.*, I, 283; v. 472; Gouverneur Morris (by citizens); *ibid.*, I, 208; v. 323. (11) By electors to be chosen for each State in such manner as the legislature thereof may direct. From Committee August 31, 1787. Adopted. Several of the above were adopted, only to be reconsidered and defeated. That for the election by the two Houses of Congress was three times adopted, once unanimously, and as often reconsidered and rejected. See *Atlantic Monthly*, vol. 42, 543; *No. Am. Rev.*, vol. 140, February, 1885; McKnight, *The Electoral System of the United States*, pp. 221-224; O'Neill, *The American Electoral System*, chap. XI.

³ Constitution of Maryland (1776), Articles XIV-XVIII.

⁴ J. H. Robinson, *Original Features in the United States Constitution*. *Annals of Am. Acad.*, Vol. I, p. 229. Stevens, *Sources of the Constitution*, pp. 153-154, note.

⁵ McKnight, pp. 30-33.

⁶ Senator Morton's speech, Forty-third Congress, second session, Cong. Record, p. 627.

⁷ "The Federalist," No. 67; also remarks of James Wilson and Chief Justice McKean in the Pennsylvania convention. Elliot, II, pp. 511, 542.

The system has not worked well in actual use, and no part of the Constitution has caused so much dissatisfaction and hence given rise to so many amendments to effect a change.⁸ Although the letter of the instrument remains only slightly amended, in practice its spirit has been completely perverted from what was intended by its framers. The electoral colleges instead of being deliberative bodies are pledged in advance to vote for certain men, and hence have become mere agents, automata.⁹ No better idea of the way in which an amendment is practically obtained, when it proves impossible to secure a constitutional amendment, can be gained than by examining the way this system of election has worked in actual practice. As a recent writer remarks:¹⁰ "The legal processes of constitutional change are so slow and cumbrous that we have been constrained to adopt a serviceable framework of fiction which enables us easily to preserve the forms without laboriously obeying the spirit of the Constitution, which will stretch as the nation grows."

38. CHOICE OF PRESIDENTIAL ELECTORS: THE TWELFTH AMENDMENT

For the first two elections the system of electing President and Vice-President worked smoothly, but by the time of the third election all was changed. Political parties had come into existence,¹¹ and Washington, who insisted upon retiring, was the only man who could command the united support of the entire nation. It at once became evident that a change was desirable, for the election of 1796 proved that by the existing method the will of the party in majority might be defeated by the elevation to the first position of the candidate who had been selected for the second place through the refusal of one elector to carry out the intention of the party. It also might prevent, as it did in this election, the President and the Vice-President from being of the same political party, inasmuch as some of the electors, fearing the result of a tie vote between their party candidates, threw away their votes for the second position, while thereby insuring the election of their candidate for the Presidency they permitted the opposition's candidate to secure the Vice-Presidency.

As early as January 9, 1797, even before the electoral vote was counted, Mr. Smith of South Carolina proposed a resolution declaring that the Constitution ought to be so amended that the Presidential electors be obliged in giving their votes to designate the person for whom they vote for President and Vice-President, respectively.¹² A very similar resolution was introduced in each of the three following years by as many different persons,¹³ and the legislatures of Massachusetts and Vermont favored this change.¹⁴ No decisive action was taken—a further trial of the old system was needed to show more fully its dangers. The election of the year 1800 revealed anew the inadequacy of the existing system. The dissatisfaction already felt was greatly intensified by the critical experience of the tie vote in this year. The legislatures of three States, Vermont, New York, and North Carolina, presented resolutions to Congress early in the year 1802, proposing an amendment to the Constitution in this particular.¹⁵ In response to the desire of the great body of the people, resolutions providing for this change were immediately presented in both Houses.¹⁶ In the closing days of the session the House passed the amendment by a vote of 47 yeas to 14 nays. The resolution was immediately brought to a vote in the Senate, but lacked one vote of the necessary two-thirds, the vote standing 15 to 8.¹⁷

At the opening of the next session resolutions to change the method of election were reintroduced, but were postponed until the next Congress.¹⁸ In the fall of

⁸ Story, II, pp. 298-301.

⁹ Morton's speech as above. Bryce, I, pp. 40-44.

¹⁰ Woodrow Wilson, *Congressional Government*, p. 242.

¹¹ Even in 1789 tickets bearing names of electors were placed in the field, but by 1796 pledged lists of electors were common and in Pennsylvania the beginning of the convention system was in operation. In 1800 Congressional caucuses to nominate candidates and thus forestall the action of the electoral colleges were first held. O'Neil, pp. 35, 46, 70.

¹² App., No. 328.

¹³ App., Nos. 329, 334, 336.

¹⁴ App., Nos. 334a, 334b. Maryland also, during the winter of 1800-1801, passed resolutions proposing an amendment of the establishment of a uniform mode for the choice of electors. App., No. 341a.

¹⁵ App., Nos. 342, 344, 348, 351.

¹⁶ App., Nos. 345, 352. The House proposition in its original form made provision also for the choice of electors in districts. See post, par. 39.

¹⁷ App., No. 345.

¹⁸ App., No. 354.

1803 the Vermont legislature renewed their proposal, and Ohio instructed their Representatives to favor the change.¹⁹ A resolution was presented in the House on the first day of the session of the new Congress, to which several amendments were proposed.²⁰ After taking into consideration the different propositions, the select committee reported a resolution to amend the method of electing the Executive by requiring that the electors should designate which votes they cast for President and which for Vice-President. No change was to be made in the manner of choosing the President in the eventual election, but the chance of its occurrence was lessened.²¹ This resolution, after several unsuccessful attempts had been made to amend, passed the House by a vote of 88 to 31. The Senate postponed its consideration, as meanwhile they had under discussion a resolution of their own, which had been introduced by Mr. Clinton of New York. After various amendments to it had been accepted, the Clinton resolution passed the Senate by the vote 22 yeas to 10 nays.²²

Although all sections of the country, Republican and Federalist alike, had in previous years sought this change,²³ the amendment now met with the systematic opposition of the Federalists, who seemed determined either to defeat or mutilate it. As soon as the Senate resolution came before the House the Federalists raised the cry of unconstitutionality, on the ground that the resolution had not received the vote of two-thirds of the Senate, but only two-thirds of the Senators present. The Republicans met this objection by appealing to precedent in the case of some of the first ten amendments, showing that two-thirds of the members present fulfilled the constitutional requirement.²⁴ All their attempts to postpone or to amend were in vain,²⁵ and even their appeal to State rights was disregarded, for the House, on December 9, 1803, concurred with the Senate by the exact constitutional majority—84 yeas to 42 nays, the vote of the Speaker being required to make the necessary two-thirds majority.²⁶

The amendment was sent to the States at a favorable time. The Republicans were in the ascendancy and Jefferson, who was a candidate for reelection, was at the height of his popularity. The next Presidential election was approaching, and the legislatures which assembled shortly after the submission of the amendment took prompt action. Ten States shortly ratified, and a proclamation of the Secretary of State, dated September 25, 1804, declared the amendment in force.²⁷ The legislatures of Massachusetts, Connecticut, and Delaware alone rejected it.²⁸ "Each of these declared it unwise, impolitic, and unconstitutional."²⁹

The twelfth amendment was a virtual recognition of the existence of political parties, and stimulated the growth of the system of the nomination of candidates and the pledging of electors, which had already made its appearance.³⁰

39. CHOICE OF ELECTORS BY DISTRICTS

The lack of uniformity in the choice of electors³¹ early led to various attempts to secure an amendment to the Constitution prescribing a method which would be binding upon all. The mode most frequently suggested during the first quarter

¹⁹ App., Nos. 360, 361.

²⁰ App., No. 356.

²¹ The number of candidates sent to the House reduced from five to three. App., No. 359.

²² App., No. 358.

²³ See speech of Gregg of Pennsylvania, who showed that the measure was not a partisan one. *Annals*, p. 701.

²⁴ *Annals of Congress*, Eighth Congress, first session, pp. 648-653; post, par. 183.

²⁵ To abolish the Vice-Presidency. ante, par. 34; to prevent the Vice-President acting as President in case of a failure to elect by the House, when the election devolved upon it; to prevent reducing the number of candidates to be sent to the House. They claimed the proposed change violated the spirit and design of the Constitution. O'Neill, p. 252.

²⁶ Only three Representatives from New England voted for it.

²⁷ See list after App., No. 358. McMaster, III, pp. 186-187.

²⁸ The New Hampshire legislature passed it, but the governor vetoes it. Post, par. 180. McMaster, III, p. 187. See also O'Neill, p. 95, for sectional address issued to the people of Connecticut, which was in part as follows: "The plan of this amendment is to bury New England in oblivion and put the reins of Government into the hands of Virginia forever. They, the Democrats, have seized on a moment of delirious enthusiasm to make a dangerous inroad on the Constitution and to prostrate the only mound capable of resisting the headlong influence of the great States and preserving the independence and safety of the small ones."

²⁹ For centralizing the effect of amendment, see Adams, *History of the United States*, IV, 132-133; Story, II, 302-304.

³⁰ See post, par. 40.

of this century was for the choice of Presidential electors by districts.³² Some forty-two amendments of this character have been proposed. They naturally fall into two classes; the one providing that the States should be divided into as many districts as it was entitled to Senators and Representatives in Congress; the other for the choice of the electors in Congressional districts in each State, and the two remaining to be selected in some other way.

The first of these objects has been sought by thirty resolutions, introduced for the most part between 1800 and 1826.³³ The first proposition of this character was presented by Mr. Nicholas of Virginia, in 1800,³⁴ together with a resolution for the choice of Representatives by districts.³⁵ In 1802 the resolutions of the legislatures of Vermont, New York, and North Carolina, calling for the election of Presidential electors by districts, as well as the designation of the person voted for as President and Vice-President were presented to Congress. Such an amendment was favored by the leading men in both political parties.³⁶ Amendments proposing the district system were introduced in both branches of Congress. The resolution which passed the House in this session making provision for the designation of the persons voted for as President and Vice-President in its original form, also contained an article providing for the choice of electors by districts.³⁷ The resolution was divided so that the article establishing the district plan was not brought to a vote.

Owing to the great excitement which prevailed in North Carolina in consequence of the act of the legislature of that State in 1812, depriving the people of their traditional right to choose the electors, the Senators and Representatives from North Carolina were particularly zealous in advocating this amendment.³⁸ The circumstances attendant upon the choice of electors in Massachusetts and New Jersey in this same year also showed the desirability of a uniform system being prescribed. In the former State a deadlock between the two branches of the legislature had almost deprived the State of its vote, which loss was averted only by the calling an extra session of the legislature.³⁹ In the latter State, on the very eve of the election, the legislature, for partisan purposes, took the direct choice of electors to itself, depriving the voters of their expected suffrage.⁴⁰

These events so aroused the Senate that the amendment proposed in 1813 by Senator Turner of North Carolina, upon the instruction of the new legislature of his State, passed that body by the vote of 22 to 9, but was not advanced to a vote in the house.⁴¹ A similar amendment was repeatedly urged by Representatives from all sections of the country during the next few years.⁴² In 1816 the legislature of Massachusetts added her indorsement of the district system to that of the States already referred to.⁴³ This was significant in view of her recent

³² In the election of 1796 six States employed the district system, viz: Massachusetts, Virginia, Kentucky, North Carolina, Maryland, and Tennessee (divided into three districts). O'Neill, p. 63. Wilson had suggested the plan in the Federal Convention, ante, p. 75, note 8. Gallatin favored the district system, letter to Jefferson September 14, 1801. Writings of Albert Gallatin (ed. by Henry Adams), I, p. 49. Hamilton also favored it, letter to Morris, April 6, 1802, Works vi, p. 556. Madison in a letter to George Hay of August 23, 1823, writes: "The district mode was mostly, if not exclusively, in view when the Constitution was framed and adopted." He shows advantage of the system and gave a "sketch" of an amendment which he drew up "for this faulty part of the Constitution in question." Works, III, pp. 332, 335. Jefferson seems also to have approved of it. McKnight, p. 387. See App., No. 77.

³³ The following introduced between 1800-1826: App., Nos. 338, 340, 345, 346, 350, 353, 355, 357, 373, 407, 409, 414, 450, 453, 455, 460, 463, 491, 532, 534, 537, 540, 555, 556, 738.

³⁴ Virginia had employed the district system in the three previous Presidential elections, but in 1800 by advice of Madison and Jefferson, who feared that their party might not secure all the electors, the change to the general-ticket system was made. O'Neill, p. 75. The Federalists in Massachusetts also changed from the district system to joint ballot by the legislature for the same purpose.

³⁵ Ante, par. 24.

³⁶ Hamilton had favored this method in the Convention of 1787, and the passage of the resolutions by the New York legislature at this time were due to his efforts, ably seconded by De Witt Clinton. For attitude of Gallatin and Jefferson, see note 3 above.

³⁷ Ante, par. 38.

³⁸ App., Nos. 407, 414, 450, 455, 460, 463, 540. The action of the legislature was defended on the ground that large numbers of voters favorable to Madison had enlisted in the Army; that their absence might have made the State doubtful. O'Neill, 106; Niles' Register ix, 349.

³⁹ McMaster, iv, 195; O'Neill, 104-105; Niles' Register, III, 128; ix, 349.

⁴⁰ McMaster, iv, 193-194; Stanwood, Presidential Elections, 61; O'Neill, 105-106; Niles' Register, III, 160.

⁴¹ App., No. 409. See Niles' Register, III, 174-175.

⁴² App., Nos. 414, 450, 453, 455, 460, 463, 491, 507b, 532, 534, 537, 540, 555, 556.

⁴³ App., No. 453. Again in 1819, App., No. 488a b. The Virginia legislature also approved of the North Carolina proposition in 1816. App., No. 451a. But the legislatures of Rhode Island, Connecticut, and Ohio disapproved. Massachusetts Archives, Misc. 8178-8183.

experience. The hostility to the Congressional caucus system of nominating candidates favored in this same year the passage of such an amendment, which was urged with renewed vigor by its champion, Mr. Pickens of North Carolina, but the support of two-thirds of the members of either branch of Congress could not now be secured.⁴⁴

Some of the later amendments presented some peculiarities, one or two of which are worthy of mention. The one proposed by Mr. Livingston, in 1824, was extremely novel.⁴⁵ It provided that the voters meeting in their respective districts shall vote for one person to be President, another to be Vice-President, and the third to be an elector. The person having the greatest number of votes as President, Vice-President, and elector, respectively, shall be considered as entitled to the vote of such district for the said office. The electors to be called upon to serve only in case two persons have a majority of the whole number of district votes for President, in which event they shall assemble in their respective States and choose one of the two persons to be President.

The need of uniformity in the filling of vacancies in the electoral colleges was shown in the election of 1824.⁴⁶ This doubtless suggested the provisions of the amendment introduced by Mr. Saunders of North Carolina, in the following year.⁴⁷ It provided that when the electors assembled in their respective States, in case of the nonattendance of any elector, the electors present should fill the vacancies.⁴⁸ It further stipulated that the person having the greatest number of votes for President shall be President, if such number be one-third of the whole number.

A group of seventeen additional resolutions made a distinct provision in regard to the choice of the two electors at large from each State, in addition to the electors chosen by districts.⁴⁹ These, with three exceptions, were introduced between the years 1817 and 1826. Senator Dickerson of New Jersey, in December of 1817, after laying before the Senate the proceedings of the legislature of his State in relation to amending the Constitution in regard to the election of President and Vice-President, introduced a resolution providing for its amendment in this particular, the two additional electors to be chosen as the legislatures of each State should direct.⁵⁰

The legislature of North Carolina which, up to the previous session of Congress, had continued to advocate the other method of the division of State into electoral districts, now instruct their Senators to use their best endeavor to secure an amendment similar to the one proposed by Senator Dickerson.⁵¹ The New Jersey resolution was not brought to a vote until March, when, although it received a good majority, it failed for the lack of the two-thirds vote of the Senate. To the resolution of these two States, at the next session of Congress, the legislatures of New York, New Hampshire, and Connecticut added the weight of their indorsement.⁵² Again Senator Dickerson presented his resolution. This time the resolution was debated at much length, and three times referred to committees, and finally passed (28 to 10) the Senate February 3, 1819, but failed to be considered favorably by the House.⁵³

⁴⁴ App., Nos. 453, 460. Pickens's speech is quoted in part by McMaster, iv, 369-371. An editorial in Niles' Register (ix, 349) refers to this amendment, after the failure of Congress to consider it favorably, and says: "And we jog on in the old way, swindling and to swindle." The legislature of Illinois, in 1821, passed resolutions favoring an amendment for a uniform mode of electing President and Vice-President. App., No. 507b.

⁴⁵ App., No. 537.

⁴⁶ In that election vacancies in the college of electors had been supplied in New York by the electors present, in New Jersey by the governor, and in Virginia by the legislature.

⁴⁷ App., No. 540.

⁴⁸ This was done in Texas in 1872. Cong. Record, Forty-third Congress, second session, p. 827. Also in 1876 in Michigan, Oregon, Pennsylvania, Rhode Island and Vermont. Stanwood, pp. 340-342.

⁴⁹ App., Nos. 468, 472, 482, 484, 485, 488, 489, 497, 500, 506, 519, 525, 529, 577, 869b, 1247, 1324.

⁵⁰ App., No. 468. The electors, when convened for the purpose of giving their votes, should have the power to fill such vacancies as there should be in their number. By act of 1845, "Each State may provide for the filling of any vacancy or vacancies which may occur in its college of electors, when such college meets to give its electoral vote." Rev. Stat. U. S., sec. 133. J. Q. Adams, while he refused to recommend any amendments to Congress while he was President, nevertheless favored the choice of the electors by districts, the two at large by the legislature of each State. But he would not change the contingency of its devolving upon the House of Representatives in case of no choice by the electors. "The House of Representatives was, of all others, the body peculiarly fitted for making the election." Memoirs, vii, p. 301. See post, par. 50.

⁵¹ App., No. 472.

⁵² App., Nos. 482, 484, 488.

⁵³ App., No. 485.

Senator Dickerson continued to introduce this resolution in every session of Congress, with one exception, down to 1826, presenting it in all eight different times.⁶⁴ As he had been the first so he was the last to advocate its adoption at this period. This resolution passed the Senate twice afterwards, but each time it failed to be brought to a vote in the House.⁶⁵ This identical proposition was introduced by a Representative of South Carolina in the House in 1820 and secured a vote of 92 yeas to 54 nays, but this was short of the necessary two-thirds. The amendment never again came so near to success, for if it could have been pushed through the House it would have speedily received the indorsement of the Senate.⁶⁶

An amendment, the first part of which was similar to that proposed by Senator Dickerson, was reported by the select committee of the House in 1823.⁶⁷ It differed, however, in many other details. The electors, besides filling vacancies in their number, were to appoint the two electors at large.⁶⁸

Over thirty-five years later Mr. Douglas revived the proposition for the choice of electors by districts.⁶⁹ Two isolated propositions, introduced in the later "sixties," called up this plan for the last time. The first of these departed in certain features from the early plan in that only the States which were entitled to more than two Representatives were to be divided into districts, and only in such States shall two additional electors be appointed.⁷⁰ The second resolution conferred the choice of the two electors at large upon the voters of the State.⁷¹

40. CHOICE OF ELECTORS BY GENERAL TICKET IN EACH STATE

The States have by the Constitution the right to choose electors as they prefer, except that Congress may fix the time of the election. As a result, in the early years a great variety of methods were in use, as, in the election of 1824, the electors were chosen in six of the States by the legislature,⁷² in others by districts, but in the larger number by general ticket.⁷³ The method of election was frequently changed, "according as the needs of the ruling party were best served." As indication of the need of a uniform system to prevent this political jugglery, Mr. Pickens cited, in a speech in 1816, "the disgraceful struggles which cost New York her electoral vote in 1789, and almost deprived Pennsylvania of hers in 1800 and Massachusetts of hers in 1812, and the sudden change of New Jersey on the very eve of an election" as "so many cases in point."⁷⁴

As the general-ticket system was by the "twenties" in use in the majority of the States, an amendment adopting this practice seemed to be the one most likely to be successful; accordingly, Mr. Hooper of New Hampshire, in order to secure uniformity in the Presidential election, introduced, in 1828, a resolution declaring that the Constitution ought to be so amended that in each State the electors shall be chosen by a general ticket.⁷⁵ In the election of that year there was a very general change on the part of those States which had previously chosen electors

⁶⁴ App., Nos. 489, 500, 506, 519, 527, 577.

⁶⁵ In 1820 and 1822. App., Nos. 489, 506.

⁶⁶ pp., No. 497. Ever afterwards the House refused to consider this amendment.

⁶⁷ App., No. 524.

⁶⁸ This method of choosing the two additional electors was employed in Maine and New York in 1828. Stanwood, p. 100; post, par. 40. Other clauses of this amendment made provision for case of no election, and division of the States into districts by Congress, if necessary. Post, pars. 50, 53.

⁶⁹ App., No. 869(1). The two electors at large to be chosen by the legislature in joint convention.

⁷⁰ App., Nos. 1247, 1248. A second election provided for in case no one received a majority of all the votes. If after the third election there is a tie, then it shall be decided by lot.

⁷¹ App., No. 1324.

⁷² Delaware, South Carolina, Vermont, New York, Georgia, Louisiana. It has been claimed that the election by the legislature of a State was a usurpation and "a departure from the Constitution." Report of Committee on election of President, Forty-fifth Congress, second session, H. Rep., Vol. IV, No. 819. McDuffie, in a speech in 1825. For reference, see App. No. 542; but in *McPherson v. Blackie* (146 U. S., 1) it was held that the power of the legislature to fix the method was complete. See also in *re Green*, 134 U. S. 377.

⁷³ Stanwood, p. 84; O'Neill, p. 122. For table of methods used by the States, see *The Nation*, vol. LII, p. 422; also reprinted in *Hind's Am. Govt.* 2d ed., p. 259. Six by district and twelve by the general ticket system in 1824.

⁷⁴ Ante, par. 39; MacMaster, IV, 369-37. Stanwood, 15, 38, 39, 49, 60. Other cases, Massachusetts (1804), MacMaster, III, 187; Niles' Register, IX, 349. Massachusetts changed its method of choosing electors in every election between 1796 and 1820. In 1796, by district system; 1800, by legislature on joint ballot; 1804, by general ticket; 1808, by the legislature; 1812, electors chosen in the old common pleas circuits (district system); 1816, by the legislature; 1820, by districts; 1824, by districts, the two electors at large chosen by the voters of the entire State; 1828, by general ticket.

⁷⁵ App., No. 584. This had been suggested in the Constitutional Convention of 1787. Ante, par. 37.

through their legislatures to the popular system. The old method of choice by the legislature still obtained only in Delaware and South Carolina. In Maine and New York one elector was chosen for each Representative district, and the persons so chosen selected the two additional electors. Special electoral districts existed in Maryland and in Tennessee. The States which had repeatedly tried in vain for several years to secure the adoption of an amendment establishing the district system, especially Massachusetts, New Jersey, and North Carolina, went with the majority and adopted the system of election by general ticket, making eighteen States in all that employed this method.⁶⁶ In 1832 all but two States adopted the general ticket-system. South Carolina alone adhered to her old system of legislative appointment, which she retained down to the civil war.⁶⁷ Maryland used the system of electoral districts for the last time in 1832.⁶⁸ Thus, after 1832, the method of choosing electors had become nearly uniform throughout the country without the resort to an amendment to the Constitution.⁶⁹ With but few exceptions, this system has not been departed from, although a State legislature is competent to establish any method it may choose.⁷⁰

41. ELECTION OF THE PRESIDENT BY THE PEOPLE AS THE LEGISLATURE OF THE STATES SHALL DIRECT

The action of the States also took away the reason for another group of amendments providing that the vote for President and Vice-President shall be given in such manner as the legislature of each State may direct.

The first of these amendments was proposed by Mr. Boon of Indiana, in 1826, and it provided that the vote shall be a direct vote, given as the legislature may prescribe.⁷¹ Two others were presented in the House shortly after. One of these, offered by Mr. Hemphill of Pennsylvania, while still retaining the electoral college, provided that the people of the State should appoint, in such manner as the legislature should direct, the electors to which it was entitled,⁷² thus insuring an election of the electors either by general ticket or by districts, and not by the legislature, as was still the practice in some of the States.

⁶⁶ Stanwood's Presidential Elections, p. 100.

⁶⁷ South Carolina retained this system because the lower division of the State contained twice as many slaves but less number of free population than the upper. "The lower division was intrenched in the legislature." O'Neill, p. 126, note. See letter of Calhoun defending the practice, November, 1846. Works, vi, p. 255.

⁶⁸ Stanwood, pp. 110, 118.

⁶⁹ It is claimed that "the practical effect of the electoral system has been to increase the relative importance of the large States, and the practice of voting by general ticket was introduced by the large States for that purpose, and when introduced all were compelled to follow it." House Report. Vol. iv. No. 819, Forty-fifth Congress, second session. The large States were not the first to adopt the general-ticket system; in 1789 three States adopted it, viz, Pennsylvania, New Hampshire, and Maryland; of these only Pennsylvania could be reckoned as a large State. The number varied in nearly every election, but by 1816 five States used it, viz, New Jersey, New Hampshire, North Carolina, Rhode Island, and Ohio; of these only North Carolina could be reckoned as a large State, being sixth in population. The great change came in 1824, when twelve States seem to have adopted the system, viz, Pennsylvania, New Jersey, Connecticut, New Hampshire, Virginia, North Carolina, Rhode Island, Ohio, Indiana, Mississippi, Alabama, Missouri—the second, third, fourth, and fifth States in population and eight small ones. In a letter of August 23, 1823, Mr. Madison wrote: "The district mode was mostly, if not exclusively, in view when the Constitution was framed and adopted, and was exchanged for the general ticket and the legislative election as the only expedient for baffling the policy of the particular States which had set the example." Works, Vol. iii, pp. 332-333. Governor Carroll, in his message to the legislature of Tennessee, September 19, 1831, recommends the establishment of the general-ticket system of choosing electors, in order that the State may have its "full weight in the election for President and Vice President hereafter." Am. An. Reg., Vol. vii, p. 273 (1831-32). From the above it is clear why the system became general.

⁷⁰ The following are the only cases of departure from the general-ticket system: The reconstructed State of Florida in 1868 and the newly admitted State of Colorado in 1876—there being insufficient time to provide for a general election—chose their electors through their legislatures. Stanwood, pp. 268, 328, 372. In 1892 the legislature of Michigan departed from the prevailing system and adopted the district system, one elector being chosen in each Congressional district, and for the choice of the two remaining electors the State was divided into two districts, each of which chose one of the electors at large. The constitutionality of this latter provision was questioned, but sustained by the Supreme Court of the United States in *McPherson v. Blacke*, 146 U. S., 1. The danger of other States following the example of Michigan led President Harrison in his annual message (December 9, 1891) to recommend that the permanency of the prevailing method should be secured by a constitutional amendment. Cong. Record, pp. 18, 19. This recommendation was not productive of results, but the next legislature of Michigan, being of a different political complexion from the legislature which had enacted the obnoxious law, repealed the same. See Bryce, i, p. 43.

⁷¹ App., No. 558.

⁷² App., No. 561.

The other proposition, that of Mr. Livingston of Louisiana, was more explicit.⁷² It stipulated that there should be a direct election by the people, either by district or general ticket, as the legislature of each State should direct; such mode not to be changed for a period of eight years, and in no case to be changed within three years of any Presidential election.⁷³

42. ELECTION OF PRESIDENT AND VICE-PRESIDENT BY A GENERAL DIRECT VOTE

Several of the amendments just discussed provide at the same time for some different method of electing the President in case there is no choice in the first election.⁷⁴ The same object was sought by another group of amendments intended to do away altogether with the machinery of electors. Thirty-seven propositions for the election of President by a general direct vote have been introduced, twelve of which fall in the period embraced by the years 1826 to 1837.⁷⁵

In the election of 1824, Andrew Jackson, although he had somewhat the largest popular vote,⁷⁶ lacked an electoral majority, and was then defeated in the House of Representatives by a combination of the Clay and Adams men for Adams. This result caused general dissatisfaction with the prevailing system of election among Jackson's adherents. The fact that he had polled the largest popular vote, together with his increasing popularity, suggested a method, the adoption of which would prevent the people's choice from being overruled, namely, a direct vote of the people, State lines being disregarded altogether. Mr. McManus of New York first proposed this change in Congress January 4, 1826.⁷⁷ Within the next four years a similar amendment was introduced eight times in the House, two of these proposals coming from the legislatures of Ohio and Missouri.⁷⁸ In 1833 Senator Bibb of Kentucky called up the subject again, but the committee to which his resolution was referred reported as a substitute a proposition for the direct election of President by districts.⁷⁹

Not until 1865 did the proposition again make its appearance. It was the first of a series of twenty-five resolutions of this character. Mr. Ashley and Senators Poland and Sumner were the most active in urging the adoption of this amendment during the early years of the second period of its popularity in Congress. Mr. Sumner advocated this change because the existing system was "artificial, cumbrous, radically defective, and unrepresentative," and because, in common with Mr. Ashley, he expected that the proposed method would supersede the caucus or convention system of nominations.⁸¹ There is little reason, however, to suppose that the adoption of this system would do away with the nominating convention. The greater number of these propositions required a majority of the popular vote to secure the election. In case no person received a majority twelve proposed a second election by the people,⁸² while four others provided for the final choice by one or both branches of Congress.⁸³ Several others provided that a plurality of votes only should be necessary to elect, but

⁷² App., No. 572. Mr. Livingston showed himself ready to further any scheme for the alteration of the existing method of electing President, for in 1824 he introduced one resolution to choose electors by districts (App., No. 537), and in 1826, besides the above, he proposed a general direct vote. App., No. 568. See pars. 39, 42.

⁷³ Post, par. 50. To prevent such cases as cited in par. 40.

⁷⁴ Post, par. 50.

⁷⁵ App., Nos. 550, 554, 562, 568, 570, 572, 578, 583, 592, 628, 654, 669.

⁷⁶ For estimate of popular vote, see Stanwood, pp. 87-88, who estimates Adams's vote as one-third of the popular vote. Niles' Register, Vol. xli, p. 444, claims that "the electoral vote obtained by Adams in 1824 represented a larger number of the people than the higher electoral vote of Jackson."

⁷⁷ App., No. 550.

⁷⁸ App., Nos. 554, 558, 562, 568, 578, 592, 601a. For peculiar provision of the Ohio resolution for the choice of electors to act only in case of no person receiving a majority, see post, par. 50; App., Nos. 578, 592.

⁷⁹ App., Nos. 628-630; post, par. 43. For resolutions from the legislature of Indiana approving a change in the method of election presented in 1837, and also suggesting a uniform series of three days for the election in all the States, App., No. 669, see post, par. 52. Some, as No. 554, provided that a plurality of votes should elect.

⁸¹ The preamble to the resolution, App., No. 1352, declared: "The caucus or convention, after being the engine for nomination of President, allowing the people little more than to record its will, becomes the personal instrument of the President when elected, giving him a dictatorial power, which he may employ in reducing the people to conformity with his purposes and promoting his reelection, all of which is hostile to good government and of evil example," etc. See also Ashley's speech, App., No. 1227b; Orations and Speeches by J. M. Ashley, pp. 774, and following pages.

⁸² App., Nos. 1104, 1127b, 1283c, 1352, 1368, 1389, 1464, 1505, 1536, 1626, 1668, 1695; post, par. 50.

⁸³ By joint convention of both Houses of Congress, App., Nos. 1078, 1314; by the House of Representatives, App., Nos. 1354, 1361.

in case of a tie Congress should decide.⁸¹ One of these proposed that the person having the highest number of votes should be President and the person having the next highest should be Vice President, probably in the hope of restoring the original respect and regard for the latter office.⁸² The greater number of these resolutions were introduced in the period from 1872 to 1878, and the majority were presented by members from Western States.⁸³

43. ELECTION OF PRESIDENT AND VICE PRESIDENT DIRECTLY BY DISTRICTS

A group of thirty-two resolutions, which also proposed conferring the choice of President directly upon the people, were designed to establish the district system.⁸⁴ These were similar to the propositions which had been introduced in the first quarter of the century, already discussed,⁸⁵ save that they did away with electors. The first of these was introduced in 1823 by Senator Benton. From this time to the election of General Jackson, in 1828, this proposition was urged in every Congress.⁸⁶ Among these were three sets of resolutions in favor of the proposed change, from Tennessee, the General's State, while counter resolutions were received from other States.⁸⁷ In 1826 a resolution proposing this change was reported favorably by a select committee of the Senate through their chairman, Mr. Benton.⁸⁸ It was given extended consideration, but was not brought to a vote.⁸⁹ The House spent six weeks of this session in debating McDuffie's resolution, which declared that the Constitution ought to be so amended that a uniform system of voting directly for President, by districts, should be established in all the States, and so altered as to prevent the election devolving upon Congress. The two parts of the resolution were voted upon separately, the House recording itself against the district system by a vote of 90 yeas to 102 nays, but agreed to the second portion of the resolution.⁹⁰

President Jackson, in each of his annual messages, strongly recommended that the Constitution be so amended, first, that the people should vote for the President and Vice-President directly; "for," said he, "in proportion as agents to execute the will of the people are multiplied there is danger of their wishes being frustrated; some may be unfaithful, all are liable to err;"⁹¹ and, second, as to prevent the election of President devolving upon the House of Representatives, arguing that if the different departments of the Government were to be kept distinct, that the choice of the Executive by either branch of the legislative department must be discontinued or the Executive would become the creature of the legislative department.⁹²

Although the President did not designate the specific method by which the direct vote should be given, yet it is known that he favored the amendment championed by his friend and supporter, Senator Benton. Mr. Benton changed the terms of the amendment which he had earlier introduced, to harmonize with President Jackson's views.⁹³ The first resolution proposed by him retained the provision that in case of no choice the election should devolve upon the House of Representatives, but the amendments presented by him after the election of Jackson stipulated that in the event of no election there should be a second election by the people between the two persons having the highest number of votes.⁹⁴

⁸⁴ App., No. 1058; see post, par. 50. Four provided for the decision of the tie for President by the House, for the Vice-President by the Senate, each member to have one vote, Nos. 1408, 1420, 1443, 1446; two that the tie for either office should be decided by the House, Nos. 1359, 1367.

⁸⁵ App., No. 1731.

⁸⁶ Mr. Towshend, of Illinois, has introduced this amendment in every Congress since 1880. During the same period only one other member has proposed its adoption.

⁸⁷ App., Nos. 526, 541, 541a, 542, 544a, 547, 548, 552, 581a, 582, 600a, 601, 602, 610, 626, 627, 630, 631, 632, 641, 646, 656, 659, 672, 739, 765, 770, 773, 813, 1228, 1240, 1519.

⁸⁸ Ante, par. 39.

⁸⁹ McDuffie of South Carolina proposed it three times. App., Nos. 541, 542, 582.

⁹⁰ App., Nos. 541a, 548, 581a. Counter resolutions from Ohio and Indiana. Niles' Register, xxxix, pp. 125, 369. Maine, Massachusetts Archives, Nos. 8194, 8194

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⁹¹ App., No. 552.

⁹² Mr. Dickerson proposed his plan as an amendment thereto. Ante, par. 39.

⁹³ App., No. 542. See post, par. 50. The speeches of Benton, Dickerson, and McDuffie are all valuable as throwing much light on the workings of the existing system.

⁹⁴ First Annual Message, App., No. 596.

⁹⁵ App., Nos. 598, 602, 606, 610, 626, 631, 656, 659. For Madison's opinion, see Works, III, p. 332. For opposite view, held by J. Q. Adams, see Memoirs, VII, p. 301. Post, par. 50.

⁹⁶ App., No. 526.

⁹⁷ See post, par. 50.

Senator Benton remained true to the pledge he made in 1824,⁸⁸ and continued to present this same resolution at different times down to 1844.

In the Twenty-third and Twenty-fourth Congresses select committees reported resolutions containing this provision.⁸⁹ In the course of the debate during the Twenty-third Congress, Mr. Benton declared that "the district system would break the force of the large States;" but the amendment was opposed by John Tyler and other strong State Rights men because, as Tyler said, "it obliterated all State boundaries and dictated a course of action as if we were a nation and not a compact of States." They desired "to preserve the federative principle in the Constitution."⁹⁰ In spite of the efforts of President Jackson and Senator Benton, the amendment was never brought to a vote.

This proposition was not suggested again until the early "fifties," when Andrew Johnson, then a member of the House from Tennessee, introduced a resolution similar to that of Mr. Benton's in two different Congresses.⁹¹ At the next succeeding Congress, Mr. Ewing of Kentucky proposed the same amendment.⁹² The resolution received considerable discussion in this Congress. In support of the measure, Mr. Ewing said, that "it had been advocated for a period of thirty years by such men as Benton, Van Buren, Dickerson, McDuffie, Hayne, Macon, R. M. Johnson of Kentucky, and recommended time and again by General Jackson, and opposed chiefly by Rufus King of New York."

In 1860, while a member of the Senate, Andrew Johnson again proposed this method of election, adding to the measure as a sop to the slave-holding States, in addition to the proposition to divide the judiciary equally between the slave and free States, the section that in the elections of 1864 the President should be chosen from one of the slave-holding States and the Vice-President from one of the free States, in 1868 vice versa, and so alternating the President and Vice-President every four years between the slave and free States during the continuance of the Government.⁹³

Andrew Johnson evidently was convinced of the desirability of the election by the direct vote of the people, given in districts, for in 1868, when President, he sent a special message to Congress, proposing, together with other changes in regard to the Executive, such an amendment, and at the opening of the next session of the Congress, in his annual message he renewed his previous recommendation.⁹⁴ This amendment was proposed the last time in 1881 by Mr. Wallace of Pennsylvania. One interesting provision of this resolution was that the vote should be by secret ballot, thus foreshadowing the desirability of methods now in use in the majority of the States.⁹⁵

44. ELECTION OF PRESIDENT AND VICE-PRESIDENT DIRECTLY BY A COMBINATION OF DISTRICTS AND VOTES, AT LARGE

Corresponding to the amendments proposed in an earlier period by Senator Dickerson and others, for the choice of the electors in districts, there were introduced during the early "seventies," in both the House and Senate, propositions of a somewhat similar nature save that the electoral colleges were to disappear.⁹⁶ Senator Oliver P. Morton of Indiana, who was at this time the most earnest and zealous advocate of the necessity of a change, called up the question through a resolution which he offered in March, 1873. It directed the Committee on Privileges and Elections, of which he was chairman, "to examine and report at the next session upon the best and most practical mode of electing the President and Vice-President, and providing a tribunal to adjust and decide all contested questions connected therewith."⁹⁷ The committee, in May, 1874, reported, presenting a proposition, in seven articles, as an amendment to the Constitution.⁹⁸ It pro-

⁸⁸ He said: "He would pledge himself to the Senate and to the American people to continue the subject with all the energy he was master of till he brought it to a conclusion." *Gales & Seaton's Debates*, p. 693.

⁸⁹ App., Nos. 630, 656.

⁹⁰ *Niles' Register*, vol. XLVI, 421. Van Buren favored the district system, O'Neil, p. 253.

⁹¹ App., Nos. 765, 770.

⁹² App., No. 773.

⁹³ *Cong. Globe*, Thirty-third Congress, first session, p. 283.

⁹⁴ App., No. 813.

⁹⁵ App., Nos. 1228, 1240.

⁹⁶ Ann., No. 1519.

⁹⁷ Ante, par. 39. (1817-1826.)

⁹⁸ *Cong. Record*, Forty-third Congress, special session, p. 30.

⁹⁹ App., No. 1393. The report of the committee which accompanied the amendment was one of great ability. It was the work of Mr. Morton. *Senate Reports*, Forty-third Congress, first session, Vol. II, No. 395.

vided that the people should vote directly for the President, each State being divided into districts equal to the number of Representatives to which it should be entitled. The person having the highest number of votes in each district for President should receive the vote of that district, which should count as one Presidential vote. The person receiving the highest number of votes in the State should receive two Presidential votes from the State at large. The candidate receiving the highest number of Presidential votes in the United States should be President. In case two persons have the same number of votes in any State, it being the highest number, they should receive each one Presidential vote from the State at large.¹¹

Additional sections of the same article made provision for applying the foregoing provisions to the election of Vice-President, for conferring upon Congress the power to conduct such election, when it choose to do so, to alter the division of the State into districts, and to establish tribunals for the decision of such election as may be contested.¹²

The resolution was not brought up for consideration by the Senate until the following January, when it called out an important debate, Senators Morton and Anthony delivering long and valuable speeches. Senator Morton's address especially was a clear exposition of the working of the electoral system up to that date.¹³ It is worthy of note that he accurately forecast the contested election of 1876. In opening his remarks he declared it as his conviction that "no more important question can be considered by the Senate at this session of Congress, for, in my opinion, great dangers impend, owing to the imperfection of the present system of electing the President and Vice-President."¹⁴ In support of the district system, he quoted the figures from the report of the committee, which showed that in the eight Presidential elections between the years 1844 and 1872 four of the Presidents had received less than a majority of the popular vote,¹⁵ while during the same time the district system, as shown by the Congressional elections, approached more nearly by one-third to the whole popular vote than the election by the present method. Two votes by the proposed system were to be given by the State at large, in order that "the autonomy and power of the small States" might be preserved.

In the meantime a very similar resolution was reported to the House by the Committee on Elections, which awakened considerable interest,¹⁶ but neither in the House or the Senate was the proposition brought to a vote, the general opinion being that the greatest danger lay in the matter of the electoral count. Senator Morton introduced the same amendment in the next Congress, but no action was taken beyond its reference.¹⁷

45. ELECTION OF PRESIDENT BY A DIRECT VOTE BY STATES

In the Continental Congress and its successor, the Congress of the Confederation, all officers had been chosen by a vote by States. A similar principle was recognized in the Constitution, which provided in the electoral system that each State should have two votes, corresponding to the number of Senators, besides one for each Representative in Congress; and in case of no choice by the electors, the election should devolve upon the House of Representatives, the vote being taken by States, "the representation from each State having one vote."¹⁸ Thirty-five propositions retaining this federative principle of the Constitution proposed that the President and Vice-President should be elected by a direct vote of the qualified voters, given by States. While doing away with the electoral colleges,

¹¹ If more than two, then no Presidential vote shall be counted from the State at large. If more than one receive the same number of votes in a district, it being the highest, no Presidential vote shall be counted for the district.

¹² Post, pars. 53, 54.

¹³ Cong. Record, Forty-third Congress, second session, pp. 627-634. Senator Anthony declared "all the machinery of the existing system is absurd." Senators Thurman and Conkling also spoke agreeing that some change was necessary.

¹⁴ See also report of the committee as given on previous page.

¹⁵ Polk, 1844, 50 per cent; Taylor, 1848, 47 per cent; Buchanan, 1856, 45 per cent; Lincoln, 1860, 40 per cent. Ibid., also report of committee. For a table showing the difference between the popular and electoral vote in all elections from 1832 to 1876, see House Reports, Forty-sixth Congress, first session, Vol. II, No. 347.

¹⁶ App., No. 1386. In lieu of the section conferring upon Congress power to create tribunals to decide contested elections, was one making it the duty of the Supreme Court. Post, pars. 54, 70. It was recommitted and again reported with Mr. Smith's substitute. No. 1393, post, par. 45.

¹⁷ App., No. 1431. For criticism of the district system, see post, par. 51.

¹⁸ Constitution, art. 2, sec. 1, cls. 2 and 3, as originally adopted, retained in article XII of the amendments.

the electoral ratio or votes of the States were to be retained. Such propositions were brought forward at two different periods, the first between the years 1826 and 1848, the second since 1875. In their general characteristics they fall naturally into two groups, corresponding very nearly to the periods just mentioned: the one providing that the persons receiving the greatest number of votes in a State should be declared to have received the entire vote of the State;¹⁹ the other that the Presidential vote of each State should be divided among the candidates in proportion to the popular vote received by them in the State.

The earliest of the resolutions of the first group was presented by Mr. Haynes of Georgia, in 1826.²⁰ Eleven similar resolutions were proposed at different times within the next twenty years, the greater number, indeed, within the next ten.²¹ Three of these resolutions, from the general assembly of Georgia and the legislatures of Alabama and Missouri, are interesting as showing with what jealous care the sovereignty and equality of the State was guarded.²² The general assembly of Georgia declared their concurrence with the legislature of Missouri²³ in the proposal to amend the Constitution so as to provide a uniform mode of electing President and Vice-President by the direct vote of the people, "provided such alterations can be so made that the sovereignty of the States be not invaded and the weight of the States and the present basis of representation be retained according to existing conditions of the Constitution."²⁴ The Alabama and Missouri resolutions were very similar.²⁵

The only essential difference between the amendments of this group was the provision for the method to be employed for the choice of President in case no one received a majority of the vote of all the States.²⁶

This amendment, so frequently urged at this time, was not again presented until 1878, when it was revived by Mr. Sampson of Iowa.²⁷ The same proposition has been introduced once since, in 1886.²⁸

The amendments of the second group, providing for the division of the electoral or Presidential vote of the State, were for the most part introduced since 1875. They were preceded by two isolated propositions which foreshadowed the terms of the amendment of the later period. The first of these were presented by Mr. Lawrence of New York, in 1848.²⁹ His plan proposed that the number of votes given to each person shall be estimated as such a proportion of the vote of the State³⁰ as the said vote shall bear to the whole number of votes given within the State for President. "Any person receiving a majority of all the votes so estimated, given in all the States for President, shall be President." By this method it is seen that the relative weight of each State is retained, and yet provision is made that the minority vote given in each State shall be counted. To Mr. Lawrence should be given the credit of having been the first to suggest in Congress a system of proportional voting.

Over twenty years later Mr. Ashley of Ohio, who was very zealous in his attempts to secure a new method of electing the President,³¹ renewed the suggestion of a proportional division of the vote of each State among the different par-

¹⁹ A number of votes equal to the number of Senators and Representatives to which the State was entitled in Congress.

²⁰ App., No. 559.

²¹ App., Nos. 560, 583, 594a, 600, 609, 641, 663, 735, 741.

²² App., Nos. 583, 600.

²³ Ante, par. 42, App., No. 601a.

²⁴ Similar resolutions were introduced in the legislature of Maryland. Niles' Register, xxxvii. 428. The legislature of Vermont nonconcurred with the Georgia resolution, Am. An. Reg., vi. 322. The Georgia resolutions further declared it desirable to amend so that in no case shall the election devolve upon the House of Representatives if provision is made for securing to the States an equal vote in such decisions in the last resort. App., No. 600.

²⁵ App., Nos. 583, 594a. The legislatures of Connecticut and Vermont disapproved of the Missouri amendment. Massachusetts Archives, Nos. $\frac{9919}{2}$, $\frac{9919}{6}$.

²⁶ Post, par. 50, especially Mr. McComas' amendment, No. 661.

²⁷ App., No. 1467, in case of a tie in a State the vote to be equally divided.

²⁸ App., No. 1672.

²⁹ App., No. 754.

³⁰ Which was to be equal to the number of Senators and Representatives of said State in Congress.

³¹ For other methods proposed by him, see ante, par. 42. From the variety of propositions he introduced he was known as "the suggesting member."

ties, but, curiously enough, his plan retained the colleges of electors.³² With the renewal of the discussion of the desirability of changing the method of electing the President in 1874-75, the first of twenty resolutions suggesting anew the adoption of a system of a proportional division of the electoral vote of a State among the various candidates was presented.³³ It was introduced by Mr. Smith of New York as substitute for the amendment reported by the House Committee on Elections, which proposed the district system.³⁴ Mr. Smith's substitute was designed to meet the objection urged against a popular vote regardless of State lines, for it still proposed to leave to the States their weight of influence by an ingenious but complicated system of computing the votes.³⁵ This plan, Mr. Smith said in proposing it, he framed "for the purpose of obviating the danger and difficulty of a large accumulation of contested-election cases in the electoral districts proposed by the plan of the Committee on Elections, and to prevent the gerrymandering of States by partisan majorities in the construction of election districts, and to dispense with the cumbersome machinery of electoral districts, while preserving the autonomy of the States in the election of President and Vice-President."³⁶

The next resolutions were suggested by the contested election of 1876. They were presented by Messrs. Maish, Springer, and Cravens, in 1877, and were based on the same general principle as the preceding proposition, but differed as to the method employed in computing the vote. Mr. Maish's plan provided that the electoral vote of each State should be distributed among the candidates in the proportion the electoral ratio shall bear to the popular vote of each candidate.³⁷ The electoral ratio was the quotient obtained by dividing the whole number of votes returned by the whole number of the State's electoral vote. Mr. Maish's resolution has been introduced four times since, twice by himself and twice by Mr. Beltzhoover, also from Pennsylvania.³⁸

Mr. Springer's resolution proposed a like distribution among the candidates of the electoral vote of the State, the candidate having the largest fraction should have the odd Presidential votes, if any remain, each State should be entitled to as many votes as it had Senators and Representatives in Congress, except that States having but one member of the House of Representatives should be entitled to but two votes, and States having but two members of the House of Representatives should be entitled to but three votes in the election of President and Vice-President.³⁹ Mr. Springer has introduced a resolution proposing this amendment in every Congress since 1882, the text of the proposed amendment being similar to the one first submitted by him, save the provision for reducing the number of electoral votes of the small States does not appear.⁴⁰

Mr. Cravens' device for ascertaining the Presidential vote to which each person voted for in any State was entitled, was to multiply the whole number of votes of the qualified electors in the State for such person by the number of Presidential votes to which the State was entitled and divide the sum so obtained by the aggregate votes of the qualified electors of the State for all persons for President, using for that purpose not exceeding three decimal fractions.⁴¹ Resolutions proposing a similar method of computing the votes have

³² The voters were to vote by ballot for President and Vice-President. Then the legislature of each State was to divide the total number of votes cast by the number of Senators and Representatives to which such State was entitled in Congress, and the product shall be the ratio of one elector. The legislature was then to appoint the electors, "taking care to secure to each candidate voted for in the State an equitable representation in the electoral college, as indicated by the number of votes returned for each candidate." The electors thus appointed were to vote for one of the candidates named for President and Vice-President, respectively, by the voters at the general election. App. No. 1283f.

³³ App. Nos. 1386, 1437, 1438, 1439, 1441, 1475, 1493, 1503, 1508, 1537, 1538, 1542, 1569, 1589, 1624, 1639, 1640, 1697, 1705, 1735. It was generally supposed to be an entirely new plan.

³⁴ Ante, par. 44. App., No. 1386.

³⁵ It required that the aggregate vote for President in each State shall be divided by the number of Representatives apportioned to such State in the House of Representatives and twice the result or quotient shall be added to the vote of the candidate having the highest number of the popular vote in such State for President as, and for the State vote for, such candidate. The person having the highest number of votes in all the States, including the popular vote and the State vote, shall be President.

³⁶ Cong. Record, Forty-third Congress, second session, pp. 748-749.

³⁷ App., No. 1437.

³⁸ App. Nos. 1438, 1503, 1542, 1705: also introduced in the Fifty-first Congress by Mr. Maish.

³⁹ App., No. 1439.

⁴⁰ App. Nos. 1569, 1624, 1640, 1735. No. 1569 contains this provision: the others do not.

⁴¹ The fractional part of a Presidential vote remaining shall be added to the Presidential vote of the person receiving the highest number of votes in the State. App., No. 1441.

been introduced eight times since.⁴² Two of these were reported favorably by the Select Committee of the House of Representatives on the Election of President and Vice-President in 1878, and again in 1880.⁴³ Since 1881 Mr. Browne of Indiana has proposed this amendment in each Congress. All of these amendments were presented in the House, but none were ever brought to a vote. Some provided that the person having the highest number of votes should be President;⁴⁴ others that if no person had a majority the joint convention of the Senate and House should choose the President from the two highest on the list.⁴⁵

Doubtless there is too much mathematics in some of these plans to make them popular,⁴⁶ but the simpler method of computing the vote proposed by Messrs. Maish and Springer might easily be understood. Some such application of the system of proportional representation to the election of President and Vice-President seems not only practicable, but peculiarly just and equitable, inasmuch as it not only preserves the weight of each State, but also gives a proportional part of the electoral vote to the minority candidate in each State.⁴⁷

46. ELECTION FROM CANDIDATES DESIGNATED BY THE STATES

Previous to the campaign preparatory to the Presidential election of 1832, the candidates for President had been nominated either by a caucus composed of the members of one party in Congress, or by the legislatures of the States, or even by certain counties in a State. Such nominations were far from carrying the weight possessed by the modern convention—the voice of a powerful party organization.

The practice of nominating by party convention was first inaugurated in the campaign for the election of President in 1832. In 1830 the first political national convention of delegates representing the people was held by the Anti-Masonic party.⁴⁸ The following year the same party inaugurated the practice of holding a national nominating convention, which practice was immediately adopted by the National Republican and the Democratic parties.⁴⁹ Thus was established our present system of nominating by party conventions.

However, there was one member of Congress at least who did not look with favor upon this method of nomination. Mr. Underwood of Kentucky, in 1838, and again in 1842, in connection with other amendments introduced by him, proposed a new method for the nomination and election of President and Vice-President.⁵⁰ It provided that the State legislatures, by a joint vote of each house, should, in behalf of their respective States, nominate candidates for the Presidency and Vice-Presidency, respectively. The governors of the States having reported the nominations to the President, he should publish the same by proclamation. The citizens should vote directly for one person so nominated for each office. The results of the votes given in the respective States should be forwarded to the President. Congress should canvass the votes. The person receiving a majority of all the votes should be declared elected. If no person received a majority, then both Houses of Congress in joint session should choose a President or Vice-President from among those nominated for that office. The votes should be given viva voce, each member having one vote, and a majority of the votes given should decide.⁵¹

The only other resolution which proposed the nomination of candidates by the States was introduced by Senator Davis, also of Kentucky, in 1862, and on three

⁴² App., Nos. 1475, 1493, 1508, 1537, 1538, 1589, 1639, 1697. All applied the foregoing provisions to the election of Vice-President.

⁴³ App., Nos. 1475, 1508. Able and interesting reports: 1878, H. Rep., Forty-fifth Congress, second session, Vol. IV, No. 819. It contains a table applying the proposed system to the vote given in 1876 for President. The minority report appealed to the spirit of State rights to defeat the measure, fearing interference by the Federal Government in the States on the ground of intimidation. 1880, H. Rep., Forty-sixth Congress, second session, Vol. II, No. 347.

⁴⁴ As App., Nos. 1475, 1493, 1508. These made provisions for a tie to be settled as at present.

⁴⁵ As App., Nos. 1441, 1538.

⁴⁶ The method proposed by the Cravens plan is doubtless the most accurate, but correspondingly complicated.

⁴⁷ For further discussion of proportional plan, see post, par. 51, and note.

⁴⁸ Stanwood, pp. 104-109.

⁴⁹ Ibid. The Democratic convention was called to decide upon a candidate for Vice-President, as the party was united for the reelection of Jackson.

⁵⁰ App., Nos. 679, 724.

⁵¹ In case a State should fail to nominate in the required manner or report the nomination made or the votes given in the manner and time required, the election shall be made without regard to such failure, and shall be valid.

subsequent occasions. These proposed amendments are perhaps as curious as any which have been presented during the century. By the terms of the original resolution any State might, within thirty days before the time for the election of President, in any mode adopted by the State, nominate to Congress one candidate; and from the candidates so nominated by the States the two Houses of Congress, meeting together as a convention, should choose one as President of the United States. The unanimous vote of all members elected to both Houses was necessary for the election of the President. This was to be secured by the dropping of the candidates having the least number of votes after a stated time had been spent in balloting. In the same manner the Vice-President was to be elected from the remaining candidates. In case of no choice by the convention, the decision was to be referred to the Supreme Court.⁵² The same proposition was again made by Mr. Davis early in the following year.⁵³ In December of 1864 Mr. Davis presented a long series of amendments which he desired should be submitted to a convention which should be called for the purpose of revising the Constitution. One of these proposed the same method of choice, changed in several particulars.⁵⁴ The first section of the resolution contained in a modified form the suggestion he had made earlier in this same year for the consolidation of certain of the Eastern States into three States "for Federal and national purposes only."⁵⁵ Provision was made that the President and Vice-President were to be taken alternately from the free and the slave States; that each State was to select one of its own citizens for either the Presidency or the Vice-Presidency, according as it was free or slave and as the free or slave States were entitled to the office. From the candidates so nominated the Supreme Court was to choose the President and Vice-President. In 1867 Mr. Davis proposed this method of nomination by the States for the last time, in a resolution similar to the one originally introduced by him nearly five years before, save that only a majority of the votes of the whole number of members of both Houses was by this proposition necessary to elect.⁵⁶

47. ELECTION OF PRESIDENT BY LOT

Among the many curious amendments proposed for the election of President, perhaps the most unique are three suggestions for the choice of the Executive by lot.⁵⁷ The first of these was introduced by Mr. Hillhouse, a Federalist Senator from Connecticut, in 1808, as one of the remarkable series of amendments presented by him at this time, for the preservation of the country from the evils engendered by the growth of parties and party spirit.⁵⁸ This amendment provided that the Senators should hold their office for three years, and one-third retire annually. From the retiring Senators, one should be chosen by lot as President for the ensuing year, in the following manner: Each of these Senators should, in alphabetical order, draw a ball out of the box, one of which was colored; the Senator drawing the colored ball should be President.⁵⁹ In his speech in support of these amendments, Senator Hillhouse declared that his experience in Congress for seventeen years had convinced him that some such change as he proposed was necessary for the perpetuity of the Government. "I should not have proposed this mode," said he, "if any other could have been devised which would not convulse the whole body politic, so wide open the door to intrigue and cabal, and bring upon the nation incalculable evils, evils already felt, and growing more and more serious."⁶⁰ No action was taken by Congress upon these propositions,⁶¹ but some twenty years later Hillhouse revived an agitation in favor of his plan outside of Congress, receiving letters favoring it.

⁵² App., No. 978.

⁵³ App., No. 980.

⁵⁴ App., Nos. 1039b-d.

⁵⁵ See post, par. 122. App., Nos. 987, 989. The earlier proposition had dealt only with New England. This proposed that Maine, New Hampshire, and Vermont should form one State; Massachusetts, Connecticut, and Rhode Island another, and Maryland, Delaware, and the Eastern Shore of Virginia a third.

⁵⁶ App., No. 1207.

⁵⁷ The plan for selecting electors by lot from the National Legislature was suggested by Wilson in the Federal Convention. Elliot's Debates, v. 362. Ante, par. 37, p. 75, note 8.

⁵⁸ For other propositions, see ante, pars. 26, 30; post, pars. 56, 57, 59, 60.

⁵⁹ App., No. 392.

⁶⁰ Speech in full in American Register for 1809, Chap. II (p. 15). He said that this method was suggested from the experience of "some of the republics of Switzerland," Berne in particular. Ibid., pp. 17-18. He cited twelve reasons in favor of its adoption.

⁶¹ John Adams wrote a criticism on these amendments. See Works, Vol. vi, pp. 523 et seq. It would seem he was dissuaded by his son from publishing it. See Memoir of John Quincy Adams, Vol. vii, pp. 225-226. For connection of Hillhouse with the schemes of a Northern Confederacy, *ibid.*, p. 141. See also post, par. 60.

from Chief Justice Marshall and William H. Crawford, but John Quincy Adams probably reflected the prevailing opinion when he wrote in his diary "a serious discussion of his amendments would be ridiculous."⁶²

The second, presented by Mr. Vinton of Ohio, in 1844 and again in 1846, arranged that each State should by popular vote elect from its citizens a candidate for the Presidency. From these candidates one was to be chosen by lot.⁶³ The amusing details of this suggestion were that as many balls as there were Senators and Representatives from each State, inscribed with the name of the State, should be placed in a box. One ball should be drawn from the box and the candidate elected by the State, the name of which should be upon the ball drawn out, should be President.

The last, the most novel and complicated of the three, was reserved for Senator Powell of Kentucky to bring forward in 1864.⁶⁴ This scheme, containing eleven sections, still retained the electoral college, but it reduced considerably its number by providing that Congress should apportion among the several States the electors according to the following ratio of population in Federal numbers: One elector to each State having less than a million, two to each State having one, but less than two million, and so on to seven to each State having a population of eight millions. Each State having but one elector should be an electoral district, and each of the other States should be divided by Congress into districts equal to the number of its electors, each district to elect one elector. The electors should convene at the seat of government and form an electoral college on the first Monday of February, over which the Chief Justice of the United States should preside. The electors should then be distributed alphabetically into six classes as nearly equal as possible. Each class should choose an elector from the class next succeeding it, except class six, which should choose from class one. From the six so chosen two should be designated by lot, and from these two the college should choose one to be President, the other to be Vice-President. If the college should fail, except from exterior violence or intimidation, to make an election within twenty-four hours from the time it was formed, it should be dissolved, and a new election ordered, and the college should convene and proceed as before directed. Should there be no election by an electoral college before the 1st day of June, the Senate of the United States should form itself into an electoral college, and proceed according as was directed for the electoral college, within twenty-four hours. If they should fail to elect the office should devolve upon such officer of the Government as Congress should have theretofore directed. Then followed four other sections relating to further details of the system, one of which stipulated that every elector before entering upon the duties of his office should take an oath to support the Constitution, and declare that he had not and would not pledge his vote as an elector in favor of any person, or toward aiding any political party.

48. ELECTION OF PRESIDENT FROM PRESIDENTIAL SECTIONS

The desire that a President should be selected only out of a previously designated group of men is akin to the design to compel the choice of man resident in a designated section. Two amendments have been proposed which divide the country into Presidential sections.⁶⁵ The first was introduced in 1822 by Mr. Montgomery of Kentucky; it did not change the method of the election, but provided for the creation of Presidential sections. The President was to be elected from each of four sections in rotation.⁶⁶ The New England States and New York were to constitute one section. The remainder of the Middle States, with Maryland and Virginia, another; the Southern States another, and Kentucky, Ohio, Indiana, Illinois, and Missouri another. There being twenty-four States in the Union at this time, it was provided that upon the admission of new States they should be incorporated within the section upon which they bordered. The number of the sections were to be determined by a "lottery" conducted in the presence of Congress. Provision was made for the division of any section when its population was shown by the census to be double that of the section containing the lowest represented number. The reception of the resolution may

⁶² Marshall wrote: "We shall no longer be under the banners of particular men. Strife will no longer effect its object; neither the people at large nor the councils of the nation will be agitated by the all-disturbing question, Who shall be President?" *Harpers' Weekly*, April 28, 1877; O'Neil, p. 258. Adam's diary, as above.

⁶³ App., Nos. 740, 744.

⁶⁴ App., No. 1026. The plan of Judge Nicholson of Kentucky.

⁶⁵ See ante, par. 34, for Mr. Southard's plan for an executive council.

⁶⁶ App., No. 509.

be inferred from the remark of its author: "However laughable it might appear to some gentlemen, he considered it a very serious matter."

The cause of the amendment was doubtless the jealousy awakened in the Middle States and New England, and still more in the West, by the fact that, with the exception of John Adams, all the Presidents up to this time had come from Virginia.⁶⁷

The other resolution was introduced nearly forty years later, in February, 1861, shortly before the outbreak of the civil war. Entirely different motives prompted its introduction. It was an attempt by a Northern Democrat to make such a change in the Constitution that the Southern States would refrain from going out of the Union. Calhoun, in his speech of 1850 on the compromise, had made a somewhat similar proposition.⁶⁸ It was now put forward by a Northern man, Mr. Vallandigham of Ohio.⁶⁹ The four sections contemplated by the amendment were to be known, respectively, as the North, the West, the Pacific, and the South.

Unlike the proposition of 1822, this amendment proposed changing the method of electing the President. It provided that two of the electors for the State at large should be appointed by each State as the legislature thereof should direct. The others should be chosen in the respective Congressional districts of the State. A majority of all the electors in each of the four sections should be necessary for the choice of President and Vice-President; and the concurrence of a majority of the States of each section should be necessary for the choice of President by the House of Representatives, and of the Senators from each section for the choice of Vice-President, whenever the right of choice should devolve upon either of them.

Further articles provided for the term of the President and for a special election in the case of a failure by the House and Senate to elect, when the choice devolved upon them.

The adoption of this amendment would have enabled the Southern States to have prevented the election of any man to the Presidency who was openly hostile to the system of slavery. In addition, this amendment in effect gave the South a negative on all legislation hostile to its interests, for it provided that on the demand of one-third of the Senators of any one section, on any bill, order, resolution, or vote to which the concurrence of the House was necessary the vote should be held by sections and a majority of the Senators from each section voting should be necessary to its passage. It shared the fate of the other compromise measures introduced in the session of 1860-61.

49. ELECTION OF PRESIDENT AND VICE-PRESIDENT BY THE VOTERS AS CONGRESS SHALL DIRECT

In addition to the amendments proposing to extend the power of the Federal Government to control and regulate the election of President and Vice-President, which are discussed in another paragraph, there have been three proposed amendments presented, conferring upon Congress the power to prescribe the method of electing the President.⁷⁰ The first of these was introduced in 1869 by Mr. Buckalew of Pennsylvania. It provided that "Congress shall have power to prescribe the manner in which the electors shall be chosen by the people." This amendment, as was said in the debate, would have enabled Congress to prescribe the single district system or any other improved method as seemed best at any given time. This resolution, after being presented several times, was finally passed by the Senate, in connection with the House suffrage amendment.⁷¹ The House refused to concur in the amendment, and the Senate, after receding from this article failed to give the suffrage amendment the necessary two-thirds. The fifteenth amendment passed later without this article being incorporated in it.⁷²

⁶⁷ The amendment proposed by Andrew Johnson in 1860 for the election of the President and Vice-President by district provided that the President and Vice-President should alternately be chosen from the North and South. Ante, p. 91.

⁶⁸ Works, I, 393-396.

⁶⁹ App., Nos. 901-903. See post, 49, 56, 86, 107.

⁷⁰ See post, par. 53.

⁷¹ App., Nos. 1287, 1308. See post, par. 131.

⁷² This amendment was first proposed as an additional article to the Senate suffrage amendment, later withdrawn and presented as a separate amendment, finally passed by the Senate as an additional article of the House suffrage amendment, and reconsidered as recorded above.

Twice since, in 1872 and in 1888, a very similar proposition, save that the vote should be given directly, without the intervention of electors, has been presented to Congress, the first time by General Banks, the last by Senator Cockrell.⁷³

50. ELECTION OF PRESIDENT AND VICE-PRESIDENT IN CASE OF NO CHOICE AT THE FIRST ELECTION

The greater number of the proposed amendments relating to the method of the election of President and Vice-President made provision for the method to be followed in case of no choice at the first election. The variety of the expedients proposed to effect an ultimate choice is only exceeded by the method suggested for the primary election of the chief executive officers. Provisions to the early "twenties" no amendment appears proposing any change in the clause of the twelfth amendment⁷⁴ which provides that in case of no choice for President or Vice-President by the electors the election of the former shall be made by the House of Representatives, and of the latter by the Senate.⁷⁵

In 1823, as if in expectation of trouble in the next election, several amendments to alter this provision were introduced. The failure of the electors to choose a President in 1824, and the subsequent choice of Adams by the House, called forth a large number of resolutions proposing a variety of methods to diminish the probability of the election devolving upon the House of Representatives, some even stipulating that in no case should the choice be left to the House.⁷⁶ Naturally the friends of Jackson were the most zealous in urging this proposition⁷⁷ and with some success, for in 1825 the House, after a six weeks' debate, agreed to a resolution to take away from the two Houses the power of participating in eventual elections,⁷⁸ but their committee were unable to agree upon "any specific plan," and were discharged.⁷⁹

Although Congress was unable to agree upon any substitute for this provision of the Constitution, various expedients have been devised by individual members. These for convenience of treatment are classified into eleven groups, beginning with those proposing the least change, and proceeding to the most radical.

(1) The majority of the amendments in regard to the election of President and Vice-President did not propose to deprive Congress of the contingent power to elect, but some have suggested changes in the method and procedure of the respective Houses in the event of the election devolving upon it. One such introduced in 1825, provided in case no one received one-third of the whole number of votes given by the electors, the House should choose the President under such rules as they might agree upon.⁸⁰ An other, like that advocated by Mr. Phelps of Connecticut, in 1826, proposed raising the number of candidates again to five, as

⁷³ App., Nos. 1356, 1715. Mr. Bank's proposition provided that the President and Vice-President should be "chosen by the electors qualified to vote in the election of Representatives to Congress," "in such manner and under such regulations as Congress may by law direct;" Mr. Cockrell's, for a direct vote "in such manner as Congress shall provide by law."

⁷⁴ Except Hillhouse's proposition of the choice of President by lot. Ante, par. 47.

⁷⁵ The twelfth amendment reduced the number of names submitted to the House from five to three. Compare art. 2, sec. 1, cl. 3. with the twelfth amendment. The Federalists had opposed this change made by the twelfth amendment as reducing the influence of the small States. Ante, par. 38, p. 79, note 4.

⁷⁶ As the resolutions from the legislatures of the following States: Tennessee. App., No. 581a (1827); Alabama, No. 583 (1828); Georgia, No. 600 (1830); Maine, No. 658a (1836); legislature of Vermont noneconcurred. Am. An. Reg., p. 322. Ohio, No. 655a (1836).

⁷⁷ See Sumner's Andrew Jackson, p. 106, for description of their hostility to President Adams. For Adam's views as to the propriety of election devolving upon the House, see his Memoirs, Vol. VII, pp. 301-303. For Jackson's position, see ante, par. 43. Van Buren said, "There was no point on which the people of the United States were more perfectly united than upon the propriety, not to say indisputable necessity, of taking the election of President from the House of Representatives." Quoted by O'Neil, p. 253. Madison wrote, in 1823: "An amendment of the Constitution on this point is justly called for by all its considerate and best friends." Works, Vol. III, p. 333.

⁷⁸ By a vote of 138 to 52. (This amendment was called for by the legislature of Georgia in 1826. App., No. 577a. In 1836 the legislatures of Ohio and Maine recommended this restriction. App. Nos. 655a, 658a.) At the same time a declaratory resolution in favor of the district system of election of President directly was defeated. Ante, par. 43.

⁷⁹ This failure showed that however generally it was agreed that the election ought not to devolve upon Congress, it was impossible to secure a sufficient number to agree upon any other plan. An article in Niles' Register referring to the action of the House, as above, said that the Southern States were opposed to "a further extension of the popular principle," while the greater States would not allow "a further extension of the Federal principle." "The large States will not give up one jot or tittle of the power that they have as to first choice of a President; nor will the small States abate their influence when the vote is to be taken by writs." "We despair of a change . . . because of the three parties to the question, to wit, the large States whether holding slaves or not, the non-slave-holding States and the slave-holding States, and the small States." Vol. xxx, p. 233.

⁸⁰ App., No. 540.

originally provided in the Constitution, when the election fell to the House. If no person received a majority after the second ballot, from the two having the highest number of votes the Speaker should choose one by lot.⁵¹ Several, like the amendment reported by the Senate Select Committee on Elections in 1824, stipulated, in place of the vote being taken by States, that each Representative should have one vote, and after the first ballot a plurality should elect.⁵²

Mr. Vallandigham's proposition, by which the country was divided into sections, provided in case the election devolved upon the House, the concurrence of a majority of States of each section should be necessary for a choice.⁵³

(2) Another variation would have continued to give to Congress the duty of making a choice if there was no election, but a choice by joint ballot. Senator Dickerson repeatedly introduced an amendment which provided that in case no person received a majority of the votes of the electoral college, then from the highest number not exceeding three on the list of those voted for as President, the Senate and House in joint meeting should immediately, by ballot, choose the President. A majority of the votes of all members present should be necessary to a choice on the first ballot, after which a plurality of votes should elect.⁵⁴ In the amendments introduced by Mr. Underwood of Kentucky, in 1838 and 1842, proposing the nomination of candidates by the State legislatures, and the election by a direct popular vote, provision was made, in case no person received a majority, for a joint convention of both Houses of Congress to elect the President or Vice-President by a viva voce vote from among those nominated for the office, a majority of votes present to decide.⁵⁵ A similar method of deciding the election, in case no person received a majority of the votes given directly for President and Vice-President, has been frequently suggested, especially in recent years. In most instances a majority vote of the joint convention was to decide, but some required a two-thirds vote.⁵⁶

(3) A favorite device for avoiding recourse to Congress was the suggestion of a second election by the original electors. January 10, 1823, Senator John Taylor of Virginia proposed such an amendment, but the electors should vote for one of the two as President who should have received the greatest number of electoral votes at the first election. In case of a tie at the second election, then it should be the duty of the House of Representatives to choose one of them as President.⁵⁷ This amendment was later modified in a new draft, which provided that instead of an election by the House, that both Houses of Congress in joint convention should select the President. In the amendments introduced at this same session of Congress by Mr. McDuffie of South Carolina and by Senators Hayne and Van Buren, a similar provision was made for a second meeting of the electors in case of no choice at the first election.⁵⁸ In Mr. McDuffie's resolution there was a peculiar provision that made it possible for two Presidents to be elected. It provided that the Senate and House in joint meeting should canvass the vote cast by the electors at their second meeting, and if no one had received a majority the joint meeting, each member having one vote, should choose a President. "If there be two or more persons, each of whom have the highest number of electoral votes given at the second meeting, *each one of them* shall be chosen. If there be only one person having the highest number of electoral votes, less than a majority, one of the persons who has one of the two highest number of votes shall be chosen."⁵⁹ Mr. Dromgoole of Virginia in subsequent years (1838 and 1845) twice presented an amendment similar to that introduced by Senator Taylor.⁶⁰

(4) Two amendments presented in the same session of Congress, in 1826, made provision for a second choice of electoral colleges, the persons so chosen should, from the persons having the two highest number of votes at the first election, choose one, but the vote should be taken by States, each State having one vote.⁶¹

(5) In 1824 Mr. Livingston of Louisiana proposed an amendment for the election of President by a direct vote given in districts. This amendment provided

⁵¹ App., No. 551.

⁵² App., No. 534.

⁵³ App., No. 903. See ante, par. 48.

⁵⁴ Ante, par. 39. Madison, in 1823, wrote that of "the different remedies proposed" he liked the joint vote of the two Houses best. Works, III, 334.

⁵⁵ App., Nos. 679, 724. Ante, par. 46.

⁵⁶ As App., Nos. 743, 1078, 1314, 1439, 1441, 1569, 1624, 1640, 1735.

⁵⁷ App., No. 517.

⁵⁸ App., Nos. 524, 527, 532.

⁵⁹ App., No. 534, ante, par. 34.

⁶⁰ App., Nos. 682, 743.

⁶¹ App., Nos. 556, 574.

that the citizens, at the same time they gave their vote for President and Vice-President, should also vote for an elector. In case no person was the choice of a majority of the whole number of districts, then the electors should assemble in their respective States and cast their votes for one of the two persons receiving the greatest number of district votes. In case of a tie, the one of the two who had the greatest number of votes of the electoral district should be President.⁹² In 1827, upon the instruction of the legislature of Ohio, and again in 1829, Mr. Wright of Ohio presented an amendment of a somewhat similar kind. It differed in that his resolution contemplated an election by a majority of the popular vote of the country, but the voters at the same time they voted directly for President and Vice-President were also to cast their ballots for electors equal to the number of Senators and Representatives to which their State was entitled. In case of no person receiving a majority, the electors having the greatest number of votes should choose the President and Vice-President from the two persons having the greatest number of the direct votes. In case of no election the choice should devolve on Congress.⁹³

(6) Another proposition was for a popular election to follow the meeting of the electoral colleges, if there was no choice. The citizens of each State were to vote directly for one of the two highest candidates at the first election. The votes were to be taken by States, each State having one vote. This was presented by Mr. Hemphill of Pennsylvania, in 1826,⁹⁴ and a somewhat similar plan was proposed in the following year.⁹⁵

(7) Still another modification of the system of double election is included in an amendment introduced in 1826 by James Buchanan, then a member of the House. It provided that in case no election should be made by the electors, the States should choose the President from the two highest on the list, in such manner as the legislature thereof should direct, each State having one vote.⁹⁶ The only proposition of the whole series which left the choice to the legislatures of the States was presented by Mr. Stevens of Virginia in this same year. In case of no election in the primary colleges, the legislatures of the respective States were to choose, by joint ballot, one from the three persons having the highest number of electoral votes.⁹⁷

(8) A large number of the amendments proposing various ways in which a direct vote should be given for President and Vice-President contained provisions for a second election conducted in the same manner as the first, but the candidates were to be restricted to the two receiving the largest number of votes at the first election. These propositions were presented within a few years subsequent to the election of 1824,⁹⁸ but the same plan was revived with the renewal of the introduction of resolutions for the election of the President by popular vote.⁹⁹

(9) A modification of the last-mentioned plan, which received extended consideration in 1835-36, provided in case of no choice by the people at the second election, then the choice should be made by the House of Representatives.¹ Still others, like the amendment urged by Senator Benton, and in later years by Andrew Johnson, stipulated that if the two candidates in the second election received an equal number of votes, then the person who had received the greatest number of votes in the greatest number of States should be President.²

Mr. Morton's proposition, which, like Benton's, proposed establishing the district system, made no provision for the case of two or more persons receiving an equal number of Presidential votes, as the committee which reported the measure were unable to agree upon any plan to cover this contingency. That provision of the Constitution which confers the choice of the President in case of no election by the electors upon the House voting by States has frequently been attacked and stigmatized as unjust, but the possibility of the choice of a "minority President" has never been more forcibly presented than by Mr. Morton, who showed that under the apportionment in force at that time (1875) it was possible

⁹² App., No. 537.

⁹³ App., Nos. 598, 592.

⁹⁴ App., No. 561. In case of a tie the choice to be made as the present provisions of the Constitution direct.

⁹⁵ App., No. 580.

⁹⁶ App., No. 555. A similar provision in Mr. Tucker's amendment of 1828, App., No. 585.

⁹⁷ App., No. 573.

⁹⁸ As the one presented by Mr. Dayton of South Carolina, in 1826. App., No. 574.

⁹⁹ App., Nos. 1104, 1227b, 1283a, 1352, 1368, 1388, 1464, 1505, 1506, 1626, 1608, 1695. See ante, par. 42. A second election was to be held only in case no one received a majority of the votes.

¹ App., Nos. 641, 654.

² App. Nos. 552, 601, 632, 765, 770, 813, 1240. Ante, par. 43.

for forty-five members of the House of Representatives to elect a President against the wishes of the remaining two hundred and forty-seven members.³

(10) Another favorite plan, in order that the choice might in no instance devolve upon Congress, made provision for successive elections until some one should be elected. This was first proposed in the thirties, but has frequently been urged since.⁴

(11) Several of the proposed plans did away with the necessity of a second election by providing that a plurality of the electoral or popular vote, as the case might be, should elect, and the election was only to devolve upon Congress in the very remote case of a tie.⁵

51. DISCUSSION OF SCHEMES FOR PRESIDENTIAL ELECTION

All the proposed amendments affecting the election of President and Vice-President have now been considered.⁶ It may be well, however, to review some of the more important of them.

Although at the time of the adoption of the Constitution the electoral system excited little opposition, yet at no considerable interval since has it failed to be the object of attack. First it was early found necessary to perfect the system in some of the minor details by the adoption of the twelfth amendment. We have already shown how the system has utterly belied the expectation of its framers, for the electoral college, instead of exercising its own unfettered will, has become a mere registering machine.⁷ In the early years there were various amendments proposed to secure a uniform system of elections throughout the States. After many attempts to secure the choice of electors by districts had failed, nearly all the States by a sort of common understanding adopted the general ticket system, and this method, although voluntary, has been retained ever since, with the recent exception of Michigan,⁸ and it seems to have become ingrafted upon the Constitution,⁹ or, as Professor Dicey would say, to have become one of the "conventions" of the Constitution. In the years immediately succeeding the election of 1824 there was a concerted effort to so amend the Constitution that the election of President should never again devolve upon the House. In the course of a few years the excitement incident to this election was allayed, and as there has been no case of an election by the House since, there has been no popular alarm over this complication. The dispute of 1876, when the decision was in doubt several months, turned rather on the method of canvassing the vote.¹⁰

Many of the plans have been obviously impracticable. To leave the choice of the Chief Magistrate to a direct popular vote of the entire country seems as unwise to-day as it did at the time the Constitution was framed. In addition to the vast premium placed upon fraud and intimidation, the excitement of the election under the present system would be greatly intensified. Furthermore, it would seem undesirable to entirely do away with the influence of the States in the election, owing to the long-established custom and the appropriateness of some recognition of the federal character of our Union.

The system of electing the President by districts, either by the electoral system or without it, or with the two votes of each State given at large or otherwise,

³ App., No. 1393, ante, par. 44. Record, p. 631. At that time forty-five members would control the votes of nineteen States. "Nevada with 42,000 population would have an equal vote with New York, having a population one hundred and four times as great." As at present constituted sixty-six members, representing twenty-three States, could elect the President in opposition to the will of the remaining two hundred and ninety-one members. Such a combination while possible is of course not probable.

⁴ By Mr. McComas of Virginia, in 1836. App., No. 661. In the seventies by Messrs. Wright and Riddle. App., Nos. 1391, 1420, 1464.

⁵ As Nos. 554, 1058; and the following: Four provided for the decision of the tie for the President by the House, for the Vice-President by the Senate, each member to have one vote. App., Nos. 1408, 1420, 1443, 1447. Two that the tie for either office be decided by the House. App., Nos. 1359, 1367, ante, par. 42.

⁶ The following resolutions to amend the Constitution in regard to the election of President were introduced, but it has been impossible to classify them, as the text has not been found. App., Nos. 657, 658, 863. Since par. 42 was sent to press, resolutions from the legislature of Vermont (1818) favoring the district system have been found: App. No. 480b.

⁷ The electors, however, are only bound by moral obligation and custom to cast their votes for the candidates previously designated. In the election of 1824 three of the Clay electors deserted him, "but for this defection Mr. Clay's name would have gone to the House of Representatives instead of Mr. Crawford's, and possibly Mr. John Quincy Adams would never have been President." Stanwood, p. 86. Unsuccessful attempts were made to bribe one or more electors in 1876. Ibid., p. 330.

⁸ See ante, p. 86, note 4.

⁹ See Tiedman, *The Unwritten Constitution of the U. S.*, chap. III.

¹⁰ See ante, par. 50, p. 110, section 9, Morton's proposition.

would manifestly come nearer to representing the popular vote than does the present system, especially if there was some assurance of a just and permanent arrangement of district boundaries.¹¹ But without that assurance,¹² which it would seem impossible to provide, there would still be the same danger of gerrymandering that there is in our Congressional elections. Of all the plans proposed, the district system has received the most favorable consideration in Congress. Not only did an amendment for the choice of electors by districts pass the Senate at four different times between 1813 and 1824,¹³ but in subsequent discussions some application of the district system to the choice of President has received the support of many of the leading statesmen of the country.¹⁴

The proposition for the distribution of the electoral vote of each State among the candidates in the proportion the electoral ratio shall bear to the popular vote of each candidate seems the fairest and most desirable of all the plans presented, as it retains the relative importance of each State, and at the same time secures to the minority its due proportion of the vote.¹⁵

The almost countless variety of the plans proposed is not only indicative of the dissatisfaction there is with the present anomalous system, but also shows that it would be next to an impossibility to secure the adoption of a new method of election, owing to the difficulty of uniting a sufficient number of the States in favor of any one plan. The fact that it was impossible to secure the indorsement of any one of the plans proposed in the years succeeding the contested election of 1876 by even one branch of Congress indicates that the adoption of a new system of electing the Chief Magistrate is improbable before the present method of amending the Constitution is itself changed. Since 1876 no proposition for a change of the method of electing the President has been brought to a vote in Congress, and since 1880 even the slight promise of success implied in a favorable report by a committee of either House of Congress, has been lacking. Likewise in recent years the general public has exhibited little interest in the matter.

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THE RESOLUTION OF ELECTORAL DEADLOCKS BY THE HOUSE OF REPRESENTATIVES

By Paul J. Piccard†

THE PROBLEM

The Constitution of the United States, in the Twelfth Amendment, provides in part as follows:

The person having the greatest number of [electoral] votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the States, and a majority of all States shall be necessary to a choice.

In 1801, Thomas Jefferson was elected President by the House of Representatives under the somewhat different provisions of the original Constitution, but the election of 1824 was the only one in the history of the United States that did not result in a majority vote by the electoral college. Table II, below, summarizes the vote by which John Quincy Adams was elected President. An account of the intrigue and maneuvering that accompanied these two House elections belongs properly to a study of the history of presidential elections; for the present it is sufficient to note that the outcome did not depend upon either the popular vote or the electoral vote. Once the election went to the House, it was not to be determined by the majority or even a plurality of the members there, but rather by a majority of the states. The constitutional requirements remain the same today.

Despite the record of the electoral college in producing majority decisions ever since the days of the second Adams, it is evident from a study of the mathematics of presidential elections that the threat of a deadlock

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is very great whenever there are more than two serious contenders for the presidency. Truman's success in 1948, for example, hung on the very slender thread of a few thousand votes in certain key states.

There are two reasons for studying the manner of resolving a failure of the electoral college to render a majority verdict. First, such an examination will demonstrate the serious consequences involved in an election of the President by the House of Representatives. Second, it points to a phase of the system of electing the chief executive that is well known to practical politicians and which therefore conditions their strategy and tactics. The possibility of a choice in the Congress is one of several characteristics of presidential elections that needs to be examined in order to comprehend the total impact of the mechanics of selecting the first magistrate upon the shape of modern American politics. An understanding of just this one phase of presidential elections will lead to two conclusions: the electoral college system is more than a pleasant anachronism and it needs to be changed by a constitutional amendment.

In 1912, 1924, and 1948, the electoral vote was divided between three pairs of candidates rather than the usual two. An account of what would have happened had these three elections gone to the Congress will illustrate the significant aspects of this problem. These hypothetical events should be regarded not as academic questions that would have arisen if facts had been different from what they actually were, but rather as models of what might happen in the future. In 1823, Jefferson wrote to a friend: "I have ever considered the constitutional mode of election ultimately by the legislature voting by states as the most dangerous blot on our constn, and one which some unlucky chance will some day hit. . . ." ¹ The "unlucky chance" came to pass the next year; it is due again soon. Americans skirted the possibility in 1912 and 1924 as an incidental part of other political phenomena, but the southern Democrats have taken to flirting with the idea seriously. In 1944 some Texans talked about throwing the election to the House of Representatives. Four years later such a plan received significant support. Given another opportunity, not necessarily in southern hands, the scheme may work. Thus although the following treatment must be phrased in conjectural terms, the problem is a very real one. It has already diverted the stream of politics and now threatens a general pollution.

An elaboration of the following three points will convey an understand-

¹ To George Hay, August 17, 1823, in Paul L. Ford (ed.), *The Works of Thomas Jefferson* (New York: G. P. Putnam's Sons, 1905), XII, 303.

ing of the problems involved in the ultimate selection of the President by the lower house of Congress. (1) The composition of the House of Representatives, both constitutionally and politically, will determine the choice of a chief executive. (2) This situation involves a grievous threat to the integrity of the election process. (3) Finally, proposed reforms are generally inadequate if restricted to the present concept of indirect election.

CONSTITUTIONAL COMPOSITION OF THE HOUSE OF REPRESENTATIVES

The constitutional provisions for the make-up of the House of Representatives in the event that the election of a President devolves upon that body may be translated into modern terms as follows. The quorum requires the presence of at least one representative from each of thirty-two states. These might be drawn from the thirty-two smallest states, with a population of about fifty million people and a total of one hundred and forty-three representatives.

If the choice of a President ever fell to the House again, however, much more than a quorum would be present. The twenty-five smaller states could nevertheless control the decision. These states have a population of approximately thirty million people and eighty-six representatives. Even if there were no absentees, the vote of these states could be determined by as few as sixty-five representatives. In other words, sixty-five men from twenty-five states could out-vote the other three hundred and seventy representatives in the House. Men representing perhaps twenty-five million Americans would be stronger than those standing for the other one hundred and twenty-five million.

The small states have never yet developed a political interest different from that of their neighbors, and the twenty-five smaller states are stretched from Maine to Arizona and from Oregon to South Carolina. Every section of the country, except that which borders on the Great Lakes, is represented. It would be surprising indeed to see these states enter into a combination for partisan political purposes, but their power is described in order to explain the constitutional mechanics of an election by the House of Representatives. Whether the small states combine or not, each of the eighty-six representatives from the smaller states wields a far greater proportion of the forty-eight votes in the House on the occasion of the election of the President than does any one of his three hundred and forty-nine colleagues from the larger states. The gentleman from Nevada, for example, holds in his hand one forty-eighth of the total vote. His counterpart from a New York district with more than twice the population of Nevada, commands only 1-2064ths of the total.

POLITICAL COMPLEXION OF THE HOUSE OF REPRESENTATIVES

Instead of a schism along the lines of the relative size of the states, the House of Representatives would probably produce a division according to political party affiliation. This is so likely that an analysis of the election of a President by that assembly may well proceed upon the assumption that most representatives would support their party's candidate. The chances are very great, however, that some members would be forced to change their vote in order for the House to effect a verdict. Although no prediction of the future composition of the lower chamber can be made, a good idea of the problems involved may be gleaned from a review of the political line-up in the House following the elections of 1912, 1924, and 1948. These are the three elections during the twentieth century when the electoral votes were divided among more than two candidates for the presidency.

A break-down of party membership in each state's delegation for each of these three years appears in Table I. The figures illustrate that domi-

TABLE I

TWO-PARTY COMPOSITION OF THE HOUSE OF REPRESENTATIVES AT THE TIME OF THE ELECTORAL COUNTS OF 1913, 1925, AND 1949*

State	1913		1925		1949		Times subject to 1 man
	Demo- crats	Repub- licans	Demo- crats	Repub- licans	Demo- crats	Repub- licans	
Alabama	9	—	10	—	9	—	—
Arizona	1	—	1	—	2	—	3
Arkansas	6	—	7	—	7	—	—
California	1	7	2	8	10	13	—
Colorado	3	—	1	3	3	1	2
Connecticut	1	4	1	4	3	3	1
Delaware	—	1	1	—	—	1	3
Florida	3	—	4	—	6	—	—
Georgia	11	—	11	—	10	—	—
Idaho	—	1	—	2	1	1	3
Illinois	11	14	7	19	12	14	1
Indiana	12	1	5	8	7	4	—
Iowa	1	10	—	11	—	8	—
Kansas	2	6	1	7	—	6	—
Kentucky	9	2	8	3	7	2	—
Louisiana	7	—	8	—	8	—	—
Maine	2	2	—	4	—	3	1
Maryland	5	1	4	2	4	2	2

TABLE I—Continued

Massachusetts	4	10	3	12	6	8	1
Michigan	2	9	1	12	5	12	—
Minnesota	1	8	—	8	4	5	1
Mississippi	8	—	8	—	7	—	—
Missouri	14	2	11	5	12	1	—
Montana	—	1	1	1	1	1	3
Nebraska	3	3	3	3	1	3	3
Nevada	—	1	1	—	1	—	3
New Hampshire	—	2	1	1	—	2	3
New Jersey	7	3	6	6	5	9	1
New Mexico	1	1	1	—	2	—	3
New York	20	14	22	21	24	20	1
North Carolina	10	—	10	—	12	—	—
North Dakota	—	1	—	3	—	2	2
Ohio	14	5	6	16	12	11	1
Oklahoma	3	2	7	1	8	—	1
Oregon	—	2	1	2	—	4	2
Pennsylvania	7	23	6	30	16	17	1
Rhode Island	1	—	1	2	2	—	3
South Carolina	7	—	7	—	6	—	—
South Dakota	—	2	—	3	—	2	2
Tennessee	8	2	8	2	8	2	—
Texas	16	—	17	1	21	—	—
Utah	—	1	—	2	2	—	3
Vermont	—	2	—	2	—	1	3
Virginia	9	1	10	—	9	—	—
Washington	—	2	1	4	2	4	1
West Virginia	4	1	4	2	2	6	1
Wisconsin	2	8	—	10	2	8	—
Wyoming	—	1	—	1	—	1	3

**Official Congressional Directory*, 62d Cong., 3d Sess.; 68th Cong., 2d Sess. (compared and corrected with a roll call of the House on Feb. 11, 1925, *Congressional Record*, same session, p. 3511); 81st Cong., 1st Sess.

nating the House itself and controlling a majority of the states as units are two different problems. A comfortable majority of the seats in the House, such as was held by the Democrats in 1913 and 1949, and by the Republicans in 1925, does not indicate an ability to elect a President if that duty should be conveyed to the House. The distribution of the forty-eight votes may be summarized in this manner:

	1912	1924	1948
Democratic	23	21	25
Republican	22	23	20
Divided equally	3	4	3

Thus only in the last case did the major party control the minimum number of states necessary to elect a President. The Democratic position in the opening days of the Eighty-first Congress, however, was dependent upon the co-operation of the southern states. If the House had had to choose between the three highest presidential candidates it seems highly probable that the first ballot would have shown:²

Truman	21
Dewey	20
Thurmond	4
Divided	3

The state totals, unfortunately, do not reveal the really rotten core around which the system is built. Perceiving that the issue would be close, one understands well enough that great political pressure would be brought to bear upon those states that held the balance of power. A more exact examination of the figures in Table I discloses the startling fact that the outcome of the election is dependent upon any one of a large number of strategically located individuals.

THE POWER OF SINGLE KEY REPRESENTATIVES

A brief digression into the field of history at this point will demonstrate that the possible situations discussed below are more real than imaginary. Table II demonstrates that in 1825 John Quincy Adams was elected President by the House of Representatives by the narrowest possible margin (one state). As the table indicates, he had the support of eighty-seven representatives (Jackson had seventy-one and Crawford had fifty-four), but any one of the twenty-nine men from Rhode Island, New York, Maryland, Louisiana, Missouri, and Illinois who voted for Adams, had it within his power to create a deadlock by depriving Adams of his essential thirteenth state. The vote of New York, as it developed, depended on the decision of Stephen Van Rensselaer, who remained doubtful to the very last moment.³ In Maryland the issue rested in the hands of Henry R. Warfield who was pressured by Charles Carroll and Roger B. Taney to vote for Jackson. In a personal conference, however, Adams

² See "Proposing an Amendment to the Constitution of the United States Providing for the Election of President and Vice-President," Senate Report No. 602, 81st Cong., 1st Sess., June 30, 1949.

³ For an account of the pressure brought to bear upon Van Rensselaer, see Jabez D. Hammond, *The History of Political Parties in the State of New York, from the Ratification of the Federal Constitution to December, 1840* (Albany: C. Van Benthuysen, 1842), II, 190; and Everett S. Brown, "The Presidential Election of 1824-1825," *Political Science Quarterly*, XL (September, 1925), 402.

TABLE II

THE ELECTION OF ADAMS BY THE HOUSE OF REPRESENTATIVES, 1825*

State	Adams	Jackson	Crawford	State vote went to:
Alabama	—	3	—	Jackson
Connecticut	6	—	—	Adams
Delaware	—	—	1	Crawford
Georgia	—	—	7	Crawford
Illinois	1	—	—	Adams
Indiana	—	3	—	Jackson
Kentucky	8	4	—	Adams
Louisiana	2	1	—	Adams
Maine	7	—	—	Adams
Maryland	5	3	1	Adams
Massachusetts	12	1	—	Adams
Mississippi	—	1	—	Jackson
Missouri	1	—	—	Adams
New Hampshire	6	—	—	Adams
New Jersey	1	5	—	Jackson
New York	18	2	14	Adams
North Carolina	1	2	10	Crawford
Ohio	10	2	2	Adams
Pennsylvania	1	25	—	Jackson
Rhode Island	2	—	—	Adams
South Carolina	—	9	—	Jackson
Tennessee	—	9	—	Jackson
Vermont	5	—	—	Adams
Virginia	1	1	19	Crawford
TOTALS				
Representatives	87	71	54	
States	13	7	4	

*Adapted from Thomas H. McKee, *The National Conventions and Platforms of All Political Parties, 1789 to 1901* (4th ed.; Baltimore: The Friedenwald Co., 1901), p. 23; and Edward Stanwood, *A History of the Presidency from 1788 to 1897* (Boston: Houghton Mifflin Co., 1898), p. 141.

assured Warfield that everything would be all right. This won him over and opened the White House doors for Adams.⁴ That the outcome of a presidential election should hinge upon the sensitivity to various sorts of pressure of two such unknown representatives as Van Rensselaer and

⁴ See Bernard C. Steiner, *Life of Roger Brooke Taney, Chief Justice of the United States Supreme Court* (Baltimore: Williams & Wilkins Co., 1922), p. 84; Charles F. Adams (ed.), *Memoirs of John Quincy Adams, Comprising Portions of his Diary from 1795 to 1848* (Philadelphia: J. B. Lippincott & Co., 1875), VI, 499 f.; and Brown, article cited, n. 3, pp. 401 f.

Warfield is, to say the least, an anomaly. The influence of Clay upon the outcome was probably more in keeping with the political techniques of the nation, but even that led to a result that was, as Senator Benton said, "a violation of the *demos krates* principle. . . ."⁵

In some situations the power of a single representative to alter the vote of his state could be exercised simply by casting a blank ballot. At other times it might be necessary to vote with the opposition in order to accomplish the desired result. Four possibilities illustrate these variations. (1) In the House election of Jefferson in 1801, the Vermont delegation was evenly divided until the one Federalist who had been voting for Burr abstained. This alone was enough to give Jefferson the one additional state that he needed for victory. (2) The balloting in the House in 1825 showed Illinois, among other states, casting its vote for a candidate by a margin of one. Were that one man to abstain from voting his earlier candidate would lose that state's vote. In a larger state (Illinois had only one representative in those days), such a margin would empower several men in this way. (3) Given the same case as just described, by switching his vote to the opposition, that one man could give his state to the other party. Finally (4) even if there is a margin of two in favor of one candidate, as for example Rhode Island's two votes for Adams in 1825, one man alone by voting against the previous majority could create a deadlock, thereby depriving that party of his state's vote.

Had the election of 1912 gone into the House, there were twenty-one Republicans in fourteen states, any one of whom could have changed the vote of his state. Eleven Democrats, likewise, from six states, were individually powerful enough to switch his state's vote. In both parties, then, there were seventeen states held at the mercy of any one of thirty-two men.

The totals for 1925 are even higher. Had that election gone into the House there were twenty-five Republicans and forty-five Democrats who would have held, individually, the vote of a state in the balance. Eighteen states were involved in these closely and evenly divided cases. The 1948 figures were the highest of the three. Leaving aside the complications injected by the presence of sympathizers of the States' Rights party, there were sixty-five Republicans and thirty-three Democrats, any one of whom could have changed the vote of his state. Twenty-three states were held subject to the will of one man. The margin, therefore, by which the state totals were held was so narrow arithmetically as to be virtually non-existent

⁵ Thomas H. Benton, *Thirty Years' View* (New York: D. Appleton & Co., 1854-1856), I, 47.

politically. The exact location, both by state and party affiliation, of each of these crucial representatives can be determined from Table I, above.

The fact that there were so many key individuals, like Van Rensselaer and Warfield, following the elections of 1912, 1924, and 1948 has no significance in itself. It does suggest, however, that such conditions should be anticipated in any future choice of the President by the House of Representatives. An election that is so close that no candidate receives a majority of the electoral vote would very probably result in a House composed approximately like the three just analyzed. The politicians of that future day will know early in November who holds the balance of power, and there will be two full months for them to make arrangements with each other.

Just as the politicians of 1825 were able to locate the pivotal individuals and bring pressure to bear upon them, so would their successors isolate the key doubtful men in an attempt to persuade them to resolve the deadlock by changing their votes or by abstaining. Thus the question of the number and location of those Representatives who command the votes of their states is not academic. Since the future cannot be observed, there is little profit to be had from predicting what individuals would shift their votes. Some of the factors that might have an influence are nevertheless worth noting. The most important element involved is the human one. Certain men, as a part of their personality or character, would be more susceptible to pressure than others. The gradual shading of American politics from one position to another results in the election of some representatives under one party label while their true sympathies are with the other party.

The question of location, moreover, cannot be ignored. A Democrat from Texas in the House of Representatives who wished to vote for the Republican candidate in 1949, would have accomplished nothing unless he had been able to bring ten other Texans with him into the opposition camp. A weak or greedy Pennsylvania Republican in 1924, for example, could not have caused his state's vote to be cast for Davis. His weakness would not have been tested; his greediness would have been frustrated. By itself, his vote did not matter at all. In contrast to these innocuously located individuals are those from closely or evenly balanced states.

What kind of an appeal could be made to these key representatives? Leaving aside personalities, some practical possibilities are apparent. In 1948, Minnesota's electors voted unanimously for Truman and Barkley. Five of the state's nine representatives, however, were Republican. Sup-

pose that nearly two weeks of deadlock and an ever-growing threat of a hiatus in the presidency had combined with long hours and the value of the prize to shorten tempers and fray nerves. By that time might not one of Minnesota's five Republicans have been receptive to a proposal to swing his state to Truman, the choice of a majority of his constituents? (Truman carried every congressional district in Minnesota.) If state ballot-boxes were being used in the House of Representatives, as they were in 1825, any one of these five men could give in to this suggestion without telling anyone. More likely, however, any man transferring a state's vote would be more than happy to receive both the recognition and the reward for his action. The Minnesota situation was not particularly unusual. Idaho and Montana sent evenly divided delegations to the House of Representatives while casting their electoral votes for Truman. Connecticut elected three representatives from each party and voted for Dewey. Illinois, Maryland, Massachusetts, Washington, and Wyoming (of the states whose vote was controlled by one man) gave a majority of their representatives to one party and their electoral vote to the other.⁶

SUMMARY CRITICISM OF THE POWER OF THE HOUSE OF REPRESENTATIVES

An appalling fact is that such pressures, arguments, and motivations as have just been suggested would be only the milder aspects of an election of the President by the House of Representatives. The invitation for this type of activity is a standing one, awaiting only that slight twist of electoral arithmetic that will throw the election completely out of kilter. In the meantime, these clearly undesirable features of the system have an influence upon presidential politics, there being some Americans willing to make sacrifices in order to avoid the apparent calamity and there being others emboldened by the opportunity for increased power.

Bad as the possibilities of confused electoral arithmetic in the House of Representatives are, and dangerous as the opportunities for individual bargaining are, they are not the only serious defects in the system. Were an election ever thrown into Congress, other weaknesses would become apparent. A recognition of these additional difficulties would contribute in a significant manner to the movement for reform. Unfortunately, the American people refuse to anticipate the evils of the system; everyone

6 See Herbert Wechsler, "Presidential Elections and the Constitution: A Comment on Proposed Amendment," *American Bar Association Journal*, XXXV (March, 1949), 181.

seems to be from Missouri, waiting to be shown. The demonstration must be made in practice, where the price of the lesson would be greatest, rather than in the cloistered sanctuary of an academic institution, where the matter can be explained at almost no cost.

The Constitution, as quoted above, provides that when the election of the President devolves upon the House of Representatives, the field from which the next chief executive may be chosen shall include "the persons having the highest numbers [of electoral votes] not exceeding three on the list of those voted for as President." There is no explanation of how to cope with a tie for third place. Presumably, the choice would then be limited to the two leading candidates since a reduction of the number from which the selection may be made would not be a violation of the Constitution, while an increase to include four aspirants would be a direct contravention of the Twelfth Amendment. If one candidate had the greatest number of votes and three more were tied for second place, the choice by the House of Representatives would seem to be dictated by the prohibition against considering a fourth individual. In the unlikely event of a four-way tie for first place, the Congress would be forced to set aside the Constitution. The question then would be, could any limitation be imposed upon the House of Representatives? Once the flood gates are opened there is no containing the waters.

A further inadequacy in the method of resolving a deadlock results from the failure of Congress to exercise the foresight expected of it by the Twentieth Amendment. Congress is authorized to provide by law for the possibility of the death of one of the three candidates from whom the House of Representatives might have to choose a President. No such law appears in the United States Code. Just as the Forty-fourth Congress entered the notorious Hayes-Tilden dispute in 1876 without any prior or permanent provision for dealing with the problem then presented, so have the recent Congresses postponed a solution to this question. The matter is being put off until a close election and until the immediate partisan effects of the solution will be apparent. A more hazardous obstacle to a proper statute providing for a reasonable settlement could hardly be devised.

When the time comes for action by the House of Representatives, the most popular candidate may be dead. Perhaps a party that polled a majority of the popular ballots and a plurality of the electoral votes would be frozen out of the presidency because of the untimely death of their leading standard bearer. Suppose that such a candidate were to die in mid-

December. The President, perhaps himself a defeated aspirant for reelection, could call a special session of the lame-duck Congress and a law could be passed restricting the House of Representatives to the three highest living candidates. The new Congress might attempt to repeal such a partisan measure, but the old President would still be on hand to veto any rectification of the injustice. The whole controversy having arisen because of the closeness of the campaign, the veto would probably stand. Even if Congress were to anticipate this situation today, and pass a general provision to cope with the problem whenever it arose, a special lame-duck session could undo the legislation and proceed as just suggested. In such a case the forces seeking to change the law for partisan advantage would have to run against an established and previously accepted rule, but even so they might be successful. The remedy should be constitutional rather than statutory.

The Twentieth Amendment has a further peculiarly paradoxical effect. It places the choice of a President in the new Congress. The reason for a failure of the electoral college to complete the choice will be the presence of a third party. If the election were decided by the retiring Congress, as was the case prior to the adoption of the Twentieth Amendment, the new disrupting element would not be present in the House. This would simplify the election and increase the possibility of a candidate's receiving the required number of states, but it might involve a serious miscarriage of justice. Although unlikely, the new party might be the strongest in the field (Teddy Roosevelt ran second in 1912, leading the regular Republicans by a considerable margin); it might have received greater support both at the polls and in the electoral college than either of the two established parties. The new Congress, even though it might not reflect the popularity of a new party's presidential candidate, must therefore be considered as more representative of the nation than the old, and on this basis it is certainly entitled to make the decision. Vesting this power in the new Congress, however complicates the issue and increases the possibility of a prolonged deadlock.

At the same time, the Twentieth Amendment reduces the time available to the House of Representatives for rendering its verdict. The term of Congress commences on the third day of January; the inauguration of the President-elect is scheduled for January twentieth. During this time the House must organize, the electoral votes must be counted, and, if any time remains after a protracted electoral count (a grave danger in itself), the House may then have to see to the selection of the President. If it

fails to accomplish this, the Vice-President-elect will assume the office pending the qualification of the President, but the same difficulties may have befallen the Senate in its attempt to select a Vice-President. Without exception during the twentieth century, every vice-presidential candidate has received a number of electoral votes equal to that of his running mate. Even Nicholas Murray Butler, who was named as the Republican's vice-presidential candidate by the National Committee rather than by the Convention, the Convention's nominee having died, received as many votes as did Taft in 1913. In a divided presidential contest there might be some coalition for the second place on the ticket, but it is certainly to be anticipated that in the future whenever the House is choosing a President the Senate will be selecting a Vice-President.

The problem of time thus involves an insoluble dilemma. If the date of the inauguration of a new President is much more than two months after the election, the retiring chief executive is held in office too long. This is generally and properly regarded as unwise. On the other hand, if the new term commences too soon after the election, there may not be enough time available to thresh out a solution to any deadlock that may occur. Since this problem cannot be solved, it should be avoided. The method provided for resolving a deadlock should be simple, sure, and swift. The entire election, from the first expression by the voters to the final determination of a President-elect, should take place in a very short time.

Several proposed reforms in this part of the electoral system are considered below. One of these, it will be seen, accomplishes the objective of a quick and certain conclusion to any election in which no candidate receives the necessary majority of the electoral votes in the first instance.

Before turning to the proposed reforms, the criticism of the present mode may be concluded by reference to a mitigating factor. A certain amount of perseverance is needed in order to discover something good to say about the possibility of an election of the President by the House of Representatives. As will be apparent in a moment, the two sides of this question do not even approach a balance. Senator Benton of Missouri gave this system a sort of back-handed compliment when he objected strenuously to the nominating conventions. He said that he preferred the possibility of a nomination of three candidates by the people themselves, with the final choice to be made as a matter of course by the states in the lower house.⁷ This assumes that the people would somehow be able to nominate

⁷ Benton, work cited, n. 5, II, 599.

directly and effectively, and that they would be so evenly divided between their three favorites that the House could do no injustice, regardless of which candidate it chose. Senator Benton also ignored, in this immediate connection, the problem of an agreement being reached between one of the presidential aspirants and some of the representatives. A satisfactory provision for the vice-presidency under such a system, furthermore, would be most difficult.

The closest thing to a real advantage that can be suggested as resulting from the present system of a possible choice of the President by the House of Representatives was also suggested by Benton. This too is a negative sort of flattery. Benton pointed out that

whoever gets the nomination—no matter how effected—becomes the candidate of the party, from the necessity of union against the opposite party, and from the indisposition of the great States to go into the House of Representatives to be balanced by the small ones.⁸

Thus the threat of a defection by a state, causing the turmoil and confusion of an election by the House, is one that can be made only by the smaller states. The large states of the northeast and west coast will not attempt to blackmail the majority of their party with talk of a three-way contest. This certainly is a good limitation because these states have altogether too much power already as a consequence of their pivotal unit votes. The choice of the chief executive by the lower house is so bad that it, like an evil bugbear, serves a useful purpose by intimidating at least some of the states. The efforts to abolish this specter, however, are generally meritorious, though most of the suggested alternatives are inadequate. These may now be reviewed.⁹

PROPOSED REFORMS

The requirement of a majority of the presidential electors is a complete artificiality. Since 1826 twelve elections have been won by a candidate polling less than half of the popular vote, the most recent of these being Harry S. Truman. The fact that minority Presidents are possible under the present electoral college system could be given constitutional recognition and the winner of a plurality of the electoral votes could be declared the next President. This would greatly reduce the possibility of an election being thrown into the House of Representatives. Only a tie vote would present a problem.

⁸ The same, I, 49.

⁹ For further adverse criticism, see Joseph C. Allen, "Our Bungling Electoral System," *American Political Science Review*, XI (November, 1917), 697.

Whether the election of a new chief executive aborts because of a failure on the part of any candidate to achieve a majority, or whether there is a breakdown resulting from an equal distribution of electoral votes, does not make any substantial difference insofar as the following discussion is concerned. The electoral system, whatever it is, will prescribe certain requirements, perhaps a majority, perhaps a plurality. What is to be done in case no presidential aspirant achieves victory under these terms? The range of conceivable solutions is as great as the vast variety of different modes available for the initial step in the election.

Jefferson once expressed the view that if the electors did not reach a majority decision on the first attempt, they should be given a second opportunity.¹⁰ This would enable the political managers to work out an arrangement and it would preserve all the advantages of representing the states according to the same principles prevailing during the first phase of the election. Problems of population, small states, suffrage differences, liaison between Congress and the President-elect, and so forth, would all be solved with the same facility embodied in the original plan. The chief objection to this scheme is that it is predicated upon a higher degree of electoral subservience than it is safe to assume today. Pledging an elector in advance to the nominee of one party is much simpler than binding him informally to party leaders who would be expected to change his vote on the second ballot. The threat of electoral independence, which is too great under the present system, condemns the proposition to submit the election to the electoral college a second time.

At the same time that Jefferson expressed his opinion on this subject, Madison indicated a preference for a final determination by a joint session of Congress with each member casting his own vote.¹¹ In conjunction with this, he would have restricted the field of choice to the two highest contenders. This solution has the merit of preserving the relative strength of the states as represented in the electoral college, and it does not complicate the peripheral problems of suffrage and the like. Most of the objections to the present method of resolving conflicts would be obviated by doing away with the equality of the states. No member of Congress would have the power to swing a state one way or the other, and none would

¹⁰ From the letter cited above, n. 1.

¹¹ Letter to George Hay, August 23, 1823, in Gaillard Hunt (ed.), *The Writings of James Madison*, IX (New York: G. P. Putnam's Sons, 1910), 152 f. See Lucius Wilmerding, Jr., "Reform of the Electoral System," *Political Science Quarterly*, LXIV (March, 1949), 1. This is one of the best published articles on the electoral college.

command a greater proportion of the total vote than was in the hands of each of his colleagues.

There remain, nevertheless, two very serious objections to a choice by a joint session of Congress, even with the members voting *per capita*. First, senators and representatives are elected on the basis of other factors than presidential preferences. In 1948, eleven states gave a majority of their seats in the House of Representatives to a different party than the one to which they presented their electoral vote. The popular verdict in each of the states would have been reversed by a *per capita* vote in the House of Representatives. The presence of senators elected two and four years previously would further distort the will of the voters.

Secondly, an eventual choice of the President by members of Congress would place the executive incumbent under obligation to certain members of the legislative branch of the government. As a candidate before the joint session he might easily enter into bargains that would later tend to upset the constitutional balance between the legislature and the executive.

This joint meeting proposal has received a certain amount of support, and was incorporated in the Lodge-Gossett Amendment which passed the Senate in the Eighty-first Congress and which is ably discussed by Mr. Gossett elsewhere in this *Manual*. House joint resolution 11 of the Eighty-second Congress included such a provision and is also explained by its author, Representative Frederic Coudert, in another article in this *Manual*.

Under the Coudert resolution, if a bare quorum (three-fourths of the whole number of senators and representatives) were present, the delegations from New York, California, Pennsylvania, and Illinois could control the decision. Although this appears to be unfair, it is more representative than the present system because the population of these four big states is considerably greater than that of the twenty-five small states now vested with this power. The number of senators and representatives present on such an occasion, moreover, would probably be much closer to five hundred and thirty-one (the total) than to three hundred and ninety-nine (the quorum). Even so, with Ohio and either Texas or Michigan added to the four states just named, as few as six states in a three-cornered contest might dictate the decision to the other forty-two. Although certainly an improvement over the present system, this reform stops short of what should be the objective. In order to achieve a suitable mode of electing a President, all of the permutations and possible corruptions of the votes of the people need to be abolished. Congressional determination of the results, even as a last resort, does not accomplish the fundamental change that is needed.

Any number of other possibilities might be conjured up for examination. Some already existing state agency might be utilized, there could be a resort to chance, some objective standards might be applied as a final test between the contending candidates, a run-off election following the same lines as the initial expression might be in order, and so forth. All of these may be rejected merely by stating them, although each would have certain merit. One final possible alternative to the present system may be noted more carefully.

Senate joint resolution 200 of the Eightieth Congress, a predecessor of the Lodge-Gossett Amendment which passed the Senate of the succeeding Congress, provided that in case a computation of its figures resulted in a tie "then the one for whom the greatest number of popular votes were cast shall be President."¹² This proposal would give the nation every chance to make a decision according to its federal principles, but it says that if the recognition of the states, as such, results in an absolute equality, then the deadlock is to be resolved by a resort to the theory of a unitary government.

The use of a single executive constituency prevails in forty-seven of the states (all but Georgia) in connection with the election of the governors. It is not a foreign idea. In order for the voice of the people to be heard directly under the proposal embodied in the above resolution, it would first have to come so close to hurdling the federal obstacles that only the narrowest possible margin prevented its success. The people of the few most populous states could dominate the final determination of the next President only by achieving a complete unanimity. This they have never been able to do. The unit vote, which bestows an artificial unanimity on each of the states, would play no part in the proposal to solve the election by an eventual reliance upon the aggregate popular vote. The winner of such a closely contested election would have received a federalistic support equal to that of his nearest opponent and a unitary-type backing that was greater. Some distortion of the popular vote might create the tie to begin with, but this would not be compounded by any further juggling of figures. Neither congressmen nor special electors would be given the opportunity to flout the will of the people. No bargains and no switching of votes could occur. The entire decision would be based upon the single popular

¹² *Amending the Constitution with Respect to Election of President and Vice-President (To Abolish the Electoral College System, Etc.)* Hearing before a subcommittee of the Committee on the Judiciary, United States Senate, 80th Cong., 2d Sess., April 26, 1948 (Washington: Government Printing Office, 1948), p. 2, or see other records of the 80th Congress.

suffrage, construed first one way and then another. No new opportunities for maneuvering or campaigning would be made available. This is by far the simplest and most adequate method of solving a deadlock. If no other change in the electoral college system is made, this one would be worthwhile. In the absence of such a remedial amendment, there remains a stronger argument for abolition of the electoral college mode than would otherwise be the case.

The only adverse criticism that may be directed against a final reference to the popular vote to break an electoral deadlock is that it would make for a peaceful and sure solution of any deadlock, so that the people would be satisfied to perpetuate the other unsatisfactory but hidden parts of the election machinery. Perhaps a highly agitated choice of a President by the House of Representatives is the catalyst required to bring about the total reform that the nation needs. One deadlocked election in the twentieth century would probably be the last presidential election under the electoral college system.

The present method of solving an electoral deadlock for either the presidency or vice-presidency,¹³ and most of the proposed reforms, are seriously lacking in their respect for orderly, legal, and representative government. The most acceptable manner of concluding a suspended election would be a resort to the popular vote.

The inescapable conclusion to this entire discussion is that it has dealt with an irksome problem that should never be raised. The system of presidential election should be so constructed as to avoid any possibility of deadlock. This would require the abolition of the electors as they exist today, and an abandonment of the fictitious majority requirement. As is apparent from even a cursory perusal of the other articles in this *Manual*, the objections to the present manner of resolving electoral deadlocks constitute only one of many arguments for abolition of the electoral college system.

13 The Twelfth Amendment provides for the vice-presidency in much the same way as for the presidency, except that only the two highest candidates may be considered. The Senate, however, is constructed to operate in terms of state equality at all times. Offsetting this slight advantage is the serious defect involved in the possibility that the Senate might choose a Vice-President from the party in opposition to the President.

(The following is a study prepared by Walter Kravitz, History and Government Division, Legislative Reference Service, Library of Congress, dated December 7, 1960.)

RESIDENCE REQUIREMENTS FOR VOTING

History

Residence requirements as a qualification for voting in this country date back to colonial days. The practice was probably imported from England where the question was treated as early as 1413.¹ But while its application atrophied in England,² the American colonies, and later the States, gradually elaborated upon their earlier requirements.

During the first decades of the 18th century, only four colonies defined the length of residence they required within their territories as a whole: 2 years in Pennsylvania and Delaware; 6 months in Georgia; and 1 year in North Carolina.³ Other colonies prescribed local requirements, as did some cities.⁴ By the time the Revolution only three of the Thirteen Colonies prescribed no specific duration of residence: Connecticut, Virginia, and South Carolina. But these three did demand property qualifications.⁵

According to some authorities, property, qualifications were of greater significance than residence requirements in restricting suffrage during the early years of the Republic. "When a person resided in a community long enough to acquire property or to pay taxes, it was assumed in some States that he had become sufficiently familiar with State and local affairs to cast an intelligent vote, and moreover that he had a financial interest which would move him to inform himself about candidates."⁶

During the first half of the 19th century, property and tax qualifications were abolished. To replace these restrictions the suffrage laws were amended to include new tests, and among these were more elaborate and more stringent residence requirements.⁷

By 1860 only Indiana and New Hampshire, among the 34 States then in the Union, had no residence laws relating to voting. The most widespread requirement, demanded by 17 States, was for 1 year's residence. Three States required 2 years, and seven others 6 months. County, town, or parish residence requirements were also prevalent; 6 months in nine States, 1 month in six States, and anywhere from 3 months to 1 year in the others. Only three States specified requirements for election districts.⁸

By the time of the Civil War, the geographical pattern as to greater or lesser stringency of residence laws was already established. The Middle Western and Western States, eager to attract immigrants and more egalitarian in political

¹ Bishop, Cortlandt F. *History of elections in the American colonies*. New York, Columbia College, 1893. p. 69.

² The laws requiring electors to reside within the counties in which their freeholds were situated were repealed in 1774." *Ibid.* "In England, Scotland and Wales, it is enough that as [sic] an elector should be resident in a constituency on the registration day; the law used to specify a longer period * * * but this vanished in 1918." MacKenzie, William J. M. *Free elections; an elementary textbook*. New York, Rinehart, 1958. p. 23.

³ Bishop, *op. cit.*, p. 67.

⁴ In Rhode Island no person could vote except in the town where he lived. North Carolina, sometime before 1734, reduced its requirement to 6 months residence within the precinct. In South Carolina, in 1704, a personal residence in the county and precinct for 3 months "next preceding the date of the writs for the election" was required. In 1716 this was changed to 6 months residence in the province and parish, and in 1721 residence was fixed at 1 year within the county. The cities of New York and Albany had 3-month requirements for freemen, and Williamsburg, Va., prescribed an actual residence of 12 months. *Ibid.*, pp. 67-68. In New Jersey according to the law of Aug. 23, 1725: "any individual whose right to vote was questioned by a candidate or by any of the election officials had to take an oath or affirmation to the effect that he had been a resident freeholder in the county or town for 1 year." McCormick, Richard P. *The history of voting in New Jersey; a study of the development of election machinery, 1664-1911*. New Brunswick, N.J., Rutgers University Press, 1953. p. 50.

⁵ Thorpe, Francis Newton. *A constitutional history of the American people, 1776-1850*. New York, Harper, 1898. pp. 93-97. Vermont's constitution of 1777 required 1 year's residence in the State.

⁶ McKean, Dayton David. *Party and pressure politics*. Boston, Houghton Mifflin, 1949. p. 57. See also, Porter, Kirk N. *A history of suffrage in the United States*. Chicago, University of Chicago Press, 1918. p. 14.

⁷ *Ibid.*, p. 145.

⁸ *Ibid.*, p. 148.

spirit, tended to adopt less restrictive measures, while the East and South maintained more rigorous tests.⁹ This pattern was reinforced during the period 1890-1908 when many Southern States revised their constitutions. Numerous voting restrictions were adopted in these revisions for the generally acknowledged purpose of disfranchising the Negro. The Mississippi Constitution of 1890 and the Alabama Constitution of 1901, which were widely imitated in the South, incorporated a variety of restrictive measures including clauses which raised the State residence requirement from 1 to 2 years. The Mississippi law also demanded 1 year's residence in the election district or in the incorporated city or town.¹⁰ Alabama required 1 year in the county and 3 months in the precinct.¹¹ "The lengthy residence requirements was expected to bear more heavily on Negroes because of their supposedly peripatetic habits."¹²

Current requirements

The Constitution of the United States indirectly delivers into the hands of the States responsibility for setting voters' qualifications in Federal elections. Consequently, the Nation appears to have ridden off in almost as many directions as there are States.

As of the 1960 general election, some 40 different combinations of State, county, precinct, and city residence durations were in use by the 50 States. State residence requirements range from 6 months to 2 years, with some States waiving all or part of the requirement in voting for President and Vice President (see "Contemporary Trends" below). County-residence requirements vary from none at all to 1 year, and the qualifications for smaller political units cover the same range. The most popular requirements are: in State, 1 year; in county, 3 months; in locality, 30 days. In fact, six States actually have all these provisions.¹³

Table I lists the detailed requirements for each State. Table II gives the number of States using each time period for each of its jurisdictions. Table III breaks down the data in table II by region and indicates the percent of the States in each region favoring each time period in each jurisdiction.¹⁴ For example, the table shows that 50 percent of the States in the South demand 6 months' residence in a county, while 25 percent of the North Central States require 3 months and no North Central State requires more than 3 months.

Aside from the multiplicity of provisions, the tables clearly indicate that, as a group, the Southern States set the most stringent provisions for all jurisdictional sizes. It is difficult to say which of the other three regions is the least severe in its demands.

Idaho, the State with the highest percentage of potential voters voting in the 1956 general election, has one of the most moderate residence requirement laws in the country—6 months State, 30 days county.¹⁵

⁹ Ibid., p. 149. In Massachusetts, "a constitutional amendment of 1859, repealed in 1863, required two years' residence in the United States, after naturalization" for all voters, a symptom of the party battles for immigrant support in that period. Penniman, Howard R. *Salt's American parties and elections*. 5th ed. New York, Appleton-Century-Crofts, 1952. p. 22n.

¹⁰ Key, Valdimir O. *Southern politics in State and Nation*. New York, Knopf, 1949. p. 537.

¹¹ Penniman, op. cit., p. 33.

¹² Key, op. cit. See also, Penniman, op. cit., and Ogden, Frederic D. *The poll tax in the South*. University, Ala., University of Alabama Press. 1958. p. 4.

¹³ Delaware, Illinois, North Dakota, New Mexico, South Dakota, and Washington.

¹⁴ Tables II and III are based upon tables devised by Ralph M. Goldman.

¹⁵ How many might have voted? Congressional quarterly weekly report. Sept. 2, 1960: 1533.

TABLE I.—*Residence requirements*

State	Requirements			
	State	County	Election district, precinct, or ward	Township, municipality, town, or city
Alabama.....	2 years.....	1 year.....	3 months ¹	
Alaska.....	1 year.....		30 days ²	
Arizona.....	1 year.....	30 days.....	30 days.....	
Arkansas.....	1 year.....	6 months.....	30 days.....	
California.....	1 year ³	3 months ⁴	54 days.....	
Colorado.....	1 year.....	3 months ⁴	15 days.....	30 days.
Connecticut.....	1 year.....			6 months. ⁵
Delaware.....	1 year.....	3 months.....	30 days.....	
Florida.....	1 year.....	6 months.....		
Georgia.....	1 year.....	6 months.....		
Hawaii.....	1 year.....		3 months.....	
Idaho.....	6 months.....	30 days.....	30 days.....	
Illinois.....	1 year.....	3 months ⁴	30 days.....	2 months. ⁶
Indiana.....	6 months.....		30 days.....	
Iowa.....	6 months.....	2 months ⁶		
Kansas.....	6 months.....		30 days.....	30 days.
Kentucky.....	1 year.....	6 months.....	2 months ⁶	
Louisiana.....	1 year.....	1 year.....	3 months.....	4 months. ⁷
Maine.....	6 months.....	3 months ⁸		3 months.
Maryland.....	1 year.....	6 months.....	6 months ⁴	
Massachusetts.....	1 year.....			6 months. ⁵
Michigan.....	6 months.....			30 days.
Minnesota.....	6 months.....		30 days.....	
Mississippi.....	2 years.....		1 year ⁹	
Missouri.....	1 year.....	2 months ⁶	2 months ⁶	
Montana.....	1 year ¹⁰	30 days.....		
Nebraska.....	6 months.....	40 days.....	10 days.....	
Nevada.....	6 months.....	30 days.....	10 days.....	
New Hampshire.....	6 months.....		6 months.....	6 months.
New Jersey.....	6 months.....	2 months ⁶		15 days. ¹¹
New Mexico.....	1 year.....	3 months ⁴	30 days.....	
New York.....	1 year.....	4 months.....	30 days.....	
North Carolina.....	1 year.....		30 days.....	
North Dakota.....	1 year.....	3 months ⁴	30 days ⁵	
Ohio.....	1 year ¹²	40 days ⁴	40 days.....	
Oklahoma.....	1 year.....	6 months.....	30 days.....	
Oregon.....	6 months.....		(13).....	
Pennsylvania.....	1 year ¹⁴		2 months.....	
Rhode Island.....	1 year.....			6 months.
South Carolina.....	2 years ⁹ 15.....	1 year.....	4 months.....	
South Dakota.....	1 year.....	3 months ⁴	30 days.....	
Tennessee.....	1 year.....	3 months.....		
Texas.....	1 year.....	6 months.....	6 months.....	
Utah.....	1 year.....	4 months.....	2 months ⁶	
Vermont.....	1 year.....			3 months.
Virginia.....	1 year.....	6 months.....	30 days.....	6 months.
Washington.....	1 year.....	3 months ⁴	30 days.....	
West Virginia.....	1 year.....	2 months ⁶		
Wisconsin.....	1 year ¹⁶		10 days.....	
Wyoming.....	1 year.....	2 months ⁶	10 days.....	

¹ Otherwise qualified electors who have moved to a new precinct in the same county, town, or city may vote in their old precincts.

² In election district.

³ New residents in the State may vote for President and Vice President only, after 54 days of residence.

⁴ 90 days.

⁵ No elector who has changed his residence from one county, precinct, or town to another loses his right to vote in his former county, precinct, or town until he acquires voting residence in the new one.

⁶ 60 days.

⁷ Municipality.

⁸ "Plantation."

⁹ Ministers and wives may vote after 6 months' residence.

¹⁰ New residents in the State may vote for President and Vice President only, after 60 days of residence.

¹¹ In city of 4th class.

¹² 40-day residence requirement when voting for President and Vice President.

¹³ Voter must reside in precinct in which he registers.

¹⁴ 6 months if previously an elector or native of the United States.

¹⁵ Public school teachers and spouses may vote after 6 months' residence.

¹⁶ 10-day precinct residence requirement when voting for President and Vice President.

TABLE II.—*Residence requirements by States, place where voter must reside for period indicated*

Required duration of residence	In State		In county	In locality ¹
Years.....	2	3	—	—
Months.....	1	35	3	1
	6	12	8	3
	5	—	—	—
	4	—	2	1
	3	—	10	3
	2	—	5	2 5
Days.....	40	—	2	1
	30	—	4	16
	15	—	—	1
	10	—	—	5
No requirement.....	—	—	16	14

¹ Election district, precinct, or ward.² Includes 1 State requiring 54 days.TABLE III.—*Residence requirements by percent of States in regions, place where voter must reside for period indicated*

Required duration of residence		In State				In county				In district ¹					Other ²				
		N	E	N	C	S	W	N	E	N	C	S	W	N	E	N	C	S	W
Years	2				19														
	1	67	50	81	77			19				7							
Months	6	33	50		23			50		11		12		43			7		
	5																		
	4																		
	3					11			7½			7					7		
	2					11	25	12	31			12	7½	23					
Days	40					11	17	7	7½	11	8	7	8 15½		8				
	30																		
	15								31	11	50	30	31		17			7½	
	10												15½						
No requirement						67	41	12	23	67	17	25	23	23	75	86	92½		

¹ Election district, precinct, or ward.² Township, municipality, town, or city.³ Includes 1 State requiring 54 days.

Regions: NE (Northeast), NC (North Central), S (South), and W (West) according to Census Bureau definitions.

The most severe State residence qualifications, 2 years, are required by Alabama, Mississippi, and South Carolina. The most severe county residence provisions, 1 year, are in effect in Alabama, Louisiana, and South Carolina. The most stringent district residence requirement, 1 year, is demanded by Mississippi.¹⁶

Despite the wide disagreement as to the proper duration of residence, the States generally agree as to definitions. Most election codes define "residence" for voting purposes as referring "to one's permanent abode, to the location from which one has no present intention of moving and to which one intends to return after temporary absence. For a married man, the place where his family resides is usually considered his residence unless he and his wife are separated and maintain separate homes. For a single man, the place where he sleeps is usually regarded as his residence. One cannot have two residences for the purpose of establishing voting rights, for as soon as one place is claimed as residence, the right to claim a second is relinquished."¹⁷

¹⁶ While these States—Alabama, Mississippi, South Carolina, and Louisiana—are among the six with the lowest percentage of potential voters voting in the 1956 election, factors other than residence requirements are relevant. Ibid. Nevertheless, the American Heritage Foundation maintains, "There is a close correlation between the voting rank of States and their election laws."

¹⁷ Smith, Constan E. Voting and election laws. New York, Oceana Publications, 1960. p. 14. The last sentence may appear too elementary for consideration until one learns that under 19th century British practice, in parliamentary elections, a person could vote in more than one ordinary constituency if he was qualified by tenure of property in several places. "Rich electors who had more than one vote could vote in a number of different constituencies, so long as elections were spread over a period of several days * * *." MacKenzie, op. cit., p. 30.

Temporary absence does not deprive an elector of his residence. All election codes preserve the residence status of persons in the Armed Forces or in service agencies connected with the Armed Forces. Most States provide that no person shall lose or gain residence status because of absence while employed by the Federal Government. Similarly, most election codes provide that electors who are employed in navigation or who are attending a school, college, university, or other institution of learning retain their residence rights.¹⁸

Conversely, members of the Armed Forces do not acquire residence by virtue of being stationed at a military establishment within a State. The States early learned that "there was great danger in permitting these men to vote in the localities where they might be situated, because frequently it would happen that a large enough number would be in the vicinity of a town completely to dominate and control local politics."¹⁹ This does not work any considerable hardship upon military personnel since all States now provide them with absentee balloting privileges. These privileges are usually extended to their wives and dependents as well.²⁰

Students attending institutions of learning similarly may not acquire residence thereby. "Ordinarily they have no intention of establishing permanent residence, and their interest in local politics is but transitory."²¹ In 1845 this issue was brought to the attention of Congress because of a contested election involving some Princeton students. A committee of the House of Representatives produced a report covering all aspects of the subject.²²

Inmates of public or private institutions usually do not establish residence thereby. Domicile recognition is granted in some States, however, to persons in soldiers', sailors', and old-age homes.²³

Estimates of disfranchising effects

The exact number of persons disfranchised by residence requirement laws is not available nor, indeed, are accurate computations possible under present conditions. The States themselves keep no records. The Bureau of the Census publishes estimates of population mobility but these are not easily translatable into meaningful statistics.

It is the common characteristic of residence requirements that they disqualify only temporarily, usually for no more than one election. At least one writer, therefore, considers this "a minor type of disqualification that disfranchises relatively few."²⁴ Other students of the subject disagree with this estimate. Harold F. Gosnell, for example, wrote in 1948: "There is no question that the residence requirement disfranchises large elements, particularly in a period of economic depression when there are many migratory laborers seeking jobs, or in a war boom period when workers are attracted from their former homes to war industry centers."²⁵

More concretely, a survey of nonvoting in Chicago in 1924 by Merriam and Gosnell disclosed that 5.2 percent of the nonvoters interviewed "claimed that insufficient legal residence kept them from the polls."²⁶ Twenty-eight years later other investigators found that, in the election of 1952, "12 percent of the people who reported that they had not voted said they were disfranchised because of inability to meet [residence] requirements; in terms of total population, this means 3 out of every 100 adults living in private households * * *."²⁷ Comparing these reports, Lane concludes that the number of persons disfranchised by such requirements is on the rise.²⁸

¹⁸ Smith, *op. cit.*, p. 14-15; Graves, N. Brooke. *American State government*. 4th ed. Boston, D. C. Heath and Company, 1953. P. 115.

¹⁹ Porter, *op. cit.*, p. 146.

²⁰ U.S. Department of Defense. *Office of Armed Forces Information and Education*. 1960 voting information. 107 pp.

²¹ Porter, *op. cit.*, p. 146.

²² U.S. Congress. House of Representatives. Committee on Elections. Report * * * John Cessna vs. Benjamin F. Meyers. 42 Cong., 2d sess. Report No. 11. See also, McCrary, George W. A treatise on the American law of elections. Keokuk, Iowa, R. B. Ogden, 1875. Pp. 34-35, and *passim*.

²³ Goodman, William. The two-party system in the United States. 2d ed. Princeton, D. Van Nostrand, 1960. P. 241; Smith, *op. cit.*, p. 15.

²⁴ McGovney, Dudley O. The American suffrage medley * * * Chicago, University of Chicago Press, 1949. P. 54.

²⁵ Gosnell, Harold F. *Democracy, the threshold of freedom*. New York, Ronald Press, 1948. P. 114.

²⁶ Merriam, Charles E. and Harold F. Gosnell. *Non-voting; causes and methods of control*. Chicago, University of Chicago Press, 1924. Pp. 78, 79.

²⁷ Campbell, Angus, Gerald Gurin, and Warren E. Miller. *The voter decides*. Evanston, Ill., Row, Peterson, 1954. P. 37.

²⁸ Lane, Robert E. *Political life; why people get involved in politics*. Glencoe, Ill., Free Press, 1959. P. 315.

Others agree. Constance Smith writes: "One has only to look at the statistics of population movement in the United States, especially during and since the Second World War, to know that the problem of disfranchisement of sizable portions of the electorate can only become more acute unless residence requirements are reduced to reasonable limits."²⁹ And V. O. Key observes: "The geographical mobility of the American population gives the residence requirement a greater significance than might be supposed. In the early 1950's annual census surveys showed that between 3 and 4 percent of the people lived in a different State than they had 1 year earlier; roughly the same proportion lived in a different county of the same State than it had 1 year earlier."³⁰ Both Key and Smith estimate that residence requirements probably exclude more than 5 percent of the potential electorate from the ballot.³¹

If the educated guesses published in recent years are to be trusted, the rising trend of disfranchisement postulated by Lane and Smith is clearly documented. Ralph Goldman claims that a conservative figure for 1954 would be 5 million, or about 5 percent of the eligible voters.³² The American Heritage Foundation estimates that 6 million were disqualified because of residence requirements in 1956, or about 6 percent of the eligible voters.³³ And in 1960 the foundation said 8 million otherwise eligible voters would be disfranchised, about 7½ percent.³⁴

Whatever the accuracy of these estimates, the facts of American internal migration are undeniable. Americans have always been extraordinarily mobile. In measuring this phenomena on the Census Bureau has discovered that, in 1850, 24 percent of the population was residing in a State other than the one of birth. The figure dropped to 20.6 in 1900, but afterward moved steadily upward, except for 1940. In 1950 it was 25.2 percent.

About 1 out of every 5 Americans moved from one location to another at least once in 1957, according to Census estimates, and 14 percent of these moved from one State to another. Of the 171 million civilians 1 year old and over in the United States in April 1959, about 19.2 percent had moved to another house during the previous year. About 13.1 percent had changed residence within their counties; another 3.2 percent had moved from one county to another within their States; and about 3 percent of the total population had moved from one State to another.³⁵ This bustling internal mobility is probably greater than that in any other country in the world, except perhaps in totalitarian states practicing forced migration.

Who are these movers? What kinds of people are likely to be the targets of residence disqualifications? We have already mentioned migratory labor and the shifts caused by war industries. We have also mentioned the effect stringent residence requirements were expected to have upon Negro voting. In this connection Gosnell has written: "It is notorious that the Negro agricultural laborers are in a precarious economic position in the South, and that they seek to improve their lot by making changes. Each change constitutes a barrier to voting."³⁶

While not denying the effect of residence requirements upon these groups, other observers assert that professional and business people are among the hardest hit. Raymond Moley claims that "great corporations engaged in manufacturing or oil production and distribution or chainstores must of necessity shift managers, salesmen, and other executives constantly."³⁷ And the Saturday Evening Post recently observed: "By and large, the 'lost voters' * * * are the better educated, more informed people who reasonably could be expected to ballot with the welfare of the Nation in mind and not for selfish reasons."³⁸

²⁹ Smith, op. cit., p. 16.

³⁰ Key, Valdimer O. Politics, parties, and pressure groups. 4th ed. New York, Crowell, 1958. P. 669.

³¹ Ibid., Smith, op. cit.

³² Goldman, Ralph M. Move—lose your vote. National municipal review, January 1956: 6.

³³ American Heritage Foundation undated release [probably Nov. 27, 1956]. See also, 17,000,000 barred, vote study finds. New York Times, Nov. 28, 1956: 24.

³⁴ American Heritage Foundation undated release [November 1960].

³⁵ Information gathered from various publications of the Bureau of the Census: Statistical abstract of the United States, 1960, pp. 36-37; Mobility of the population of the United States, March 1957 to 1958, series P-20, No. 85; Mobility of the population of the United States, April 1958 to 1959, series P-20, No. 104; Historical statistics of the United States, p. 41.

³⁶ Gosnell, op. cit., p. 115.

³⁷ Moley, Raymond. The disfranchised. Newsweek, Nov. 21, 1960: 116.

³⁸ Are you barred from the polls by obsolete laws? Saturday Evening Post, Nov. 12, 1960: 10.

Recent Census Bureau tabulations tend, at least partially, to confirm this point of view. Of the major occupation classifications listed by the Bureau, professional and technical personnel made up the third largest group of owners. The largest group of migrants were what the Bureau calls "operatives and kindred workers," i.e., semiskilled and apprentice workers, while the second largest group consisted of craftsmen and foremen. Large numbers of migratory farm laborers are also affected.³⁹

Pros and Cons

No competent authority completely denies the merit of some sort of residence requirements for voters. The theorist may declare, as one has, that "the requirement of special residence for the exercise of the franchise is not compatible with the pure quality of democracy." But he will almost certainly hasten to add that "from the standpoint of the Government it is necessary because only those will look after the consequences of their policies who have to face them. The homeless agitator, now here, now there, will not assume such responsibility."⁴⁰

The justification for these requirements is divided into three major propositions:

- (1) Residence requirements help to prevent fraud.
- (2) Voters should have sufficient time to acquaint themselves with local candidates and issues.
- (3) It is more likely that after a period of residence a voter will acquire a stake in community affairs sufficient to encourage responsible voting.

Fraudulent voting practices are undeniably deterred by residence requirements. Even the United Kingdom, with one of the most liberal residence laws in the world, has found it expedient since 1949 to require 3 months' residence in the constituencies of Northern Ireland because of the risk that the balance in some marginal districts might be upset by voters brought across the border.⁴¹ In American practice, the importation of "floaters" into close districts where a few voters may turn the tide is not unknown.⁴² Residence requirements tend to discourage such tactics.

The demand that a person shall become acquainted with the candidates and issues upon which he will pass judgment at the polls is also a reasonable one. The ideal of a democratic system is not merely that each member of the society should vote, but that each member should cast an intelligent and knowledgeable vote. Residence requirements ensure that a voter has had sufficient time to appraise the local situation and to inform himself about its intricacies.

Finally, it is expected that after a reasonable period of residence the prospective voter will have acquired some material stake in the well-being of the community. His vote, it is hoped, will be tempered by responsibility and by the realization that his own long-term interests are involved. Braunnias' "homeless agitator" is thus circumvented, and the influence of the stable element in the community is enhanced.

Responsible critics of our present residence requirement situation make both direct and indirect rebuttal to the arguments cited above. They call attention to the general trend in the development of suffrage in this country. That trend has been toward a widening of the electoral base. The 1830's marked the end almost everywhere of the traditional property limitations. The new States west of the Alleghenies, where social class differences were at a minimum, marked their admission with practically universal suffrage for white men, and the tendency was rapidly carried back into the original States. The enfranchisement of Negroes after the Civil War and the extension of women suffrage to all States in 1920 continued that trend. Unjust, unreasonable, and discriminatory residence requirements are relics of less democratic days. They run contrary to the mainstream of American suffrage development.

Granted that there is some justice in a domicile requirement, the crucial question arises as to what is a reasonable length of time? The problem of fraud is at least partially solved by an efficient registration system. A brief rather than a lengthy period of residence should be sufficient additional safeguard.

³⁹ U.S. Bureau of the Census. *Mobility of the population of the United States*, April 1958 to 1959. Series P-20, No. 104. P. 23.

⁴⁰ Braunnias, as paraphrased by Gosnell, *op. cit.*, p. 114.

⁴¹ MacKenzie, *op. cit.*, p. 23.

⁴² Gosnell, *op. cit.*, p. 110; Beard, Charles A. *American government and politics*. 10th ed. New York, Macmillan, 1949. P. 554.

Local issues are not so complex that an alert and reasonably intelligent potential voter could not prepare himself for a decision on candidates and issues within a similarly brief period. And even if local issues are so complex, it does not follow that when a person moves across the street and thereby into a different precinct or district he loses his competence as a voter.⁴³ Similarly, removal from one county to another within a State may throw suspicion upon a voter's immediate competence to judge his new county's affairs, but it does not affect his knowledge of State candidates and issues. Finally, in this day of improved communications and growing homogeneity of the Nation, what relation has length of residence in any particular State to knowledge about candidates for President and Vice President?

The groups disfranchised by residence requirements have been described above. These are all worthy members of our society who are being discriminated against simply because of a migratory accident. The person temporarily disfranchised by the State in which he is establishing a new residence is still a citizen of the United States. He may be otherwise qualified in every reasonable respect; yet he is denied the right to vote. Legal restrictions, Morris S. Ogul reminds us, "are necessary if honest, efficiently conducted elections are to be held. However, the object * * * should be * * * to facilitate voting as well as to raise barriers to the exercise of the franchise."⁴⁴

Finally, there is a basic injustice in the wide variety of statutory residence requirements from State to State. Why should a State require a citizen who moves into that State to wait 2 years before voting for national officials, while other States are satisfied with 6 months' residence?

These and similar objections have been voiced by numerous organizations and individuals. The American Heritage Foundation, a nonpartisan organization active for many years in get-out-the-vote campaigns, lists reduction of residence requirements as its No. 1 reform recommendation. At one time the foundation favored 6 months' State and 60 days' county residence. In its latest release the foundation recommends: "Reduce State residence requirements for voting for President and Vice President to 40 days; and to 6 months for other elections."⁴⁵

The National Institute of Municipal Clerks created a committee on uniform election laws in May 1952. A year later this committee recommended that the institute urge the Federal Government "to act to make it possible for 'inter-state movers' to vote" in elections of officials of the Federal Government.⁴⁶ The institute adopted the report.

The National Association of Secretaries of State has been concerned with the problem since 1953. At its Seattle convention of that year the association approved a model proposal, based upon recent Connecticut legislation, that would permit former residents of a State to vote for President and Vice President in that State until they have qualified under the residence requirements of their new domicile.⁴⁷ A special association committee recommended similar action in a report to the 1957 annual meeting.⁴⁸ At its 1960 convention in New York the association again went on record in favor of a relaxation of State residence requirements for voters, after listening to an address favoring such relaxation by New York Gov. Nelson A. Rockefeller.⁴⁹

Like the Secretaries of State Association, the General Assembly of the States, one of the organizations serviced by the Council of State Governments, has opposed Federal legislation in this area, urging the States to handle the problem themselves. In December 1952, the Eleventh General Assembly recommended that

⁴³ The severity of precinct requirements may be more apparent than real. Local election judges have been known to interpret the law quite broadly. It is reported that in the 50th precinct of Chicago's 2nd ward there were only 22 residents at the time of the November 1960 elections, but 84 votes were cast. The election judges explained that slum-clearing demolition had forced many persons to move from the precinct. (The judges said they had permitted these relocated residents to vote. GOP Chicago vote aide charges "white wash." Washington Post, Nov. 24, 1960: A2.)

⁴⁴ Ogul, Morris S. Residence requirements as barriers to voting in presidential elections. *Midwest journal of political science*, Aug. 1959: 254.

⁴⁵ Suggested election reforms, in extension of remarks of Hon. Jacob K. Javits, Congressional Record, Mar. 5, 1959 [daily ed.] p. A1768; American Heritage Foundation undated release [Nov. 1960].

⁴⁶ Ogul, op. cit., p. 256.

⁴⁷ National Association of Secretaries of State. Thirty-sixth annual conference. [Proceedings.] Seattle, Wash., Aug. 26, 27, 28, 29, 1953. Pp. 10-29.

⁴⁸ Davis, I. Ridgway. Re appraisal of the residence requirement for voters. *Social science*, Jan. 1960: 34.

⁴⁹ Residence hurdles for voters scored. *New York Times*, Aug. 27, 1960: 6; State secretaries ask voting reform, *New York Times*, Aug. 28, 1960: 27.

the organization concern itself with absentee voting legislation "including draft proposals to prevent the loss of voting rights by persons who move from one State to another thus becoming disenfranchised."⁵⁰ A draft of suggested legislation was approved in 1953 by the Drafting Committee of State Officials, another affiliate of the Council. (See appendix.) The model is patterned after the Connecticut law.⁵¹ The drafting committee also recommended that "all States initiate action looking to the establishment of a residence requirement for voting purposes which does not exceed 1 year and which would preferably be the specific period of 6 months. This recommendation applies to all voting, and not just to voting in a national election."⁵²

Many Members of Congress have expressed concern over the current state of residence requirements, among them Representatives Laurence Curtis of Massachusetts, Byron L. Johnson of Colorado, George H. Bender of Ohio, and Senator Jacob K. Javits of New York.⁵³ (See Congressional Action below.)

Numerous political scientists and other scholars have been critical of the stringency of residence qualifications, including Dudley O. McGovney, Robert E. Lane, Hugh A. Bone, Constance Smith, Clyde F. Snider, Dayton David McKean, Harold F. Gosnell, Henry Steele Commager, Ralph M. Goldman, Morris S. Ogul, and I. Ridgway Davis.⁵⁴ McGovney has suggested a constitutional amendment setting residence requirements at 6 months in the State and 3 months in the voting precinct.⁵⁵ (See appendix.)

Editorials appeared this year in *Life* and the *Saturday Evening Post* urging modernization of election laws and the reduction of residence requirements.⁵⁶ The lead editorial in the *Washington Post* of August 27, 1956, decried the "appalling loss of citizen participation" because of residence disqualifications and argued for a uniform law. Raymond Moley recently devoted a column to criticism of "our absurd and obsolete" election laws. "It seems to me," he wrote, "that Federal legislation might be held constitutional which would permit every qualified American citizen to cast a vote for President and Vice President where he has lived for 30 days."⁵⁷

The public's reaction to the problem of residence requirements was measured by the American Institute of Public Opinion in 1959. A nationwide sample was asked: "Would you approve or disapprove of a law which would require not more than 6 months' residence in any State to be eligible to vote in all elections in that State?" The institute reported the following results:⁵⁸

	Percent
Approve-----	72
Disapprove-----	22
No Opinion-----	6

Contemporary trends in State legislation

During the past decade a perceptible movement toward the easing of residence requirements has developed. Only a small number of the States are at yet involved and the remedies adopted are sometimes conflicting, but steps have nevertheless been taken on three broad fronts.

One direction of change simply involves reducing the period of residence required within a State's jurisdiction. In recent years Louisiana and Rhode Island have lowered their requirements from 2 years to 1, and New Jersey reduced its State residence demand from 1 year to 6 months.

A second movement of reform has concentrated upon those residence requirements completely barring from the polls otherwise qualified voters who have moved from one part of the State to another. Alabama, which ordinarily requires 3 months' residence in a precinct or ward now permits otherwise quali-

⁵⁰ Drafting Committee of State Officials. Suggested State legislation program for 1955. Chicago. Council of State Governments, 1954. p. 77.

⁵¹ *Ibid.*, p. 79.

⁵² *Ibid.*, p. 78.

⁵³ Congressional Record [dail ed.], June 25, 1953; A4048-4049; Mar. 5, 1959: A1768; Jan. 27, 1959: 1936-1327.

⁵⁴ See previously cited works, and: Commager, Henry Steele. Why almost half of us don't vote. *New York Times* magazine, Oct. 28, 1956: 16; Snider, Clyde F. *American State and local government*. New York, Appleton-Century-Crofts, 1950. Pp. 102-103.

⁵⁵ McGovney, op. cit., p. 181.

⁵⁶ Let's not penalize mobility. *Life*, Nov. 14, 1960: 41; Are you barred from the polls by obsolete laws? *Saturday Evening Post*, Nov. 12, 1960: 10.

⁵⁷ Moley, op. cit. For a rebuttal of this position, as well as a similar one advanced by Ralph M. Goldman, see *Constitutionality of Federal Legislation* below.

⁵⁸ Public would "re-enfranchise" 10 million now denied ballot. American Institute of Public Opinion release, June 13, 1959.

fied electors who have moved to a new precinct or ward in the same county, town, or city within 3 months of an election to vote in their former precincts.

Broader reforms involving movement between counties have been adopted by at least eight other States. Otherwise qualified intrastate migrants in these States may cast their ballot for State and National offices at their previous addresses if they have not met local residence requirements by election day. Thus, in California a voter retains the right to vote at his former residence if he moves to another county during the 90 days preceding an election. In North Dakota, South Dakota, and Maine the statutory grace period is 3 months. In Massachusetts, Maryland, and Connecticut it is 6 months, and in Ohio it is 40 days.

The third type of reform has attempted to restore to otherwise qualified individuals who have moved from one State to another the right to vote for Presidential and Vice Presidential electors.

Two types of legislation have been enacted. The first was passed by Connecticut in 1953. It declares that any person who has been registered as a voter in a town of the State and has moved to another State may vote, by absentee ballot, in his previous residence. He may vote only for Presidential and Vice Presidential electors and only within a 24-month period after he has moved, provided he has not become a qualified voter at his new residence.⁵⁹ In 1957, Vermont adopted a similar measure. It specifies a 15-month retention period, and adds the proviso that those wishing to take advantage of the act "must file with their town or city clerk a written declaration of intention to retain such Vermont residence for the purpose of casting a vote for Presidential and Vice Presidential electors."⁶⁰

A second, and somewhat conflicting, approach was first adopted by Wisconsin in 1954. This method waives all or part of the State's normal residence requirements for new residents who wish to vote for Presidential and Vice Presidential electors.

The Wisconsin statute declares:

"A person who has been a resident of this State for less than 1 year prior to the date of a Presidential election shall be entitled to vote for Presidential and Vice Presidential electors in such elections but for no other offices, providing he was either a qualified elector in another State immediately prior to his removal to this State or would have been eligible to vote in such other State had he remained there until such election, and provided further that he would be a qualified elector under section 601 except that he has not resided in the State for 1 year."⁶¹

Section 601 states that the person must be 21 years old, a resident of the State for 1 year and of his precinct for 10 days. In effect, therefore, otherwise qualified but newly resident persons in Wisconsin may vote for President and Vice President after 10 days residence in one of the State's precincts.

Davis describes the mechanics of the Wisconsin procedure as follows:

"The new voter must appear before an election official and submit a certified statement from the municipal clerk of his former residence as to his qualifications to vote. The prospective voter must also present an affidavit certifying his qualifications from two freeholders in his Wisconsin voting precinct. Here, again, a special procedure is established and special ballots used. The new voter must cast his ballot in the presence of a Wisconsin election official. Secrecy is maintained, since the voter casts his ballot in such a manner that the election official cannot see how it is marked."⁶²

Three States have followed Wisconsin's lead. In 1958 the voters of California and Missouri approved amendments to their State constitutions to grant new residents the right to vote in presidential elections. The California amendment authorized the State legislature to extend this right to otherwise qualified persons who have resided in California for at least 54 days (the normal precinct requirement). Missouri's Constitution now permits a person to vote for President and Vice President after residing in the State at least 60 days. Ohio voters amended their constitution in 1957 so as to authorize the legislature to extend similar privileges to new arrivals in that State. The legislature passed implementing statutes in 1959, and otherwise qualified persons may now vote for

⁵⁹ The original act specified a 15-month period, amended to 24 months in 1957. Davis, *op. cit.*, p. 38 n.

⁶⁰ *Ibid.*, p. 35.

⁶¹ West's Wisconsin statutes annotated, sec. 9.045.

⁶² Davis, *op. cit.*, p. 35. The freeholder-affidavits requirement was abolished in 1957.

Presidential and Vice Presidential electors in Ohio provided they have resided in the State at least 40 days.

The legislatures of at least four other States have considered and rejected bills to enfranchise new residents who might otherwise lose their vote for President: Arizona, Colorado, Massachusetts, and New York.⁶³ The Secretary of the State of New York has declared that a measure modeled on the Wisconsin plan will again be recommended to the State legislature.⁶⁴

Oregon's residence provisions are unique. As of the 1960 election a voter was qualified if he had resided 6 months in the State and if he resided in the precinct in which he registered. In the 1960 election, Oregon voters approved a constitutional amendment authorizing the legislature to permit otherwise qualified persons who have resided in the State for less than 6 months to vote for presidential candidates.⁶⁵

In summary, two States—Connecticut and Vermont—permit former residents to cast absentee ballots for President and Vice President, while five States—Wisconsin, California, Missouri, Ohio, and Oregon—waive their normal residence requirements so that new residents may vote for presidential electors.

Both the Connecticut and Wisconsin approaches are limited to presidential elections for constitutional as well as practical reasons. The Constitution of the United States leaves the entire method of election of Presidential and Vice Presidential electors to the States.⁶⁶ But the States cannot constitutionally waive residence requirements for voters in the election of Members of Congress unless they also waive such requirements for the election of members of the most numerous branch of their legislatures.⁶⁷ Thus the States are unlikely to do since it is in regard to the latter that the argument for a period of residence in order to become familiar with local issues assumes its greatest force.⁶⁸

The Connecticut plan has one great advantage: The voter is at all times eligible to vote for President and Vice President. He retains that eligibility in his original State of residence until the very day he becomes qualified in his new State. Furthermore, if all States were to adopt this system, no State would be required to relax its other residence requirements.

Connecticut's system might prove unsatisfactory in two ways. First, new residents might be encouraged to postpone acquiring familiarity with local political conditions. Secondly, some persons might be discouraged by a cumbersome absentee ballot procedure.

One principal disadvantage impairs the Wisconsin approach. Some interstate migrants would still be unable to vote because they could not meet even the minimal residence requirements, although the number of such persons would admittedly be very small.

The Council of State Governments' affiliates and the National Association of Secretaries of State, as noted above, have approved model proposals based upon the Connecticut legislation.

From one point of view the Wisconsin and Connecticut laws conflict with each other. A qualified Connecticut voter who moves to Wisconsin is embarrassed with riches. He may continue to vote in presidential elections in Connecticut by absentee ballot until he fulfills the normal Wisconsin residence requirements. Or he may take advantage of the waiver provisions of Wisconsin law after 10 days. On the other hand, a Wisconsin resident who moves to Connecticut derives no benefit from either State's special laws. He must now complete 1 year's residence in the State and 6 months in a town before he can vote in any election.

At least two writers have suggested an alternative to both the Wisconsin and Connecticut approaches. Goldman recommends that "the States among themselves might adopt a reciprocal-recognition system that would make obstructive residence requirements obsolete."⁶⁹ Ogul suggests more concretely that "the ideal solution * * * might be a model State registration system adopted by all of the States with each one granting reciprocity at least for presidential elections."⁷⁰

⁶³ *Ibid.*, p. 37; Dickinson, William B., Jr. Voting in 1960. Editorial research reports, v. 2, No. 11, Sept. 21, 1960: 694.

⁶⁴ State secretaries ask voting reform. New York Times, Aug. 28, 1960: 27.

⁶⁵ Dickinson, *op. cit.*, p. 694 n.; see also, United Press International story, Washington Post, Nov. 11, 1960: A8.

⁶⁶ Article II, section 1, clause 2.

⁶⁷ Article I, section 2, clause 1, and Amendment XVII.

⁶⁸ Unless one believes in straight-ticket party voting.

⁶⁹ Goldman, *op. cit.*, p. 46.

⁷⁰ Ogul, *op. cit.*, p. 262.

Congressional action

On March 22, 1954, during the 2d session of the 83d Congress, Representative Laurence Curtis of Massachusetts introduced House Concurrent Resolution 218, dealing with the subject of residence requirements for voting. In its original form, the resolution proposed that Congress recommend to the States "the immediate enactment of appropriate legislation to enable a person to vote for Federal officials, when such person would be eligible to vote for such Federal officials but for the residence requirements of the State in which he is residing."⁷¹ The resolution was reported by the Committee on House Administration. On August 5, 1954, unanimous consent was requested for its immediate consideration, but objection was heard.⁷² On August 9, the resolution was successfully called up. A committee amendment attaching an explanatory preamble was accepted, as was a revision of the body of the resolution to broaden its application to all, not just Federal, elections. In addition, the word "suggests" was substituted for "recommends" and "consideration" was inserted in lieu of "immediate enactment." In this form the concurrent resolution was agreed to by the House. It died in the Senate.⁷³

Mr. Curtis reintroduced his proposal in the following Congress as House Concurrent Resolution 94. It passed the House on June 30, 1955.⁷⁴ The Senate agreed to the resolution on January 16, 1956.⁷⁵ The final text read as follows:

"Whereas many citizens are deprived of the right to vote because they have recently moved from one State to another and have not subsequent to such move complied with the residence requirements of the State to which they have moved; and

"Whereas it is desirable that citizens should be entitled to vote for the office of President and Vice President whether or not they had moved from one State to another; and

"Whereas such disfranchisement could be avoided by reciprocal arrangements between the several States which would recognize the right of a citizen who had moved from one State to another to continue to vote in the State from which he had moved for such reasonable period of time as would enable him to fulfill the residence requirements in the State to which he had moved: Therefore be it

"Resolved by the House of Representatives (the Senate concurring), That the Congress expresses itself as favoring, and recommends to the several States the consideration of appropriate legislation to enable a person to vote for President and Vice President when such person would be eligible to vote but for the fact that he had moved from one State to another and had not yet fulfilled the residence requirements of such State to which he had moved."⁷⁶

Note that the third paragraph of the resolution appears to endorse State legislation similar to the Connecticut model.

Congress has taken no further action in this field. Two resolutions were introduced during the 1st session of the 86th Congress but neither was reported out of committee. One was introduced on February 17, 1959, by Senator Pat McNamara of Michigan. It called for a constitutional amendment prescribing maximum qualifications for voting in Federal elections as (1) citizenship, (2) age 21, and (3) 1-year residence in a State.⁷⁷ On September 10, 1959, Representative John Brademas of Indiana introduced House Joint Resolution 524 which proposed a constitutional amendment restricting State voter qualifications to those of "nonage, nonresidence, or imprisonment."⁷⁸

*Constitutionality of Federal Legislation*⁷⁹

May Congress regulate by legislation the residence qualification of voters in Federal elections? Apparently it may not. Other than unenforceable recommendations to the States, such as House Concurrent Resolution 94, 84th Congress, described above, it would appear that an amendment to the Constitution of the United States is the only method available to Congress for modifying such requirements.

⁷¹ Congressional Record, 83 Cong., 2 sess., Aug. 5, 1954: 13468-13469.

⁷² *Ibid.*

⁷³ Congressional Record, 83 Cong., 2 sess., Aug. 9, 1954: 13816.

⁷⁴ Congressional Record, 84 Cong., 1st sess., June 30, 1955: 12395-12396.

⁷⁵ Congressional Record, 84 Cong., 2 sess., Jan. 16, 1956: 533.

⁷⁶ 70 Stat. 84.

⁷⁷ S.J. Res. 51. Digest of Public Bills, 86 Cong., 1 sess., final issue, 1959, p. B-4.

⁷⁸ *Ibid.*, p. F-30.

⁷⁹ This section is based largely upon a previously prepared memorandum by Mollie Z. Margolin of the American Law Division, Legislative Reference Service.

Under the terms of article I, section 2, clause 1, and amendment XVII of the Constitution, the people of the several States are guaranteed the right to vote for Representatives and Senators.⁸⁰ But in both instances the Constitution states further that "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature(s)." Thus, while the States may not directly prescribe the qualifications of voters for Members of Congress as such, the qualifications the States prescribe for electors of the most numerous branch of their legislatures are adopted by the Constitution for this purpose.

The Supreme Court of the United States discussed the point in *Ex parte Yarborough* (110 U.S. 651, 663):

"The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the population branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for members of Congress."

It would appear, therefore, that the right to vote for Members of Congress is derived from the United States Constitution, and Congress may legislate to protect the rights of those who qualify under State law. But Congress may not legislate as to the qualifications of the voters since this power is given by the Constitution to the States. As in the case of the 15th and 19th amendments, which forbid the States to deny any citizen the voting privilege on account of race, color, previous condition of servitude, or sex, it would require a constitutional amendment to effect any change in the residence requirement for electors of Senators and Representatives.

Insofar as the election of the President and Vice President is concerned, article II, section 1, clause 2 of the Constitution of the United States provides:

"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress. * * *

The word "appoint" in this clause has been interpreted in its broadest sense. Thus, the appointment and mode of appointment of Presidential and Vice Presidential electors are said to belong exclusively to the States.⁸¹ If this be so, in a State which selects as its mode of appointment election by the people, the qualifications of the voters are part of this mode. Such qualifications are therefore State responsibilities reserved to them by the Constitution.

APPENDIX

DRAFTING COMMITTEE OF STATE OFFICIALS

SUGGESTED LEGISLATION

[Title should conform to state requirements. The following is a suggestion: "An Act Concerning the Temporary Retention of the Elective Franchise by Electors Who Have Removed from the State."]

(Be it enacted, etc.)

Section 1. Each person who is properly registered as an elector in any [election] [voting] district in this state and who has removed to another state shall retain his right to vote for presidential electors to be nominated or elected, or for President and Vice President of the United States in any preferential or other direct primary election for nomination or preference of candidates for said office, and not other wise, in the [election] [voting] district from which he has removed, for a period of [fifteen months]¹ after such removal, provided he shall not, during such period, have become an elector in such other state. The provisions of this section shall be in addition to and not in substitution for any voting rights otherwise enjoyed by an elector of this state.

⁸⁰ See, *Wiley v. Sinkles* (1900), 179 U.S. 58, 62; *Swafford v. Templeton* (1902), 185 U.S. 487, 492; *U.S. v. Aczel* (1915), 219 Fed. 917, 929.

⁸¹ *McPherson v. Blacker*, 146 U.S. 1, 27, 35.

¹ The period should be sufficient to acquire voting residence in new state.

Source: Suggested State legislation program for 1955. P. 79.

Section 2. Votes cast in accordance with the provisions of this act shall be by absentee ballot, the form of which shall be prescribed by the Secretary of State pursuant to the provisions of [Insert reference to law governing absentee voting in general].

Section 3. [Insert penalty provisions, if desired, regarding double voting.]

Section 4. [Insert effective date.]

SUGGESTED CONSTITUTIONAL AMENDMENT

"SECTION 1. Every citizen of the United States of the age of twenty-one years or older who has resided in any State or Territory six months and in the voting precinct three months, immediately before offering to vote, shall be entitled to vote at any primary election or other election therein, in which candidates for any public office are nominated or elected, except that the privilege of voting shall not extend to persons in confinement for crime nor to persons adjudicated unsound of mind.

"SECTION 2. Congress shall have power to enforce this Article by appropriate legislation."

Source: McGovney, Dudley D. *The American suffrage medley* * * *. Chicago, University of Chicago Press, 1949. P. 181.

(The following is reprinted from *Good Housekeeping*, July 1960:)

THE IRON CURTAIN AROUND THE BALLOT BOX

(By Eugene Burdick (coauthor of "The Ugly American"))

Most States provide that ex-felons, insane persons, and noncitizens cannot vote in elections. This seems reasonable. But there is a huge group of people who are intelligent and sane, who have not been in prison, and who are citizens—but who cannot vote. They cannot vote for a single reason: they are mobile. No one thinks this is particularly reasonable, but no one is doing much about it. Meanwhile, there are a vast and steadily growing number of Americans who are currently disenfranchised.

Most States require that before you can vote, even for the President of the United States, you must have lived in your State, county, and voting district certain lengths of time. Usually the periods are 1 year in the State, 90 days in the county, and 30 days in the district, but they are much longer in some States. If you merely move across the street 30 days before an election, you can lose your right to vote. Only recently have we come to realize that this antiquated voting requirement is depriving a great many people of one of their most fundamental rights as citizens of the United States—that is, their right to vote.

Take the case of Jim Mainard as an example of how the system works. The name is changed, but the facts are true. Jim, 35 years old and a college graduate with an IQ of 132, is regarded by his corporation as a promising executive. His wife is also a college graduate, and they have three children. Jim was recently transferred from New York to California as the result of a promotion, which also raised his salary to \$9,600 a year. The company plans for Jim to spend 2 years in Los Angeles and then to move to San Francisco and there take over management of its west coast headquarters.

The Mainards were unable to vote for the Governor and U.S. Senator and Congressman in California last year, and this year they will be unable to vote for the President of the United States—to say nothing of the possibility of a whole range of ballot proposition which could affect them very directly. The Mainards—to put it quite bluntly—have been disenfranchised.

"We have been moving around so much," Jim says, "that I haven't voted even once since I left college. To have been able to vote in New York, I would have had to have lived in the State 1 year, the county 4 months, and the district 30 days. I lived in the State 1 year all right, but I was on a training program which moved me from one branch of the company to another, each in a different county. Also, the company, like most large organizations, makes a point of moving you in the middle of the summer so that your children can start the school year without missing time. As a result, we always arrived in the new county in August. This never gave us time to qualify for the 4 months' county residency before the November election rolled around."

Not only do most companies move their executive personnel during the summer, but in many large cities the fall is "moving time." As a result, there is a great flow from the city to the suburbs and from one district within the city to another. Many of these people, unless they have taken elaborate precautions, have found themselves unable to vote when the next election came. This August, when Jim Mainard is transferred to San Francisco, he will again have to meet a county residency requirement in time to vote this year.

This is, you might say, an exceptional situation, one of the tiny, but unavoidable, cases that occur in a complex modern society. You would be wrong. Bureau of the Census Abstracts and Sociological Studies indicate that somewhere between 5 and 10 million people move in the United States every year. Most of these "mobiles," as they are called, will be unable to vote in the year they move. Indeed, it is quite possible that if these people were allowed to vote many State and even presidential elections would turn out differently. Scholars have noted, for example, that presidential elections are usually decided by very narrow margins. Even in the "landslide" choice of President Eisenhower in 1956, if 4 percent of the voters had voted differently, Adlai Stevenson might be President today.

It is not, however, the final result of the elections which causes sociologists and psychologists to be concerned. They are much more worried about the psychological damage to a citizen who is, time after time, denied the right to vote. Part of the American promise, a glowing part of our tradition, driven home to us from childhood, is that each of us can share in the shaping of our political life by casting a ballot. But for utterly trivial reasons we now find millions of citizens deprived of the right to vote.

Who are the people hurt by the invisible wall around the ballot box? In general, they are precisely the people who act in the best American tradition—those who have the gumption to pull up stakes and move to take advantage of new opportunities. William Whyte, author of "The Organization Man," the study of the business executive, has proved that the person who moves most often is usually in the higher income brackets. The authors of "They Went to College" have discovered that the higher the educational level of an individual, the more he will move about the country, seeking the best opportunities.

There are a substantial number of mobiles who do not fit this description, of course. This group is made up of migratory workers; workers in such seasonal jobs as lumber, construction, and dam building; drifters; and a sizable number of what we used to call hoboes. In general, these people, psychologists tell us, have little political interest and little political information. They seldom wish to register, and they seldom vote. However, there is considerable evidence that if there were a simple, easily understood manner of registration their political interest would be stimulated. It is altogether possible that they might be turned into active, participating citizens. We should, in any case, make the effort.

There is a third great group of Americans discriminated against by the present voting laws. This consists of the hundreds of thousands of loyal Americans who make their careers in the Army, Navy, Air Force, or Marine Corps or who spend several years in these branches of the Armed Forces as part of their military obligation. The theory is that a serviceman and his family will keep up political ties in their home State. The simple fact is that many career people never serve in their home State, know little or nothing of its politics, and, at the same time, are denied the right to vote in the localities in which they live. A revision or elimination of the residency laws would allow these people to enter the political life of the communities in which they are stationed.

Residency requirements grew out of the need to prevent rigged elections. Candidates used to organize their supporters like small armies, having them march from poll to poll and vote again and again, giving new name and address at each polling place. Some city machines began to "import" voters. For example, large numbers of voters were brought into Memphis from Arkansas, across the Mississippi River. These "visitors" voted and revoted in the city. In cities such as Philadelphia, it was not unusual to have 60,000 illegal votes cast in a single election. The only restraint on multiple and corrupt voting was the ability of the opposition to stop it. Voting, originally conceived as a right of every citizen, was becoming a right which was exercised in an atmosphere of guerrilla, rowdy, alcoholic warfare.

By 1890 most States were moving to correct these flagrant outrages through a registration procedure calling for a residency requirement, which stated that a voter had to have lived in the State, county, and district a set time. The

residency requirement made sense for two reasons. First, it allowed voting officials to verify the voters by checking their names against the addresses. Second, it was reasonable to assume that it would take a new resident some time to learn the issues and personalities involved in State and local politics.

Today, however, the conditions which made fraudulent voting possible have almost completely disappeared. The big-city boss, for example, no longer has great masses of newly arrived, politically ignorant immigrants to deploy and have vote as he sees fit. Voting officials have also developed sound techniques, along with a corps of people who understand them well. Today both the voting officials and representatives of the political parties watch elections like hawks, ready to pounce at the faintest sign of irregularity.

There are available any number of sensible procedures which would make it possible for newcomers to vote and which would still eliminate fraudulent voting. One ingenious possibility, among many, would take advantage of the rapidity and skill with which modern electronic machinery can handle cards and information. With this system each newcomer would merely identify himself properly when he entered a new State. He would then be issued a voting license, which would indicate the district and county in which he lived. This information would be coded onto a card and kept in the State capitol, along with separate cards for all other voters. At voting time the voter would receive a keyed card, which would tell him where to vote. A duplicate of the card would go to the designated polling place. When the voter moved out of the district or county, he would merely drop his "license" in the mail, indicating his new address, and the machines would automatically assign him to a new precinct. Such a procedure not only would be workable and avoid the ponderous registration procedures now effective in most States, but would, in all probability, be cheaper than the present system.

Today, moreover, it is no longer necessary for a person to have lived a year in a State before he understands its politics. In recent years we have developed our means of communication and education in enormous strides. If a person has been in a State a short time, he has had access to enough information on which to base a political decision—through newspapers, television, and radio and through the activities of such nonpartisan organizations as the League of Women Voters. Also, all candidates and parties go to elaborate pains to put their programs before the voters.

There is every indication that American mobility will increase, rather than decrease, in the future. Air travel is getting even quicker and less expensive. Railways have developed family plans that make it easier to move cross-country. The unrolling of the freeways across America is a constant invitation to the venturesome to strike out for new frontiers. Whole communities of trailers now dot the Nation. Around the cities are thick belts of suburban homes which are built, financed, and designed for a rapid turnover in occupancy. It has become almost effortless for a family to wind up its affairs, move a thousand miles, and set up a new home. The rotation and training plans of big corporations and government agencies, the natural impulse of Americans to move on, the increased ease of moving—all assure sociologists that an increasing number of our population will become mobile.

The need for doing something to protect the voting rights of this growing number of mobile citizens is made more urgent by the fact that this year we will again vote for a President. If the voting laws remain unchanged, at least 5 million intelligent voters will be denied the privilege of casting their ballot.

This is not a party issue. The denied vote cuts across party lines. It is a national issue, and it is time something was done about it on a nationwide basis.

(The following is a study prepared by Walter Kravitz, History and Government Division, Legislative Reference Service, Library of Congress, dated March 28, 1961.)

STATE ACTION TO LOWER THE VOTING AGE, 1943-60

Since the introduction in the 78th Congress, 1st session, of House Joint Resolution 39, calling for a constitutional amendment to extend the right to vote to citizens 18 years of age or older, at least 47 State governments have dealt with the matter of lowering the voting age in one way or another. This report presents a State-by-State survey of such action, followed by a summary of the most important of these.

The information has been compile from a variety of sources. A completely thorough and exhaustive study would require examination of every State journal of the period under consideration. Few of these are available to us, and it would take many months to check those that are. We have, nevertheless, spot-checked some State journals when provided with specific leads from other sources.

Undoubtedly, we have caught only a fraction of the instances in which bills were introduced only to die in committee. But we have included, we believe, every major State action in this field, especially every instance in which the matter was put to a referendum.

Except for West Virginia, specific age qualifications for voting are embodied by all States in their constitutions; any change, therefore, requires a constitutional amendment.¹ Wherever pertinent, the method of amendment is explained below.

Alabama

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. We have no record of any action since 1943.

Alaska

The State entered the Union in 1959 under a constitution approved by a 2 to 1 majority of the voters on April 24, 1956. All citizens 19 years of age and older are entitled to vote.

Arizona

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. We have no record of any action since 1943.

Arkansas

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. In the same year, the lower house approved the resolution 84 to 68, but the senate voted it down, 37 to 15. We have no record of any action since 1943.

California

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. We have no record of any action since 1943.

Connecticut

Proposals to lower the voting age to 18 were introduced in the legislature in 1955 and 1957. In both years the responsible house committee rejected the measures.

Delaware

In 1949 a bill to lower the voting age, H.B. 103, died in committee. In 1951 another house bill was similarly handled, while a senate measure, S.B. 187 was favorably reported but not acted upon. In 1953 a proposal to amend the constitution by lowering the voting age to 18 was passed by the lower house, 30-1; the senate did not act. An identical measure, S.B. 31, was passed by the senate by a vote of 16 to 1 in 1955 and received a 15 to 12 majority in the house, but the latter was less than the required constitutional majority and the bill failed.

Florida

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It was defeated. In 1951, five resolutions to the same effect were introduced. One, H.J.R. 71, received the required three-fifths constitutional majority of the house, by a vote of 77 to 13, on April 18. On April 25 the measure failed in the senate, 9-29. In 1953, three bills were introduced; none gained committee approval. S.J.R. 204, in the legislature of 1955, passed the constitutional test in the senate on April 26 by a vote of 26 to 10, and on the following day a reconsideration motion was defeated, 13-24. In the house the measure was approved by the committee and put on the calendar, but never came to a vote. Measures to lower the voting age introduced in 1957 and 1959 were either pigeonholed or reported unfavorably.

¹ West Virginia's constitution bars minors, the word being defined by statute.

Georgia

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It was passed by the senate on February 11, and by the house on March 3. The electorate ratified the amendment on August 3, 1943, by a majority of better than 2 to 1: yes, 42,284; no, 19,682.

Hawaii

The State entered the Union in 1959 under the constitution of 1950, which lowered the voting age to 20.

Idaho

Measures to lower the voting age were introduced in both houses in 1951, and were defeated. In 1959 a proposal to amend the constitution so as to lower the voting age to 19 received the necessary vote of two-thirds of all members of each of the two houses, voting separately. A referendum was accordingly held at the next general election, that of November 1960. The measure was defeated: yes, 113,594; no, 155,548.

Illinois

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. Similar resolutions were pigeonholed in both houses in 1945, 1947, 1949, 1951, and 1953. In 1955 and 1957 resolutions were brought to the floor of the house, but both were defeated.

Indiana

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. Constitutional amendments must secure majorities in each house in two successive legislatures, plus a vote by the electorate, in order to succeed. A proposal to lower the voting age was passed by the legislature in 1945, but apparently failed in the next legislature. In 1953, a proposed amendment to give the vote to those 19 years of age and older was passed by both houses, but it was rejected by the 1955 legislature.

Iowa

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. Similar resolutions were pigeonholed in 1949, 1953, 1957, and 1959.

Kansas

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee, as did similar measures in 1945, 1947, and 1949. In 1951, another resolution received the vote of a majority in one house, 69-50, but failed to get the required two-thirds vote. In the 1953, 1955, 1957, and 1959 legislatures other resolutions were introduced; none went beyond a second reading.

Kentucky

An amendment to lower the voting age was introduced in the legislature in 1946 but was never reported out of committee. In 1948, 1950, and 1952, similar proposals were released by the committees only to die or be defeated on the floor. In 1954 the legislature approved, by the required three-fifths of the members elected to each house, a proposal to submit to the voters a constitutional amendment to lower the voting age to 18. The referendum took place on November 9, 1955, and the amendment passed.

Louisiana

A proposal to lower the voting age was introduced in the legislature as H. 3 in 1946. It was favorably reported from committee but, on June 21, failed in a floor vote, 32-39. Of three similar measures introduced in the same session, two died in committee and the other was buried in the calendar. In 1948, a proposal to amend the constitution to lower the voting age to 18, H. 101, was reported favorably on June 3, and received a majority vote of the house, 48-39, on June 7. The State constitution, however, requires a constitutional two-thirds vote for amendments, so the measure failed. In 1950 H. 739, and in 1952 S. 27, both proposing a lowering of the voting age to 18, died either in committee or on the calendar.

Maine

Proposals for a constitutional amendment to lower the voting age to 18 were introduced to the legislature in 1943, 1945, 1947, 1951, and 1953. No action was taken on any of them. In 1957, a similar measure was unfavorably reported by the committee and the house upheld the report, 77-34, on April 26.

Maryland

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. A similar proposal died in the house of delegates in 1953. In the following year, 1954, the same measure managed to reach the senate floor, where it was defeated by a vote of 14-14. The State's constitution requires a favorable three-fifths vote of all members of each house to place a proposal on the ballot. In 1957 another attempt to lower the voting age was smothered in committee, despite the support of Governor McKeldin. In 1959 the proposal was reintroduced and, on March 6, was approved by the senate judicial proceedings committee. Three days later, in a test vote, the senate gave the bill a 16-11 majority, but on March 11 it reversed itself and defeated the measure, 15-14. A similar proposal was denied clearance, during the same year, by the house judiciary committee.

Massachusetts

A constitutional amendment was introduced in the general court in 1943 to lower the voting age to 18. It died in committee. Similar proposals were reported favorably but did not come to a floor vote in 1951, failed in committee in 1952, and were again reported favorably but did not come to the floor in 1953.

In his annual message of January 6, 1954, Gov. Christian Herter indorsed the move to amend the constitution to lower the vote to 18-year-olds. In the same year the proposal reached the floor of the senate, but was defeated. In 1955, a similar measure was taken as far as the joint session of the general court, only to fail. In 1956 the State's Governor again recommended lowering the voting age and the matter was again taken as far as a joint session, where it was defeated. In 1958 there was a favorable committee report, but no further action. In 1959 the joint session of the general court again rejected the proposal.

Michigan

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It was defeated. In 1953 four measures were introduced; all died in committee. In 1954, H.J.R. "B," a proposal to lower the voting age to 19, was reported favorably. On the floor the resolution received a 54-38 majority, but failed for lack of the required constitutional two-thirds. Measures introduced in 1955, 1957, and 1959 all died in committee.

Minnesota

Constitutional amendments to lower the voting age to 18 were introduced in the legislature in 1943, 1947, and 1949. They were all either defeated or pigeonholed in committee. In 1953 a similar measure was put to a vote in the house, on March 3. The vote was 63 to 62 in favor, but the measure was nevertheless lost because it did not receive a majority vote of the total house membership. In the same year, a similar senate proposal died in committee.

Mississippi

In 1953 one senate and two house proposals to amend the constitution so as to lower the voting age died in committee. One house resolution was reported, but was not brought up for a vote. On March 4, 1954, the senate rejected a measure designed to lower the voting age to 18.

Missouri

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. We have no record of any action since 1943.

Montana

In 1951, S. 96, a proposal to lower the voting age, was defeated in the senate by a vote of 22 to 26. In 1957, H.B. 41, which proposed lowering the voting age to 18, passed the house 72 to 19, but was rejected by the senate.

Nebraska

Two proposals were introduced in the legislature in 1943 to amend the constitution so as to lower the voting age to 18, L.B. 345 and L.B. 382. Both were lost by postponement. In 1945, a similar measure, L.B. 129, was postponed by a vote of 28 to 10. In 1953, L.B. 201, another proposal, failed to get on the general file. In the 1957 session, L.B. 27, to lower the voting age to 18, died in committee.

Nevada

A joint resolution was introduced in the assembly in 1953 to lower the voting age. It passed that body by a vote of 25 to 18. In the senate the proposal died in committee.

New Hampshire

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. A similar proposal, S. 6, was defeated in the senate in 1951.

New Jersey

A constitutional amendment to lower the voting age to 18 was introduced in the legislature in 1943. It died on the calendar. In 1953 a similar measure, Con. Res. 6, died in committee. In his annual message to the legislature in 1955, Governor Meyner urged that the voting age be lowered to 18. We have no record of any legislative action.

New York

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It was favorably reported and approved by the assembly, 77-59, but the senate failed to vote on the measure. In 1953 a similar proposal, S. 453, was defeated in the senate. The New York Times, on January 21, 1954, reported that Governor Dewey, at a news conference, expressed doubt about the advisability of lowering the voting age. In 1957, Governor Harriman urged the legislature to lower the voting age to 18. A proposal to lower it to 19 was introduced in the legislature but received no action. Governor Harriman repeated his recommendation in his 1958 annual message, without result.

North Carolina

The senate defeated a bill to lower the voting age by a vote of 15 to 30 in 1951. We have no record of any other legislative action.

North Dakota

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. In 1953 a similar proposal was defeated.

Ohio

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. The Congressional Digest, in its March 1954 issue, page 72, stated that "several measures have been defeated on the floor during the past 10 years." In 1958, two proposals to lower the voting age to 18 died in committee, one in each house. In 1959, according to the New York Times, June 12, 1959, the house passed a resolution to lower the voting age to 18, and sent the measure to the senate. Apparently the latter body never acted on the proposal.

Oklahoma

A constitutional amendment to lower the voting age to 18 was introduced in the legislature in 1943. It died in committee. The 1951 session of the legislature passed H.J.R. 9, to amend the constitution to lower the voting age to 18, by the necessary constitutional majorities, and the proposal was put to a referendum in November 1952. It was overwhelmingly defeated: no, 639,224; yes, 233,094. No proposals to lower the voting age have been submitted to the legislature since 1952.

Oregon

A constitutional amendment to lower the voting age to 18 was introduced in the legislature as H.J.R. 1 in 1943. It died in committee. A similar measure, H.J.R. 7, suffered the same fate in 1953. In 1955, a senate-initiated resolution, S.J.R. 1, passed the senate on March 24 by a vote of 21 to 9, but the measure died in the house committee. Two resolutions in 1957 and one in 1959, all designed to lower the voting age to 18 or 19, were pigeonholed in committee.

Pennsylvania

A constitutional amendment to lower the voting age to 18 was introduced in the legislature in 1943. It died in committee. According to the Congressional Digest of March 1954, page 72, two bills to lower the voting age, S. 1 and H. 8, died in 1953, "as have other earlier measures since 1943." On May 24, 1957, the house of representatives approved, by a vote of 159 to 1, a measure to reduce the voting age to 18. The senate had previously passed the bill unanimously. Under the State's constitution, passage by the next legislature was required before the matter could be put to a referendum. Apparently the 1959 legislature did not take the necessary affirmative action.

Rhode Island

A measure to lower the voting age was defeated in the legislature in 1953. We have no record of any other action.

South Carolina

In 1953 the legislature rejected a proposal to lower the voting age. In his 1954 annual message to the legislature, Governor Byrnes recommended that the State constitution be amended to give 18-year-olds the vote. We have no record of any other legislative action.

South Dakota

This State is unique in having twice rejected by referendum proposals to lower the voting age to 18. A measure passed by the legislature in 1951 was submitted to the voters in 1952. It lost by 685 votes: no, 128,916; yes, 128,231. The legislature rejected a similar amendment in 1954, but in 1957 it again chose to put the question to the electorate. On November 5, 1958, the proposal was decisively defeated: no, 137,942; yes, 71,033.

Tennessee

In 1957 the legislature acted favorably upon a resolution to submit to the people a proposed amendment to the constitution to lower the voting age to 18. The State's amending process requires that two successive legislatures approve a measure before submission to a referendum. In 1959, instead of reapproving the 1957 proposal, the legislature called a constitutional convention to consider, as one of its four topics, the lowering of the voting age to 18. The convention met in Nashville on July 21. On July 30 the convention voted, 60-33, to leave the constitutional age provision unchanged. It also voted, 58-35, against reducing the minimum to 18, and rejected two proposals to reduce the voting age to 20.

Texas

A constitutional amendment was introduced in the legislature in 1943 to lower the voting age to 18. It died in committee. A similar bill was similarly treated in 1945. In 1949 H.J.R. 6 was favorably reported by the committee, but was then recommitted by the house. We have no record of any other legislative action.

Utah

In 1943 and 1953 constitutional amendments were introduced in the legislature to lower the voting age to 18. All died in committee. In 1955, a similar resolution, H.J.R. 3, was passed by the house, 40-18, but was rejected by the senate committee. In 1959, another proposal, S.J.R. 6, was similarly disposed of by the senate committee.

Virginia

Proposals to amend the constitution so as to lower the voting age to 18 were introduced in the legislatures in 1954, 1956, and 1958. All died in committee.

Washington

Two proposals to amend the constitution so as to lower the voting age to 18 were introduced in the legislature in 1943—H.J.R. 9 and S.J.R. 6. Both died in committee. In 1945, as H.J.R. 2, the proposal was favorably reported and, on February 23, received a majority vote, 49 to 48, in the house. Since this fell far short of the required constitutional two-thirds vote, the measure was lost. Similar measures died in committee in the legislative sessions of 1947, 1949, and 1953. In 1955, another proposal to lower the minimum to 18, H.J.R. 3, was recommended by the committee and passed the house with the required constitutional vote, 71 to 28, on February 15. In the senate the measure was pigeonholed in committee and a motion to discharge the committee and put the resolution on the calendar lost 28 to 18, on March 8. In 1957, three resolutions

were introduced: H.J.R. 3 and S.J.R. 3 to lower the minimum to 18, and S.J.R. 27 to lower it to 19. H.J.R. 3 was twice reported favorably by the committee, but the proposal was never brought to the floor. In the 1959 session each house received a resolution and in each the resolutions died in committee.

West Virginia

Constitutional amendments to lower the voting age to 18 were introduced in the legislature in 1943, 1945, 1949, 1951, and 1953. In the first three sessions the measures died in committee. In 1951, on March 6, an attempt to discharge the committee in the house failed, 40 to 48. In 1953 the house committee reported favorably, but no further action was taken. We have no record of legislative action after 1953.

Wisconsin

A constitutional amendment to lower the voting age to 18 was introduced in the legislature in 1943. It was adopted by the assembly as J.R. 30 by a vote of 55 to 29, but failed to gain clearance from the senate committee. In 1945, a similar resolution was rejected by the assembly committee. In 1947, under the designation Jt. Res. 18,A, the proposal to lower the voting age passed through an intricate maze of parliamentary maneuvers ending in a 48-44 vote to pass. The majority not being a constitutional one, the measure failed. In 1951 an 18-year-old voting age proposal was rejected by a senate committee, and in 1953 an assembly measure to lower the limit to 19 was unfavorably reported.

Wyoming

In 1951, Gov. Frank A. Barrett asked the legislature to lower the minimum voting age to 18. A measure was introduced and defeated. We have no record of any other legislative action.

SUMMARY

Table I lists the five States in which the question of lowering the voting age has been put to the electorate. In two, Georgia and Kentucky, the question was approved. In three, Idaho, Oklahoma, and South Dakota, it was defeated.

Table II lists the 14 States in which, in addition to those in table I, at least one house of the legislature has approved a proposal to lower the voting age by the required constitutional majority.

TABLE I.—*Referenda results*

State	Age	Year	Result
Georgia.....	18	1943	Adopted.
Idaho.....	19	1960	Defeated.
Kentucky.....	18	1955	Adopted.
Oklahoma.....	18	1952	Defeated.
South Dakota.....	18	1952	Do.
	18	1958	Do.

TABLE II.—*States in which at least a single house of the legislature has voted affirmatively*

State	Age	Year	Action
Arkansas.....	18	1943	Passed in house; defeated in senate.
Delaware.....	18	1953	Passed in house.
	18	1955	Passed in senate; lacked constitutional majority in house.
Florida.....	18	1951	Passed in house; defeated in senate.
	18	1955	Passed in senate.
Indiana.....	18	1945	Passed both houses; failed in next legislature.
	19	1953	Do.
Montana.....	18	1957	Passed in house; defeated in senate.
Nevada.....	18	1953	Passed in house.
New York.....	18	1943	Passed in assembly.
Ohio.....	18	1959	Passed in house.
Oregon.....	18	1955	Passed in senate.
Pennsylvania.....	18	1957	Passed both houses; failed in next legislature.
Tennessee.....	18	1957	Passed both houses; failed in constitutional convention.
Utah.....	18	1955	Passed in house.
Washington.....	18	1955	Do.
Wisconsin.....	18	1943	Passed in assembly.

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SPECIFICATIONS FOR A MODEL
STATE PRESIDENTIAL
PRIMARY LAW

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PROPOSED SPECIFICATIONS FOR
A PRESIDENTIAL PRIMARY SYSTEM IN FLORIDA

Paul T. David

Statement Prepared at the Request of
Mr. William A. F. Stephenson, St. Petersburg,
Florida, January 24, 1955

The basic proposal is for the type of system in which the voter is required to make only one choice and one mark in order to vote the presidential primary ballot. The voter would choose among slates of delegates. But the specifications that follow could be expected to give the voter in each party a frequent choice between candidates for the presidential nomination as an aspect of his choosing between groups of candidates for delegate. In its basic structure, the proposed system contemplates and assumes that occasionally there may be a desirable candidate for President who is unwilling to campaign openly for the nomination, and who may have to be drafted if he is to be nominated at all.

1. The presidential primary would be a closed primary; voters would be allowed to vote only the ballot of the political party in which they are registered.

Comment: This would be unlike the Wisconsin presidential primary, but like most of the others:

2. The ballot would carry organized slates of delegates; no would-be delegate would be allowed to run for election as an individual, but only as a part of an organized slate that includes a full list of candidates for delegate-at-large, together with a full quota of district delegates in at least half of the congressional districts of the state.

Comment: The proposal for carrying slates that are organized and run as a unit but which need not be complete for all congressional districts is new. Oftentimes a group with strength in one part of a state is unable to complete its ticket in other parts of the state. The 1952 Kefauver delegation ticket in Ohio, for example, was incomplete but won state-wide and in most of the districts where it was filed. In California, the Kefauverites had great difficulty in completing their slate in order to qualify; and after President Truman withdrew and the regular organization had to refile its delegation, it was unable to complete

its slate in the time available and went on the ballot with a short slate that may have been illegal, although no court test was made.

3. Delegates-at-large would be elected on the basis of the state-wide vote; district delegates on the basis of the vote in their respective districts.

Comment: As in Wisconsin and Minnesota, but not in California and South Dakota, where the state-wide vote controls for the entire delegation.

4. In each congressional district, the ballot would carry only the portions of the slates to be voted on in that district: the candidates for delegate-at-large and for district delegate for that congressional district.

Comment: As in Wisconsin and Minnesota; see illustration of 1952 Wisconsin ballot, page 179, Volume I, Presidential Nominating Politics in 1952, by Paul T. David, Malcolm Moos, and Ralph M. Goldman.

5. Organized slates that prefer a particular individual for the presidential nomination would be allowed to indicate their preference on the ballot, in a position prominently associated with the box or circle in which the voter places his mark. The consent of the potential nominee would not be required for the inclusion of such expression of preference on the ballot.

Comment: California, Wisconsin, South Dakota, and Minnesota provide examples of this form of ballot construction, but all require the consent of a presidential candidate before a delegate slate can be placed on the ballot under his name. Under existing laws in Florida and New Hampshire, on the other hand, would-be delegates can put their presidential preferences on the ballot without securing consent from the person they prefer, but are not allowed to run as organized slates, to be voted for as units. The opportunity to express a preference on the ballot without securing consent from the proposed nominee is important if the possibility of drafting a presidential candidate is to be retained under a regime of presidential primaries.

6. If two or more slates are filed in support of the same candidate, he would be given an opportunity to choose the one to appear on the ballot. If he declined the making of a choice, the first slate filed would be placed on the ballot.

Comment: This provision would meet the kind of situation that existed in Florida in 1952, when three different groups of would-be delegates favoring Russell were on the ballot, although not as organized slates.

7. Delegates would not be required to execute any formal pledge of support for the candidate they favor, the moral commitment implied in association on the ballot being deemed sufficient if the candidate proves to be available.

Comment: The rigidities involved in formal pledges by delegates and formal action by the national candidates to approve slates have frequently proved undesirable in the experience of such states as California, Ohio, and Wisconsin. On the other hand, South Dakota does not require delegates supporting a national candidate to make formal pledges, and there has been no difficulty on the point.

8. The ballot would carry organized slates running on a "no preference" basis where such slates are offered.

Comment: As in South Dakota; see ballot at page 177 of Volume I, Presidential Nominating Politics in 1952. The opportunity to offer a no preference slate of delegates is particularly important whenever there is uncertainty as to the intentions of the incumbent President or uncertainty about the availability of leading potential candidates, with resulting confusion in the national situation. The provision for no preference slates has seemingly worked well in South Dakota, while the absence of such a provision has led repeatedly to "stalking horse" candidacies in such states as California, Wisconsin, and Ohio.

9. If two or more "no preference" slates meet the filing requirements in the presidential primary of the same party, all would appear on the ballot.

Comment: While the forces supporting a single candidate for the nomination should probably be required to consolidate their strength in support of a single ticket of would-be delegates, this reasoning does not apply in the case of "no preference" slates. In the rare instances when two such slates might appear on the ballot, it can be assumed that there is a factional cleavage within the state party of sufficient importance to justify a choice by the voters.

10. In each slate of delegates carried on the ballot, the individual to serve as delegation chairman should be clearly indicated and he should head the list of candidates for delegates-at-large.

Comment: This is a new proposal, never tried in the experience of any state. But the delegation chairman is so important in the functioning of a state delegation that the designation should be definite and public at the earliest possible date. The candidate who will serve as delegation chairman should run for election as a delegate-at-large in order to make the choice the result of a state-wide vote. The voters will be better able to appraise contesting delegation slates if each slate is equipped with a chairman; and a better organized campaign will be conducted by the contesting delegation slates if each has a chairman. In most states, it could ordinarily be expected that the governor would head one of the slates, and that other slates would be headed by a senator, a former governor or a candidate for governor.

11. Members of each slate accepted for the ballot should be required to file a public statement of not more than 1000 words in which they set forth so far as possible the position they propose to take on known issues that will come before the national convention and on which it is expected that the convention will be divided.

Comment: This statement would indicate the specifications the members of the slate would seek in a candidate for the nomination, if they have to look beyond their announced preference or have no preference; the position they would take on controversial questions of national party rules, such as the loyalty oath; and their position on major controversial platform questions. It is not contemplated that the proposed statement would appear on the ballot but that it would be on file with the secretary of state and available for public inspection. The proposal is new; it is intended to call attention to the breadth of a delegation's responsibilities and to bring out the pertinent facts for the consideration of the voters when there is a contest between two or more slates.

12. There would be no provision for a separate presidential preference poll in which the voters would vote on candidates for the presidential nomination, as distinguished from slates of delegates supporting a particular candidate.

Comment: Most of the experience to date suggests that a presidential preference poll does not take on much meaning unless it is associated in some fashion with the election of delegates. On the other hand, when the opportunity exists to elect delegates who are publicly committed to the support of a particular candidate, a separate presidential preference poll becomes unnecessary and may introduce an undesirable element of confusion. In 1952, for example, Kefauver claimed a victory in the New Jersey presidential primary because he had "won" a preference poll in which he had no opposition; but he had not entered a single delegate in the delegate contest, and the winning slate of delegates had some basis for refusing to admit that it had any obligation to vote for him.

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TOWARD A MODEL STATE PRESIDENTIAL PRIMARY LAW

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Since 1948, there has been a marked revival of interest in the presidential primary.¹ In all probability this has come about because of the cleavage between the bulk of the regular Republican leadership, most of whom favored Taft, and the rank and file of the Republican party, who, together with many independent voters, favored Eisenhower. Concurrently, in the Democratic party there was in 1952 a "free convention" for the first time since 1932. As a result, there was revived interest in the presidential primary, and in the system of selecting delegates to the national nominating conventions, during the pre-convention campaigns of 1952. Since the untimely heart attack suffered by President Dwight D. Eisenhower in 1955, interest in the nominating process for the presidential candidates of the major parties is again at a high point. This article, after reviewing briefly recent developments with respect to presidential primaries, discusses in some detail the legislation enacted in 1955 by the state of Florida.

I

During the period of the 1952 contest, interest in the presidential primary was expressed in four ways. In the first place, Eisenhower's decisive show of strength in primary contests in New Hampshire, Minnesota, and New Jersey drew public attention to the contrast between the preference primary and the methods of delegate selection in other states. Texas is a prime example of the manipulations that characterized the worst use of the convention system.

In the second place, proposals for a nationwide system of presidential preferential primaries were introduced in Congress. These proposals received more attention in 1952 than had been given the issue for a number of years.² Two

¹ The term presidential primary is used in this article to describe what are actually three different systems. First, there is the preferential primary, in which presidential aspirants are listed and the voters in the primary choose between them. Second, there is the primary for electing delegates to the national convention. A third system, favored by the authors, provides for a combination system in which the voters select among delegate slates pledged to particular candidates. This inclusive definition follows Charles Merriam and Louise Overacker, *Primary Elections* (Chicago, 1928), p. 141. See also Louise Overacker, *The Presidential Primary* (New York, 1926).

² For earlier proposals see S. 1726, 72nd Cong., 1st sess., Dec. 14, 1931, *Congressional Record*, Vol. 75, p. 443; and George W. Norris, *Fighting Liberal* (New York, 1945), p. 336. The first major reference in Congress to such legislation was in the 61st Congress. Speech of Sen. Jonathan Bourne (R) of Oregon, 61st Cong., 3rd sess., Feb. 27, 1911, *Congressional Record*, Vol. 46, p. 3550. Reference was to the Oregon state law.

different systems were suggested. One, advocated by Senator George Smathers,³ called for a constitutional amendment to abolish the national party nominating conventions and replace them with two primaries in each major political party. The first primary was to be held on the first Tuesday after the first Monday in June of each presidential election year; the second primary was to be held on the first Monday in August of that same year. The computation of votes in each party was to be based on the proportion of the votes received by each candidate in every state. The second primary was to be held only if no candidate received an absolute majority in the first primary, and was to be limited to the two candidates receiving the highest vote. As an alternative to this procedure, Senator Smathers proposed another constitutional amendment⁴ which was less detailed and simply specified that Congress should enact appropriate legislation to provide for the presidential nominations "in a simultaneous, nationwide individual party primary."

A less elaborate procedure which retained the national convention was proposed in a bill sponsored by Senator Paul Douglas of Illinois and Representative Charles Bennett of Florida.⁵ This measure provided for compensating each state which conducted a presidential preferential primary with an amount of money equal to the cost of the primary. An appropriation of \$10,000,000 was authorized for this purpose. Only parties which polled 10,000,000 or more popular votes in the election of 1948 were to participate in these primaries. Obviously, this would restrict the primaries to the Republican and Democratic parties. This bill and the Smathers proposals have been analyzed in Paul T. David, *et al.*, *Presidential Nominating Politics in 1952; the National Story*,⁶ and will not be further considered here.

The Douglas-Bennett bill did not eliminate the national nominating convention. Moreover, it left the choice of delegates to be determined by individual states or the rules of the parties themselves. In 1953 the Douglas-Bennett bill was revised and introduced in the 83rd Congress.⁷ After further study, still another version of the bill has been introduced in the current Congress.⁸ This proposes a bipartisan commission of five appointed by the President. This commission is to receive from participating states a statement of the provision under which the states will hold primaries. It will certify dates for participation in the primaries if they conform to the general provision of the national legislation outlined below.

³ S.J.R. 125, 82nd Cong., 2nd sess., Jan. 20, 1952.

⁴ S.J.R. 145, 82nd Cong., 2nd sess., March 25, 1952.

⁵ H.R. 8374, 82nd Cong., 2nd sess., June 26, 1952; S. 2570, 82nd Cong., 2nd sess.; Cf. *Hearing before the Subcommittee on Rules of the Committee on Rules and Administration, U.S. Senate, 82nd Cong., 2nd Sess., on S. 2570* (March 28, 1952, G.P.O., 1952).

⁶ (Baltimore, 1954), pp. 194-224.

⁷ H.R. 96, 83rd Cong. 1st sess., Jan. 3, 1953, *Congressional Record*, Vol. 99, pp. 55-56; also S. 1049, 83rd Cong., 1st sess., Feb. 20, 1953, *Congressional Record*, Vol. 99, p. 1294.

⁸ H.R. 2532, 84th Cong., 1st sess., Jan. 20, 1955, *Congressional Record*, Vol. 101, p. 417. S. 652, 84th Cong., 1st sess., Jan. 20, 1955, *Congressional Record*, Vol. 101, p. 441, and "analysis," *ibid.*, pp. 445-46.

Candidates shall be eligible to participate if they are certified to the commission by petitions containing at least 1,000 signatures from each state participating, if no more than four states participate. If more than four states participate, petitions containing at least 1,000 signatures for each candidate must be submitted from at least 75 per cent of the participating states. Petitions are received until March 1 and a candidate who does not withdraw by March 20 is then certified to the states. A candidate may be listed in only one party primary, and voter participation is restricted to the party in which the voter is registered (the closed primary). The primary must be held between April 1 and July 31. State law must pledge the delegates selected to the party national convention to vote for the winning candidate of that party on the first ballot. The proposed statute does not fix the method for selecting delegates. However, it binds the delegates to the candidate to whom they are pledged so long as he does not withdraw and so long as he received at least 10 per cent of the vote on the first ballot, 20 per cent on the third ballot, and 30 per cent or more on the fifth ballot. Each state holding such a primary shall receive from federal funds 20 cents for each vote cast in the primary.

The Douglas-Bennett Bill has thus been revised, but the aim at a national system of presidential preferential primaries remains the same. The primary is designed to supplement but not to supplant the national convention. The bill also seeks, by providing for the closed primary, to meet the criticism that it would weaken party discipline. The bill has been further refined in attempting to avoid a convention deadlock by liberalizing the provisions for pledging delegates. As the convention advances, a larger proportion of the vote must be polled or the delegates are released from their pledges.⁹ This attitude of reconciling the primary with party machinery is typical of most present-day proponents of the presidential preferential primary. Such an attitude is in contrast with earlier proposals of the Progressive Era, which showed little or no such concern.¹⁰

A third manifestation of interest in the presidential primary in 1952 was the American Political Science Association project for the study of the nominating process in the two major national parties. The enthusiasm of Association members, together with the financial assistance of the Stern Family Fund, resulted in a complete study of the pre-convention process in all states, and of the nominating conventions themselves. After two years of intensive work, the separate state studies were published in four volumes; the editors of these volumes, Paul T. David, Malcolm Moos, and Ralph M. Goldman, wrote a summary volume, *Presidential Nominating Politics in 1952: The National Story*.

The fourth major development was the increase in voter participation in

⁹ Paul H. Douglas, "Conventions and the Popular Will," *New Republic*, Vol. 132, pp. 11-15, May 28, 1955.

¹⁰ The same may be said for most political scientists. See the American Political Science Association Report, "Toward a More Responsible Two Party System," this REVIEW, Vol. 44 (Sept., 1950), Supplement; also Malcolm Moos, "New Light on the Nominating Process," in *Research Frontiers in Politics and Government* (Washington, 1955), pp. 135-67.

presidential preferential primaries, the enactment of improved laws, and the addition of new states to the list of those having primaries. In 1948 only 3,622,117 votes were cast in presidential preferential primaries.¹¹ In 1952 the number of votes cast in such primaries rose to 10,735,122 (see Table I) in the 14 states in which there were opposed candidates. In addition, there were elections for delegate slates in the primaries of other states, but these contests were not of great significance.¹²

Of additional importance are the redrafting and improvement of state primary laws and the adoption of the presidential preference primary by certain states

TABLE I. PRESIDENTIAL PREFERENCE PRIMARIES: POPULAR VOTES, 1952*

State	Popular Votes	State	Popular Votes
California	2,954,791	New Hampshire	136,159
Florida	653,333 ^a	New Jersey	800,862
Illinois	1,872,435	Oregon	392,024
Maryland	154,269	Pennsylvania	1,290,618
Massachusetts	434,922	South Dakota	162,150
Minnesota	418,789	West Virginia	128,026
Nebraska	318,590	Wisconsin	1,018,149
Total			10,735,122

* Data from *Congressional Record*, 82nd Cong., 1st sess., July 3, 1952, Vol. 98, p. 9082.

^a Democrats only.

and by Congress for the District of Columbia. Between 1948 and 1952 there were important changes in state laws. These included adoption of the new Minnesota statute and important revision in the state laws for the presidential primaries in Wisconsin, New Hampshire, and Nebraska.¹³ In the period 1952-54 there have been other changes in state laws and 1955 saw Congress grant a type of franchise to the District of Columbia for the first time.¹⁴ A general

¹¹ See *Congressional Record*, July 3, 1952, Vol. 98, p. 9082 for tabulation; as to the number of states holding primaries, a check was made with David, *et al.*, *Presidential Nominating Politics in 1952*, especially *The National Story*, pp. 173 ff. For changes, statutes of all 48 states were checked through 1954. Except for the Florida developments and those in the District of Columbia, 1954 is the end of the period for which legislation in the separate states is considered in this article. Legal supplements and other data for the 1955 legislatures were not available when this article was being written.

¹² *Congressional Record*, Apr. 9, 1952, Vol. 98, p. A 2720; Roma K. McNickle, "Presidential Primaries, 1952" in *Editorial Research Reports*, Vol. 1, p. 46 (1952). Also Paul T. David, *et al.*, *op. cit.*, chapters on Ohio, Alabama, New York.

¹³ David, *et al.*, chapters on the states mentioned. Nebraska added in 1951 an amendment which required the consent of the candidate, which changed a traditional feature of her system that was known as the "all star contest." Vol. 4, p. 286.

¹⁴ A different version of this bill was adopted in 1954 but vetoed by the President because of interference with principles of the Hatch Act in one clause. For the 1955 Act, see *Congressional Record*, 84th Cong., 1st sess., July 12, 1955, pp. 8839-41, for amended version and for Senate action. This became Public Law 376, 84th Cong., approved Aug. 12, 1955.

primary law was enacted which provided for election of party officials for the District in the two major parties. This provided as well for a presidential preferential primary among candidates who (1) are certified by the party committee; and (2) consent to having their names on the ballot. This law marks the first enactment of presidential primary legislation by Congress.

Changes in state laws between 1952 and 1954 show that New Jersey enacted a few unimportant changes and three states, Indiana, Montana, and Nevada, adopted presidential primary statutes in 1953. The Nevada statute, however, was repealed in 1955. Montana provided in 1953 for election of pledged delegates in the primary, but the 1955 Montana legislature modified this to provide for selection of delegates by a state convention. A presidential preferential primary is required, however, with the delegates to remain pledged to the candidate winning the primary unless he shall release the delegates, or unless his vote drops below 20 per cent of the total vote received in the convention.¹⁶

The Indiana act simply provides for listing the candidates for president on the primary ballot and having the voter mark his choice. Delegates who are selected by the state convention are required to take an oath to vote on the first ballot for the presidential candidate winning the state-wide party primary. District delegates are similarly bound to the winner of the district primary. The addition of Indiana and Montana as presidential primary states raises the number having names of delegates or candidates for the presidency on the primary ballot from 17 in 1952 to 19 authorized by mid-1955. In addition, Arkansas and Georgia have optional statutes seldom or never used. But it should be noted that this total number of states is lower than the peak around 1916 when half the states had the primary in operation. Then a decline set in. It is the position of the present writers, following V. O. Key, Jr., that the misconceptions about the primary, faulty laws establishing such a primary, and faulty ballot procedures did not permit a valid test of the presidential primary.¹⁷ Consequently, analysis of proper principles for such a primary and construction of a proper ballot are of importance.

II

The recent enactment of a new ballot form for the Florida presidential preferential primary was preceded by careful analysis of these factors. At the same time considerable attention was given to the encouragement of a two-party system within the framework of the proposed law. Some attention had to be given to the background of existing legislation. Consequently, these factors

¹⁶ For 1953 acts see Title 19-31, *New Jersey Statutes Annotated, 1954 Supp.*; *Annotated Indiana Statutes, 1953 Supp.*, Title 29-3619, giving Ch. 193 of 1953 Acts.; Ch. 214, *Laws, Resolutions . . . by the 33rd Legislative Assembly* [of Montana], 1953; Ch. 299, *Statutes of Nevada passed at the 46th Session of the Legislative Assembly*.

¹⁶ For changes in Nevada in 1955 see Ch. 304, *Statutes of Nevada, 1955* and for changes in Montana, Sec. 29-909 (639), Sec. 23-1006 (673.6) *1956 Supp. to Election Laws of Montana*.

¹⁷ *Politics, Parties and Pressure Groups*, 2nd ed. (New York, 1947), p. 392.

necessitate the tracing of a story which considers the background, an analysis of the principles, and the ultimate ballot and law.

The Florida law on primary elections has been modified by almost every session of the legislature since the primary was first authorized in 1901.¹⁸ The original 1901 act was typical of those acts of the Progressive Era which regulated the holding of primaries. It empowered a state party executive committee, congressional district party committee, or county committee, to hold a primary election for the choice of any party nominee. Under this permissive act the first state-wide primaries were held in 1902. Then, in 1904, the state committee of the Democratic party called a primary election on May 10 of that year. The 1904 primary provided for the election of delegates to the Democratic National Convention, four from the state-at-large and the remainder from congressional districts.¹⁹ It should be noted that this election of the Florida delegates to the Democratic National Convention is four years earlier than any previously noted presidential preferential primaries.²⁰

The Florida primary in 1913²¹ was made mandatory for the Democratic party for all candidates for elective offices, and made permissive for all party offices, including delegates to the nominating convention. The state executive committee was empowered to set up a form of ballot for party offices and determine which party officers should be chosen in the primary. Subsequently, in 1915, the nomination of delegates to the national convention was made mandatory in the primary.²² This provision, with various changes, has remained a part of the law to the present. Until 1955 none of these features were mandatory upon the minority party. In addition to the election of delegates in the primary, the state party committee was empowered by this early legislation to provide for listing the leading candidates for president and vice-president on the primary ballot. The earliest date for which there was a separate vote for these candidates was in the primary of 1912 when Oscar W. Underwood and Woodrow Wilson were listed.²³ Since 1943 the power of the state committee to provide for a specific listing of presidential candidates on the primary ballot has been required by statute.²⁴

Finally, since 1945, candidates for delegates to the national convention may list after their names their choice for a presidential nominee. The act also provides for those delegates running unpledged to be carried as unpledged on the ballot.²⁵ This resulted in an extremely complicated situation in the 1952 Demo-

¹⁸ Ch. 5014, *Acts of Florida*, 1901.

¹⁹ Jacksonville, *Florida Times Union*, May 1, 1904, p. 15, cols. 1-2; May 10, 1904, p. 3, cols. 4-5; May 22, 1904, p. 2, cols. 1-5.

²⁰ See Overacker, *The Presidential Primary*, which considers early statutes and lists the Wisconsin law of 1905 and the Oregon law of 1910, and Merriam and Overacker, *Primary Elections*, p. 141.

²¹ Ch. 6469, *Laws of Florida*, 1913.

²² Ch. 6874, *Laws of Florida*, 1915.

²³ Jacksonville, *Florida Times Union*, May 10, 1912, p. 13, cols. 1-2, p. 17, cols. 1-2.

²⁴ Ch. 22058, *Laws of Florida*, 1943.

²⁵ Ch. 22729, *Laws of Florida*, 1945.

cratic primary. At the time of the first primary the names of Estes Kefauver and Richard Russell appeared on the ballot. Then in the second primary in May the names of the delegates appeared. However, there were further complications in 1952 because three competing slates, all pledged for Russell, appeared on the ballot for the second primary. Since the delegates were listed in alphabetical order, this produced a very long ballot and one which was definitely confusing. It resulted, moreover, in splitting the Russell vote so that Kefauver received more delegates than would otherwise have been the case. Among statewide delegates, there were eight to be elected. Sixty-one per cent of the vote was cast for Russell but only five of the eight delegate vacancies went to the Russell candidates.²⁶ All this created an atmosphere in which the Florida legislature was quite receptive to a clarification of the ballot.

There was another factor which produced a legislative atmosphere favorable to the adoption of an improved system. The present governor of Florida, LeRoy Collins, campaigning in 1954 for the two-year vacancy created by the death of the previous governor, had made "improvement of campaign laws" a plank of his platform. He was generally concerned with clarification of the ballot but more concerned with the reduction of the campaign period and the reduction in campaign expenditures. Recommendations to accomplish this were made in the governor's message at the opening of the legislature on April 5th.²⁷ A final factor which produced a favorable atmosphere for the improvement of the presidential preferential primary in Florida was the general desire of many officials of both parties to improve election laws and to recognize the two-party situation existing in many parts of the state. In 1952 Eisenhower carried the state. Then, in the 1954 elections to the United States House of Representatives, a Republican, W. C. Cramer, was elected from the district which includes St. Petersburg and Tampa. In other areas of South Florida some Republican county officials were elected. All of this called for a rejuvenation of both Democratic and Republican campaign machinery.

Late in 1954, four independent moves were made toward redrafting the election code. Governor LeRoy Collins appointed a Citizens Committee, headed by former State Senator Henry Baynard of St. Petersburg, Florida, to work on certain phases of the law. The Democratic State Committee, headed by James Milligan of Orlando, Florida, proposed legislation to strengthen the loyalty oath for both candidates and voters within the closed Florida primary system. The committee also wished to improve party finances by asking for a law which would transfer the filing fees required of all candidates from the state treasury to the party committees. It had a complete program supported by a lobby representative throughout the legislative session. W. A. F. Stephenson, Chairman of the Democratic Executive Committee for Pinellas County (St. Petersburg and Clearwater), began an independent move to redraft the code with special emphasis on adapting to the two-party situation in central and South Florida. Finally, members of the minority faction of the Republican party

²⁶ Manning J. Dauer, *et al.*, "Florida" in David, *et al.*, *op. cit.* Vol. 3, p. 137.

²⁷ Jacksonville, *Florida Times Union*, April 6, 1955, p. 1.

wanted the Republican primary of 1956 to include the choice of delegates to the national convention. The Alexander majority faction of the Republicans also was willing for the Republican delegates to the 1956 convention to be elected. The Republicans held six of the 95 seats in the Florida House of Representatives and one of the 38 seats in the Florida Senate. Their strength in voting was therefore of no importance, but both the regular Democratic organization and the minority Republicans were mutually interested in encouraging the registration of voters under the respective party labels. Under the closed primary system, this would assure elimination of many voters from the Democratic primary with an increase in the Republican registration.

While other phases of the election code received the attention of different groups, the initial move to modernize the presidential preferential primary section of the election code was made by William Stephenson. In January, 1955, he wrote to Paul T. David requesting David's advice on the redrafting of the Florida primary law. David replied on January 24, 1955 outlining in a four-page memorandum "Proposed Specifications for a Presidential Primary System in Florida." David also wrote to the author of this article and by agreement with Stephenson, Dauer, and Professor Bruce B. Mason, also of the Department of Political Science of the University of Florida, undertook to draft the proposed changes in this section in the Florida law.²⁸ Mason and Dauer then studied the existing Florida law, the David proposal, the January, 1955 memorandum by Richard Childs of the National Municipal League,²⁹ and the South Dakota law, which was deemed to have the best ballot arrangement. Before the final version was ready for the legislature, several conferences were held with Stephenson and there was also an interchange of correspondence by David with Professors Louise Overacker, Arthur N. Holcombe, and Joseph P. Harris. The final draft of the law met with the general approval of all those named, except that Mr. Richard Childs, while approving the law in part, remained committed to certain different proposals.

III

In the opinion of the senior author, the object of a presidential preferential primary should be to permit the expression of a popular choice in each state. However, the preference primary should be incorporated within the framework of existing party structure. This calls for the continuation of the national nominating convention, and the election of delegate slates favorable to the candidate named in the preference primary. Finally, the delegates at the convention should be loyal to the candidate, but should be free to compromise or change as the convention develops.

It is also desirable that the presidential preferential primary not lead to the long ballot.

²⁸ *Florida Statutes Annotated*, Sec. 103.101.

²⁹ "Outline of a Model State Primary Law" (mimeographed).

The David proposals were all incorporated in the Florida law except for point 11. The main differences between the general principles of Richard Childs and the David proposals were: first, no direct effort was made to include Childs' suggestion that there be a form of proportional representation. This was contrary to the experience in Florida and would not have been deemed acceptable. On the other hand, it was equally certain that a single vote for all the delegates, electing them from the state at large, would not be acceptable. Consequently, David's point 3, that "delegates-at-large would be elected on the basis of the state-wide vote; district delegates on the basis of the vote in their respective districts," was deemed to accomplish both what was feasible in this direction and what would reflect the voters' opinion in instances where the minority

Candidates Preferring JOHN GREEN for President	Candidates Preferring JAMES BROWN for President	Candidates Expressing No Preference
		
Delegates-at-Large	Delegates-at-Large	Delegates-at-Large
Organizing Chairman Sam White	Organizing Chairman Robert Gray	Organizing Chairman John Williams
John Jones Belle Brooks	Charles Smith Hildred Casey	Peter Kyne Wilbur Collins
District Delegates John Doe Mary Roe	District Delegates William Jones Peter Sands	District Delegates Tom Burt Susie Brown

FIG. 1. Florida Presidential Primary Ballot.

might be concentrated in one or more congressional districts. At the same time this was accomplished without the need for further marking on the ballot by the provision of the Florida Law, Sec. 101.180, *Florida Statutes Annotated*, and Sec. 103.101, sub-section 7, which simply specifies that a vote on the ballot shall be counted separately for the state-at-large delegates and within each congressional district. (See Figure 1.)

One other feature, found both in the South Dakota law and in the Childs proposal, was rejected: requiring a candidate's approval before his name be put on the ballot. It was believed to be desirable, both by David and in Florida practice, that the Florida law should not require approval of candidates for president before delegates pledged to him might file. On the other hand, if the presidential candidate does take an active interest in the delegates, the Secretary of State is directed to enter on the ballot only the slate approved by the candidate. In case he does not indicate a choice of delegates and more than

one slate files for him, only the first slate which files with the Secretary of State shall appear on the ballot. In subsequent discussion with the Election Committees of the Florida House and Senate, the only objection raised to this feature was by Representative Fred C. Peterson, Republican, of Pinellas. He pointed out that this would discriminate against the minority faction of the Republican party, of which he was a member, when his party was in power nationally. If the national party recognized only the state organization as the official representative of the administration, a delegate who might win in a congressional district could be omitted from the official party slate.

In accord with Florida practice, the law (*Florida Statutes Annotated*, Sec. 103.101) provides that half the delegation shall be men, and half women. It also provides that each delegate shall select his or her own alternate. Finally, it provides for filling vacancies in district delegates (in case a slate carries the district, but its list is incomplete in that district) by action of the state-at-large delegation, if that group is elected which also is pledged to the same presidential candidate.

No attempt was made in Florida to pledge the delegates for a given number of ballots. The assumption was that in the average case those delegates who appear on the ballot will have the approval of the candidate for president and will have a point of view sufficiently favorable to him that they will remain loyal as long as there is any practical chance of the convention nominating the candidate. David's own view is that the delegates and the convention should be allowed reasonable freedom of action. He states: "I would be inclined to emphasize the desirability of leaving the delegate in a position to represent his constituents in accordance with his best judgment after having informed them of the preference by which he intends to be guided, particularly since the delegate does not receive any pledge that his preferred candidate will in fact be available. My view is that most delegates who are formally pledged stay frozen too long rather than not long enough, in terms of the major interests of their own constituents. However, we expect to have additional data on this after we complete studies currently in process."³¹

* * * * *

VI

Since enactment of the Florida presidential preferential primary law, national reaction has been generally favorable. In the *New York Times*, Arthur Krock considered the law "... a great improvement over any other now in effect." He also pointed out that "Florida's new law is derived from a five-volume study which the Brookings Institution made for the American Political Science Association."⁴³ In this last statement, there is a certain degree of elipsis.

Senator Paul Douglas in a letter to W. F. Stephenson said:

"... It is easily the best presidential primary bill in the United States and should serve as a model. I suppose that the absence of a formal pledge to stick by the candidates approved in the primary will not be a serious detriment in Florida, although I think in some states it distinctly might be. The same issue came up about 1912 in some states in the

³¹ David to Dauer, Aug. 3, 1955.

election of Senators by the State Legislatures, and as to how binding a popular and advisory vote was to be. . . ."⁴³

Congressman Charles Bennett has also stated:

"The Florida legislature recently took a forward step in the art of democratic government. It enacted an improved presidential primary statute which pioneers in a number of respects. This statute may be the model for similar statutes in other States which share Florida's objective of giving the American people more voice in the nomination of candidates for President and Vice President."⁴⁴

* * * * *

Both Senator Douglas and Congressman Bennett continue to criticize the system of separate state primaries, however. Douglas also still feels that the pledging of delegates by law is important. Both he and Bennett desire the uniformity among states which their law would encourage. Bennett likewise believes that: "Without . . . Federal legislation, each candidate would continue to enter the primaries of the states in which his chances of success would be best."⁴⁵ No law of a single state can, of course, assure the uniformity desired by Douglas and Bennett. However, Senator Douglas' objections concerning the pledging of delegates do not seem very serious. An active presidential candidate, who has an organization in a state, would find it more advantageous to have selected a slate than to have a pledged slate which he does not select.

There is, finally, the traditional objection that the presidential primary weakens the party organization in a state. The answer to this objection is that the Florida law does provide for the closed primary. It should help to draw lines between the parties by assuring the Republicans of an additional reason for registering in the Republican party. They may expect to have more real contests in their primaries. Moreover, the law assumes that the choice of presidential nominees is a matter of vital concern to the party members as a whole. Furthermore, the Florida preference primary continues to operate within the framework of the national conventions. It assumes that conventions will be more representative and can therefore make the strongest choice for the party leadership. If the preference primary enables the convention to make a better choice, parties will in the future be more effective than they are today.

⁴³ July 8, 1955, p. 22, col. 5.

⁴⁴ Douglas to Stephenson, July 11, 1955.

⁴⁵ *Congressional Record*, July 13, 1955, Vol. 101, pp. 8997-98.

⁴⁶ *Congressional Record*, July 13, 1955, Vol. 101, p. 8998.

(The following is reprinted from Nebraska Law Review, vol. 39, 1960, p. 473:)

PERFORMANCE AND POTENTIAL OF PRESIDENTIAL PRIMARY LAWS

Richard H. Hansen*

I. INTRODUCTION

The presidential primary, an experiment in democracy, has been a subject of controversy since its inception fifty years ago. Before using the past and present laws as a basis for endorsing or rejecting the philosophy behind the primary, lawyers, legislators, and political scientists would do well to examine and re-examine the myriad laws passed. We should determine if these laws have been successful in attaining the objectives envisioned by the originators of the primary. It is the purpose of this article to present a brief analysis of this question.

To understand the objectives of the presidential preference primary it will be helpful to review its historical development and to restate its general purpose.

II. HISTORY AND PURPOSE

Generally speaking, the presidential primary is the outgrowth of a trend to broaden popular control of our governmental processes. Because of the semi-aristocratic origins of the Constitution, this trend developed soon after its adoption. An early phase resulted in the replacement of the congressional caucus, as a means for choosing the President, by the national convention system. In other areas property qualifications for voting were abolished, negro suffrage became a reality and the movement for woman suffrage arose in the 1860's in Wyoming.

The presidential primary had its immediate genesis in the progressive era at the beginning of the century when broadening political control resulted in the popular election of senators and the general adoption of the initiative, referendum and recall by states. In fact, it was the adoption of measures for the popular election of senators which gave concrete form to proposals for the presidential primary.

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A number of states, chiefly west of the Mississippi, worked out a plan under which popular election of senators was attained, to all intents and purposes, even before the adoption of the Seventeenth Amendment. Nebraska, in 1879,¹ and other states during the same period, provided that the voters of each party were authorized to indicate at the polls which of the party senatorial candidates they preferred, and the nominations thus made were formally presented to the legislature. Usually that body was trusted, without any special precaution, to execute the public will by electing the designated candidate of the majority party. In 1909 Oregon² and Nebraska³ introduced a system under which candidates for the legislature were asked to pledge their support in advance to the people's choice for senator, regardless of party. In either case there was, as with presidential electors, no obligation other than moral. Legally, the legislature remained free to elect whomsoever it would, but the popular will was almost invariably carried out.

Statutes of this type laid the groundwork for the state presidential primary. Senator Jonathan Bourne of Oregon,⁴ Senator Robert M. LaFollette of Wisconsin, Teddy Roosevelt,⁵ and the other progressives of the early 1900's sought by similar means to accomplish a two-fold purpose in the field of presidential nominations: (1) to allow the voters to show their preference for the leading aspirants for their party's nomination, and, (2) to reflect this preference in the national conventions by the action of the state's delegation.

This was the immediate goal of the state primary. Some hoped that it would be "The origin of a new method of electing presidents."⁶ This has proved nothing more than a hope. The real objective was to make the state delegations more responsive

¹ NEB. COMP. STAT., ch. 26, § 9 (1881).

² LORD'S OREGON LAWS, 1910, Vol. II, Title XXVII, Ch. II, § 3361.

³ NEB. COBBEY'S ANN. STAT., ch. 16, § 5906xl (1911).

⁴ U. S. Senator from Oregon, 1907-1913. (Republican).

⁵ Teddy's illustrious fifth cousin, Franklin D. Roosevelt, was one of the "insurgents" who led the fight for a direct primary bill in New York State in 1911 against Tammany Hall. The bill passed, in watered-down version. See II, F.D.R., *His Personal Letters*, 165-166 (1948). FDR's views on the national convention system and presidential primaries were kept carefully to himself. Neither Mrs. Roosevelt, James A. Farley, or Judge Samuel Rosenman recall hearing him express himself on that point. Letters and interviews with the author. Woodrow Wilson not only espoused state primaries, but asked Congress in 1913 to establish a national primary.

⁶ Oregon Daily Journal, April 28, 1908.

to the wishes of the people. It was a modest goal and one which could be accomplished solely by state action.

The idea of a national primary soon followed.⁷ Its goal was automatic nomination through the primary and abolishment of the convention. Unfortunately, people still tend to confuse the goal of the national primary with the simpler purpose of the state laws. The distinction should be kept in mind while reading this article. Treatment of the national primary is outside the scope of this writing.

CHART I
LEADING CONTENDERS FOR THE
PRESIDENTIAL NOMINATION
1912-1956

Republican Party	Democratic Party
1912 William Howard Taft Theodore Roosevelt Robert M. LaFollette A. B. Cummins	1912 Judson Harmon Bennett "Champ" Clark Woodrow Wilson
1916 Charles Evans Hughes Elihu Root John W. Weeks	1920 Wm. G. McAdoo A. Mitchell Palmer James M. Cox
1920 Leonard Wood Frank Lowden Hiram Johnson	1924 Wm. G. McAdoo Alfred E. Smith
1928 Herbert Hoover Frank Lowden Charles Curtis	1932 Franklin D. Roosevelt Alfred E. Smith John N. Garner Albert Ritchie Newton D. Baker
1940 Thomas E. Dewey Robert A. Taft Arthur Vandenberg Wendell L. Wilkie	1952 Estes Kefauver Adlai Stevenson Richard Russell Averell Harriman
1948 Thomas E. Dewey Robert A. Taft Harold E. Stassen Earl Warren	1956 Estes Kefauver Adlai Stevenson
1952 Dwight D. Eisenhower Robert A. Taft Earl Warren Harold E. Stassen	

⁷ For President Wilson's message urging adoption of a national primary see 51 *Cong. Rec.* 44 (1913).

CHART II
STATE LAWS REVIEWED; NUMBER OF
POSSIBLE CONTESTS

Bearing in mind the years in which there were serious contests for the nominations, state laws which were in effect during those years studied, and the number of possible contests determined and the number of instances in which all of the contenders were entered.

<i>State and Years Law was Operative</i>	<i>Possible Pri- mary Contests</i>	<i>No. Contests in which all contenders were entered</i>
Alaska, 1955-	1	1
California, 1911-	13	2
Florida, 1955-	1	1
Illinois, 1913-1933, 1955-	9	2
Indiana, 1915-1929; 1955	6	1
Iowa, 1913-1917	1	0
Massachusetts, 1912-	13	1
Michigan, 1912-1931	7	0
Minnesota, 1913-1927; 1944	5	1
Montana, 1913-1927; 1954	5	2
Nebraska, 1911-	13	3
New Hampshire, 1913-	11	0
New Jersey, 1912-	13	1
North Carolina, 1919-1927	3	0
North Dakota, 1911-1935	8	2
Ohio, 1911-	13	1
Oregon, 1911-	13	4*
Pennsylvania, 1911-	13	0
South Dakota, 1917-	10	1
Vermont, 1915-1921	3	0
West Virginia, 1915-	11	0
Wisconsin, 1911-	13	1
Totals	185	24

*Complete figures not available from Secretary of State

III. PLACING THE CANDIDATES ON THE BALLOT

Have primary laws enabled voters to indicate their preferences for leading candidates?

The answer to this must be a resounding *NO*. During the period since 1912 we have chosen nominees for the Presidency

twenty-six times. In thirteen of these cases there were contests for the nomination, i.e., an incumbent President was not already assured of re-nomination, or there was not just one contender with an outstanding lead, like Al Smith⁸ in 1928. Chart I indicates the years in which these races occurred and the aspirants. In these thirteen cases there were opportunities, between the two parties, for one hundred and eighty-five primary elections. These figures are shown in Chart II.

In all of these primaries we find only twenty-four instances in which the leading contenders were entered. It must be concluded that in the vast majority of states which had presidential primary laws in the period from 1912 to 1956, the laws have actually frustrated the purposes of the state primary.

Primary laws have frustrated their objectives at the outset interposing serious difficulties in the way of those who tried to place the names of presidential aspirants on the ballot. What provisions, or lack of provisions, in primary laws have led to this situation? After fifty years of experience we should be able to draw some profitable conclusions by examining the pertinent portions of these laws and the proposals advanced to correct the situation.

A. DATE OF THE PRIMARY

This can be a very significant factor in getting all the candidates on the ballot. If the primary is held too early, all of the contenders may not have announced their candidacies. Of the twenty-four instances in which all of the candidates have been on the ballot, four of the primaries were held in March, twelve in April, seven in May and one in June.⁹ We must also remember the fact that these cases all happened in years when the major candidates were known well in advance of the conventions.¹⁰ In 1912, for example, Taft,¹¹ Roosevelt and LaFollette were all early contenders in the Republican Party, while Wilson, Rep. Bennett (Champ) Clark of Missouri and Governor Judson Har-

⁸ Alfred E. Smith, Governor of New York (1919-1921; 1923-1929).

⁹ *March*: 1912, 1920 N.D. Rep.; 1920 S.D. Rep.; 1956 Minn. Dem.; *April*: 1912 Mass. Rep.; 1912 Ore. Dem. and Rep.; 1912 Wis. Rep.; 1920 Mont. Rep.; 1912 and 1920 Ill. Rep.; 1912 Ohio Dem.; 1912 Neb. Dem. and Rep.; 1948 Neb. Rep.; 1956 Alaska Dem. *May*: 1912 Calif. Rep.; 1920 Ind. Rep.; 1912 N.J. Rep.; 1920 Ore. Rep.; 1924 Mont. Dem.; 1956 Fla. Dem.; 1956 Ore. Dem. *June*: 1956 Calif. Dem.

¹⁰ 1912, 1920, 1924, 1948, 1956.

¹¹ William Howard Taft, President, (1907-1913).

mon of Ohio were not exactly reticent in their aspirations for the Democratic nomination. The trend has been away from the early months, March and April.¹² This is not only because it affords greater opportunity to get all of the candidates on the ballot, but because of the possibility of inclement weather in many of the northern states.

Ample time must be allowed for canvassing the vote. With one or two exceptions the conventions have met in June and July, so the latest date feasible, allowing the secretary of state sufficient time to count the votes, would be the middle of May.¹³ More primaries are held in May than any other month¹⁴ and the legislation proposed in the period immediately following the 1952 election favored that month also.¹⁵ A late study, made by the Nevada State Legislative Council, suggests late May or early June.¹⁶ There are two states which presently hold their primary in early June.¹⁷

Nine of the 1956 presidential primaries were held in conjunction with state primaries, since the cost of holding two separate elections is much greater.¹⁸ Only three states which have a presidential primary also have a state primary the same year and hold the two on separate dates.¹⁹ There is less inconvenience to the voters and a better chance for a large vote when the two elections are held together.

B. CONSENT AND WITHDRAWAL PROVISIONS

Many states have required the consent of the presidential candidate before his name can be placed on the ballot.²⁰ This

¹² Indiana, Montana, Pennsylvania, New Jersey and South Dakota have all changed from an early date to a later one. New Hampshire is the only state which changed to an earlier date and has adhered to it.

¹³ Since 1900 twenty conventions have been held in June, eight in July and the two 1956 conventions were held in August.

¹⁴ Present line-up: March (1); April (5); May (8); June (2).

¹⁵ March (1); April (4); May (7); June (4); July (1); August (2).

¹⁶ NEVADA LEGISLATIVE COUNCIL: THE PRESIDENTIAL PRIMARY, (Dec., 1958).

¹⁷ California and South Dakota (June 7th).

¹⁸ Alaska, Florida, Illinois, Montana, Nebraska, Ohio, Oregon, Pennsylvania, South Dakota.

¹⁹ Massachusetts, New Hampshire, Wisconsin.

²⁰ The following states have had this type of provision at various intervals: California, Iowa, Massachusetts, Michigan, Nebraska, Vermont, West Virginia, and Wisconsin.

is done by requiring either a declaration of candidacy on his part, or consent to the filing of a petition by his supporters. Some of these states also allow a candidate to withdraw from the primary if he desires.²¹ Others allow withdrawal, but do not require consent,²² while still others have neither consent nor withdrawal provisions.²³

It seems logical, if we are to get all of the candidates on the ballot, that there should be no consent or withdrawal provisions. Withdrawal should be limited, in any case, to those situations where the candidate does not want to run for health or valid personal reasons and is willing to say so. Of the twenty-four instances in which all of the candidates have been on the ballot, eighteen of these contests took place in states which had neither consent nor withdrawal provisions, three in states with withdrawal provisions only, two with consent only, and only one in a state which had both features.²⁴ However, there were at least ninety-two instances in which candidates *could* have been entered without giving consent or being able to withdraw, and ninety-three instances in which consent or withdrawal provisions were operative. It might seem from these figures that there should be more cases where all the candidates were entered if it is the consent and withdrawal provisions which are a bar to placing the candidates on the ballot. But a further analysis of the states which have not had these clauses shows that, with the exception of California, they have all been states with a relatively small vote in the convention. For this reason the candidates probably felt that the small gain from winning did not justify making the race. The really important states from the standpoint of voting strength in the convention — Massachusetts, New Jersey, Ohio and Pennsylvania — have had consent and withdrawal provisions. It would seem that requiring consent, or allowing withdrawal, has kept the people from having a real choice in the primary.

²¹ New Jersey; Ohio.

²² Indiana, Illinois, New Hampshire, Pennsylvania.

²³ At various intervals: Calif., Mass., Mich., Minn., Mont., Neb., N.H., N.C., N.E., Ore., Penn., S.D., Wis., Alaska, Fla.

²⁴ *No consent or withdrawal*: 1912 Calif. Rep., 1912 Neb. Dem., 1912 Neb. Rep., 1912 N.D. Rep., 1920 N.D. Rep., 1920 S.D. Mont. Rep., 1924 Mont. Dem., 1912 Ore. Dem., 1912 Ore. Rep., 1920 Ore. Rep., 1912 Mass. Rep., 1948 Neb. Rep., 1912 Wis. Rep., 1956 Alaska Dem., 1956 Fla. Dem., 1956 Ore. Dem., 1956 Calif. Dem. *Withdrawal only*: 1920 Ind. Rep., 1912 N.J. Rep., 1956 Minn. Dem. *Consent only*: 1912 Ill. Rep., 1920 Ill. Rep. *Consent and withdrawal*: 1912 Ohio Dem.

Until very recently those drafting new primary legislation have not been aware of the detrimental effect of consent and withdrawal provisions. Of the bills offered in the period 1952-55, five had consent provisions, six had withdrawal clauses, and only one provided that no consent was necessary. A Texas bill²⁵ provided for withdrawal only, on condition that the candidate state that he did not want his name considered by the convention. The Nevada study, previously mentioned, recommended a similar provision.²⁶

There is no doubt that candidates use these clauses for political expedience. It was a consent clause which kept the leading contenders off the Nebraska ballot in 1952. If Mr. Truman had stuck by his decision to withdraw from the New Hampshire primary in 1952, he could easily have avoided the humiliating defeat at the hands of Senator Kefauver.

Granting the desirability of eliminating consent and withdrawal provisions, is their absence from the law sufficient guarantee that the name of a candidate will be put on the ballot when a petition, duly signed, is presented to the secretary of state? Not necessarily! There have been two court cases on this question, and each came to a different conclusion based on the particular wording of the statute.²⁷

Again, the mere absence of a withdrawal provision is no insurance that the secretary of state will not accede to the wishes of a candidate who wishes his name withdrawn.²⁸ Therefore,

²⁵ S.B. 2, 54th Leg., filed Jan. 19, 1956 by Senator Jimmy Phillips.

²⁶ *Supra*, note 16. Sec. 30, p. 78.

²⁷ *McCamant v. Olcott*, 80 Ore. 246, 156 Pac. 1034, LRA 1916E 706 (1916); *State ex rel. Kinzer v. Hall*, 50 N.D. 708, 198 N.W. 770 (1924). In the first case mandamus was granted when a Hughes supporter brought suit to compel Hughes' name to be put on the ballot after it had been removed at his request. The court held that the mandamus would lie because the law provided that every voter should have a choice for preference, and the vote was only advisory. The second case involved withdrawal of LaFollette's name and the court did not allow the name to appear on the ballot, holding that since the law was intended to allow a choice among aspirants, and LaFollette had declined, he was not an aspirant.

²⁸ Secretary of State, Charles W. Pool of Nebraska, (1915-1919) in notifying the signers of the Hughes' petition that he would honor Hughes' wish not to run, even in the absence of a withdrawal provision, said:

"Exercising the authority which I feel I am warranted in using, I have decided to follow the wishes of Justice Hughes

a strong primary law should use mandatory language to require the secretary of state to put the name on the ballot, and such a law should also state under what specific conditions withdrawal is to be allowed.

Certainly no one should be required to run for President if he has valid personal reasons for not doing so. This person can be given an out by the procedure suggested in the Texas and Nevada proposals previously mentioned.²⁹ A similar provision was embodied in the Minnesota law prior to its repeal. No consent was required, but a candidate could withdraw if he filed a statement that he would not accept the nomination.³⁰

It is not surprising to find this section of the Minnesota law the subject of a lawsuit. Estes Kefauver tried to withdraw from the 1952 primary without signing the required statement. The secretary of state, acting on the advice of the attorney general, honored Kefauver's request and the Minnesota court upheld the secretary's action, declaring the law unconstitutional.³¹ The opinion states that the law was "arbitrary and unreasonable", and got down to specific reasoning in one paragraph where it said:

Not only is the state attempting to deprive a citizen of a private right and invading his liberty, but it is also attempting to control the action of every other state. If a candidate has been compelled to file such an oath as a condition of withdrawal, and if, at the forthcoming national convention he receives the nomination for the Presidency, it is apparent that such an oath on file in the office of the Secretary of State in Minnesota would, to say the least, be most embarrassing if the nominee should wish to accept the nomination. If he did accept it, it can readily be seen how the oath would handicap his candidacy. This . . . condition . . . is arbitrary and unreasonable, depriving a person of an inherent right and invading the liberty guaranteed by the 14th Amendment.

What is this private right of which the court speaks?

in this particular, believing that he, as a member of the highest court in the land, would not request me to do that which was contrary to existing laws. Should you feel that I have erred in this ruling, I shall be pleased to have you take it before the courts of our state for final adjudication." Quoted in New York Times, Nov. 23, 1915.

²⁹ *Supra*, notes 16, 25 and 26.

³⁰ MINN. STAT. ANN., § 202.49(2) (1949).

³¹ *Ryan v. Holm*, 236 Minn. 189, 193, 52 N.W.2d 406, 408 (1952).

Early in American legal history Judge Cooley wrote of the "right to be left alone,"³² and this has led to the recognition of the tort of invasion of privacy.³³ An examination of the cases on this subject reveals that the tort is concerned with publication of pictures and news stories.³⁴ The facts of this case clearly do not fall in this category. The Minnesota court defined "private right" in connection with another statute as "some power or privilege to which one is entitled upon principles of morality, religion, law or the like."³⁵ This could cover practically any situation!

Giving the widest possible interpretation to the phrase, as the court obviously intended, it is still difficult to see how the candidate has been deprived of any right. Entering a state primary, does not necessarily result in nomination at the convention. Even if it did, the candidate could still decline. It is submitted that the Minnesota court used the concept of "private right" to obscure the real reason for its decision. If there is any private right involved here it is superseded by a greater right of the public. The objection to the primary law is really made on the basis of the assumed right of the politician to exercise an option to run in the states where he can win and avoid contests where he might lose. Such a ruling may preserve a "right" for some politicians, but it completely overlooks the interest of the public in the popular choice of a President.

C. FAVORITE SONS

When the name of a favorite son is on the ballot the people are, in reality, denied a choice among the leading contenders, for his local popularity seldom bears any relation to his real chances of winning the nomination. Rarely is a favorite son a serious contender for the Presidency. He is usually on the ballot to "throw dust in the eyes" of the voter, and enable the state organization to send an uninstructed delegation to the convention.³⁶ About the only hope these candidates have of securing the nomination is to become a dark horse in the event of a deadlock.

³² COOLEY, TORTS, 29 (1888).

³³ See 4 HARV. L. REV. 193 (1890).

³⁴ *Leverton v. Curtis Pub. Co.*, 192 F.2d 974 (3d Cir., 1951). *Peay v. Curtis Pub. Co.*, 78 F. Supp. 305 (D.C.D.C. 1948). *Gill v. Curtis Pub. Co.*, 38 Cal. 2d 273, 231 P.2d 565 (1951).

³⁵ *State v. Pancratz*, 238 Minn. 517, 57 N.W.2d 635, 647 (1953).

³⁶ See *Outlook*, Ap. 5, 1916, for an article by F. M. Davenport entitled "Failure of the Presidential Primary." On page 809 Mr. Davenport speaks of the failure of the primary in this regard.

Although the favorite son device can make a mockery of any presidential primary law, it has been overlooked or ignored in most of them. Favorite sons can get on the ballot in the same way as any other candidate, regardless of the fact that it is much easier for him to obtain the required number of signatures on the petition. One way to obviate this difficulty is to require a favorite son to obtain a larger number of signatures than out-of-state candidates. If he is required to obtain a larger number of signatures *in each congressional district* the situation may equalize itself. If the favorite son is really a serious contender for the nomination and not just a blind, then he should not have any difficulty getting, say, three times as many signatures on a petition as an outsider.

State Representative Henry R. Heyburn introduced a bill in the 1954 session of the Kentucky legislature which suggests another approach to the problem.³⁷ He would require the petitioners to state that:

... we are entering _____ as a bona fide candidate; that we honestly seek his nomination as President; and that we are not entering him in the interest of any other candidate.

It is unlikely that any favorite son candidate will admit that he is not a serious contender. After his ego has been inflated by members of his state organization he may actually believe he is on the way to the White House. Proof that a man was not a bona fide contender would be difficult in such a case, whether it concerned the candidate, the petitioners, or those influencing the petitioners.

The most realistic proposal is contained in the Nevada study.³⁸ A native of the state may have his name on the ballot if he has entered in any other state presidential primaries. This seems to get to the crux of the problem.

D. WHEN NO CANDIDATES ENTER THE PRIMARY OR PETITIONERS DO NOT ENTER THEM

The traditional methods for putting a candidate's name on the ballot, i.e., permitting him to enter on his own or allowing

³⁷ H. B. 453, Reg. Sess., 1954, introduced March 1, 1954. This bill was the result of the research of Mr. Henry R. Heyburn of Louisville, Kentucky, and was written by the Legislative Drafting Service of the Harvard Law School from an outline furnished by Mr. Heyburn. The final result, as might be expected, represents one of the best primary bills offered in the active period of 1952-1955.

³⁸ *Supra*, note 16, Sec. 26 (1), p. 77.

petitions to be filed by his supporters, have not been sufficient to insure a full ticket. A good example of this occurred in the 1956 Nebraska Democratic primary. Adlai Stevenson did not file as a candidate and supporters were not forthcoming to circulate the necessary petitions. Yet Stevenson and Kefauver were undisputably the two main contenders for the Democratic nomination. With only Kefauver's name before the voters of the state, the primary was virtually meaningless. Such a situation need not arise.

Oregon has found a practical answer and enacted it into law.³⁹ The Nevada Legislative Counsel has recommended a similar provision. The secretary of state is authorized, and specifically instructed, automatically to list on the ballot all candidates for the presidential nomination who have been entered in the presidential primaries of at least two or more states, districts, or territories. The statute was further amended in 1959 to provide that a candidate may be entered if the secretary of state "in his sole discretion determines that he is actively seeking the nomination and such candidacy is advocated or recognized by news media throughout the United States."⁴⁰

E. WRITE-IN VOTES

Sometimes a candidate enters the race after the deadline for filing has passed. This occurred in Minnesota during the 1952 primary. But because the law in that state permitted write-in votes, the name of Dwight D. Eisenhower appeared in an election for the first time. The huge write-in vote launched the boom which propelled Mr. Eisenhower into the presidency. Harold Stassen⁴¹ and an unknown by the name of Settedahl were the only persons whose names appeared on the ballot, and although Stassen won, Eisenhower received thirty-seven percent of the votes cast.⁴² The Eisenhower movement was helped immeasurably by the write-in vote in several other states. In Nebraska, neither Taft's⁴³ nor Eisenhower's name appeared on the ballot, but as a result of a well organized campaign, it was the write-in vote which determined the election. Taft led with 79,537, Ike

³⁹ ORE. REV. STAT. 249, 368 (1959).

⁴⁰ ORE. LAWS, 1959, ch. 390.

⁴¹ Governor of Minn. (1939-1945).

⁴² REPORT OF THE MINN. STATE CANVASSING BOARD, March 18, 1952, Primary Election, p. 6.

⁴³ Robert A. Taft, U.S. Senator from Ohio (1939-1953).

was second with 66,078 and Stassen, the only candidate whose name appeared on the ballot, received but 53,238 votes.⁴⁴

This experience should indicate the wisdom of providing space on the ballot for a write-in vote.

F. NO PREFERENCE VOTES

Quite often a voter will find himself in the position of not favoring any of the candidates on the ballot. He may have no preference at all. If he is to have complete choice, some provision should be made for him to vote "no preference" and in favor of an uninstructed delegation. Such a provision may be especially valuable in years when there is not a strong contest for the nomination.

Governor Robert Meyner of New Jersey has commented that . . . in the absence of one or two outstanding candidates, primaries are a poor substitute for the convention system.⁴⁵

This argument would not apply to a law with a "no preference" provision. Then the voters could send an uninstructed delegation, at the same time allowing those who favored the candidates entered to vote for them. In the absence of a primary in the situation mentioned by Governor Meyner it would be possible for the delegation to be instructed for a man who was the favorite only of the state party organization, not of the rank and file voters. Even in off years the primary would help to maintain a high degree of voter control.

G. EXPENSE FACTOR

It is impossible to know how many men have been deterred from entering state primaries because of the expense involved. Those who have campaigned extensively have found the cost a considerable burden. Theodore Roosevelt spent much of his private fortune during the 1912 primaries, and in 1955 Senator Estes Kefauver was still paying the debts incurred during the 1952 campaign.⁴⁶ Those close to politics have been quick to notice

⁴⁴ OFFICIAL REPORT, NEBRASKA STATE CANVASSING BOARD, PRIMARY ELECTION, 2 (1952).

⁴⁵ Letter from Gov. Robert Meyner to Richard H. Hansen, July 12, 1955.

⁴⁶ A.P., October 18, 1955.

this problem. Secretary of State Christian A. Herter says that the present laws result in

... a premium on the spending of large sums of money by individual candidates in individual states prior to the convention.⁴⁷

Former President Truman comments:

The old saying is that any citizen has a right to run for any office that he wishes, but, as a practical matter, he doesn't always have the money.⁴⁸

Of course, the man who spends the most money doesn't always win, but as an article in the 1912 *Omaha Bee* suggested:

... one thing in this direction does stand out and that is that a candidate who without the expenditure of considerable money would not have attracted any considerable votes, can, by liberal expenditures, make it decidedly uncomfortable for others.⁴⁹

There can be no doubt that some well qualified men have refused to run in the primaries because of the expense. These men could conceivably be forced into the race by the elimination of consent and withdrawal clauses. For this reason the expense factor provides one of the strongest arguments for retaining these provisions in primary laws. Instead of keeping features which are susceptible to abuse, several states have tried to assist the candidates in meeting campaign expenditures. This gets to the heart of the problem by making certain that the candidates will be on the ballot, while at the same time recognizing the very practical fact of life that there is a burden of expense imposed on the candidate. However, these attempts have not been very realistic to date, and have had little success. Some have limited the amount to be spent by the candidates, while others have provided for publication of a campaign booklet by the state, setting forth the views of the candidates on campaign issues. All these have proven abortive and most of them have been abandoned.⁵⁰

It has been suggested that the government should advance a certain sum for candidates and then forbid campaign expendi-

⁴⁷ Letter from Press Secretary Emmanuel Goldberg, when Herter was Governor of Massachusetts to Richard H. Hansen, July 13, 1955.

⁴⁸ Interview with Richard H. Hansen, July 25, 1953.

⁴⁹ *Omaha (Neb.) Bee*, April 10, 1912, p. 3, col. 5.

⁵⁰ CALIF. LAWS, 1911, ch. 18, § 10, repealed by CALIF. LAWS, 1915, ch. 137; MONT. LAWS, 1913 § 5, repealed by MONT. LAWS, 1927, ch. 126, S.D. LAWS, 1917, ch. 234, § 48, repealed, S.D. LAWS, 1921, ch. 329, 333. The latter law also provided for at least one debate among the contenders before the primary.

tures from other sources. The late Professor of Political Science, John P. Senning of the University of Nebraska favored this approach.⁵¹ Mr. Truman recalls that when he was in the Senate this idea was discussed by Senators Norris and Hatch,⁵² and it has been suggested also by Senators Smathers and Douglas.⁵³ Certainly the people of a state, through their government, have an interest in the conduct of the campaign. If the people want the privilege of voting for all the candidates why should they not take steps through their state government to equalize the financial burden for the candidates? Although regulation of campaign expenditures has been upheld by the courts, there could be some serious constitutional questions raised by such a statute.⁵⁴ These should be considered carefully in drafting legislation.

The most common objection to this idea is that too many men would try to take advantage of state funds. But a requirement of a large number of signatures from various parts of the state on the petition would eliminate these undesirables, while encouraging the good men to run.

An alternative suggestion would be that the public media in the state, i.e., press, radio and television, be requested to give equal space or time to each candidate.⁵⁵

Whatever the approach, something should be done to avert the danger that the primary might become a "rich man's game." If

⁵¹ Dr. Senning worked closely with the late U.S. Senator George Norris (Ind., Nebr.) to establish the Unicameral Legislature in Nebraska.

⁵² Carl A. Hatch, U. S. Senator from N. M. (1933-1949).

⁵³ George A. Smathers, U.S. Senator from Florida (1951-); Paul H. Douglas, U.S. Senator from Ill. (1948-). *Hearings before the Subcommittee on the Judiciary*, 83rd Cong., 1st Sess., p. 33 (1953).

⁵⁴ Opinions of the Attorney General, Texas, May 16, 1953, Reported in DIGEST OF OPINIONS OF THE ATTORNEY GENERAL, Vol. 16, No. 33, 1953, publ. by Co. of State Governments 1313 East 60th St., Chicago, Ill.

⁵⁵ Another approach was suggested by Senator Estes Kefauver, who introduced in the second session of the 86th Congress a bill designed, among other things, to limit the amount a candidate in a presidential primary could spend. See S. 2436. The bill proposes a formula (Sec. 208 (c) for limiting expenses, But in Sec. 208 (c) so many exceptions are made that this purpose is largely negated. The bill was passed by the Senate in January, 1960, but has not been considered by the House at this writing. While it is ineffective, the bill is important because this is the first time either House has passed a bill which would limit, in any measure, expenses in state presidential primaries. Previous bills have been killed in Committee.

the movement is to develop further, serious thought must be given to this very real problem and some method devised to solve it.

H. REGISTRATION AS A SAFEGUARD TO PARTIES

If the voters of a party are to have a true choice among the leading contenders in their party, they must be protected from members of the other party who may deliberately switch parties in the primary in the hope of nominating the weakest candidate. Mr. Richard S. Childs of the National Municipal League has prepared a Model Presidential Primary Law which contains, among other worthwhile provisions, a section which reads:

To qualify for participation in the Presidential Primary of a party, the voter must register in the party of his choice not later than the previous November.⁵⁶

Most of the states feel that such a safeguard is needed to maintain the integrity of the parties and have provided for a "closed" primary.

Summarizing briefly, experience dictates that in order to place all of the candidates on the ballot an effective primary law should provide:

- a. that the primary be held in May or June, preferably in conjunction with the state primary;
- b. that consent of the candidate will not be a prerequisite, nor will he be allowed to withdraw except under certain specific conditions; the law should make it mandatory for the secretary of state to place a name on the ballot once it has been duly submitted;
- c. that favorite sons must obtain a higher number of signatures on their nominating petitions than candidates from out of the state;
- d. that, if they have not already entered the primary, the secretary of state should list the names of candidates who have been entered in two or more state, district or territorial primaries;
- e. for write-in votes;
- f. for no preference votes;
- g. that the primary be a closed one; no cross-filing should be allowed;

⁵⁶ Initial draft, p. 5. Publ. by National Municipal League, 47 East 68th St., New York 21, N.Y.

h. for equal time and space to be given to all the candidates in the papers, radio and television, and for public debates if possible.

This is the hard core of the provisions which should be embodied in a primary law designed to fulfill the original purpose of getting all the candidates on the ballot.

IV. THE PREFERENCE VOTE AND ELECTION OF DELEGATES

Once there are adequate provisions to insure the entry of all the presidential candidates in the primary, the next problem concerns the method by which the voter shows his preference. The simplest approach is to list the names of the presidential candidates on the ballot and let the voter take his choice. Few primary laws have followed such a simple procedure, because an important function of the primary is the election of delegates to the national convention. The two functions, i.e., indicating a preference and electing the delegates, have been interwoven by a maze of statutory provisions. The result has been that some sections of the law unwittingly defeat the purposes of other sections. This will become clearer as we examine the types of laws which have been passed.

A. DIRECT PREFERENCE VOTE

Under this approach the names of the presidential candidates are listed, as are the names of the candidates for delegates.⁵⁷ When this technique is used the voters are unaware of the preferences of the candidates for delegates. As a consequence, the voter may find that he has voted for a certain presidential aspirant and elected delegates who favor another candidate.

⁵⁷ (1915-29) Ind., Acts of 1915, c. 105, p. 359.
 (1912-16) Mass., St. 1912, c. 254; St. 1913, c. 835.
 (1913-15) Minn., L. 1913, c. 449.
 (1913-27) Montana Session Laws, 1913, p. 590 (passed by initiative).
 (1911 to date) Neb., Laws, 1911, c. 46, p. 216.
 (1949 to date) N.H., Laws, 1949, c. 186, p. 199.
 (1916-30) N.J., L. 1916, c. 41, p. 72.
 (1911-35) N.D., Chapter 208, Session laws, N.D. 1911.
 (1911 to date) Ore., Chapter 5, Oregon Laws 1911.
 (1917-29) S.D., Session laws, 1917, c. 234.
 (1915-21) Vt., Secs. 26 & 27 of No. 4, Acts of 1915.
 (1915 to date) W. Va., c. 26, Acts of the Legislature, of 1915, Reg. Sess.
 (1911-15) Wis., c. 300, Laws of 1911.

In Nebraska, with this type of law, many of the candidates for delegate make it a point to announce their preferences through the newspapers. If their candidate does not win the preference vote, these delegates vote for him anyway at the convention. This type of statute permits them to claim that the people elected them on the basis of the preference they announced before the primary. One of our governors used this argument to influence the Nebraska Republican delegation to vote for Eisenhower in 1952, although Senator Taft won the primary. The only defect in this reasoning is that the average voter will not remember the individual preferences of the delegates. He does not carry a newspaper with him to the polls to be certain that he votes for the right delegates.

B. DIRECT PREFERENCE VOTE SHOWING DELEGATES' CHOICE

This technique provides for the listing of the names of the presidential candidates, and the personal preference of the candidate for delegate is shown, thus:

John Jones
(favors Eisenhower)

Disparity between the preference vote and the preferences of the individual delegates results under this method also.⁵⁸ Though the preference of the delegate is listed, confusion can ensue. An example of this is discussed by Merriam and Overacker:

The idea, of course, is that the voters will then select the delegates whose personal preferences agree with their own. Experience shows, however, that this is not always the case. The Massachusetts primaries of 1912 furnish a good example of this. In the Republican Party, Taft and Roosevelt ran a close race, and the final returns showed that the voters of the state at large had endorsed Taft in the preference vote, but had elected the eight delegates at large favoring Roosevelt. . . . Where such conflicting instructions are given, the delegate naturally follows the instructions which correspond to his own inclination.⁵⁹

⁵⁸ (1911-33) Ill., Laws of 1912 (Sp. Sess.) p. 43.

(1915-17) Minn., L. 1915, c. 372.

(1949-59) Minn., L. 1949, c. 433.

(1930 to date) N.J., Laws, 1930, c. 187, p. 819.

(1913 to date) Penn., Laws, 1913, No. 400, p. 719.

(1913-49) N.H., Laws, 1913, c. 167.

(1915 to date) Wis., c. 381, Laws of 1915.

⁵⁹ MERRIAM AND OVERACKER, PRIMARY ELECTIONS, p. 151 (1928).

C. INDIRECT PREFERENCE VOTE

These laws provide that only the names of the delegates are listed on the ballot, with an indication of their preference.⁶⁰ There is no direct vote for presidential contenders, only for individual delegates. Here there is still the danger that the popularity of the delegates may influence the voting to an extent which obscures the real preference for presidential candidates.

D. THE SLATE METHOD

California is the outstanding proponent of this system, which provides that the names of the presidential candidates are not listed.⁶¹ Instead, the candidates for delegate are listed in groups according to their preferences for President. One mark constitutes a vote for the whole slate.

Experience with this method has been highly unsatisfactory. A substantial portion of the electorate can be deprived of a vote in the convention by the operation of this system. The 1952 Republican primary in South Dakota affords a singular example of this inequity. Slates were entered for both Taft and Eisenhower. Taft received fifty and two-tenths percent of the vote and by virtue of four tenths of one percent of the vote cast had all of his delegates elected. Former Governor Joe Foss⁶² comments in this situation:

The margin was very slim and much discussion was held on the point of whether or not it was advisable to have all the delegates pledged to one man. The Taft slate went to the convention and supported the late Senator until the last ballot switch of votes which gave the nomination to Eisenhower. There was some feeling in South Dakota that, with the vote so close between the two delegations in the primary, part of the delegation should have been pledged to Taft and part to Eisenhower.⁶³

The slate method deprived thirty-three percent of the Republican voters in California of representation in the 1952 convention; and in the Minnesota primary that year the percentage was even higher—sixty-six.⁶⁴

⁶⁰ (1916 to date) Mass., St. 1916, c. 16.

⁶¹ (1911 to date) Calif., Laws, 1911, Ext. sess., c. 18.
(1929 to date) S.D., Session laws, 1929, c. 118.

⁶² Joseph J. Foss, Governor of S.D. (1955-57).

⁶³ Letter from Gov. Joseph J. Foss to Richard H. Hansen, July 19, 1955.

⁶⁴ CALIFORNIA, STATEMENT OF VOTE, June 3, 1952.

In spite of the California results, the Legislature of that State has not changed the law since the 1952 election. The Chairman of the Legislature's Committee on Elections and Re-apportionment in 1955, Assemblyman Charles J. Conrad, states an interesting argument for the slate method:

You have asked whether I feel election by slates is equitable. My personal answer is emphatically, yes, so long as the present method of casting electoral votes is in existence. That is to say, since electoral votes are cast on a package basis under present California law, no candidate is likely to receive any electoral vote in California unless he receives a majority of the votes cast at the general election and, therefore, it is equally logical that the delegation also be selected on a 'winner take all' basis. . . . Delegations made up of supporters of several candidates are not effective on the floor of the convention and frequently find themselves in a disadvantageous position, so far as the interests of the people of their state are concerned. . . . California has frequently complained that in the past it has not been given proper recognition in either of the two national conventions . . . there have been criticisms as to consideration so far as water rights, tidelands, conservation measures and the general welfare of the West. In such cases, a split delegation has virtually no bargaining power on the floor of the convention itself. Only by a united delegation able to deliver its votes in a unit can recognition be obtained vital to the interest of any large state. . . . There is a sharp divergence of opinion on this and there are those in both political parties who would like to see the delegates elected on a congressional district basis.⁶⁵

The method used by the Electoral College to count votes has been criticized vehemently for one hundred and seventy-one years. Historically, it was enacted as part of the same compromise which resulted in the creation of the House and Senate. Practically, it has resulted in the election of five minority Presidents.⁶⁶ On this basis it cannot be argued that the Electoral College system is an example of majority rule. Extending similar procedure into the field of nominations is a multiplication of errors.

The strongest argument for the national convention system is that it affords an opportunity for mixing all the cross currents of public opinion. The slate system defeats this purpose. In the South Dakota case just mentioned it deprived forty-nine and eight-tenths percent of the voters in the state of representation.

Mr. Conrad very ably states, *supra*, the conviction that only a united delegation is able to obtain "recognition" vital to the interests of any large state. By "recognition" he may mean incor-

⁶⁵ Letters from Charles J. Conrad to Richard H. Hansen, July 5, 20, 1955.

⁶⁶ John Q. Adams, A. Lincoln, R. B. Hayes, B. Harrison, W. Wilson.

corporation of planks in the party platform recommending favored projects. This argument can hardly justify the slate system. It is one thing to adopt a platform and another to enact a law. Platforms are famous for their attempts to placate factions. They are often divorced from the views of the candidates.

"Recognition" may mean dispensation of patronage to the united delegation which has "delivered" its votes. If this be the case, are the delegates under a slate system "delivering" their votes purely to insure the protection of the vital interests of the state, or the vital interests of the delegates in the promised patronage?

E. NEW APPROACHES

Bills introduced in the Nebraska and Washington Legislatures suggest a new technique.⁶⁷ These bills, practically identical, provided that a delegate must state his preference. The voters would vote for both the presidential candidate (through a preference vote) and for the delegates as individuals. Election of the delegates would be determined by the percentage of votes cast for the presidential candidates. If one candidate received fifty percent of the votes he would get fifty percent of the delegates, chosen from those pledged to him in order of the highest number of votes received individually. As a practical matter, the formula by which the delegates were to be elected was difficult to explain to the legislators. In spite of that fact, the Nebraska bill failed of passage by only one vote.⁶⁸ The Washington bill suffered a similar fate.

Mr. Conrad, the California Assemblyman quoted above, noted that there is a strong feeling that pledged delegates should be elected on a congressional district basis. Traditionally, many of the states have elected two delegates from each congressional district, and the remainder at large. By pledging these delegates it is possible to get a much better proportional representation than by election of entire slates at large. Indiana and Montana passed laws with such a provision in 1953 and 1954 respectively⁶⁹ and bills

⁶⁷ Nebraska: L.B. 260, 65th Leg., 1953; Washington: S.B. 26, 33rd Leg., 1953.

⁶⁸ Neb. Leg. Journ., 65th Sess. (1953) p. 1664.

⁶⁹ Indiana: Laws, 1953, c. 143, sec. 1, last para.; Montana: Laws, 1953, c. 214, sec. 8(4), referendum passed Nov. 2, 1954. However, the Montana law was repealed by laws, 1959, c. 274, p. 676.

with this feature have been introduced in Kentucky, Missouri, Oklahoma and Tennessee.⁷⁰

Former Governor Theodore R. McKeldin of Maryland,⁷¹ who apparently has given a good deal of thought to the problem, says:

I believe selection of party delegates by popular vote is good, provided they are elected in the main by congressional districts rather than at large, so that all areas of the state are represented. Selection at large would be acceptable in cases where states have been awarded bonus delegates for party performance in past elections. . . .⁷²

This trend is a definite step forward. There is, however, still a chance under such a system for the popularity of the delegates to influence the voter, even if he votes only for the presidential candidate. This is because the names of the candidates for delegate are still on the ballot. After the experience of the 1912 Massachusetts Republican primary⁷³ it would seem wise to avoid any conflict in the mind of the voter. The best technique would be to leave the names of the delegates off the ballot altogether. The names of the delegates would be kept on file at the office of the secretary of state and a vote for the presidential candidate would be a vote for the delegates pledged to him in that congressional district. Thus, any chance of conflict between the delegates' popularity and the preference for presidential nominee would be removed. The preference would be clear-cut, the proportionate representation narrowed, and the ballot shortened. The voter need only put his mark by the name of the presidential candidate favored.

There is another reason why delegates should not be listed on the ballot. It would be necessary to list the alternates also, unless the delegates are empowered to choose them, as is done in some states. A ballot listing both delegates and alternates is necessarily long. It is lengthened even more when the state allows its delegates to vote half-votes. For example, Nebraska was allowed twelve votes in the 1956 Democratic convention, but it would have been necessary to elect twenty-four delegates if the State Central Committee had decided to accept the option given by the National Committee to use half-votes. Since, in

⁷⁰ H.B. 437, Reg. Sess., Kentucky Leg., 1954, introduced by Cassius M. Clay. H.B. 18, 1953 Gen'l. Assem., Missouri; H.B. 898, 1953, Sess., Oklahoma; S.B. 95, 1953 Sess., Tenn.

⁷¹ Governor, 1951-59.

⁷² Letter from Governor Theodore R. McKeldin to Richard H. Hansen.

⁷³ *Supra*, note 59.

Nebraska, the alternates' names must also appear on the ballot, there would have been forty-eight names listed. Under the new California law there is no need for either delegates' or alternates' names to appear.⁷⁴

V. EFFECTS OF THE PRIMARY ON THE NATIONAL CONVENTIONS

The overall goal of the state presidential primary has always been to increase popular participation in the choice of the party nominee. Hardly anyone originally anticipated that it would also affect procedural aspects of the convention. We turn now to a scrutiny of the degree to which the primary has influenced both of these phases of the national convention. For purposes of clarity the impact of the primary on nominations will be discussed first, followed by a review of its procedural ramifications.

A. EFFECT ON PARTY NOMINATIONS

It is necessary to consider conflicting opinions on this question. The first school of thought is that the primary has had no effect on the nominations. The second view is to the contrary, and there are some new figures to support this argument.

1. *Indirect effect*

Those who are of the first opinion usually place chief reliance on one fact. A person can win *all* the primaries and still fail to capture the nomination. Estes Kefauver's experience in 1952 is a case in point. The coonskin cap became a symbol of victory in all the primaries that year, but when the delegates convened it was nudged out of the presidential ring by a fedora with an Illinois label. The single fact that winning *all* of the primaries is no assurance of winning the nomination has often been used as the premise for arguing that primaries should be abolished, but the obvious answer is not always the correct one. It is true that winning *all* of the primaries may not clinch the nomination, but *winning a few key ones* gives a campaign powerful impetus.

This important reality must be kept in mind: The value of any state presidential primary depends upon the caliber of the opposition and the locale of the contest. To illustrate: With the exception of the New Hampshire race against Truman, Kefauver's victories in 1952 were meaningless. He was the only

⁷⁴ CALIF. LAWS, 1957, Vol. 1, Ch. 932, p. 2143.

candidate in many states, and in others he ran against men who were not themselves serious contenders.⁷⁵ Kefauver's real opponent, Stevenson, didn't enter the picture until after the primaries. But in 1956, when Stevenson and Kefauver joined battle in the crucial state of California, the results enhanced the prestige of the winner and had national repercussions.

Under certain circumstances a candidate can lose a primary and still improve his position. This sometimes happens when he is a write-in candidate. If he is given overwhelming support, politicians in other states will start getting on "the bandwagon." This is exactly what happened to Eisenhower in the 1952 Minnesota primary, previously mentioned.⁷⁶ Though he lost, Eisenhower's showing was so spectacular that his campaign gained tremendous momentum.

The primary can eliminate contenders. The 1944 Wisconsin primary destroyed the hopes of Wendell Willkie for capturing the Republican nomination that year, and he subsequently withdrew from the race. Defeat in even one primary, if it is crucial, can take a candidate out of the running. Rejection in several successive primaries in key states means certain political oblivion.

2. *Direct Effect*

It has been stated⁷⁷ that the second purpose of the primary is to insure a reflection of the preference vote in the convention through the balloting of the delegates. The primary may not make the nomination automatic, but if it influences the delegates' voting it has accomplished its purpose. In order to judge this effect of the primary we must look at the voting records of the delegates.

The series of charts reproduced in appendix A, pages 509 to 527, correlate the preference vote with convention balloting. Delegate reaction follows a definite pattern, depending on the number of candidates who appeared on the ballot in the primary.

a. *When the Winner's Name was Written-in*

The difficulty with write-in votes arises from the fact that the delegates do not feel that this method of expression repre-

⁷⁵ For instance, in Nebraska he was pitted against U.S. Senator Robert S. Kerr, (Okla.), who was a candidate only if Truman was not.

⁷⁶ See p. 15.

⁷⁷ See p. 3.

sents a clear mandate from the people. This feeling is especially pronounced when the write-in vote is small;⁷⁸ and it holds true even when it is comparatively large. For instance, McAdoo received almost fifty-five thousand write-in votes in the 1924 Wisconsin Democratic primary, compared to fifty-eight hundred write-ins for Al Smith. Yet only three out of twenty-six delegates voted for him at the convention in the early balloting.⁷⁹

There is one major exception to this rule. It occurs rarely. When exceptionally popular candidates, such as Franklin Roosevelt and Dwight Eisenhower, are making a bid for the nomination, a write-in vote can assume proportions which compels support by the delegates. This exception is exemplified by the 1952 Minnesota and Nebraska Republican primaries, previously mentioned.⁸⁰

b. *When One Candidate is on the Ballot*

There is no essential difference between a write-in vote and this situation. Only one candidate on the ballot, muse the delegates, gives the voters as much choice as they would have in a Russian election. A. Mitchell Palmer⁸¹ was the only candidate entered in the 1920 Michigan Democratic primary and received forty percent of the votes of the delegation at the convention. The delegates' response was generous, compared with their reaction to the 1924 Democratic primary in the same state. McAdoo received ninety-nine percent of the preference vote, but none of the delegates voted for him at the convention.

Widely popular candidates are an exception to the rule.⁸² Primary winner Hoover⁸³ won the convention votes of the New Jersey and Michigan Republican delegates in 1928; while Franklin Roosevelt, winner in the 1932 Democratic primaries in the Dakotas, also enjoyed the confidence of the delegates from those states.

Even though he is the only candidate on the ballot a favorite son will receive strong support from the home state delegates.

⁷⁸ See ff. primaries: 1920 Wis. Rep.; 1920 Penn. Rep.; 1920 Penn. Dem.; 1920 and 1924 N.J. Dem.

⁷⁹ See ff. primaries: 1924 Wis. Dem.; 1948 N.J. Rep.

⁸⁰ See p. 15 *supra*.

⁸¹ A. Mitchell Palmer, Attorney General of U.S., 1919-20.

⁸² See ff. primaries: 1912 Penn. Dem.; 1912 N.J. Dem.; 1928 N.J. and Mich. Rep.; 1932 S.D. and N.D. Dem.

⁸³ Herbert C. Hoover, President, 1929-33.

This is not a one ballot courtesy either. When the favorite sons are men like Woodrow Wilson, James M. Cox⁸⁴ and Robert A. Taft, who are popular in other states, the home state delegation is always the last to desert his cause.⁸⁵

c. *When Two Candidates out of Three or More are on the Ballot*

Convention balloting here varies as much as human personality. The delegate's individual interpretation of the primary vote determines the way he casts his ballot, for the voters haven't given him any clear instruction. It would be difficult to find a better example than Hiram Johnson's⁸⁶ experience in the 1920 Republican primaries. There were three prominent competitors for the nomination. Johnson appeared on the primary ballot with one other candidate in Nebraska, Michigan and North Carolina. He received only forty-six percent of the vote in Nebraska, but forty-four percent of the delegation was voting for him on the tenth and final ballot. Yet the delegates from Michigan, where he received seventy-two percent of the preference vote, were deserting him after the fifth ballot. And those from North Carolina, where he also received seventy-two percent of the preference vote, never gave him more than eighteen percent of their votes. In Nebraska and North Carolina he ran against Leonard Wood,⁸⁷ a strong contender, and in Michigan against Frank Lowden,⁸⁸ also a formidable opponent. It is impossible to account for the disparity in support. Delegates in North Carolina were supposed to be bound by the vote at large and in their districts; the winner in Michigan was said to be "the choice of the people;" while the Nebraska law did not bind the delegates at all. So far as these binding provisions are concerned, one would expect the North Carolina law to have been the *most* effective and the Nebraska law *least* conducive to delegate support. Yet the converse was true.

Here we again have the same exception as in (a) and (b), *supra*. Extraordinary national popularity may compel the dele-

⁸⁴ Gov. of Ohio, 1913-15, 1917-21.

⁸⁵ See ff. primaries: 1920 Ohio Dem.; 1940 Ohio Rep.

⁸⁶ Hiram Johnson, U.S. Senator from Calif. (1917-47).

⁸⁷ Gen. Leonard Wood, former "Rough Rider", Gov. General of the Philippines, 1921-27.

⁸⁸ Frank Lowden, Gov. of Ill., 1917-21.

gates to vote consistently for the primary winner. Franklin Roosevelt is a prime example, as are Dwight Eisenhower and Champ Clark.⁸⁹

d. *When All of the Candidates are on the Ballot*

This situation differs substantially from the previous ones. The voters have had full opportunity to choose between all of the presidential aspirants. If the delegates choose to disregard the clear instructions of the electorate then the primary is nothing but a popularity contest. On the other hand, if they follow the popular will, in these instances, the primary has fulfilled its second stated purpose. History offers striking evidence of success. It is so obvious it has been overlooked.

Presidential primaries with all candidates have been held twenty-four times. A chart listing these primaries is reproduced on page 500. The preference vote received by the winner is compared with the percentage of votes cast for him at the convention by the state's delegation. The number of ballots cast before a candidate was nominated is also given.

In only four of these situations have the candidates received a lesser percentage of votes from the delegates than from the voters in the primary. Three of these cases involved unique circumstances.

At the 1912 Massachusetts Republican primary Taft received fifty and four-tenths percent of the primary vote, but only forty-four percent of the delegates voted for him on the first ballot. This was the primary where Taft won the preference vote but delegates-at-large favoring Teddy Roosevelt were elected. At the convention these eight delegates, joined by eight other Roosevelt men, abstained from voting. They did this because the convention had previously decided credentials disputes in other states in favor of Taft delegates. If the Massachusetts primary law had been drawn to avoid conflict between the preference vote and the personal popularity of delegates, this situation would never have developed.

⁸⁹ See ff. primaries: 1912 Calif. Dem.; 1932 Neb. Dem.; 1932 Penn. Dem.; 1920 Neb. Rep.; 1952 Penn. Rep.

CHART III
 PRIMARIES IN WHICH ALL CANDIDATES WERE ENTERED
 1912-1956

Year	State	Preference Vote		Convention Balloting*							Total No. Ballots
		Party	% by winner	1	2	3	4	5	Last		
1956	Alaska	Dem.	61	100						100	1
1912	Calif.	Rep.	53	92						92	1
1956	Calif.	Dem.	62	100						100	1
1956	Fla.	Dem.	51	88						88	1
1912	Ill.	Rep.	61	93						93	1
1920	Ill.	Rep.	51	71	71	71	71	71	2		10
1920	Ind.	Rep.	42	78	78	60	60	60	30		10
1912	Mass.	Rep.	50.4	44						44	1
1956	Minn.	Dem.	56	0						0	1
1920	Mont.	Rep.	61	100							
		on all ballots								100	10
1924	Mont.	Dem.	91	12	25	62	87	100	25		103
1912	Neb.	Rep.	54	100						100	1
1912	Neb.	Dem.	44	75	75	75	75	75	0		46
1948	Neb.	Rep.	43	98	87	60				0	3
1912	N.J.	Rep.	56	93						93	1
1912	N.D.	Rep.	57	100						100	1
1920	N.D.	Rep.	96	80	60	60	60	50	0		10
1912	Ohio	Dem.	52	73	71	69	69	71	25		46
1912	Ore.	Rep.	40	100						100	1
1920	Ore.	Rep.	38	90	90	80	50	50	50		10
1912	Ore.	Dem.	53	100							
		on all ballots								100	46
1956	Ore.	Dem.	60	100						100	1
1920	S. D.	Rep.	36	100	100	100	100	100	60		10
1912	Wis.	Rep.	74	100						100	1

* Figures given are percentage of vote of whole delegation cast for the primary winner. Thus, in 1956, Stevenson won the Alaska primary by 61% of the vote, and the whole delegation to the convention (100%) cast their votes for him on the first and only ballot, etc.

In 1924 ninety-one percent of the Montana Democrats voted for William Gibbs McAddo⁹⁰ in the primary. When the conven-

⁹⁰ Former Sec. of Treasury under Pres. Wilson, 1913-18.

tion met, the delegates only gave him twelve percent of their votes on the first ballot, but by the fifth ballot they were all behind him; and ninety-eight ballots later twenty-five percent were still voting "McAdoo." Though the delegates did not all vote for McAdoo on the first ballot, they appear to have responded to the primary vote as the balloting progressed. The fact that twenty-five percent of the delegates were still voting for him on the one hundred and third ballot shows that the primary vote had impressed the delegates.

Senator Kefauver won fifty-six percent of the Democratic primary vote in Minnesota in 1956, yet on the first ballot all the delegates voted for Stevenson. They had originally cast their votes for the Tennessean, but switched them over to Stevenson when it became obvious he would receive the nomination on the first ballot.

The special facts in these three instances support the argument that the delegates will reflect the preference vote in the convention. In the case of Massachusetts they paid obeisance to the primary by abstaining from balloting. The Montana delegates did support McAdoo when the convention got under way. The Minnesota delegates supported Kefauver until Stevenson's nomination was inevitable.

In the fourth case, the North Dakota Republican primary in 1920, ninety-six percent of the preference vote was cast for Hiram Johnson. He did not receive ninety-six percent of the delegates' votes on the first ballot, but he got eighty percent. Such figures may not reflect proportional representation, but they do offer strong evidence that the delegates were mindful of the preference vote.

The delegates in twenty of the twenty-four instances listed gave the primary winner a much higher percentage of their votes than he had won in the preference poll. Looking at these cases collectively it will be seen that the candidates received an average of fifty-two percent of the preference vote. The average first ballot vote by the delegates for the winner was ninety-two percent, roughly forty percent greater support than the candidate had received in the primary.

The greatest individual variance occurred in the 1920 South Dakota Republican race where Leonard Wood won the primary with a thirty-six percent plurality. On the first ballot the state's delegates gave him one hundred percent of their votes.

Five of these twenty situations arose out of the race for the 1920 Republican nomination. In the five states concerned the

primary winners averaged fifty-four percent of the preference vote. It took ten ballots to nominate Harding, but on the tenth ballot the individual primary winners were still getting forty-eight percent of the votes of the delegates from the states concerned.

The 1912 Democratic convention took forty-six ballots to nominate Wilson. The primary winners in three of the twenty cases were involved in this race, and received an average of eighty-two percent of the primary vote. After forty-six ballots they were still receiving forty-one percent of the votes of the delegates.

These facts leave little room for argument. The delegates will support the primary winner at the convention if all the candidates have appeared on the primary ballot.

3. *Binding Provisions*

The biggest misconception about primary laws is voiced in the most prominent political circles. It has been stated repeatedly by the nation's leading politicians in both parties during the course of this research. Former President Truman succinctly expressed his opinion in an interview:

Question: What do you think are the major defects in the existing primary laws?

Mr. Truman: Well, they are not binding on the delegates...

Question: How do you think they should be corrected?

Mr. Truman: Delegates should be bound by some method, but not indefinitely. How it should be done, I don't know.⁹¹

In truth, if all of the candidates are on the ballot in the primary, it makes no difference whether or not the delegates are bound. As we have seen in the above discussion, in twenty of the twenty-four cases where all of the candidates were on the ballot the delegates gave the winners an average of forty percent more votes than the candidate had won in the primary. In most of these cases the delegates were not bound at all, and in others a wide variety of formulas were employed to bind the delegates. Twelve of these instances involved states which had no binding provisions at all.⁹² The delegates simply felt that they had clear

⁹¹ Interview with Richard H. Hansen, July 25, 1953.

⁹² 1912 Calif. Rep.; 1912 Neb. Rep.; 1912 Ohio Dem.; 1912 N.J. Rep.; 1912 Ill. Rep.; 1920 Ill. Rep.; 1948 Neb. Rep.; 1912 Neb. Dem.; 1956 Alaska Dem.; 1956 Fla. Dem.; 1956 Ore. Dem.; 1956 Minn. Dem.

instructions from the voters and acted accordingly. The averages of the primary and convention votes are quite revealing. The candidates averaged fifty-five percent of the primary vote, and, although the preference vote was only advisory or morally binding on the delegates, they gave the winners *ninety-two* percent of the votes on the first ballot.

The remaining eleven cases involved states with assorted binding formulas. In three instances⁹³ the delegates were bound to support the winner "to the best of my judgment and ability." The primary winners averaged sixty percent of the preference vote and one hundred percent of the convention votes on the first ballot.

Three more cases concerned laws which bound the delegates to the primary winner under a promise to use "my best efforts to secure nomination."⁹⁴ Two of the Oregon delegates to the 1912 Democratic convention switched temporarily to Champ Clark, although Wilson won the primary. They were severely criticized by their constituents."⁹⁵ The average vote received by the primary winners in these situations was forty-three percent and the delegates supported them with ninety-six percent of the vote on the first ballot.

South Dakota in 1920 bound the delegates to the Republican convention to support the winners for three ballots. This is a commonplace formula, the idea behind it being that, generally speaking, all nominations are decided in less than three ballots. The mean of the total number of ballots cast at all conventions may be less than three, but the average number required for nomination has been twelve for the Democrats and four and eight-tenths for the Republicans. The Democrats have taken as many as one hundred and three ballots (1924) and the Republicans fifty-three (1852). Mathematically speaking, there is not much point in a provision which binds for three ballots. In the South Dakota case in 1920 the delegates supported the winner long after the third ballot. On the tenth and final ballot sixty percent were still behind him.

The Indiana law in 1920 bound the delegates to a majority winner only. Leonard Wood was a plurality winner, receiving

⁹³ 1912 N.D. Rep.; 1920 Mont. Rep.; 1956 Calif. Dem.

⁹⁴ 1912 Ore. Rep.; 1912 Ore. Dem.; 1920 Ore. Rep.

⁹⁵ See OVERACKER, THE PRESIDENTIAL PRIMARY, (1926), p. 73, note 1.

only forty-two percent of the vote. Nevertheless, seventy-eight percent of the delegates voted for him on the first ballot, sixty percent were for him on the fifth, and although he had absolutely no chance for nomination on the tenth and final ballot, thirty percent were still supporting him.

There are other types of binding provisions in effect, and several new ones have recently been proposed. One formula would bind the delegates until the presidential candidate received less than ten percent of the vote. This provision was first used in Wisconsin and found its way into the laws of several other states. Mr. Richard S. Childs of the National Municipal League included it in his Model Presidential Primary Law.⁹⁶

While it is a fact that few candidates have been nominated after receiving less than ten percent of the vote, it *has* happened. John W. Davis had less than three percent of the vote on the first ballot at the 1924 Democratic convention, yet he won the nomination. On the other hand, most candidates are out of the race long before their share of the vote decreases to less than ten percent of the total. Furthermore, if a dark horse should enter the contest late in the balloting the complexion of the voting could change so rapidly that the rigidly bound delegate would be unable to change his vote. For example, in the 1852 Democratic convention the name of Franklin Pierce⁹⁷ was not voted on until the thirty-fifth ballot. On the forty-eighth the five leading contenders had over ten percent of the vote, yet Pierce was nominated on the next ballot. In such a case delegates bound by this type of clause would not be released in time to vote for the nominee. The ten percent formula is more popular than practical.

The bill offered in the 1953 Nebraska Legislature proposed that delegates be bound until their candidate started losing votes.⁹⁸ The history of convention balloting does not support the practicality of this method. Bryan⁹⁹ and Harding¹⁰⁰ both lost votes between the first and second ballots at the 1896 Democratic and 1920 Republican conventions, respectively, yet

⁹⁶ MODEL PRIMARY BILL, § 9, (1st Draft), see n. 56.

⁹⁷ Franklin Pierce, President, 1853-57.

⁹⁸ L. B. 260, 65th Leg., 1953, sec. 6.

⁹⁹ William Jennings Bryan, Democratic pres. nominee, 1896, 1900, 1908, U.S. Sec. of State 1913-15.

¹⁰⁰ Warren G. Harding, President, 1921-23.

both won the nomination. Several nominees have lost votes from one ballot to the next.¹⁰¹

A new proposal would bind the delegates for one ballot. They would then be released, caucus and then be bound by the unit rule. This procedure is questionable since the unit rule has been abolished in both party conventions. Another proposal for one ballot would bind them and then allow them to vote for any candidate who has received votes on the first ballot.¹⁰²

If the theory of representative government is to be extended to convention activities, the delegates should not be so securely bound to a primary winner that they are unable to exercise their own judgment and discretion when it becomes reasonably certain that a candidate cannot be nominated.¹⁰³ At what point can this fact be determined? The history of convention balloting does not present any pattern of voting upon which a realistic formula can be predicated. But convention balloting does prove conclusively that if all the candidates are on the primary ballot no binding provisions are necessary.

* * *

Several conclusions can be drawn from the foregoing discussion. Winning the primaries does not insure automatic nomination. That is the purpose of a national, not a state primary. The state laws have had an indirect effect in determining which candidate receives the nomination. Presidential primaries have strengthened the candidacy of some, and forced others from the race.

The direct effect of the primary has been on the voting of the delegates in the convention. We have seen that the degree to which the balloting is affected depends directly on the number of candidates who appeared on the primary ballot. In other words, where the first purpose of the primary - giving the people

¹⁰¹ Highest number of votes lost on any one ballot from previous ballots: *Whig Party*: 1840, figures not available; 1852, Fillmore, 8. *Republican Party*: 1880, Garfield, 2; 1888, Benjamin Harrison, 4; 1920, Harding, 7. *Democratic Party*: 1856, Buchanan, 12½; 1860, Douglas, 1; 1896, Bryan, 40; 1912, Wilson, 5; 1920, Cox, 30; 1924, Davis, 18. Sources: See individual volumes of - PROCEEDINGS REPUBLICAN AND DEMOCRATIC CONVENTIONS; STANWOOD, HISTORY OF PRESIDENTIAL ELECTIONS, (1898); MINOR, STORY OF THE DEMOCRATIC PARTY, (1928).

¹⁰² S.B. 2, 1953 Sess., Tex. Leg.

¹⁰³ This was the conclusion reached by the New Mexico study in 1953. JUDAH, PRESIDENTIAL PRIMARY, UNI. OF NEW MEXICO, p. 23 (1953).

a choice among all the contenders - has been met, the second has also been fulfilled.

B. EFFECT OF THE PRIMARY ON PROCEDURAL ASPECTS OF THE CONVENTION

We have previously discussed the fact that the majority of presidential primary laws now combine the direct election of delegates with a preference vote.¹⁰⁴ Under the old system the voters elected delegates to a county convention. At the county convention the delegates to the state convention were selected. It then fell to the state convention, three stages removed from the voters, to elect the delegates to the national convention.¹⁰⁵ These pyramidal conventions increased the power of the bosses. Since they usually controlled the state delegation, the bosses had more bargaining power in the traditional smoke-filled room. Direct election of delegates helps to diminish this influence, but to what extent is impossible to measure.

There is one obvious procedural effect of the direct election of delegates which can be measured, but it has been completely overlooked. No one has considered how direct election of delegates has reduced the number of credentials disputes.

Credentials conflicts can wreck a political party. In 1912 the unsatisfactory disposition of the credentials contests led to the formation of the Bull Moose Party. This, in turn, split the Republican vote and resulted in the election of Woodrow Wilson.

Statistics from the convention proceedings indicate that states which directly elect delegates still become involved in credential disputes. However, the controversies arising in the primary states are confined to one or two delegates at large or to congressional district delegates. They have seldom involved the whole delegation. A good example is the experience of the Oregon delegation at the 1920 Democratic convention. The contest arose over the filling of a vacancy caused by the death of Judge Baldwin, who had been regularly elected. There were two claimants, so the credentials committee followed the time honored procedure of seating both and allowing them a half-vote each.

It is unusual for the whole delegation from a primary state to become involved in a credentials dispute. It has happened once. At the 1912 Democratic convention there were three delega-

¹⁰⁴ See p. 21, *supra*.

¹⁰⁵ Two-thirds of the states still use this system.

tions from South Dakota, all claiming to have been legally elected. The facts showed that a Wilson ticket had been filed first in the state primary, and a "Wilson-Bryan-Clark" ticket, favoring Clark, filed second. Then, apparently to split the vote, a third ticket was filed, which also favored Clark. When the returns came in, the State Central Committee unofficially tabulated the votes for the second and third tickets together. On the basis of a very small number of votes, the Committee declared the Clark delegates elected. They claimed that since the people thought they were voting for Clark when they voted for the second and third tickets it was only fair to add them together. The secretary of state tabulated the whole vote on the basis of all the returns, and declared the Wilson delegates elected.¹⁰⁶ The Credentials Committee at the convention differed on the question. A minority report urging the seating of the Wilson group was submitted and adopted by a vote of six hundred and thirty-nine and one-half to four hundred thirty-seven.¹⁰⁷

The statistics show that the direct election of delegates has had an effect in reducing the number of credentials disputes. Of the fifty-eight contests which have arisen at the conventions since 1912, only eleven have been from primary states.¹⁰⁸

The method by which these disputes have been decided raises the question of whether we should not now direct our attention to an overhaul of the convention machinery for the settlement of credentials contests. This problem is one for the conventions to solve themselves. It was considered by the Special Committee on Rules for the 1956 Democratic convention, but no concrete action resulted.

VI. CONCLUSION

Primary laws have not fulfilled their purpose, except in the twenty-four cases discussed. These cases are sufficient to prove that the convention delegates, from states in which all presidential contenders are represented in the primaries, will reflect the preference of the people. The cases also demonstrate that binding provisions are not necessary.

¹⁰⁶ A humorous aspect of the presentation of the contest before the convention was the unmerciful flailing given to the secretary of state, a Republican, who was clearly the most disinterested party to the dispute.

¹⁰⁷ PROCEEDINGS, DEM. NATIONAL CONVENTION, 1912.

¹⁰⁸ Figures for the 1956 conventions are not available at this writing.

Experience and new techniques can be utilized to place all of the candidates on the ballot. This is accomplished by the recent Florida law and the amendments to the Oregon statute, and will be furthered by the recommendations in the Nevada study.¹⁰⁹ By providing for slates elected on a congressional district and an at large basis, the new trend in legislation recognizes the need for correlating the preference vote with the election of delegates, and reflects a new phase in the development of the primary.

This new trend may be fleeting. States may continue to disregard experience and to enact isolated laws having unrealistic provisions that defeat one another or states may repeal existing laws. On the other hand, the new trend may signal an orderly growth. Such growth could result from a concerted drive for the adoption of a Uniform Presidential Primary Law throughout the nation. The Florida and Oregon statutes could serve as models for the Uniform Law. With this accomplished the spirit of the primary might ultimately emerge from the letter of the law.

¹⁰⁹ Florida Statutes, sec. 103.101 ff. (1959).
Oregon, Chapter 390, Oregon Laws (1959).
Nevada study, see note 14, *supra*.

APPENDIX A

State of Alaska

(1955-1959)

Democratic Party

Year	Preference Vote		%	Convention Ballots					
	Choice	Winner		1	2	3	4	5	Last
1956	Yes	Stevenson	61	100					1

¹ Stevenson nominated on first ballot.

State of Florida

(1955 to date)

Democratic Party

Year	Preference Vote		%	Convention Ballots					
	Choice	Winner		1	2	3	4	5	Last
1956	Yes	Stevenson	51	88					1

¹ Stevenson nominated on first ballot.

State of California

(1911 to date)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1912	Yes Roosevelt	52	92			92 ¹
1920	No ⁴ Johnson	63	100	100	100	100
1928	No ⁶ Hoover	100	100	100		100
1940	No ¹⁰ Seawell	100	0	0	0	0
1948	No ¹¹ Warren	100	100	100	0	0 ¹²
1952	No ¹³ Warren	67	100			100

* Choice—Whether or not leading contenders on ballot

1 Twenty-four out of twenty-six abstained in protest of the method in which the Taft forces settled the credentials disputes.

2 Clark and Wilson only candidates entered.

3 Forty-six ballots.

4 Hoover and Johnson slates entered.

5 McAdoo only candidate entered.

6 Hoover only candidate entered.

7 Roosevelt, Smith and Garner entered states.

8 Exact results not available from Secretary of State.

9 Hearst switched delegation to Roosevelt on fourth ballot, thus assuring his nomination.

Democratic Party

Year	Preference Vote Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1912	No ² Clark	71	100	100	100	100	92 ³
1924	No ⁵ McAdoo	85	100	100	100	100	0
1932	No ⁷ Garner	8	100	100	100	100	0 ⁹
1952	No ¹⁴ Kefauver	70	100	100	100	100	100 ¹⁵
1956	Yes Stevenson	100					16

¹⁰ Seawell only candidate who entered a slate.

¹¹ Warren only candidate entering a slate.

¹² Dewey unanimously nominated on third ballot.

¹³ Warren and Thomas H. Werdell only candidates entering slates.

¹⁴ Kefauver and E. G. (Pat) Brown only candidates entering slates.

¹⁵ Stevenson's nomination made unanimous after third ballot.

¹⁶ Stevenson nominated on first ballot.

Comments: When all the candidates were entered in the 1912 Republican primary the delegates stayed with the winner even to extent of giving him 39% more of convention vote than had been earned in the primary.

State of Indiana

(1915-1929)

(1945 to date)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1920	Yes Wood	42	78	78	60	60 60 301

* Choice—Whether or not leading contenders on ballot

1 9 out of 30 delegates stayed with Wood.

2 McAdoo only candidate on ballot; he received 180,544 votes; 235 write-ins for Al Smith.

3 Figures not available.

Democratic Party

Year	Preference Vote Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1924	No ² McAdoo	99	0	0	0	0	0
1956	³						

Comments: All of the candidates were on the ballot in the 1920 Republican race, so the delegates stayed with Wood fairly well, in spite of the statutory provision that they need not do so unless the winner received a majority.

State of Illinois

(1912 to date)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots					Last
		%	1	2	3	4	5
1912	Yes Roosevelt	61	93				93
1916	No ³ Favorite Son	90	97	97			0
1920	Yes Lowden	51	71	71	71	71	2
1928	No ⁸ Lowden	99	26				26

* Choice—Whether or not leading contenders on ballot

¹ Clark and Wilson entered.

² Switched to Wilson on last ballot.

³ Sherman only candidate entered.

⁴ Write-ins for McAdoo and Cox.

⁵ Majority voted for Palmer, remainder split between McAdoo and Cox.

⁶ McAdoo only candidate entered.

⁷ More delegates for Smith than McAdoo.

Democratic Party

Year	Preference Vote Choice Winner	Convention Ballots					Last
		%	1	2	3	4	5
1912	No ¹ Clark	74	100	100	100	100	0 ²
1920	No ⁴ Edwards	32	8	0	1	0	0 ⁵
1924	No ⁶ McAdoo	99	21	21	22	22	0 ⁷
1932	No ⁹ FDR	77					
1956	No Stevenson	93	82				10

⁸ Lowden only candidate on ballot; 4368 write-ins for Hoover.

⁹ Write-ins for all candidates, totaling only 1,390.

¹⁰ Stevenson nominated on first ballot.

¹¹ Further figures not available from Secretary of State.

Comments: The 1920 and 1924 Democratic primaries and the 1928 Republican primary illustrate the tendency of delegates to disregard the preference vote when only one candidate is entered.

State of Massachusetts
(1912 to date)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1912	Yes Taft	50.4	44			44 ¹
1916	⁴					
1920	⁵					

* Choice—Whether or not leading contenders on ballot

¹ Sixteen Roosevelt delegates abstained from voting in protest of settling of credentials disputes by Taft forces.

² Clark and Wilson only candidates entered.

³ The delegates stayed with Clark 75% strong until 21st ballot when they switched to another candidate. All were for Wilson on last ballot.

⁴ One set of delegates for Roosevelt were entered, but they lost out to an unpledged group.

⁵ The 1920 contests in both parties and the 1924 Democratic primary both had only unpledged dele-

Democratic Party

Year	Preference Vote Choice Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1912	No ² Clark	69	100	97	97	92 92 0 ³
1956	No McCormack ⁶	25	0			7

⁶ gates entered.

⁷ Favorite son.

Comments: The figures for this state are very meager because complete records were not sent from the office of the Secretary of State. In a letter dated November 23, 1955, the Secretary stated that the names of candidates never have been listed on the ballot; that there is only a write-in preference vote. A check of the session laws reveals that this is only occasional also. Figures on voting for pledged delegates were not made available.

State of Michigan

(1912-1931)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1920	No ¹ Johnson	72	100	100	100	100 100 132
1928	No ⁴ Hoover	98	100			100

* Choice—Whether or not leading contenders on ballot

¹ Lowden and Johnson only candidates entered.

² 10 ballots; on 6th ballot delegates began shifting to Wood; 18 out of 30 were for Johnson; on 9th ballot only 8 Johnson votes and 4 on 10th and final ballot.

³ Palmer only candidate on ballot.

⁴ Hoover only candidate on ballot.

Democratic Party

Year	Preference Vote Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1920	No ³ Palmer	100	40	43	40	36	36 0

Comments: Where two out of the three candidates were on the ballot (1920 Rep. primary) the delegates stayed with winner fairly well until the last five ballots. The contrast between the 1920 Democratic primary and the 1928 Republican primary shows what difference the winner's national popularity makes in the support given by the delegates. Hoover enjoyed great popularity in 1928.

State of Montana

(1913-1927)

Republican Party

Year	Choice*	Preference Vote Winner	Convention Ballots				
			%	1	2	3	4 5 Last
1920	Yes	Johnson	61	100	100	100	100 100

* Choice—leading contenders on ballot

1 Kefauver only candidate on ballot.

2 Stevenson nominated on first ballot.

Comments: The 1920 Republican contests shows that 39% of the Montana Republican voters had no repre-

Democratic Party

Year	Choice	Preference Vote Winner	%	Convention Ballots				
				1	2	3	4	5 Last
1924	Yes	McAdoo	91	12	25	62	87	100
1956	No	Kefauver ¹	100	0				²

sentation in the Republican convention that year; also that the delegates will stand a better chance of staying with the preference winner at the convention when all of the candidates have been on the ballot. See p— for discussion of 1924 Democratic primary.

State of Minnesota

(1913-1917)

(1949-1959)

Republican Party

Year	Choice*	Preference Vote Winner	Convention Ballots				
			%	1	2	3	4 5 Last
1952	No ¹	Stassen	44	100			100 ²

1 Write-ins for Eisenhower, Taft, MacArthur and Warren.

2 After first ballot Eisenhower's nomination made unanimous.

3 Write-ins for Kefauver, Truman and Eisenhower.

4 On second and third ballots delegates split between Kefauver and Stevenson.

Democratic Party

Year	Choice	Preference Vote Winner	%	Convention Ballots				
				1	2	3	4	5 Last
1952	No ³	Humphrey	78	100	0	0		0 ⁴
1956	Yes	Kefauver	56	0				0 ⁵

⁵ Stevenson nominated on first ballot.

Comments: The favorite son device in the 1952 Democratic primary made it virtually impossible to tell which candidates the delegates really favored. The Republican primary again illustrates the inequities of which often occur in the primary system: Ike got 37% of the vote, but no delegate votes.

State of Nebraska

(1911 to date)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1912	Yes Roosevelt	54	100			100 ¹
1916	No ² Cummins	33	88	88	88	0 ⁰³
1920	No ⁴ Johnson	46	81	81	81	81 44
1924						
1928	No ⁷ Norris	92	42			42
1940	No ⁹ Dewey	59	100	100	36	0 0 0
1948	Yes Stassen	43	98	87	60	0
1952	No ¹⁰ Taft	36	59	73		73

* Choice—Whether or not leading contenders on ballot

1 Two voted directly for Roosevelt and fourteen abstained in protest of the method in which the Taft forces settled the credentials disputes.

2 Hughes, Root and Weeks not on ballot.

3 Unanimous for Hughes on third ballot.

4 Wood and Johnson only candidates on ballot.

5 Hitchcock and R. G. Ross only candidates on ballot.

6 All write-in votes.

7 Norris only candidate on ballot.

8 FDR, Garner, and "Wild Bill" Murray only candidates on ballot.

9 Dewey and Vandenberg only candidates on ballot.

10 Write-in votes for Eisenhower, Taft, MacArthur and Warren.

Democratic Party

Year	Preference Vote Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1912	Yes Clark	44	75	75	75	75	0
1920	No ⁵ Hitchcock	67	100	100	100	31	0
1924	No ⁶ McAdoo	64	6	6	6	6	0
1932	No ⁸ FDR	63	100	100	100	100	100
1952	No ¹¹ Kefauver	59	42	42	25		25
1956	No ¹² Kefauver	74	0 ¹³				

11 Robert Kerr and Kefauver only candidates on ballot.

12 Kefauver only candidate on ballot.

13 Stevenson nominated on first ballot.

Comments: In the 1912 primaries of both the parties and the 1916 Republican primary the winners received a larger delegate vote than they were entitled to by their showing in the primary, thus depriving those who cast their vote for the losers of any voice in the convention. Hitchcock, who went as a favorite son to the 1920 Democratic convention was soon dropped, after a complimentary vote. The 1924 Democratic primary illustrated as well as any the fact that delegates will disregard a preference vote when it is solely by write-in, except when there is an extremely popular figure whose name is written in.

State of New Hampshire

(1913 to date)
(No Preference Vote Until 1949)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1920	No ¹ Wood	---	100	100	100	100 100
1940	No ³ Dewey	---	0	0	0	0 0
1948	No ⁵ Dewey	---	75	75	0	0 ⁶
1952	No ⁷ Ike	51	100	---	---	100

* Choice—Whether or not leading contenders on ballot

¹ Wood and Johnson delegates entered; all Wood delegates elected.

² Only Roosevelt and Smith delegates entered; all Roosevelt delegates elected.

³ Figures on number of delegates pledged not available from Secretary of State.

⁴ Delegates didn't vote for Dewey on any ballot.

⁵ Dewey and Stassen delegates entered.

⁶ Dewey nominated unanimously on 3rd ballot.

⁷ Eisenhower and Taft only candidates entered.

Democratic Party

Year	Preference Vote Choice Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1932	No ² FDR	100	100	100	100	100
1952	No ⁸ Kefauver	55	100	100	100	100 ⁹
1956	No Kefauver	80	0	---	---	10

⁸ Kefauver and Truman only candidates entered.

⁹ Stevenson's nomination made unanimous on 3rd ballot.

¹⁰ Stevenson nominated on first ballot.

Comments: While Wood and Johnson were both entered in the 1920 Republican primary Johnson received no delegate votes at all in the convention; nor did Al Smith in the 1932 Democratic race. Taft, who received 49% of the vote in 1952 was also deprived of representation, as was Truman, who received 45% of the vote on the Democratic side.

State of New Jersey

(1911 to date)

Republican Party

Year	Preference Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1912	Yes Roosevelt	56	93			931
1920	No ⁴ Wood	51	61	61	61	61 54 ⁵
1928	No ⁸ Hoover	100	100			100
1940	No ¹⁰ Dewey	94	63	44	22	19 16 0
1948	No ¹¹ Dewey	51	0	68	0	0
1952	No ¹³ Ike	62	87			87

* Choice—Whether or not leading contenders on ballot

1 24 out of 28 delegates voted for Roosevelt by abstaining in protest of settlement of credentials disputes.

2 Wilson only candidate entered.

3 46 ballots; 24 out of 28 delegates stayed with Wilson all the way. (He was Governor of the state).

4 Wood and Johnson only candidates on ballot.

5 15 out of 28 stayed with Wood all the way.

6 Only 180 write-in votes for McAdoo.

7 Only 69 write-ins for McAdoo; 721 for Smith.

8 Hoover only candidate on ballot; nominated by acclamation.

9 Write-in votes for Roosevelt and Smith.

10 Dewey and Willkie on ballot; write-ins for Taft and Vandenberg.

Democratic Party

Year	Preference Vote Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1912	No ² Wilson	100	86	86	86	86	86 ³
1920	No ⁶ McAdoo	100	0	0	0	0	0
1924	No ⁷ Smith	91	0	0	0	0	0
1932	No ⁹ Smith	62	100	100	100	100	100
1952	No ¹² Kefauver	99	9	13	13		13
1956	No Kefauver ¹⁴	99	0				15

11 All write-in votes.

12 Kefauver only candidate on ballot.

13 Eisenhower, Taft and Stassen on ballot.

14 Kefauver only candidate on ballot.

15 Stevenson nominated on first ballot.

16 1956 figures not available.

Comments: Where there is only one candidate on the ballot delegates will not stay with him unless he is very popular: 1912 Dem. and 1928 Rep. primaries - Hoover and Wilson were very popular. But delegates will disregard the preference vote when there is only a small write-in vote; 1920 and 1924 Dem. primaries. The convention vote was wholly disproportionate in the 1912 and 1952 Rep. primaries, also the 1932 Dem. primary.

State of North Dakota

(1912-1935)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1912	Yes LaFollette	57	100			100
1920	Yes Johnson	96	80	60	60	50 0
1928	No ² Lowden	100	62			62 ³

* Choice—leading contenders on ballot

1 McAdoo only candidate on ballot.

2 Lowden only candidate on ballot.

3 Hoover nominated on first ballot.

4 Roosevelt only candidate on ballot.

Comments: Delegates in North Dakota were supposed to support the winner to the best of their judgment

Democratic Party

Year	Preference Vote Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1924	No ¹ McAdoo	100	100	100	80	60	0
1932	No ⁴ FDR	100	90	100	90	100	100

and ability. McAdoo and Lowden offer instances of cases where one candidate, moderately popular, was on the ballot and the delegates did not feel particularly bound to support him; while in the 1932 race, the delegates stayed with Roosevelt. He was very popular nationally at that time in North Dakota.

State of Ohio

(1911 to date)

(Pref. Vote abolished - 1948)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1920	No ¹ Wood	100	19	19	19	19 0 ²
1928	No ⁷ Hoover	98	71			71
1940	No ⁹ Taft	99	100	100	100	100 0 ¹⁰
1948	No ¹¹ Taft	-	12			
1952	No ¹³ Taft	-	14			

Democratic Party

Year	Preference Vote Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1912	Yes Harmon	52	73	71	69	69	71 25
1920	No ³ Cox	100	100	100	100	100	100 100 ⁴
1924	No ⁵ McAdoo	100	0	0	0	0	0 0 ⁶
1932	No ⁸ FDR	57	0	1	4	65	65
1952	No ¹⁵ Kefauver						

- * Choice—Whether or not leading contenders on ballot
- 1 Wood only candidate entered; Harding was favorite son.
- 2 10 ballots: The Wood delegates stayed with him until the 9th.
- 3 Cox, Governor of the State, only candidate entered.
- 4 44 ballots: Stayed with Cox 100%.
- 5 McAdoo only candidate entered.
- 6 103 ballots: Ohio just didn't like McAdoo.
- 7 Hoover only candidate entered; 3,676 write-ins for Lowden.
- 8 All votes were write-ins, totaling only 3,516 (Unofficial figures).
- 9 Taft only candidate on ballot; write-in votes for Dewey and Willkie.

- 10 Dewey unanimously nominated on 6th ballot.
- 11 Preference vote abolished 1948; delegates entered pledged to Taft and Stassen; 44 Taft delegates elected, 9 Stassen.
- 12 Taft's 44 delegates stayed with him until 3rd ballot when Dewey was nominated unanimously; One Stassen delegate defected to Dewey on second ballot.
- 13 Delegates entered pledged to Taft and Stassen; all 56 of the Taft delegates were elected.
- 14 On the first ballot all 56 voted for Taft until Eisenhower's nomination made unanimous.
- 15 29 of the 54 delegates elected were for Kefauver. He lost two of them before the 3rd and final ballot.
- 16 1956 figures not available.

Comments: It will be noted that in the 1912 Dem. primary, where all the candidates were entered, the delegates initially gave Harmon 21% more of the convention vote than he had won in the primary. 60% of the delegates, 8% more than he had won in the primary, stayed with him until the 22nd ballot when they were apparently released. The 1912 Republican contests indicates that where one candidate is on the ballot, the delegates will generally not support him. 19% of them stayed with Lowden, however, even in the face of the candidacy of Harding a favorite son. But at this time the delegates could be elected as pledged and several of these were pledged to him. The 1924 Dem. primary and the 1928 Rep. indicate further

how the delegate will not feel bound to a man when he was the only candidate on the ballot. But in the 1920 Dem. and 1940 Rep. contests the delegates stayed with the winner, because he was an immensely popular favorite son—Cox and Taft, respectively. FDR, who received a majority of the small number of write-in votes didn't fare too well with the state's delegation, until they decided to join the bandwagon on the fourth ballot. From the record of the pledged delegates elected in the 1948 and 1952 Rep. primaries and the 1952 Dem. primary, it appears that the absence of the preference vote and sole voting on delegates focused enough attention on them so they felt compelled to support with their choice.

State of Oregon

(1911 to date)

Republican Party

Year	Preference Vote Choice* Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1912	Yes Roosevelt	40 100					100 ¹
1916	No ³ Hughes	59 100					100
1920	Yes Johnson	38 90	90	90	90	80	50 ⁴

* Choice—Whether or not leading contenders on ballot.

¹ Eight voted for Roosevelt, two abstained, as did many Roosevelt delegates in protest of the manner in which the credentials contests were decided.

² Two delegates switched to Clark on the 11th ballot, but went back to Wilson on the 28th and then stayed with him to the 46th and final ballot.

³ Hughes and Cummins only candidates entered.

⁴ Stayed with Johnson all ten ballots.

⁵ McAdoo only candidate entered.

⁶ Stayed with him 100% on all 44 ballots.

⁷ McAdoo only candidate entered.

Democratic Party

Year	Preference Vote Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1912	Yes Wilson	53 100	100	100	100	100	100 ²
1920	No ⁵ McAdoo	99 100	100	100	100	100	100 ⁶
1924	No ⁷ McAdoo	100 100	100	100	100	100	30 ⁸
1936	Yes Stevenson	60 100					⁹

⁸ 103 ballots—30% stayed with McAdoo all the way.

⁹ Stevenson nominated on first ballot.

Comments: Oregon presents a good example of the disparity in amount of votes a candidate "earns" in a primary, and the amount of delegate votes he receives at the convention. The 1920 and 1924 Democratic primaries seem to be an exception to the usual rule that where one out of several candidates is entered, the delegates will not support him wholeheartedly. The two delegates who defected from Wilson in 1912 were subjected to so much criticism that subsequently elected delegates no doubt felt bound to the winner. Where more than one candidate is entered such a view can be grossly inequitable to the losing candidates.

State of Pennsylvania

(1911 to date)

Republican Party

Year	Preference Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1912	No ¹ Roosevelt	59	84			84
1920	No ⁵ Johnson	74	0	0	0	0 18
1952	No ¹¹ Ike	88	76			76

* Choice—Whether or not leading contenders entered.

1 Roosevelt and Taft only candidates entered.

2 62 out of the 64 delegates for Roosevelt abstained from voting in protest of the manner in which the credentials disputes were settled.

3 Wilson only man on ballot.

4 46 ballots: Wilson never got below 93% of the Penn. vote.

5 Write-in votes for Wood and Johnson.

6 McAdoo only candidate on ballot.

7 44 ballots: McAdoo had only one Penn. vote on first several ballots, but on 42nd had 49. Soon thereafter the tide turned for Cox.

8 Write-in votes for Al Smith and McAdoo.

9 103 ballots.

Democratic Party

Year	Preference Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1912	No ³ Wilson	100	93	94	96	96	100 ⁴
1920	No ⁶ McAdoo	100	3	3	3	3	3 57
1924	No ⁸ McAdoo	53	33	33	33	33	33 0 ⁹
1932	No ¹⁰ FDR	54	58	58	59	64	64

¹⁰ Roosevelt and Al Smith only candidates entered.¹¹ Eisenhower and Stassen only candidates on ballot.¹² 1956 figures not available.

Comments: The 1920 Dem. and Rep. primaries and the 1924 Dem. primary illustrate the fact that where there are a small number of write-in votes the delegates will not consider themselves bound. The 1912 Dem. primary shows how delegates will sometimes stick with the winner even though he was the only contender on the primary ballot. This could probably be attributed to Wilson's popularity and connections with Pennsylvania politicians. With two candidates on the ballot, the delegates were fairly faithful to the winner in the 1932 Dem. and 1952 Rep. primaries.

State of South Dakota

(1917-29)

(1929 to date)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1920	Yes Wood	36	100	100	100	100 100 60 ¹
1952	No ³ Taft	50.2	100			 100

* Choice—leading contenders on ballot.

¹ 10 ballots: all ten delegates stayed with Wood for 9 ballots; four switched to Harding on 10th.² Roosevelt only candidate entered (entering delegates).³ Eisenhower and Taft only candidates on ballot (entering delegates).⁴ Kefauver only candidate on ballot (entering delegates) 11,741 write-ins for various other candidates.⁵ Stevenson's nomination made unanimous after third ballot.⁶ Kefauver only candidate on ballot.⁷ Stevenson nominated on first ballot.

Democratic Party

Year	Preference Vote Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1932	No ² FDR	100	100	100	100	100	100
1952	No ⁴ Kefauver	66	100	100	100	100	100 ⁵
1956	No Kefauver ⁶	100	0				7

Comments: Since all of the candidates were entered in the 1920 primary the delegates stayed with the winner very well; of course they were bound to do so for three ballots. Though FDR was the only candidate on the 1932 Democratic ballot the delegates stayed with him because of his popularity. The '52 primaries illustrate the inequities in the slate system. Though Eisenhower got 49.8% of the votes cast he received no delegate votes at the convention. And Kefauver, though the only candidate who entered delegates in the primary, received only 66% of the vote, and yet had his whole slate elected.

State of Vermont

(1915-1921)

Republican Party

Year	Preference Vote		%	Convention Ballots					
	Choice	Winner		1	2	3	4	5	Last
1920	No ¹	Wood	100	63	100	100	100	63	100

¹ Wood only candidate entered.

Comments: With only the one candidate entered the delegates stayed with him in spite of the fact that they were not legally bound. This is not usually the case.

State of North Carolina

(1915-1927)

Republican Party

Year	Preference Vote		%	Convention Ballots					
	Choice*	Winner		1	2	3	4	5	Last
1920	No ¹	Johnson	73	5	0	18	9	5	0

* Choice—Whether or not leading contenders entered.

¹ Wood and Johnson only candidates entered.

Comments: Though two out of the three leading candidates were on the ballot, the delegates did not consider themselves bound, in spite of the legal provisions.

State of West Virginia¹

(1915 to date)

Republican Party

Year	Preference Choice*	Vote Winner	%	Convention Ballots					Last
				1	2	3	4	5	
1920	No ²	Wood	100	0	6	38	50	56	03
1952	No ⁴	Taft	73	88					88 ⁵

* Choice—Whether or not leading contenders on ballot.

¹ No contests in Democratic Party according to figures provided by Sec. of St.

² Leonard Wood only candidate entered.

³ Switched to Harding on 10th and final ballot.

⁴ Taft and Stassen only candidates entered.

⁵ 14 out of 16 votes for Taft; none for Stassen.

⁶ 1956 figures not available.

Comments: The 1920 contest would seem to bear out the fact that where only one candidate is entered in the primary the delegates may or may not feel bound. In the 1952 contest, Stassen, who got 27% of the vote, didn't get a single delegate vote in the convention.

State of Wisconsin

(1911 to date)

Republican Party

Year	Preference Vote Choice* Winner	Convention Ballots				
		%	1	2	3	4 5 Last
1912	Yes LaFollette	74	100			100
1920	No ³ Wood	57	3	3	3	3 0
1928	No ⁶ Norris	88	58			58
1940	No ⁸ Dewey	73	100	100	100	100 0
1948	No ⁹ Stassen	40	71	71	0	0
1952	No ¹⁰ Taft	42	80			80

* Choice—Whether or not leading contenders on ballot.

- 1 Wilson and Clark only candidates entered.
- 2 46 ballots; Wilson never got less than 73% of the Wis. delegation's vote.
- 3 Write-in votes for all major candidates.
- 4 Only 76 write-in votes for McAdoo.
- 5 Write-in votes for McAdoo and Smith.
- 6 Norris only candidate on ballot; write-ins for Hoover and Lowden.
- 7 Roosevelt only candidate on ballot.
- 8 Write-in votes for Dewey, Taft, and Vandenberg.

Democratic Party

Year	Preference Vote Choice Winner	%	Convention Ballots				
			1	2	3	4	5 Last
1912	No ¹ Wilson	55	73	73	73	77	100 ²
1920	No ⁴ McAdoo	100	42	62	65	73	73 11
1924	No ⁵ McAdoo	90	13	13	13	13	13 0
1932	No ⁷ FDR	99	92	92	92	92	92
1952	No ¹¹ Kefauver	100	100	100	100	100	100
1956	No ¹² Kefauver	100	0				13

⁹ Write-in votes for Dewey, Stassen and MacArthur.

- ¹⁰ Taft, Warren and Stassen on ballot.
- ¹¹ Kefauver only candidate on ballot.
- ¹² Kefauver only candidate on ballot.
- ¹³ Stevenson nominated on first ballot.

Comments: Even though there are a large number of write-ins the delegates will not always consider themselves bound; this is borne out by the 1920 Rep. and 1924 Dem. primaries. Where there is only one candidate on the ballot the delegates may or may not feel bound to him. See the 1928 Rep. and 1952 Dem. primaries.

(The following is an excerpt from an unpublished manuscript by Dr. Paul T. David, University of Virginia, entitled "Equitable Representation in State Legislatures: Senator Clark's Proposals for Federal Action," dated August 16, 1960. It concerned Senate Joint Resolution 215, introduced in the 86th Congress by Senator Joseph S. Clark, of Pennsylvania, which proposed an amendment to the U.S. Constitution and provided for ratification by conventions in the States. A companion bill, S. 3781, dealt with how ratifying conventions shall be held in the States when this mode of ratification is specified by Congress.)

THE CONVENTION SYSTEM OF RATIFICATION

(By Paul T. David)

The notion that an amendment of the Federal Constitution might be possible as a means of reforming representation in State legislatures is not entirely new. The writer recalls a casual discussion of the idea some years ago with Senator Clark's administrative assistant, James L. Sundquist. We were not under the impression that the idea was original with either of us, but so far as we were aware, it had never been reduced to writing or buttressed with the kind of research that would be necessary as the earliest preliminary step.

The idea would never have seemed promising if it had been necessary to rely upon the consent of the State legislatures under the procedure that has been most often used in amending the Federal Constitution. From the first it appeared desirable to make use of the alternative procedure for ratification by conventions in the States, under which prohibition repeal was achieved in less than 10 months from the time when the repealer amendment passed Congress. But even this intended procedure left many questions for study.

What would happen to a proposed amendment on which the legislatures had a direct interest in preventing action? Could they simply refuse to submit such a proposal to ratifying conventions in the States? Or could they provide for the conventions, but make them so unrepresentative as to prejudice action? What ultimate authority resides in Congress to deal with obstructionist tactics in State legislatures either in anticipation or after the fact?¹

DEBATE BEFORE PROHIBITION REPEAL

All of these questions of constitutional strategy were examined at length by scholars, publicists, and legislators during the controversy that preceded repeal of the prohibition amendment. The State legislatures were generally under attack by the proponents of repeal from 1918 to 1933, first, for having ratified

¹ Before going to the Center for Advanced Study in the Behavioral Sciences, the writer was encouraged to work on the problem of a Federal amendment by John E. Behout and John P. Wheeler, Jr., of the National Municipal League, the latter of whom was directing the League's State Constitutional Studies Project and kindly supplied a set of the research documents it was then producing. Of these, the most important was the prepublication version of "State Constitutions: Reapportionment" (National Municipal League, 1960), by Prof. Gordon E. Baker of the University of California, Santa Barbara.

After studying this report, the first draft of a proposed amendment was prepared by the writer in December 1959, rapidly revised in conversations at the center, reproduced, and circulated for discussion by a group of friendly critics. The problems that then came to the surface required further work leading to a more elaborate draft. This was presented in a 15-page memorandum, reproduced at the center, on Mar. 3, 1960; about 50 copies of this eventually got into circulation. (Prof. A. Leo Levin of the University of Pennsylvania Law School, previously noted as one of the fellows at the center, was especially helpful on the problems involved in the preparation of the Mar. 3 draft.)

Through Mr. Sundquist, Senator Clark indicated interest in introducing the proposed amendment. After the memorandum of Mar. 3, 1960, became available, it was used as the basis for further work by members of the Senator's staff. At conferences on May 12 and 13, 1960, attended by Bernard Fensterwald, Jr., of the staff of the Senate Committee on the Judiciary; Alan Rosenthal, an APSA congressional fellow assigned to Senator Clark's office; Mr. Sundquist; and the writer, it was agreed that the most satisfactory drafting formula would consist of the proposed joint resolution, worded as briefly as possible and with a grant of authority to Congress to deal with details, and the two bills, each of which would incorporate a portion of the detail previously included in the proposed amendment. Drafts along these lines were prepared, were later redrafted extensively by the Legislative Counsel of the Senate and by Senator Clark, and reached introduction on June 29, 1960. See Congressional Record of that date, pp. 13827-13836, and reprints of this material distributed by Senator Clark's office.

the 18th amendment, allegedly at the instance of pressure group activity and while popular attention was turned in other directions; and second, for remaining so much under the same influences that repeal would be hopeless if it had to go through the State legislatures. Those favoring repeal favored using the convention system of ratification in order to make repeal possible. But since, up to that time, no proposed amendment had been ratified by that means, there was great uncertainty concerning what was involved.

The relevant language of article V of the Constitution merely states that amendments shall become valid "when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress." Some of the experts on constitutional law, led by former Attorney General A. Mitchell Palmer, were of the opinion that Congress could exercise exclusive authority over the ratifying conventions, and that in any event it could supersede State action to any extent it found necessary. Others, led by James M. Beck, a former Solicitor General, took conservative States' rights positions to the effect that all authority to call and regulate the conventions remained exclusively in the State legislatures.²

THE 1933 EXPERIENCE

In the event, Congress put forward the article that was to become the 21st amendment without any specification as to how or by whom the required ratifying conventions in the States should be called; but the possibility remained open that Congress might later enact legislation if sufficient need appeared. In 43 States, the legislatures promptly acted, in 38 States the conventions met, and in 37 the amendment was ratified. No less than 21 States provided that if Congress should prescribe the manner of holding the conventions, their own laws were to be superseded, thus conceding the authority of Congress. New Mexico took an opposite position.³

In three States, the State courts were called on for rulings concerning State legislative authority. The Ohio court, with the others in general agreement, took the line that calling a convention to ratify an amendment of the Federal Constitution is a Federal function, "which, in the absence of action by the Congress, the State legislature is authorized to perform."⁴ In performing this function, it was held that the State legislatures were not bound by existing provisions of State constitutions or laws.

The forms of a deliberative assembly were maintained in bringing the conventions together. The delegates ranged in number from 3 to 329, but in most States the process became much like the electing and convening of Presidential electors. Generally the ballot carried one list of delegates identified as favoring the amendment and another identified as opposing it; 25 States provided for electing the delegates at large. Only a few States made any provision for the election of unpledged delegates.⁵

The net effect of the 1933 experience was thus to establish the feasibility of the convention system of ratification and to demonstrate how readily it could develop as a popular referendum. The latent powers of Congress remained in doubt, but the dispositions of the State legislatures and courts seemed to confirm that those powers were extensive.

RESEARCH BY ABRAHAM WEINFELD

Some years later, the various lines of historical evidence in regard to the intentions of the framers of the Constitution were reviewed, along with the experience of 1933, in the previously cited article by Abraham Weinfeld. In the records of the Federal Convention of 1787, he found no suggestion of any desire to vest exclusive authority over ratifying conventions in the States, much evidence of distrust of the State legislatures, and no evidence of any intention to withhold authority from Congress.

² Orfield, *op. cit.*, pp. 56-57; Everett S. Brown, "The Ratification of the Twenty-first Amendment," *American Political Science Review*, vol. 29, December 1935, pp. 1005-1017; Abraham C. Weinfeld, "Power of Congress over State Ratifying Conventions," *Harvard Law Review*, vol. 51, January 1938, pp. 473-506.

³ Brown, *op. cit.*, pp. 1008-1009. See also Everett S. Brown, "Ratification of the Twenty-First Amendment to the Constitution of the United States" (1938), in which are reprinted the State laws and convention records for all of the States taking action.

⁴ Weinfeld, *op. cit.*, pp. 500-502.

⁵ Brown, article previously cited, pp. 1010, 1013.

The elaborate machinery of elections that now rests so completely in the hands of the States mostly did not exist in 1787; the notion that Congress could provide for calling the conventions as easily as the States was in no way foreign to the thinking of the time. It was exemplified, in fact, in the provision of article V, so far never used, under which Congress may "call a convention for proposing amendments," when requested by a sufficient number of States.

The obvious reason for adding ratification by conventions as an alternative to ratification by the legislatures was to provide a means of action that could operate even when the legislatures were reluctant or unwilling. The context of the debates indicates that Madison and Hamilton thought they were achieving that objective, yet it would be defeated if the legislatures were presumed to control use of the alternative procedure. The Federal courts have had no occasion to pass directly on the issues, but when dealing with analogous matters, have upheld the authority of Congress. Weinfeld was thus able to end his article as follows:

"These general considerations as well as the proceedings of the Federal convention, the decisions of the Supreme Court of the United States and of the highest courts of some States, and the conduct of many State legislatures when ratifying the 21st amendment, all lead to the conclusion that *Congress has power to call and necessarily to regulate ratifying conventions in States.*"⁶

THE CLARK PROPOSAL ON RATIFYING CONVENTIONS

Senator Clark concluded early in his consideration of the proposed amendment that any provisions on how ratifying conventions should be held in the States could better be introduced separately, rather than as a part of the joint resolution proposing the amendment. A bill for the purpose was readily available (H.R. 299, 75th Congress, 1st sess.) This was a proposal for general legislation by Representative James W. Wadsworth, Jr., in 1937, which provided mainly that in any case when ratification by conventions in the States was proposed by Congress, the convention in each State shall be composed of delegates elected at large.

Other provisions were added in preparing the Clark bill. Unless other dates are specified by Congress, the required delegates are to be elected in each State at the time of the congressional election coming next after the amendment is proposed. They are to meet on the 28th day after their election, and to remain in session until the proposed amendment has been ratified or rejected by a majority of the delegates.

Under these provisions, some formal action to put the State's election machinery in motion might still be required of the legislature in most States; in others, general State laws on the holding of ratifying conventions, enacted in 1933, might suffice. Should any legislature prove recalcitrant in getting the proposal on the ballot at the next congressional election, there would be time for Congress to consider additional measures before other elections had passed and the 5-year period for ratification, written into the text of the amendment, had elapsed.

All need for State legislative action could probably be eliminated by relatively simple additions to the proposed Federal legislation. The Governor or the State secretary of state, for example, could be authorized to provide, by regulations generally in accord with the election practice of the State, for such action as may be necessary to nominate one list of candidates for delegate favoring any proposed amendment and another list opposing it, and to place the two lists on the ballot under suitable designations. This would be on the basis of the legal view that the holding of a ratifying convention is a Federal function for which Congress may provide. It would therefore be desirable in that case to authorize such Federal appropriations as might be necessary to reimburse the States for their necessary special expenses in holding the conventions, and to limit the number of delegates to be elected in any State.

⁶ Op. cit., p. 506. Italics supplied. The argument is concisely reviewed, and other authorities quoted and cited, in Orfield, op. cit., pp. 56-61.



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LEGISLATIVE REFERENCE SERVICE

July 5, 1961

To : Senate Subcommittee on Constitutional Amendments
Honorable Estes Kefauver, Chairman

From : American Law Division

Subject: What are the legal and constitutional consequences of merely abolishing the office of presidential elector and attempting to retain the present electoral voting strength of the States?

If the office of presidential elector is abolished by a constitutional amendment which preserves the electoral vote now allocated to each State and awards these votes either totally to the winner of a plurality of the popular vote, or divides them proportionately according to the candidate's percentages of the popular vote, and if the amendment contains no other provisions, several problems will arise.

1. Qualifications of voters

The Constitution of the United States now provides that "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in Congress . . ." (Art. II, sec. 1, cl. 2).

The word "appoint" was manifestly used as conveying the broadest power of determination. In short, the appointment and mode of appointment of electors belong exclusively to the States under the Constitution of the United States. McPherson v. Blacker, 146 U.S. 1, 27, 35. Since the mode of appointment belongs exclusively to the States, it must necessarily follow that when a State selects election by the people as its mode of appointment, as all the States have by now done, the qualification of the voters forms a part of this mode and is therefore a State function reserved to the States by the Constitution of the United States.

A constitutional amendment abolishing the electoral college system and providing instead for direct election of the President and Vice-President of the United States by the people, would, regardless of what provision the amendment made for distribution of the electoral votes of the States, create a vacuum as to the qualification of voters, which, with the repeal of Article II, section 1, clause 2 of the Constitution, would no longer be a State function.

Should the constitutional amendment cover this point, as for example, your bill, S.J. Res. 17, 87th Congress, does by stating that "The electors in each State shall have the qualifications requisite for electors of

the most numerous branch of the State legislature," it would still effect a situation which is probably not contemplated.

A new trend has begun to take shape in this country, as is evidenced by the enactment of legislation in several States, permitting new residents, otherwise qualified, who move from one State to another shortly before election, to vote for Presidential and Vice-Presidential electors, even though they would not be qualified to vote for State officers due to the lack of sufficient length of residence in the new State. Accordingly, the States of California, Connecticut, Ohio, Oregon, Vermont, and Wisconsin have by one method or another made provisions for such voting by new residents (For details on this subject see "The Problem of Disfranchisement In Federal Elections of Persons Moving to Another State Prior to Election," a report prepared in this Division on December 14, 1960).

Under the constitutional amendment proposed by S.J. Res. 17, the function of establishing standards for qualifications for voting for the President and Vice-President would no longer be completely left to the States, but would be specifically prescribed by the Constitution as is now done in the case of Senators and Representatives (Art. I, sec. 2,

clause 1; Amendment XVII). "They [the States] define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress." Ex Parte Yarborough, 110 U.S. 651, 663. In the same manner, the constitutional amendment (S.J. Res. 17) would render the States powerless to change the qualifications required for voting for President and Vice-President from "the qualifications requisite for electors of the most numerous branch of the State legislature." The laws and the State constitutional amendments now in effect in the aforementioned six States would thus be rendered invalid in principle even though they be amended to apply to Presidential candidates instead of Presidential electors, for they establish qualifications for presidential voters which are not those "requisite for electors of the most numerous branch of the State legislature" since such new residents would not be enabled to vote for members of the State legislature.

This situation could be remedied by amending the third sentence of paragraph 2 of section 1 of S.J. Res. 17, to read as follows: "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature; but the State

legislature may, at any time by law permit new residents, qualified but for lack of the required term of residence in the State, to vote for the President and Vice-President." In the alternative, this sentence could be amended to read as follows: "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature; but the Congress may at any time by law provide for the residence qualification of persons otherwise qualified to vote for the President and Vice-President, when such persons have moved to another State too soon before an election to establish a voting residence in such State."

The first alternative would render valid any State law on the subject. The second alternative would require an act of Congress, specifically setting out conditions under which new residents could qualify for voting for President and Vice-President. The first alternative would leave the decision with each State, when, how, or whether to enact such legislation, whereas the second alternative would apply to all States alike, at the same time.

2. Conduct of elections

With respect to Members of Congress, the Constitution provides:

"The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to places of choosing Senators" (Art. 1, sec. 4).

By enacting a Federal law Congress could regulate the elections of Senators and Representatives. It could regulate "the duties to be performed, the custody of the ballots, the mode of ascertaining the result, and every other matter relating to the subject." Ex Parte Siebold, 100 U.S. 371, 396.

As to the election of President and Vice-President, although S.J. Res. 17 does provide for the qualification of voters, as has been discussed above, it does not provide coverage for every phase of the election, and should this constitutional amendment be adopted, there would be a vacuum as to the remaining powers concerning the regulation of electors. For example, shall the type and form of ballot remain a State function or will Congress have authority "to alter" this procedure should the need arise? The ballots in the several States vary from one extreme to the other. Some provide for separate Presidential and Vice-Presidential ballots, which effect the simplest methods of crossing party lines to

vote for such candidates. On the other hand some States provide for a type of ballot which results in encouraging a voter to vote a straight party ticket. (For more detailed information on this subject, see "State Statutes Affecting the Right of Voter to Cross Party Lines in Presidential Elections", a report prepared in this Division on December 5, 1960).

Should Congress find it necessary to provide for a separate uniform ballot of a specified type, it would derive no authority for such legislation from the proposed constitutional amendment. Neither would Congress be empowered to legislate concerning the preservation of separate presidential ballots for recount purposes. In the case of Senators and Representatives, Congress always has the power "to alter" any laws concerning the manner of holding elections, which have been prescribed by the States. This power would be lacking in the case of election of President and Vice-President under the proposed constitutional amendment.

3. Controversies and contests regarding the election.

With respect to Members of Congress, the Constitution provides that "Each House shall be the judge of the elections, returns and qualifications of its own members." (Art. I, sec. 5, clause 1).

That power carries with it authority to take such steps as may be appropriate and necessary to secure information upon which to decide concerning elections. Barry v. U.S. ex rel Cunningham, 297 U.S. 597, 613, citing Reed v. County Commissioners, 277 U.S. 376, 388.

There is no comparable authority lodged in the Federal Government under the proposed constitutional amendment regarding the election of the President and Vice-President. The repeal of paragraph 2 of section 1 of Article II which authorized the States to appoint electors "in such manner as the legislature thereof may direct," will not be replaced by any provision as to the control of the "manner" of such elections.

The Federal law as embodied in 3 U.S.C. § 5 provides for the final determination by the State of any controversy regarding the choice of presidential electors. The provisions of 3 U.S.C. § 15, which cover the counting of electoral votes in Congress do leave with Congress the discretion to determine which set of electors was duly elected in a case where claims are made by two sets of electors. However this discretion is limited to a determination as to whose title to the State's electoral vote is supported by the State's proper authority as provided by the law of that State. The provisions of both 3 U.S.C.

§ 5 and 3 U.S.C. § 15 show a clear intent that Congress merely interprets the will of the State, since the "manner" of selection of presidential electors is now completely left to the States.

To fill the vacuum which would thus be created by the repeal of said paragraph 2 of section 1 of Article II, S.J. Res. 17 could be amended by adding at the end of the second paragraph of section 1, on line 21, the following sentence: "The manner of holding elections for President and Vice-President shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations."

Under authority of a constitutional amendment carrying such a provision, Congress, since it would be required to re-enact the provisions of sections 1 to 18 of Title 3 of the U.S. Code, to implement the constitutional amendment, could enact a detailed code regulating the election of President and Vice-President, or could merely provide for its interpretation of the provisions of State law, leaving it to some future day, should experience show a need for same, to enact such a detailed law.

4. State laws

Should S.J. Res. 17 be adopted, every State would

be compelled to repeal its laws covering the nomination and election of presidential electors and to replace them with enactments providing for direct election of the President and Vice-President by the people. It is quite possible, that should Congress enact a Federal law setting out a detailed procedure to cover the conduct of the election and the manner for the determination of controversies as to the proper distribution of a State's electoral vote, that the States would use this law as a guide for their own new enactments.

5. Candidates

Should the constitutional amendment remain silent regarding the manner of nominating the candidates for President and Vice-President, as is the case in S.J. Res. 17, no vacuum would be created by such proposed amendment.

The States would retain their present laws covering the method of selecting delegates to the national conventions of the political parties. The national conventions would continue to select their candidates as they do at present.

However, should S.J. Res. 17 be amended as suggested above, by adding to the second paragraph of section 1 thereof, on line 21, the sentence: "The manner of holding elections for President and Vice-President shall be prescribed in each

State by the legislature thereof; but the Congress may at any time by law make or alter such regulations," the situation will then be parallel to that which exists with regard to selection of candidates for Senators and Representatives, for the Amendment would have lodged in Congress the same power over the selection of candidates for President and Vice-President as section 4 of Article I has lodged in Congress over the selection of candidates for Senators and Representatives. How far that power extends to nominations is a matter of controversy (see U.S. v. Classic, 313 U.S. 299 (1941); of Newberry v. U.S., 256 U.S. 232 (1921)), and is felt not to be the purpose of this memorandum.

Mollie Z. Margolin
Legislative Attorney

INDEX

Absentee voting: (<i>See also</i> Residence requirements.)	Page
American Heritage Foundation.....	471
Joint resolution: Senate Joint Resolution 14.....	13
"Let's Modernize Our 'Horse-and-Buggy' Election Laws".....	471
Memorandum prepared by the Council of State Governments, "Loss of Voting Rights in Presidential Elections".....	487
Statement of—	
Byrne, Brendan.....	467
Kefauver, Senator Estes.....	275
Advancing the date the President assumes office:	
Draft of proposed constitutional amendment.....	427
Joint resolution: Senate Joint Resolution 23.....	15
Statement of Prof. Paul T. David.....	426
Changing the time of election, the convening of Congress, and the in- auguration:	
Draft of a proposed constitutional amendment.....	427
Statement of Prof. Paul T. David.....	426
Communications concerning presidential elections from former Presi- dents of the United States:	
Eisenhower, Hon. Dwight D.....	346
Hoover, Hon. Herbert.....	346
Truman, Hon. Harry S.....	676
Constitution of the United States, provisions governing the election of President and Vice President:	
Amendment XII.....	29
Amendment XX.....	30
Amendment XXIII.....	30
Article II.....	29
Direct popular election:	
Concurrent resolution of the General Assembly of Arkansas.....	318
Joint resolutions:	
Senate Joint Resolution 1.....	3
Senate Joint Resolution 23.....	15
Results of political scientists' poll.....	692
Statement of—	
Chavez, Senator Dennis.....	173
David, Prof. Paul T.....	424
Dixon, Prof. Robert G., Jr.....	330
Keating, Senator Kenneth B.....	31
Leiserson, Prof. Avery.....	346
Mansfield, Senator Mike.....	58
Piccard, Prof. Paul J.....	501, 511
Smith, Senator Margaret Chase.....	59, 69
Truman, Prof. David B.....	675
Tyler, Gus.....	664
District system:	
Article by Hon. Frederick R. Coudert, Jr.....	777
Colloquy between Senators Kefauver and Mundt.....	49
Joint resolution: Senate Joint Resolution 12.....	12
Results of political scientists' poll.....	692
Speech of Senator Paul H. Douglas (excerpts).....	744

District system—Continued

Statement of—	Page
Aly, Prof. Bower	489
Dixon, Prof. Robert G., Jr.	331, 340
Evans, Prof. W. J.	521
Hruska, Senator Roman L.	161
McClellan, Senator John L.	678
Morton, Senator Thruston B.	108
Mundt, Senator Karl E.	41
National Association of Manufacturers	517
Thurmond, Senator Strom	241, 680
Truman, Prof. David B.	675
Truman, Hon. Harry S.	676
Proposed amendment submitted in connection with statement	677
Tyler, Gus.	655
Tables submitted in connection with statement	666, 668
Williams J. Harvie	527
Wilmerding, Lucius	295
Study: "Enforcement of Those Provisions of Senate Joint Resolution 12 Requiring Electors To Be Elected by the So-called District System"	682
Eighteen-year-old voting:	
Colloquy between—	
Senators Kefauver and McGee	266
Senators Kefauver and Smith of Maine	73
Joint resolutions:	
Senate Joint Resolution 20	15
Senate Joint Resolution 54	21
Senate Joint Resolution 67	22
Senate Joint Resolution 71	22
Statement of—	
Arnall, Hon. Ellis	181
Bailey, John M.	541
Dixon, Prof. Robert G., Jr.	328, 337
Goldman, Prof. Ralph M.	350
Katzenbach, Nicholas deB.	368, 388
Keating, Senator Kenneth	40
Kefauver, Senator Estes	277
Miller, Hon. William E.	552
Randolph, Senator Jennings	179
Savage, Leo V.	344
Study: "State Action to Lower the Voting Age, 1943-60"	859
Election districts. (See District system.)	
Election of President and Vice President by the Congress: Statement of Victor Russell	440
Election results, hypothetical results if other systems in effect:	
1960 vote analysis: using proposed systems	391, 409
Speech of Senator Paul H. Douglas (pre-1952 elections)	744
Statement of—	
Bailey, John M.	548
Johnson, Prof. Norman W.	656
Study of presidential elections since 1920 showing how the votes of the States would have been divided under Senate Joint Resolution 48.	132
Electoral college: (See also Direct popular election; District system; Present electoral system; Presidential electors; Proportional system.)	
Articles by—	
Ames, Herman V.	804
Burns, James MacGregor	740
Lawrence, David	737
Lewis, Anthony	259
Paullin, Charles O.	783
Piccard, Prof. Paul J.	826
Timanus, Hall E.	732
Wiggins, J. R.	738
Wilkinson, Donald M., Jr.	725

Electoral college, etc.—Continued	Page
Broadcast: "Our Election Day Illusions: The Beat Majority"-----	445
Letter of James A. Michener-----	262
Letters received from former Presidents:	
Eisenhower, Hon. Dwight D-----	346
Hoover, Hon. Herbert-----	346
Truman, Hon. Harry S-----	676
Minority views of Representative Clifford Case, House of Representa-	
tives (82d Cong., 1st sess., Rept. No. 1199)-----	290
Results of political scientists' poll-----	692
Speech by Senator Paul H. Douglas (excerpts)-----	744
Studies:	
"Duties and Powers of Presidential Electors"-----	715
"Operation of the Electoral System in Selected States in 1960"---	412
General-ticket system. (<i>See</i> Present electoral system.)	
House of Representatives, elections in, when no presidential candidate	
receives a majority of the electoral vote:	
Article by Paul J. Picard-----	826
Colloquy between Senators Ervin and Kefauver-----	255
Joint resolutions proposing changes:	
Senate Joint Resolution 9-----	9
Senate Joint Resolution 12-----	12
Senate Joint Resolution 17-----	14
Senate Joint Resolution 28-----	18
Senate Joint Resolution 113-----	26
Results of political scientists' poll-----	692
Statement of—	
Bailey, John M-----	546
Dodd, Senator Thomas J-----	80
Kefauver, Senator Estes-----	170
Humphrey compromise proposal (S. J. Res. 152, 85th Cong.):	
Statement of—	
Barrett, Robert A-----	516
Goldman, Prof. Ralph M-----	351
Kofmehl, Prof. Kenneth-----	325
Irwin, Henry D.: (<i>See also</i> Table of Contents to pt. 3 for listing of ex-	
hibits to testimony of Irwin.)	
Change in Oklahoma law after 1960 election-----	647
Extracts from letters identified by Irwin as having been received from	
Republican presidential electors-----	611
Letters received by Irwin from R. Lea Harris, of Montgomery, Ala.---	600, 622
Statement of Senator Kefauver concerning issuance of subpoena for	
Irwin-----	449
Testimony of-----	563
Lodge-Gossett Plan. (<i>See</i> Proportional system.)	
Mundt-Coudert Plan. (<i>See</i> District system.)	
1960 Vote analysis:	
Congressional Quarterly's charts of the 1960 hypothetical results-----	409
Statement of—	
Peirce, Neal R-----	391
Tyler, Gus-----	672
Sherrill, Fred G-----	352
Poll of political scientists' opinions on electoral college proposals:	
Compilation of answers to political scientists' questionnaire-----	692
Letter to political scientists from Senator Kefauver-----	691
List of participating political scientists-----	694
Questionnaire submitted to political scientists-----	691
Statements accompanying political scientists' questionnaire-----	699
Poll tax abolishment:	
Florida registration statistics showing the increased voting participa-	
tion with the abolishment of a poll tax-----	108
Joint resolutions:	
Senate Joint Resolution 58-----	21
Senate Joint Resolution 81-----	22
List of cosponsors to Senate Joint Resolution 58-----	81
New England States' laws, effect upon-----	85

Poll tax abolishment—Continued

Statement of—	Page
Bailey, John M.....	540
Clark, Senator Joseph S.....	191
Dixon, Prof. Robert G., Jr.....	328
Goldman, Prof. Ralph M.....	350
Holland, Senator Spessard L.....	81
Katzenbach, Nicholas deB.....	368, 387
Keating, Senator Kenneth B.....	41
Miller, Hon. William E.....	554
Yarborough, Senator Ralph W.....	154
Present Electoral System: (<i>See also</i> Presidential electors.)	
Article by James MacGregor Burns.....	740
Joint resolutions:	
Senate Joint Resolution 26.....	16
Senate Joint Resolution 113.....	26
Senate Joint Resolution 114.....	27
Senate Joint Resolution 132 (85th Cong., 1st sess.).....	371
Results of political scientists' poll.....	692
Statement of—	
Bailey, Dean Stephen.....	348
Case, Senator Clifford P.....	285
Dixon, Prof. Robert G., Jr.....	336
Katzenbach, Nicholas deB.....	364, 371, 381
Kefauver, Senator Estes.....	278
McGee, Senator Gale W.....	257
Miller, Hon. William E.....	551, 557
Truman, Prof. David B.....	675
Study: "Operation of the Electoral System in Selected States in 1960".....	412
Presidential electors: (<i>See also</i> Electoral college and present electoral system.)	
Abolishment of:	
Article by James MacGregor Burns.....	740
Concurrent resolution of the General Assembly of Arkansas.....	318
Effect on the XXIII amendment.....	500, 515
Joint resolutions:	
Senate Joint Resolution 1.....	3
Senate Joint Resolution 2.....	7
Senate Joint Resolution 4.....	8
Senate Joint Resolution 9.....	9
Senate Joint Resolution 17.....	14
Senate Joint Resolution 23.....	15
Senate Joint Resolution 26.....	16
Senate Joint Resolution 28.....	18
Senate Joint Resolution 48.....	19
Senate Joint Resolution 96.....	23
Senate Joint Resolution 113.....	26
Senate Joint Resolution 114.....	27
Results of political scientists' poll.....	692
Statement of—	
Bailey, John M.....	547
Katzenbach, Nicholas deB.....	364, 370
Kefauver, Senator Estes.....	169
McGee, Senator Gale W.....	258
Truman, Prof. David B.....	675
Study: Legal and constitutional effects of.....	952
Article by—	
Timanus, Hall E.....	732
Wilkinson, Donald M., Jr.....	725
Binding of electors by State law: (<i>See also</i> Irwin, Henry D.)	
Article by: Wilkinson, Donald M., Jr.....	725
Change in Oklahoma law after 1960 election.....	647
Court decisions:	
<i>Opinion of the Justices</i> , No. 87, 250 Ala. 399, 34 So. 2d 598 (1948).....	571
<i>Ray v. Blair</i> , 343 U.S. 214 (1952).....	574
Letter by Gov. Mark O. Hatfield.....	520

Presidential electors, etc.—Continued	Page
Statement of Senator Strom Thurmond	247
Study: "Duties and Powers of Presidential Electors"	715
Broadcast: "Our Election Day Illusions: The Beat Majority"	445
Study: "Duties and Powers of Presidential Electors"	715
Unpledged electors: (<i>See also</i> Irwin, Henry D.)	
Article by—	
Lawrence, David	737
Timanus, Hall E.	732
Broadcast: "Manion Forum"	568
Letters by—	
Harris, R. Lea	600, 622
Michener, James A.	262
Results of activity in 1960 election	393
Statement of—	
Evans, Prof. W.	525
Gossett, Hon. Ed.	316
Peirce, Neal R.	393
Thurmond, Senator Strom	247
Studies—	
"Duties and Powers of Presidential Electors"	715
"Operation of the Electoral System in Selected States in 1960"	412
Presidential primaries:	
Article by—	
Dauer, Manning J. (excerpts)	873
Hansen, Richard H.	884
Joint resolutions—	
Senate Joint Resolution 1	3
Senate Joint Resolution 9	9
Senate Joint Resolution 16	13
Senate Joint Resolution 102	26
Letter of Gov. Mark O. Hatfield	520
Memorandum: "Specification for a Model State Presidency Primary Law"	867
Statement of—	
Bailey, John M.	542
David, Prof. Paul T.	419
Goldman, Prof. Ralph M.	350
Hansen, Richard H.	430
Katzenbach, Nicholas deB.	366, 382
Kefauver, Senator Estes	268
Proxmire, Senator William	279
Smathers, Senator George A.	176
Smith, Senator Margaret Chase	59, 69
Truman, Prof. David B.	676
Study: "Preferential Presidential Primaries"	197
Proportional system:	
Articles by: Gossett, Hon. Ed.	308
Joint resolutions:	
Senate Joint Resolution 2	7
Senate Joint Resolution 4	8
Senate Joint Resolution 9	9
Senate Joint Resolution 17	14
Senate Joint Resolution 28	18
Senate Joint Resolution 96	23
Letter of Gov. Mark O. Hatfield	520
Modified proportional system of Senator Francis Case:	
Joint resolution: Senate Joint Resolution 48	19
Results of political scientists' poll	692
Statement of Senator Francis Case	122
Study of presidential elections since 1920 showing how the votes of the States would have been divided under Senate Joint Resolution 48	132
Modified proportional system submitted by Fred G. Sherrill	352
Results of political scientists' poll	692
Speech of Senator Paul H. Douglas (excerpts)	744

Proportional system—Continued

Statement of—	Page
Dixon, Prof. Robert G., Jr.....	330, 338
Donn, Senator Thomas J.....	74
Ervin, Senator Sam J., Jr.....	250
Gossett, Hon. Ed.....	307
Johnston, Senator Olin D.....	174
Kefauver, Senator Estes.....	167
Kofmehl, Prof. Kenneth.....	319
Kuchel, Senator Thomas H.....	463
Saltonstall, Senator Leverett.....	239
Smathers, Senator George.....	176
Truman, Prof. Daniel B.....	674
Tyler, Gus.....	669
Tables submitted in connection with statement.....	670, 671
Qualifications for Voting. (See Absentee voting; 18-year-old voting; Poll tax; Residence requirements.)	
Qualified direct popular vote: Statement of Prof. Norman W. Johnson....	660
Tables in support of.....	662
Ratification of a constitutional amendment by convention:	
Article by Prof. Paul T. David (unpublished).....	939
Joint resolution: Senate Joint Resolution 23.....	15
Statement of Prof. Paul T. David.....	424
Residence requirements:	
American Heritage Foundation.....	471
Article by Eugene Burdick.....	857
Joint resolutions:	
Senate Joint Resolution 14.....	13
Senate Joint Resolution 90.....	23
"Let's Modernize Our 'Horse-and-Buggy' Election Laws".....	471
Letter by Prof. Rhothen A. Smith to Senator Keating concerning resi- dency requirements.....	35
Memorandums prepared by the Council of State Governments:	
"Loss of Voting Rights in Presidential Elections".....	481
"Special Provisions To Prevent the Loss of Voting Rights in Presidential Elections".....	488
Permanent voting registration record form of New Jersey.....	460
Proposed constitutional amendment to the Constitution of the State of New Jersey.....	454
Replies from 32 Governors concerning residence requirements for vot- ing (compiled by Senator Keating).....	34
Statement of—	
Bailey, John M.....	540
Byrne, Brendan.....	467
Dixon, Prof. Robert G., Jr.....	328
Goldman, Prof. Ralph M.....	349
Keating, Senator Kenneth B.....	33
Kefauver, Senator Estes.....	275
Miller, Hon. William E.....	554
Naples, Samuel A.....	452
National Conference of Commissioners on Uniform State Laws.....	480
Study: "Residence Requirements for Voting".....	844
Runoff elections:	
Joint resolution: Senate Joint Resolution 1.....	3
Statement of Senator Margaret Chase Smith.....	59, 69
Special election of the President:	
Joint resolution: Senate Joint Resolution 9.....	9
Statement of Senator George A. Smathers.....	176
Unit rule system. (See Present electoral system.)	
Unpledged Electors. (See Presidential electors.)	



