

April 17, 1970

STATEMENT TO THE SENATE JUDICIARY COMMITTEE ON ELECTORAL COLLEGE REFORM

by Mrs. Donald E. Clusen, Vice President
and Mrs. Griffith L. Resor, Jr., Electoral College Chairman

Mrs. Resor described the League of Women Voters, the Electoral College study, and the position which the League of Women Voters of the U.S. adopted. She then said:

Mrs. Donald Clusen, Vice President of the League of Women Voters of the United States, will tell you why the League now urges you to vote out of the Senate Judiciary Committee this month the proposed Constitutional Amendment for direct popular election of the President and Vice President--a method which will be best for all the people of this country. We look with confidence to your committee for the leadership necessary to move the country forward in this all-important aspect of electoral law.

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I am Mrs. Donald Clusen of Green Bay, Wisconsin, Vice President of the League of Women Voters of the United States. I, too, should like to express the gratitude of the League of Women Voters for being invited to present our view before the Senate Judiciary Committee. We consider this invitation a tribute to the objectivity of our approach to this complex subject of presidential election reform.

Mrs. Resor has told you that the League of Women Voters position is FOR direct popular election with a runoff election if no candidate receives a 40 percent plurality. The League desires to replace what it considers an out-moded presidential election system with the method that will be most responsive to the will of all of the people and will also correct defects of the present system that could be troublesome for the entire nation. We believe that each person's vote in any election should have the same weight as every other person's vote in that election.

The League is convinced that channeling of the people's votes for President and Vice President through a state-related system of electoral votes is archaic and unnecessary. The League believes that the presidential election method should incorporate the one-man, one-vote principle. The President and Vice President are the only elected officials with national constituencies, yet they are not elected by their constituents. All other elected officials in this country, including United States Senators, are chosen directly. Direct election works well for members of Congress, governors, state legislators, mayors, city councilmen, school boards etc. Why should it not work for President and Vice President?

The League also believes that the one-man, one-vote principle best accommodates our mobile population whose identities are national rather than regional or state-oriented. Moreover, our members consider the direct popular vote method more responsive to the will of the people because it encourages increased voter participation.

The worst defect of any system other than direct popular election is the possibility that a President and Vice President can be elected who have not received the most popular votes--who are not the choice of the people. Other serious defects eliminated by the direct election method supported by the League are the winner-take-all system of allocating electoral votes with its attendant injustices, the office of elector and the possibility of the "faithless elector," and the congressional contingent election system.

But I do not wish to take your time either to enumerate the virtues of direct election or to deplore the weaknesses of our present system. The 1966-67 and the 1969 hearings

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But I do not wish to take your time either to enumerate the virtues of direct election or to deplore the weaknesses of our present system. The 1966-67 and the 1969 hearings

of the Senate Subcommittee on Constitutional Amendments and last year's hearings of the House Judiciary Committee contain a wealth of well-reasoned detail for your consideration. Rather we seek to focus your attention on our members' thinking on some of the objections others are raising to direct popular election of the President. In the study leading to the League members' decision in favor of direct election, they discussed the imponderables of such a change.

The Large Versus Small State Advantage: Under the Electoral College system of electing the President, voters residing in large states enjoy advantages over those in medium sized or small states. The large number of electoral votes of the big states are prime targets of presidential campaigning. Moreover, it has been proven mathematically by Professor John Banzhaf, III of George Washington University Law Center that voters residing in large states have greater opportunity to influence the outcome of a presidential election than do voters in small states. This discrepancy constitutes an injustice in the opinion of the League of Women Voters. Under a direct election system large states will retain their attractiveness for presidential campaigning; candidates will continue to campaign heavily where voters live in large numbers. But the extra influence contained in votes from a large state will disappear (in other words an injustice will be rectified and every vote will count as much as every other vote, regardless of location).

Because small states enjoy, under the Electoral College system, the advantage of each having two electoral votes corresponding to their number of Senators, it has been said that small states would not ratify a direct election plan. Actually, since under a direct election plan the votes of all citizens across the nation will have equal effect, residents of small states stand to gain. Senators from small states co-sponsored SJ RES 1 (Senator Gravel of Alaska, Senator Inouye of Hawaii, Senator Aiken of Vermont and Senator Bible of Nevada). In the House vote on HJ RES 681 last September, Congressmen from six small states favored direct election. Six other small-state delegations were evenly divided in support and opposition and only three small-state delegations opposed it.

As to ratification possibilities, Senator Robert Griffin last summer took a poll of almost 4000 legislators from 27 states of varying sizes. Of the legislators responding, 64 percent said they favored the direct election system. Of the 27 states surveyed, only Idaho and North Dakota were opposed. Thirteen small states approved--Alaska, Delaware, Hawaii, Maine, Montana, New Hampshire, Nevada, Rhode Island, South Dakota, Utah, Vermont and Wyoming.

Influence of Large States and Urban-oriented Minorities: Professor Alexander Bickel of Yale Law School believes that the disproportionate power of large states is an asset of the present Electoral College system which should be retained to counterbalance the conservative weighting in Congress of committee chairmen and others from smaller and less urbanized and presumably more conservative states. The League of Women Voters does not agree that the votes of the residents of some states should have more weight than the votes of residents of other states.

The League of Women Voters also does not agree with Professor Bickel that under the Electoral College system the large states have the power "to deliver" a presidential election. In the close elections of 1960 and 1968 the large states split: Ohio and California went Republican, whereas New York, Pennsylvania, Texas and Michigan went Democratic, and Illinois went Democratic in 1960 and Republican in 1968.

The League also differs with the views of Professor Bickel and Senator Eagleton and Senator Dole on the subject of urban-oriented minorities. When introducing SJ RES 181 last month, Senator Eagleton stated: "A direct election system would curtail the power--which exists within a two-party Electoral College context--of urban-oriented racial, ethnic and other minority groups, since these groups would have reduced ability to

affect the outcome of a presidential election...The best interests of this country do not lie in removing the power which these urban groups have in presidential races." The League is aware that some minority groups share Senator Eagleton's viewpoint. However, the League questions whether urban-oriented racial, ethnic and other minority groups have the power to affect the outcome of a presidential election, given their present voting patterns. Such groups did not vote as a bloc in 1968 nor in 1960. Urban-oriented minority groups reputedly vote for Democratic candidates. If minorities in large cities in large states actually have the power to swing a presidential election and do vote Democratic, Illinois, Ohio and California would have gone in that column and the outcome of the 1968 election would have been different.

But just suppose Professor Bickel were right in his assumptions. Does this country deliberately choose to have an antiquated, potentially dangerous Electoral College system of electing the President on the premise it provides extra clout to urban minority groups and to so-called "swing" states? Or should we be concerned with the justice of having the vote of each person in a minority group count equally, regardless of whether the voter lives in New York City or in a southern state?

Whether or not urban and minority votes have greater weight under the Electoral College system--and we do not think they do--our members support the principle that one man's vote for President should count equally with another's.

Splinter Parties: Fear is being expressed that direct election would encourage a proliferation of ideological parties, that the runoff provision would offer special inducement to such parties, and that, in turn, multiple candidacies would make runoffs very likely to occur. Actually, it is the Electoral College method that invites third party participation. In half of the presidential elections in this century a third party has participated nationally. But only on three occasions have the electors of a third party candidate received more than 3.5% of the popular vote.

The reasons for our two-party system are many and varied. The basic American system of elections discourages third parties. Do they exist as a general rule in your state in Congressional elections, gubernatorial elections, mayoralty elections? Or are they isolated instances, if indeed, they surface at all? In the past quarter century minor parties have not held more than 2 of the 435 United States House seats. Electoral laws, campaign practices, and social patterns make it extremely difficult for minor parties to attain even secondary nationwide influence.

Mounting a nationwide presidential campaign is too expensive an undertaking for splinter parties. Besides money, a campaign requires an efficiently functioning, nationwide political organization. Even when a third party has managed to do this in the past, the percentage of popular votes it has been able to win has never reduced the winning candidate's percentage to less than 40 except when Abraham Lincoln was not on the ballot in ten states and yet his electors won 39.8 percent of the popular votes.

The League thinks that there is no reason to believe that, under a direct election system, the two party system which we all cherish would not be strengthened rather than weakened.

Fraud and Recounts: Opponents of direct election point to the possibility of fraud tainting an entire election and say that recounts will present insurmountable difficulties. We cannot see why fraud should be more of a problem in a direct election system than in an Electoral College system. In a direct popular election, if fraud occurs, the effect is limited to the specific popular votes involved. It cannot have the mushrooming effect it may have in an electoral vote framework.

As to vote counting and recounting, we realize that time can be the problem in a recount situation and that some state recount laws are slow in functioning and difficult

to implement. Therefore, we suggest that the Congress, which has the authority (and the expertise) to do so, consider writing a statute which would assure uniform and prompt count and recount procedures in each state.

Uniform Voting Qualifications and Procedures: The possibility that uniform voting procedures and qualifications might be considered necessary to direct popular election or might result from such a system is feared by some. Such matters as registration qualifications are held to be exclusively the prerogatives of the individual states. This objection is becoming a debatable point, however. The Congress is already involved in setting uniform laws for presidential elections. On March 13 a majority of the members of this Senate Judiciary Committee voted affirmatively for HR 4249--the 1965 Voting Rights Act extension and Scott-Hart amendment, with the 18-year old voting amendment. If the Senate version of the Voting Rights Act becomes law, the Congress will have established voting age and residence requirements for presidential elections. Could not the Congress enact legislation to ensure an honest count in a presidential election and fast recounts, if they should be necessary?

If, indeed, uniform voting procedures and qualifications for presidential elections should eventually materialize, the League of Women Voters would consider this to be a step forward towards truly representative government for all of the people and we support this principle.

One Additional Comment on Ratification: If the polls taken in 1966 by Senator Burdick and in 1969 by Senator Griffin, both members of this Committee, are not sufficiently convincing, consider the polls of the people, whose opinion should determine the voting of their state legislators as well as that of their U.S. Senators and Representatives.

In 18 different surveys, the American public has approved reform of the Electoral College. In the Louis Harris survey the week before the November 1968 election, 79% of the people questioned favored abolition of the Electoral College. Senator Bayh's direct popular vote proposal won a 63% favorable vote in the Harris survey. Directly after the election, a Gallup poll showed that 81% of the public was in favor of basing the election of the President on a direct popular vote system.

The overwhelming vote for direct election by the House of Representatives last September has unquestioned significance in any discussion of Senate passage and ratification by the states. A thorough study of the House vote, by state delegation, is relevant. For example, the House Congressional delegations of only two states represented on this Committee voted against direct election. House delegations from the following states voted unanimously for direct election: Arkansas, Connecticut, Hawaii, Kentucky, Maryland, Massachusetts, Nebraska, West Virginia. The North Carolina and North Dakota delegations had only one vote against direct election, and the Indiana and Michigan delegations just two votes against it.

The League of Women Voters urges the Senate Judiciary Committee to take the opportunity now available to it to give the people of this country the Electoral College reform they are seeking. The House has given a proposed direct election amendment the biggest vote in the history of reform attempts. Now the Senate can make history by moving this reform forward for state ratification. The nation is waiting for just this.

TIME FOR ACTION



LEAGUE ACTION SERVICE
LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES

25 CENTS A COPY

NO. 91-11-6

April 15, 1970

TO: Local and State League Presidents
FROM: Mrs. Bruce B. Benson, President
RE: Continuing Action on Electoral College Reform (see February 6, 1970 T/A)

From the reports we are receiving daily in the national office, we know that every member of the Senate Judiciary Committee has heard from some League and that the President has heard from Leagues in at least 21 states in favor of direct popular election of the President and Vice President. We are also receiving clippings on local press coverage and letters to the editors. The next four or five weeks are crucial.

AIMS OF THIS TIME FOR ACTION:

- 1) To urge the Senate Judiciary Committee to vote out a direct election plan with a runoff provision if no candidate receives 40 percent of the popular vote (the committee is expected to vote on or before April 24). League members in the 15 states represented on the Judiciary Committee who have not already written to the Senators on the committee should be urged to do so as soon as possible.
- 2) To build support in the Senate for approval of the Constitutional amendment for direct popular election of the President and Vice President. (It could come up in the Senate early in May.) NOW IS THE TIME to let the entire United States Senate know there is support around the country for changing the Electoral College method to a direct election system. In addition to your letters, Convention delegates will have an excellent opportunity to lobby for the direct election plan during the afternoon on the Hill, Wednesday, May 6.

STATUS: As a vote on Electoral College reform approaches in the Senate Judiciary Committee, the situation regarding direct election prospects has developed into something quite different from that which existed last fall when the House overwhelmingly passed a direct election plan. The battle lines now are different--the troops are different--the issues are different. There is a new realignment of allies.

Before the House of Representatives vote the protagonists for direct election had been "the liberals" and the antagonists "the conservatives." Now, liberals in the Senate are being wooed to vote against direct election with arguments involving large state swing propensities, the vote clout of urban minorities, and the danger of splinter parties and runoffs. The "small-states-won't-ratify" argument is giving way to "the-big-states-stand-to-lose-in-a-direct-election-system-and-so-do-minority-groups-in-large-cities" argument. Washington columnists, Rowland Evans and Robert Novak, stated in early April that in their opinion the White House is hoping electoral reform will die on the vine despite the President's endorsement of it on two occasions last year.

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Gone for the time being, at least, is any expression of interest in the district plan OR the kind of proportional plan which President Nixon preferred only a year ago, before he endorsed direct election after the House-proposed amendment passed. The automatic plan and a form of proportional plan have staying powers in the current situation, and they bob up in various alternatives to direct election under discussion.

Only two alternatives have so far been introduced into the Senate in 1970--the so-called Eagleton-Dole Plan, SJ RES 181, which is really the plan of a young Washington attorney, Myron Curzan (see attached Comments on this plan) and Senator Sam J. Ervin's new automatic plan SJ RES 191.

In all probability, the Eagleton-Dole plan could not carry the Senate, if for no other reason than that it is far too complex. But combined with other pressure group measures, it might succeed in nibbling away at the convictions of a sufficient number of liberals to prevent Birch Bayh from building up the necessary two-thirds vote he needs on the Senate floor.

Urging the Senate to back a less drastic change in the election of Presidents than the House-passed proposal, Senator Ervin, on April 7, introduced a constitutional amendment which would eliminate the office of elector but would still assign electoral votes to each state on a winner-take-all basis. The contingent election provision is for a vote in a joint session of Congress with each member of the Senate and House getting one vote. Senator Ervin has thus abandoned the proportional plan which he had advocated for years.

In the Senate Judiciary Committee: It seems to be fairly certain that Senator Bayh's direct-election plan can be voted out of the Senate Judiciary Committee in some form, but only if all those favorable to it are present when the vote is taken and if some of the "unsure" Senate Judiciary members such as Joseph Tydings of Maryland, Robert Byrd of West Virginia, and Edward Kennedy of Massachusetts vote for it. SO--League members living in states whose Senators are on the Judiciary Committee (see TIME FOR ACTION, February 6) please redouble your efforts to get your Senators 1) to be present when the vote is taken and 2) to vote FOR a direct election plan with a runoff election if no candidate gets 40 percent of the popular vote.

The full Senate Judiciary Committee has decided to hold hearings for three days this month, April 16, 17 and 18. One congressional staff expert who has been very close to the whole subject dubs these hearings "an ambush." That they are definitely stacked against direct election is evident from the list of witnesses available at this time: Prof. Alexander Bickel of Yale University Law School; author-reporter Theodore White; Nicholas Katzenbach, former deputy U.S. Attorney General and former under-Secretary of State; Richard Goodwin, former White House aide and speechwriter for President Kennedy and President Johnson; Wade O. Martin, Jr., Secretary of State, State of Louisiana; Prof. Charles Black, Jr. of Yale University; Prof. Ernest Brown of Harvard, now visiting Professor at University of Pennsylvania; either Senator Eagleton or Senator Dole; and an unnamed "prominent lawyer from the state of Illinois." Of these witnesses, all are known to espouse either the present system or the automatic plan--a modification of the present system.

The League of Women Voters has been asked to testify and will do so on Friday, April 18. The League is the only witness that we know of at this time who is favorable to direct election. The fact that we were not able to testify in the 1969 hearings is perhaps the rationale for hearing our viewpoint at this time. Mrs. Donald Clusen and Mrs. Griffith L. Resor, Jr., will testify for the League.

House Vote, September 18, 1969

Senate Judiciary Committee

on
Direct Election Plan HJ RES 681

Position Re Direct Election of the President

by
state delegation

<u>State</u>	<u>Senator</u>	<u>Position</u>	<u>For</u>	<u>Against</u>
Mississippi	Eastland (D) Chairman	Against	0	5
Arkansas	McClellan (D)	?	4	0
Connecticut	Dodd (D)	Proportional- but will vote direct in Com- mittee at least	6	0
Hawaii	Fong (R)	Against	2	0
Indiana	Bayh (D)	For	9	2
Kentucky	Cook (R)	For	7	0
Maryland	Tydings (D) Mathias (R)	? For	8	0
Massachusetts	Kennedy (D)	?	10	0
Michigan	Hart (D) Griffin (R)	For For	16 1 not voting	2
Nebraska	Hruska (R)	Against	3	0
North Carolina	Ervin (D)	Proportional Against direct Automatic 4/8/70	10	1
North Dakota	Burdick (D)	For	1	1
Pennsylvania	Scott (R)	For	21 1 not voting	0
South Carolina	Thurmond (R)	Against	1 not voting	5
West Virginia	Byrd (D)	?	5	0

On the Senate Floor: Once any plan reaches the Senate floor, the real battle begins. Prophecies of doom are now replacing the optimistic opinions of last fall and winter. The Kiplinger Washington Letter predicts that the Senate will defeat direct election and that unless the 1972 presidential election is a very close one, reform may be dead for years. Capitol Hill experts who have worked on Electoral College reform consider every day of delay a build-up toward disaster.

Even if a direct-election plan is not reported to the Senate, there will be major efforts on the Senate floor to get Senate approval for the direct-election plan. The Senate will probably take up electoral reform sometime after May 4.

WHAT THE LEAGUE CAN DO: A number of League members have already written to Senators who are not on the Judiciary Committee, giving the League position and asking them to vote for direct election. Many Leagues have also written to the White House asking for more active support of Electoral College reform. NOW is the time for EVERYONE to do this.

It is much more politically effective at this time not to explain the whole League position in detail. Obviously, any part of the position not relating to direct election is a fall-back conditional position only for use IF and WHEN it is deemed necessary by the National Board.

The strategy consists of educating your community to the merits of direct election and getting as much publicity mileage out of this--not for the League per se but for the League's position. (See TIME FOR ACTION, February 6, for specific suggestions.) It also consists of urging the Senate to vote for a direct election plan.

In doing this it is important to stress those points which are being used as counter-arguments by the foes of direct election. Study the "small states," "large states," and "urban minorities" arguments. Answer them at every opportunity. Don't forget the most telling arguments of all--that direct election alone prevents any possibility of a minority President and that it alone embraces the one-man, one-vote principle completely. Examine the claims, think them through, and then refute them. As the League discovered, Electoral College reform is a very complex subject. It is now our obligation to pass on to others what we have learned in this study.

At some point compromise may be necessary, but that time is not now. And the League, of course, could only accept compromise that would fall under its position.

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NOTE: We have just learned that the Chamber of Commerce of the U.S. and the American Bar Association are now scheduled to testify before the Senate Judiciary Committee.

April 15, 1970

ELECTORAL COLLEGE REFORM

New Developments

In this "sitting-it-out" period in the Senate Judiciary Committee, prospects for Electoral College reform are being subjected to new approaches which may be intended to be fatal blows to the passage of a direct election constitutional amendment. Thinly veiled "special interest" pleas are being made under the guise of improving the direct election plan passed by the House of Representatives last September.

As electoral reform continued to be bottled up in the Senate Judiciary Committee, SJ RES 181 for a "Federal System" Plan was introduced into the Senate on March 5 by two freshmen Senators--Thomas Eagleton, Democrat of Missouri, and Robert Dole, Republican of Kansas. Neither is from a large state. Senator Eagleton was a co-sponsor of Senator Birch Bayh's SJ RES 1. The Federal System Plan is the work of Myron Curzan, young Washington attorney, who had worked for Robert Kennedy. (He is now with Arnold Porter, Abe Fortas' old law firm.)

Mr. Curzan's plan is a complicated melange of direct election and the present Electoral College system (with the winner-take-all method of allocating electoral votes) and the proportional system, that seeks to allay the fears of a liberal group who saw in Senator Birch Bayh's direct election plan a threat to the swing power of large cities and large states. "We have attempted better to mesh two of the concepts upon which our governmental structure is based--the concepts of popular sovereignty and federalism," said Senator Eagleton.

It is important to know not only what this plan consists of, but the arguments and the counter-arguments because they will be used over and over again in the Senate floor debate and should become the basis for public discussion throughout the country. League members should also be familiar with the obvious flaws of the Federal System Plan.

The Federal System Plan purports to produce a winner who will necessarily have "broad-based support throughout the country." In addition, it purports to solve problems that, according to the plan's creators, are likely to be caused by a runoff election provision. Senator Eagleton and Senator Dole ascribe to this plan other "salutary effects" which merit questioning.

In brief, the Curzan plan which is now Eagleton-Dole SJ RES 181 would operate as follows:

1. The popular vote winner would be declared elected if--

He has carried states which contain more than
one-half of persons who voted in the election;

or

He has carried more than one-half of the states.

2. If neither of the above is satisfied, the winner would be decided by a majority of the electoral vote.

3. If there is no electoral winner, the electoral votes of minor candidates would be distributed among two front-runners by giving the electoral votes carried by minor candidates to the two front-runners in each particular state in proportion to their vote totals.

For the text of the Resolution and a detailed explanation by Senators Eagleton and Dole, refer to the Congressional Record--Senate of March 5, 1970, pages S 3026-33.

I. STEP ONE -- THE FIFTY PERCENT RULES "TO ENSURE NATIONWIDE SUPPORT"

Argument: "A Chief Executive who hopes to govern effectively in the United States must be able to show that he is not simply the choice of the people, but rather that he is also the choice of the people of a number of states...that he has widespread support throughout the entire country."
-- Senator Eagleton

Answer: The Fifty Percent Rules make it possible for a President to be elected who has not received a plurality of the popular vote. Only the direct election plan guarantees that this possibility cannot occur. The League of Women Voters deems this guarantee a most important one.

In addition, neither of the Fifty Percent Rules would ensure nationwide voting support of a presidential candidate. A candidate could carry 26 states plus the District of Columbia and not get a single vote west of the Mississippi River. Under those circumstances, he would certainly not be acceptable to much of the midwest, all of the Far West or to Alaska and Hawaii.

OR since it is possible that a total of only ten states contain more than one-half of the voters in a presidential election, a candidate might win in just these ten states, might lose in 40 states plus the District of Columbia, and still, in the Eagleton-Dole plan, would win the election.

Furthermore, the most convincing answer to this argument is that the election of a "regional President" has never occurred in this country, and in these days of instant communication and television campaigns it is much less likely to do so than in the past. There is no argument on which to base the likelihood of such an occurrence in the future.

So, the nationwide support argument does not hold water.

II. STEP TWO -- SUBSTITUTES FOR A NATIONAL RUNOFF A DECISION BY A MAJORITY OF THE ELECTORAL VOTE

- A. Argument: The existence of a runoff provision in a direct election system would encourage SPLINTER PARTIES. Senator Eagleton stated:

"They would probably be ideological parties formed around a particular issue or based on a 'personality cult' centered on a particular individual. And if these parties were formed it does not require much imagination to foresee the kind of bargaining for endorsements, withdrawals and votes that could occur both prior to a close election and between an election and a runoff.

"Why should people not 'vote their conscience' in a first election when the system will probably permit them a later opportunity to vote for a so-called compromise choice? Why should blacks, or farmers, or doctors, or conservationists, or feminists bother to compromise within the two-party context when their most direct route to influence would appear to be through running candidates who can toss presidential elections into a runoff situation?

"In my judgment, the well-being of this country would suffer if its presidential elections were marked by a multitude of splinter parties, each appealing for votes on particular questions. Our political system would become factionalized, with numerous groups taking uncompromising stands and rejecting the realistic compromises which are so essential in a democratic society. At a time when the tendencies toward political fragmentation and ideological division are all too evident in this country, we must view with the gravest concern any change in our electoral processes that may aid and accelerate these tendencies."

Answer: Whether the direct election system with a runoff would strengthen or weaken the two-party system has been studied in depth by such bodies as the American Bar Association Electoral Commission and thoroughly aired before congressional committees. The ABA is convinced it would strengthen the two-party system.

In the March issue of the American Bar Association Journal, William T. Gossett, past president of the American Bar Association, in an article on Direct Popular Election of the President, states:

"Somewhat ironically, the runoff provision has been used to oppose the direct election proposal through an argument that runoff provisions encourage multiple candidacies and make runoffs more likely. Studies of nominating primaries in some southern states are cited as proof. These were considered by the (ABA) Commission. Analysis shows that they are not comparable to national Presidential elections for three important reasons:

1. The Southern primaries involved competition within a one-party system, which is hardly equivalent to elections occurring against the backdrop of an established two-party system.
2. The Southern primary campaigns involve multiple candidacies of individuals, not parties. We always have a few individuals who seek personal expression as nominal Presidential candidates, but individuals without party organizations are no threat to the system.
3. Most important, the Southern primary experiences are caused mainly by majority requirements for nomination. The Commission profited from these examples when it chose a plurality, rather than a majority, requirement. True, the plurality must reach a certain level; but it is one likely of attainment, and the tendency of majority requirements to cause third-party efforts is eliminated."

RUNOFFS AND SPLINTER PARTIES (continued)

Argument: When introducing the Resolution, Senator Eagleton said: "The cost of presidential elections would soar once a number of parties had become involved and runoff elections had become part of the system."

Answer: It is very unlikely that "a number of parties" would get involved and a runoff election in all probability might never happen. The basic American system of elections discourages third parties. They do not exist as a general rule in other direct popular elections--for Congress, for governors, state legislators or mayors. In the past quarter century minor parties have not held more than two of the 435 seats in the U.S. House of Representatives. Electoral laws, campaign practices, and social patterns make it extremely difficult for minor parties to attain even secondary nationwide influence.

Mounting a presidential campaign is just too expensive an undertaking for splinter parties. Besides money, it takes an efficiently functioning, nationwide political organization. Even when a third party has managed to do this in the past, the percentage of popular votes it has been able to win has never brought down the winning candidate's percentage to less than 40% except in 1860 when Abraham Lincoln was not on the ballot in ten states and yet his electors won 39.8% of the popular vote.

In half of the presidential elections in this century a third party has participated nationally. On only three occasions have the electors of a third party candidate received more than 3.5% of the popular vote:

1968	George Wallace	13.5%
1924	Robert LaFollette	16.6%
1912	Theodore Roosevelt	27.4%

- B. Step Two -- the choice of a winner by electoral vote majority would also give CONSTITUTIONAL LEGITIMACY TO THE WINNER-TAKE-ALL method of allocating electoral votes.

Counter-Argument: As a result of its study of the Electoral College system, the League of Women Voters determined that the winner-take-all aspect urgently required change. The possibility of a minority President goes hand in hand with the winner-take-all method--and this defect needs top priority attention in any reform of our system. When a person's vote for President can indirectly help to elect a candidate he voted against through the winner-take-all system of allocating electoral votes, an injustice is being done to that voter.

- III. STEP THREE -- carries the injustice of Step Two's winner-take-all aspect even further.

If no candidate passes the Fifty Percent Tests or receives an electoral vote majority, then a REDISTRIBUTION OF ELECTORAL VOTES takes place within each state on a proportional-with-a-twist basis. The Federal System Plan would eliminate all but two leading candidates from consideration and redistribute the electoral votes won by third (and fourth, etc.) party candidates based on the relative number of popular votes obtained within the state by the two leading national candidates.

Counter-Argument: This compounds the sin against the right of a voter to have his vote count for the person for whom it was cast. While under the winner-take-all system a person's vote can indirectly help another candidate be elected, under this proportional-with-a-twist system, a person may now be in the position of having his vote for candidate C or D given directly to candidate A or B.

IV. In addition to ensuring nationwide support (which it does not do) and preventing a proliferation of parties, the Federal System Plan claims a number of other "salutary effects" which are irrelevant and debatable.

A. Argument: The possibility of VOTE RECOUNTS and FRAUD tainting an entire national election.

Answer: This spectre is raised by Senator Eagleton but never laid to rest. The Federal System Plan makes no proposal for its solution. The possibility of recounts and fraud remains the same regardless of type of presidential election but the consequences may be decidedly more serious in an Electoral College system.

B. Argument: THE COST OF A RUNOFF ELECTION would be stupendous.

"What new problems relating to campaign fund suppliers and their influence on substantive decisions will be raised if parties are forced to obtain double or triple the present sums to finance two-tiered presidential races?"

Answer: The League of Women Voters believes that a runoff between the two top pairs of candidates should be held just as soon as possible after the first election to discourage additional campaigning. The only essential cost would be that of actually administering the election, and it has been suggested that the federal government should help to bear this expense in the highly unlikely event that a runoff should be required.

C. LARGE STATES AND URBAN-ORIENTED MINORITIES

1. Argument: "...the objective of each of the major parties would not only be to win the national popular vote but also to win each state."

Answer: This statement does not "prove out" as noted above. The largest states would still be the major target of presidential campaigning because a win in the ten largest could produce a victor. Under any system of presidential election it is inevitable that the largest states are going to be the prime targets of presidential campaigning.

2. Argument: "The significance of swing states would be retained and minority groups within those states would continue to have power to affect the result of a presidential race within the two party framework."

Herein lies the key to the whole proposal. This is what it hopes to accomplish.

Answer: Whether minority groups within swing states really do have the power to affect the result of a presidential race, given their present voting patterns, is very questionable.

3. Argument: "A direct election system would curtail the power--which exists within a two-party Electoral College context--of urban-oriented racial, ethnic and other minority groups, since these groups would have reduced ability to affect the outcome of a Presidential election...The best interests of this country do not lie in removing the power which these urban groups have in Presidential races...The passage of a direct system might well ensure that all of these voting blocs--in an effort to be heard and to obtain influence in the selection of the President--would take the only logical step left open to them, namely, the creation of Presidential parties, which can barter votes for power in a subsequent runoff election."

Answer: This argument is based on the premise that "urban-oriented racial ethnic and other minority groups" have a high voting participation and vote as a bloc. But the fact is that in 1968 they did not turn out as a bloc to defeat Richard Nixon. Their voting participation was not high and/or their clout was not sufficient. But suppose the premises were unquestionable. In 1970 does this country choose to have an antiquated, potentially dangerous Electoral College system of electing the President merely to provide extra clout to urban minority groups and to swing states?

The testimony of Clarence Mitchell, head of the Washington Bureau of the NAACP, before the House Judiciary Committee in February 1969 and the responses of several Congressmen to his statements are relevant. The NAACP position was one of support for direct election "but only if there are adequate safeguards against all forms of discrimination that deny the ballot to our citizens because of race." We favor a direct election of the President, but not at this time, because of the problems of people being denied the right to vote." Mr. Mitchell pointed out that "there are some 188 counties...in the area covered by the 1965 Voting Rights Act, to which no examiners were ever sent for the purpose of taking up the cause of those who had been discriminated against."

"Until the number of unregistered voters diminishes, I think it would be a serious hazard for the whole country if we had a system of direct election...If we can be sure the one man, one vote principle works, and everybody has a fair chance to vote, then obviously the ideal system is a direct election of the President."

Rep. Abner Mikva of Chicago, Illinois, argued with Clarence Mitchell that--

"...if you look at Negroes as a bloc, and consider that every Negro's concern is similar, whether in South Carolina or New York, I could make a case that perhaps the black voters' vote would be counted more, even with the present discrimination, if we have direct election of President and Vice President, than it is right now. I say that because the balance that is now in the northern big states, which Mr. Bickel alleges, (Prof. Alexander M. Bickel of Yale Law School and The New Republic) and I am afraid he is wrong, is controlled by a black minority--is just not so. There are other minority groups that tend to vote as a bloc. To the extent that black people do, they are not controlling. I cite the last election as an example. I am inclined to think that the influence of southern Negroes, even taking into account that still only a proportion of them are voting, would become much more important if they were counted in the electoral process. And they would be if there were a direct popular election of the President."

Rep. Robert McGlory of Illinois summed up the situation in the winter of 1969--

"...We are charged with providing legislation which would be advantageous to the national welfare--all the people. If we yield to the appeals of the bloc votes or the special interests of the small states or the large states, and if we don't take an overall national view of this problem, it seems to me that our efforts are going to be fruitless."

TIME FOR ACTION



LEAGUE ACTION SERVICE
LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES

25 CENTS A COPY

NO. 91-II-3

February 6, 1970

TO: Local and State Leagues
FROM: Mrs. Bruce B. Benson, President
RE: Electoral College Reform

On January 15, Mrs. Donald E. Clusen, Mrs. Griffith L. Resor, Jr., of the national Board and I held a press briefing in our national office to announce the League's new position in support of the direct popular election of the President and Vice-President and the abolishment of the present Electoral College system (see end of T/A for text of League's statement of position and additional background).

Senator Birch Bayh (D., Ind.), Chairman of the Judiciary Subcommittee on Constitutional Amendments and one of the principal sponsors since 1967 of the direct popular election plan in the Senate, attended the press briefing and applauded the "pace-setting" work of the League adding that the League could have a "tremendous influence" on the course of the 26th constitutional amendment on the national, state and local level.

Following the conference I wrote to all of the members of the Senate Judiciary Committee informing them of our new position and urging them to support a constitutional amendment for direct election of the President.

The House has already passed a resolution calling for a constitutional amendment for the direct election of the President and Vice President. Electoral Reform is now pending before the Senate Judiciary Committee. The next few weeks are critical and the League can play an important part in urging quick approval by the Senate Judiciary Committee so that a constitutional amendment can be approved by Congress early this year and be sent to the states for ratification.

AIMS OF THIS TIME FOR ACTION:

1) To convince the Senators on the Senate Judiciary Committee to support a constitutional amendment for direct popular election of the President and Vice-President. The Leagues in the following states should start now to mount a letter writing campaign to the Senators on the Judiciary Committee: Arkansas, Connecticut, Hawaii, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, North Carolina, North Dakota, Pennsylvania, South Carolina, and West Virginia.

2) To develop now community campaigns throughout the country to build public interest and support for direct popular election of the President and Vice-President so that before a Senate floor vote is taken, all Senators will be hearing from many constituents in favor of direct popular election.

League Action Service is published to assist Leagues and League members in working toward their legislative goals.

Time for Action is sent on Duplicate Presidents Mailing.

Subscription \$3.00 for the Congressional session.

3) To urge the President actively to support the direct popular plan. The President supports the direct popular plan (see below THE WHITE HOUSE POSITION). However, it is important that he not only says he supports it but that he actively works for Congressional approval. All Leagues should urge their members and others in the community to write the President commending his support and urging that the White House congressional liaison staff be assigned the task of persuading the Judiciary Committee to move the direct popular vote amendment to the Senate floor.

BACKGROUND ON SENATE JUDICIARY COMMITTEE

<u>Committee Members</u>	
<u>Democrats</u>	<u>Republicans</u>
* James O. Eastland (Miss.), Chairman	* Roman L. Hruska (Neb.)
John L. McClellan (Ark.)	* Hiram L. Fong (Hawaii)
* Sam J. Ervin, Jr. (N.C.)	Hugh Scott (Penn.)
* Thomas J. Dodd (Conn.)	* Strom Thurmond (S. C.)
Philip A. Hart (Mich.)	Marlow W. Cook (Ky.)
Edward M. Kennedy (Mass.)	Charles McC. Mathias, Jr. (Md.)
** Birch Bayh (Ind.)	* Robert P. Griffin (Mich.)
Quentin N. Burdick (N.D.)	
* Joseph D. Tydings (Md.)	
* Robert C. Byrd (W. Va.)	
** Chairman, Subcommittee on Constitutional Amendments	
* Member, Subcommittee on Constitutional Amendments	

On September 19, 1969, the day after the House overwhelmingly passed House Joint Resolution 681 - a proposed constitutional amendment for direct election of the President and Vice-President -- Senator Birch Bayh said, "I am confident that it will pass in committee and will be reported to the floor of the Senate. The situation on the floor of the Senate is a tenuous one. I know that more Senators support direct election of the President than any other plan. But I cannot honestly say if we have the necessary two-thirds needed for passage."

The situation in the Senate Judiciary Committee is also a tenuous one. Senator Bayh's Subcommittee on Constitutional Amendments on May 27 had reported to the full Judiciary Committee on S.J. Resolution 1 as amended with the language of the district plan. There has been no action by the full committee. Even though the Electoral College Resolution is the pending business of the full committee, it is now tied up with the confirmation of the Supreme Court Justice G. Harrold Carswell. The Senate has also directed the Judiciary Committee to report back to the Senate by March 1 the Voting Rights Bill.

Senator Bayh is holding up the Carswell confirmation in an effort to get the Committee to agree to vote on electoral reform in April. If Bayh's efforts are successful, electoral reform will come to a vote in the Judiciary Committee about April 24. Between now and that date Leagues in the 15 key states will need to mount all out efforts to get their Senators to vote out the direct election plan. Senator Bayh will need the support of the majority of the Committee (9 Senators if all are present and voting) before the Senate as a whole can consider the amendment.

We have tried to determine the views of the members of the Senate Judiciary Committee. The following information, we hope, will be of help to you as you tailor your action for your individual Senator or Senators.

Supporters of the Direct Popular Plan: In addition to Senator Bayh, the following Senators have been supporters and/or cosponsors of the direct popular plan: Burdick, Tydings, Byrd, (W. Va.) Cook, Mathias and Griffin. Senator Burdick reaffirmed his "long-time support of the direct election amendment" in a January 26, 1970 letter to me. You will recall that Senator Griffin conducted a poll of the legislators of 27 states last summer, the results of which evidently changed his preference from a proportional method to direct popular election. Senator Hart's staff informed us on February 5 that the Senator still supports the direct popular plan. Senator Kennedy has said, the direct popular plan "I believe is the best alternative. However this plan also raises significant problems regarding standards for voting, machinery for counts and recounts, dilution of the two-party system and drastic changes in the impact of the interest groups voting, and we must deal with them." Some of the Senators supporting the direct popular plan also support other versions.

No support should be taken for granted and we should work to keep these Senators on the "right side" and urge them to be present when the Committee votes.

Possible Supporters: The following Senators should receive special attention to assure their support in committee and on the floor. In a February 4 letter to me, Senator Dodd said "While I am co-sponsor of the proportional method of reform, my primary interest in this matter is to secure the strongest reform possible which the Congress will enact and the States will ratify. As a member of the Senate Judiciary Committee, I expect to try to assist in favorably reporting the direct election plan from the Committee to the Senate Floor, where the full Senate can work its will on this matter of vital importance." On the Senate floor, September 30, 1969 (Congressional Record page S. 11544) Senator Scott said "While I continue to favor the district approach to electoral reform at this time, I will support whatever legislation is reported from the Judiciary Committee to the Senate floor." Senator McClellan, to our knowledge, has not made any public statements, but there might be a possibility of picking up his support.

Unlikely but Maybe not Impossible: Both Senators Hruska and Fong to date have been supporting the district reform plan. Senator Ervin is the champion of the proportional reform plan.

Probably Impossible: Senators Eastland and Thurmond.

THE WHITE HOUSE POSITION:

President Nixon issued a statement on September 30, 1969 urging Senate approval of the House-passed amendment providing for direct election. He said in part: "In February of this year I committed this administration to support any reform of the electoral system that removed its most negative features. I said I would support any amendment approved by Congress that would make three specific reforms in the current system -- one, eliminate the problem of the 'faithless elector,' two, make a 40 percent margin adequate for victory, and three, reform the system so that the electoral outcome more closely reflects the popular outcome.... It is clear that unless the Senate follows the lead of the House, all opportunity for reform will be lost this year and possibly for years to come. Accordingly...I endorse the direct election approach and urge the Senate also to adopt it."

What the League can do:

The first priority is to concentrate on members of the Senate Judiciary Committee. Get many League members and individuals to write. Urge them to get their families and their friends to write. Contact other organizations which support the direct popular plan (i.e. local or state chapters of the Chamber of Commerce, American Bar Association, the Federal Bar Association, Association of the Bar of the City of New

York, National Federation of Independent Business, AFL-CIO, United Auto Workers).

Next get all the local visibility possible for the League view and for what is about to transpire in the Judiciary Committee. Senators read their home-state papers with close attention to the opinions of their constituents.

1) If you have not already done so, call a Press Conference to announce the position of the League of Women Voters of the U.S. on Electoral College reform. Use as a model the Press Release sent to your President the week of January 19. Invite some important community figures to discuss the subject, including local speakers your League may have had who favor the direct election. Have pictures taken and captions ready which include the fact the League is FOR direct popular election. Spell out in the Press Conference that the first target is the Senate Judiciary Committee.

2) Begin the education of your community on the merits of the direct popular vote plan, and wherever possible get these educational efforts into the press and on radio/TV.

3) Start with the schools. Try for a picture of League members, civics or political science leaders and a group of students discussing the direct popular vote plan and what the steps are in Congress and the states to obtain a constitutional amendment to abolish the Electoral College.

4) Use the same technique with community groups. Contact first (and co-sponsor community meetings with) local groups of the national organizations that support the direct popular vote. (See list above.)

5) And last but not least, urge your state legislators to memorialize Congress for a direct popular vote constitutional amendment. Passage of such a memorializing resolution should help to convince Senators that the states will indeed quickly ratify a direct popular vote plan.

STATEMENT OF POSITION AND BACKGROUND

Statement of position: The League of Women Voters supports the national direct popular vote method to elect the President and Vice President.

The League of Women Voters believes that the direct popular vote method for electing the President and Vice-President is essential to representative government and should include provisions for a national run-off election in the event no candidates /President and Vice-President/ receive 40% of the popular vote.

The League of Women Voters believes that the Electoral College should be abolished and that, only as a last resort, should reform of the present Electoral College method be undertaken. Such reform, if undertaken, should include:

- ... allocating the electoral votes proportionally to the popular vote within each state and the District of Columbia
- ... abolishing the office of elector or binding electors in the U.S. Constitution
- ... improving the congressional contingent election procedure

The League of Women Voters supports, in any event, uniform national voting qualifications and procedures for presidential elections.

Background on the Direct Popular Method: Although Senator Thurmond has been leading the opposition to electoral reform with one delaying tactic after another, it is now expected that the Senate Judiciary Committee will schedule a vote on electoral reform in April. We can dare hope that the stupendous support for the direct popular plan evidenced in the House of Representatives last September will be repeated in the Senate this spring. It is important to study the House action on H.J. Res. 681 (September 1969 National Board Report). If through your expressions of your views to your Senators, the League can build on that earlier support, success may be within our reach.

As the Washington Post stated in a February 8 editorial applauding the League's new support for direct popular election, "Dozens of other organizations are similarly clamoring for a modern electoral system in keeping with the great responsibilities that have been centered in the presidency in recent decades. They are entitled to a forthright response from the Judiciary Committee and the Senate -- not a niggling surrender to the obstructionists."

The final House vote on September 18 was 339 to 70; 82.8 percent of those who voted approved of direct election. The breakdown was 185 Democrats for, 154 Republicans for, and 44 Democrats and 26 Republicans against. The opposition came from six southern states -- Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee -- and from three small states, Alaska, Nevada, and South Dakota. Six other small states were evenly divided in support and opposition -- Idaho, Montana, New Hampshire, New Mexico, North Dakota, and Utah. But still another six small states -- Hawaii, Maine, Rhode Island, Delaware, Vermont and Wyoming -- favored it. And so there was not overwhelming small state opposition.

If you live in a small state and its delegation opposed the resolution, you should try to convince your Senators that the "small state" argument is not sound. As the New York Times editorial on September 21, 1969, stated, "The House action last week showed that representatives from small states and large, from rural areas and urban centers, understood the basic justice of assuring that each citizen's choice has equal weight toward the final result and that the candidate with the most popular votes wins the election.... The House verdict confirms all recent opinion polls, including one taken by Senator Griffin of Michigan, among state legislators from the smaller states -- the men considered most likely to oppose direct election. These legislators, in fact, strongly favor the change." With every vote counting equally in a direct election plan, small states are more likely to get attention from candidates and even produce presidential candidates than under any electoral vote plan. The advantage of the two "senatorial" electoral votes which small states now have is far outweighed by the importance each individual vote acquires in a direct election.

Reasons for League Support of the Direct Method: The LWV is overwhelmingly in favor of replacing the out-moded Electoral College method with one that will be most responsive to the will of the people and which also will correct certain glaring defects in the present system that could be extremely troublesome.

1) An out-moded method: The League believes that channeling of votes for President and Vice-President through a state-related system is archaic, unnecessary, inappropriate. The Electoral College system we now have was developed for a small agrarian society with limited communication facilities and an electorate less well educated than is now the case. Political parties had scarcely begun to emerge and the Electoral College method was designed to take care of the nominating as well as electing functions.

2) A method most responsive to the will of the people: The Presidential election method should incorporate the one man, one vote principle. The President and Vice-President are the only elected officials with national constituencies, and yet they are now not elected directly by their constituents. All other elected officials in this country are now chosen directly. Moreover, the one man, one vote principle best accommodates our mobile population whose identities are national rather than regional or state-oriented. The direct popular vote method is more responsive to the will of the people also because it encourages increased voter participation. (It is the only reform

plan which makes greater voter participation effective.)

3) It will correct glaring defects of the present system: Only with a direct popular vote method can it be certain that a President and Vice-President will be elected who have received the most popular votes -- a strong argument for the direct method. The winner-take-all system of counting votes, which disfranchises all those who do not vote for the popular winner within a state, is of course eliminated by the direct method, as is the office of presidential elector and the possibility of a faithless elector. However, both of these aspects of our present system can also be eliminated by adopting other state-related systems, and the winner-take-all vote allocation method can be changed simply by state legislation (for example, in Maine in 1969).

Another glaring defect of the present Electoral College method is the provisions for a contingent election. To change the contingent election method would necessitate a constitutional amendment. The direct election plan supported by the League includes a popular national run-off in the event no pair of candidates has received 40 percent of the popular vote in the first election. The League is convinced of the necessity for changing the present contingent election provision.

The arguments that appear most frequently against direct popular election concern the imponderables of such a change -- the effect on the two party system, the effect on election laws, the probability of ratification by three fourths of the states, and occasionally of late two further arguments -- that the political "clout" of urban minorities might be diluted and that with a national popular vote method the television image of the candidates would become all important and that national issues would lose significance in presidential campaigns. There are, of course, no factual answers to arguments dealing with uncertainties; one has to decide for oneself whose educated guess one can most confidently respect. One articulate League said on the subject of political parties that "Formation of nationwide splinter parties (which would weaken the two party system) would be equally difficult under any system because of financing." Another League said:

We feel confident that direct election will not undermine the two party system, whose stability depends more upon laws defining political parties and on the national nominating conventions. Realignment of factional political forces may occur, but this is not regarded as an obstacle to change. A third party will require broader popular support to affect the outcome of an election by direct vote than it would under the present system.

The League position includes support for uniform national voting qualifications and procedures for presidential elections. (There has been no expression as to specifics of national voter qualifications or procedures). However, it should be strongly stressed that the League does not wish to add this subject to any proposed constitutional amendment for the direct popular plan. To do so might jeopardize the success of a direct election amendment.

As was noted above, ratification probabilities are not a valid argument against the direct popular plan. But it is not too soon to begin to educate your state legislators about the need for presidential reform and the merits of direct election. Although Senator Quentin Burdick's 1966 poll of state legislators and Senator Griffin's of last summer were encouraging, the actual occupants of seats in the state legislatures change and nothing should ever be taken for granted in the political arena.

The urban minority argument is more difficult to pin down. (See page 30-32 and page 55 of Who Should Elect the President? for some of the ramifications of the argument.) It is not necessarily true that urban minorities across the country vote as a bloc under any system of presidential election, and recent close elections certainly offer evidence that urban minorities may not swing states, let alone elections.

The fear of a television "take-over" in the future is one which might exist with any system of election and certainly national issues have not held the center of the presidential election state in a number of recent elections.

news release

The League of Women Voters of the United States

For Release after 1:00 p.m.

January 15, 1970

Washington, D.C. ... The League of Women Voters of the U.S. announced a new national position in favor of the direct popular election of the President and Vice-President and the abolishment of the present Electoral College system.

The action, taken by the League's Board of Directors, marks the beginning of a national effort for a Constitutional Amendment establishing a direct election method. The League position also includes provisions for a run-off election in the event that no candidate receives more than 40 percent of the votes cast.

League President Mrs. Bruce B. Benson, Amherst, Mass., stated: "The decision to work for direct election of the President is based on a clear-cut mandate from local Leagues in all sections of the country and stems from 18 months of study and discussion by League members."

Mrs. Benson reported that of over 1,000 Leagues registering an opinion in the consensus making process, 78 percent were in support of the direct election method. Only four Leagues favored retaining the present system.

The League of Women Voters will immediately press for the passage of a Senate Joint Resolution for a direct election amendment during this session of Congress. (A House Joint Resolution, H.J.Res. 681, received the necessary two-thirds vote on September 18, 1969.) Additionally, state and local Leagues will also begin action programs which will focus on their state legislators and on informing the voting public of the issues involved.

Mrs. Benson stated that: "The League consensus favoring direct election of the President is another reflection of the League's traditional commitment to full and direct citizen participation in our political system. It is, therefore, particularly fitting that it is the first formal act taken in 1970, the League's 50th Anniversary year which we have designated as 'The Year of the Voter.'"

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TO: State Board

FROM: Jean Caine

RE: Pre Board for January 1970
National Program

LWV of Texas
January 1970

Local Leagues have now completed the Electoral College consensus and are turning their attention to the reevaluation of Foreign Aid--let's hope we will change its name to Development Aid or Development Assistance. The F.A. consensus is due February 1. The LLs have 4 new Facts and Issues, plus the reports that Rose Lancaster and I wrote on the Conference we attended in Wisconsin in October. Also, hopefully, they are using PARTNERS IN DEVELOPMENT, the report of the Pearson committee. I hope you will all get a chance to read it: it most probably will be the text for the Second Development Decade as far as Development Assistance is concerned.

The Electoral College consensus among LLs in Texas points overwhelmingly to a change to direct popular vote. In a few instances there were minority reports favoring a state-related step. All felt change is definitely needed. Since Texas LLs tend to be more conservative in their thinking than LLs in some other parts of the country, I think we can safely predict the outcome of the national Electoral College consensus.

Program making has taken up so much of the fall that I think LLs have been exceptionally pressured to get everything done on time. The first round of suggested Program items that I have received from LLs shows a great interest in some form of environmental control. Unfortunately no one seems to want to drop any item!!

* * * * *

COMPARISONS OF PROPOSED ELECTORAL SYSTEMS

System	Electors	Unit (General Ticket) Method	Rights of States (Federalism)	Voter Participation	Bloc Voting	Effect on 2-Party System	Weight of State's Electoral Vote	Election Fraud
AUTOMATIC	Frozen into Constitution, but pledged; or eliminated*	Frozen into Constitution	Eliminates State initiative	Size of popular vote not a factor	No large vote incentive--more bloc power	Uncertain	Unchanged	Possibility exists
DISTRICT	"	Unit system by districts	"	"	Easier with smaller voting units	"	"	"
PROPORTIONAL	Electors eliminated	Eliminated	"	"	Same as in "Automatic"	"	"	"
DIRECT	"	1 man-1 vote for each candidate	"	Encourages heavy vote	Larger vote harder to control	"	Eliminated as a factor	"

*Both proposed in different resolutions.

League of Women Voters
of the United States

Memorandum

OFFICIAL 34

This Memo is going
Duplicate Presidents Mailing

September 10, 1969

TO: Local and State League League Presidents (for Electoral College
Chairmen)
FROM: The National Office
RE: Electoral College Activity in Congress

Today the House of Representatives begins debate on House Joint Resolution 681 -- a proposed constitutional amendment for a direct popular vote plan to elect the President. For the major provisions of HJ RES 681 see page 27 of the May 1969 Board Report. Six hours of general debate will be followed by debate on amendments to this proposed constitutional amendment. It is predicted that debate will continue well into the week beginning September 15. Not since 1950 has a vote been taken by the House on Electoral College reform.

On May 26 the Subcommittee on Constitutional Amendments reported without recommendation to the full Senate Judiciary Committee Senator Karl Mundt's SJ RES 12 for a district plan.

League of Women Voters
of the United States

Memorandum

34

June 30, 1969

This is going on

Duplicate Presidents mailing

TO: Local and State League Presidents
FROM: National Office
RE: Who Should Elect the President?

Pressures, people, politics and priorities...and how they swirl around America's Electoral College system. That's what Who Should Elect the President? is about.

Since the adoption of the Electoral College item a year ago, League members have been looking forward to this, the League's own publication on the Electoral College. Now it's off the press, and en route to Leagues (sent book rate because of its size.) It is also being mailed to all members of the full Judiciary Committees of both the House and the Senate. (See pp 99-100 of the booklet.)

This informative, handsome, fact-filled, highly readable booklet is not only what you, the League member, need to enable you to study the electoral system effectively. It's also what John Q. Citizen needs to help him through the electoral maze...You name it...it's there...160 pages of well organized material.

Enclosed is a flyer describing the booklet, giving a suggested list of individuals and organizations to share it with, and including an order blank...If your League can afford to distribute copies of Who Should Elect the President? to key people in your community, do so by all means. If you can't afford to give the booklet away, give away the flyers. Some suggestions for distribution:

Who Should Elect the President?
(160 pp; \$1.50) Give to:

Electoral College flyer. (4 pp;
75 cents a hundred.) Give to:

Principal of each grade and high school
President of each local college and
university

Teachers of civics, government,
history, current events, etc.

Editors, station managers, well-known
columnists and commentators if your
community has them

Reporters, editorial writers,
section editors, political
writers

Heads of large organizations

Librarians; heads of smaller
organizations, women's groups,
church study groups, etc.

Key business and professional leaders

Business and professional people

Your Congressman; your mayor, your
county superintendents

Other local officials

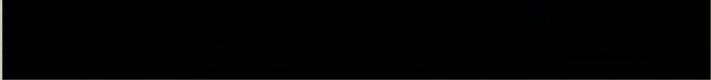
Get on the bandwagon now to get your community thinking about it...Who Should Elect the President?

Committee Section
Electoral College and Representative Government
National Board Report

January 1970

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

League of Women Voters of the United States



ELECTORAL COLLEGE

A study of the Electoral College

The League Position Resulting from the Study of the Electoral College

STATEMENT OF POSITION

As announced by the national board Jan. 15, 1970

The League of Women Voters supports the national direct popular vote method to elect the President and Vice President of the United States.

* * * * *

The League of Women Voters believes that the direct popular vote method for electing the President and Vice President is essential to representative government and should include provision for a national run-off election in the event no candidates [President and Vice President] receive 40% of the popular vote.

The League of Women Voters believes that the Electoral College should be abolished and that, only as a last resort, should reform of the present Electoral College method be undertaken. Such reform, if undertaken, should include:

- ... allocating the electoral votes proportionally to the popular vote within each state and the District of Columbia
- ... abolishing the office of elector or binding electors in the U.S. Constitution
- ... improving the congressional contingent-election procedure

The League of Women Voters supports, in any event, uniform national voting qualifications and procedures for presidential elections.

EXPLANATION OF POSITION

Support of a constitutional amendment to provide the national direct popular vote method to elect the President and Vice President has top priority in the League's Electoral College position. League members indicated that candidates for President and Vice President should be voted upon as a pair. The League believes that uniform national voting qualifications and procedures should apply to presidential elections. However, it does not believe that such uniformity should be an integral part of a constitutional amendment for the direct popular vote method. These two goals and their implementation should be kept separate so as not to jeopardize the attainment of either reform.

For the vote necessary to elect a President and Vice President, the League of Women Voters specifies at least a 40 percent plurality, regardless of method of election. This figure is not likely to be too high to produce a victor nor low enough to cause frequent contingent elections. If no pair of candidates receives 40 percent of the vote, the League wishes to have the election decided by means of a national run-off contingent election between the top two pairs of candidates. This election should be held as soon as possible after the general election and further campaigning by candidates should be discouraged.

The constitutional amendment which provides for direct popular election of the President and Vice President will abolish the Electoral College (which is mentioned in Article 2, Section 1 of the Constitution, and in the 12th, 14th, 23rd and 24th amendments).

If abolishing the Electoral College appears to be politically impossible and reform within the Electoral College system attainable, then (and only then) would the League of Women Voters support, as a substitute for the direct popular reform plan, a method of allocating the electoral votes proportionally to the popular vote within each state and the District of Columbia. This type of reform would, of course, not necessitate a constitutional amendment. However, for practical considerations, such a change should be adopted by every state.

The League of Women Voters believes that the office of elector has become unnecessary and supports its abolition. If abolition is not attainable, the League believes that the elector should be bound by the US Constitution to vote for the pair of candidates upon whose slate he was elected. Either of these changes would require amending the US Constitution.

The League would continue to support a national run-off contingent-election method within the proportional plan. If a run-off election does not appear to be possible, the League would then push for reform (via a constitutional amendment) of the congressional contingent-election method as it existed in 1969. The League prefers to have a joint session of Congress with each member voting on the top two pairs of contenders. Such election should be held as soon as possible after the new Congress convenes and with some provision for voting by the District of Columbia. If a joint session of Congress is not provided for in any change in the congressional contingent-election method, the League prefers to have the House of Representatives vote on the top two pairs, with each member having one vote.

The League of Women Voters has agreed on the principle of uniformity of voting qualifications and procedures for presidential elections. There has been no expression as to the specifics of national voter qualifications or procedures, or whether they should be delineated in the US Constitution or legislated by Congress under authority of the Constitution. The League of Women Voters has shown concern about present national nominating procedures, about campaign financing and the use of the media in presidential elections.

How Did We Tell the World?

Mrs. Benson had a press conference in the national office on January 15 to announce the League position with Mrs. Clusen and Mrs. Resor of the national

board. Senator Birch Bayh of Indiana, chairman of the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee was present. Representatives from the Associated Press, the Christian Science Monitor, the Wall Street Journal, Gannett News Service, the Washington Evening Star, Chicago Sun Times, ABC and CBS Radio, Time-Life Broadcasting, Congressional Quarterly, Medill Press and McClatchy Newspapers attended. (See Public Relations Committee Section for more details.)

Excerpts from the Washington Evening Star story follow:

THE EVENING STAR
Washington, D. C., Friday, January 16, 1970

LEAGUE BACKS ELECTORAL REFORM

An Ally for Bayh Plan

By RUTH DEAN
Star Staff Writer

Sen. Birch Bayh, D-Ind., gained a powerful ally yesterday in his fight for Senate passage and ratification of his proposed constitutional amendment for electoral reform in time for the 1972 elections.

The League of Women Voters of the United States, his new ally, announced it favors direct popular election of the President and Vice President and abolishment of the present electoral college system.

Sen. Bayh applauded the League's move at a press conference called by League president Mrs. Bruce B. Benson to announce the League's new policy.

"No better time could have been chosen by the League," he said. "It could be the chief factor between passage and failure. It is significant because of the dispersal of support and the almost universality of support."

.....

Sen. Bayh indicated, however, that the proposed constitutional amendment still faces rough sledding in the Senate Judiciary Committee where it has been tied up since September due to delaying tactics by Rep. Strom Thurmond, R-S.C.

Bayh said he "has no desire to tie up" the committee's consideration of the new Supreme Court justice nomination, expected from the President soon.

At the same time he indicated he intends to see his amendment eventually reported out.

"I will not hesitate to use what parliamentary tactics are necessary to get it out," he said. He added, however, he would favor "persuasion" over the ultimate parliamentary weapon of a discharge petition.

Mrs. Benson announced that she has written to each member of the Senate Judiciary Committee urging the Committee to report favorably to the Senate floor a resolution providing for the direct national popular vote method of electing the President and Vice President.

What Did Your Consensus Reports Say?

A record number of reports on the Electoral College study were received -- 1065 from local Leagues (and 47 from provisional Leagues). All but four of the 1065 local Leagues wanted change in the method of electing the President and Vice President. Many Leagues reported that this was a unanimous decision. Two Leagues did not want any change, and two could not reach consensus on the question.

That Leagues of all sizes and in all areas of the country understood the complexity of the Electoral College program item was evidenced in a variety of ways -- in their thoughtfully developed lists of reasons for desiring change and in their reasons for a direct or a state-related reform plan, in their suggestions for further study on related topics, in the inability of 11 percent of the reporting Leagues to reach consensus at all on the question of direct popular vote or a state-related plan, in the frequent mention of various concerns.

A typical comment was voiced by a small League in Pennsylvania:

"Some changes, though they seem to be desirable, also seem to have some far-reaching and yet inassessable ramifications."

Despite their realization of the complexity of the choices to be made, the Leagues unquestionably reached a national consensus: over three-fourths of the Leagues reporting preferred the direct popular election method of electing the President. Those preferring an election process that includes a state-related step totalled only 11 percent of the reporting Leagues. Four-fifths of the Leagues were for a national run-off contingent election.

Almost all of the Leagues that replied to questions about electors did not wish to retain the office of elector, but if the office were retained they wished to bind electors in the US Constitution to vote for the candidate on whose slate they had been elected. A very large majority of the Leagues were for the proportional method of allocating electoral votes.

Regardless of the high percentages of preferences for abolishing the office of elector or binding electors in the US Constitution, the conviction was frequently expressed that "there was very little interest in halfway reform, such as binding electors, because this seemed too much effort to expend for the resulting reform."

To summarize the response about a direct popular plan or a state-related step: Those members who supported the direct popular vote method did so either without any reservations or with some reservations which they believed were more than cancelled out by the disadvantages of a state-related step. Those who supported a reform plan with a state-related step did so more often than not because of their apprehensions about the imponderables of change or doubts about the political feasibility of a direct popular vote plan.

A League in Indiana provided a typical example of the expression of both majority and minority viewpoints:

"Although concerned about the implementation of change, 80 percent wanted direct popular vote because they felt that this method favored more democratic elections. 20 percent of the members wanted to retain a state-related step because they were anxious over the uncertain results that a radical change in the election process might bring. For example, would the party system be destroyed by the springing up of splinter parties; how would candidates be selected, how would campaigns be financed; would there be national election laws to standardize age, residence requirements, other eligibilities, etc; what about the recounting of challenged votes and the delay involved in holding a run-off election ???? (Actually, many of the 80 percent above voiced these same concerns, but voted as they did hoping and thinking that implementation could be accomplished.)"

A New Jersey League stated that:

"We feel confident that direct election will not undermine the two-party system, whose stability depends more upon laws defining political parties and on the national nominating conventions. Realignment of factional political forces may occur, but is not regarded as an obstacle to change. A third party will require broader popular support to affect the outcome of an election by direct vote than it would under the present system."

An Illinois League stated that "formation of nationwide splinter parties (which would weaken the two-party system) would be equally difficult under any system because of financing."

The reasons listed for wanting the direct popular vote ran the gamut from philosophical principles such as one man-one vote, through practical considerations such as the possible increase of voter participation because of a direct plan, to correction of a variety of defects (such as the winner-take-all electoral vote allocation) in the present system of electing a President.

As far as the vote necessary to elect is concerned, more than three-fourths of the reporting Leagues desired a 40 percent plurality. That 40 percent is not likely to be too high a figure to produce a victor is indicated by the fact that no President has been elected with less than 40 percent of the popular vote except Abraham Lincoln (who in 1860 received 39.8 percent in a four-way race when his name was not on the ballot in ten states).

In response to the question "If provisions for electing the U.S. President and Vice President are to be altered, what changes in the method of election does your League consider most necessary?" Leagues mentioned most frequently uniform voter qualifications and procedures for presidential elections. When the changes mentioned were computed in order of urgency indicated by the Leagues, the direct popular vote method, abolishing the office of elector, and then uniform national voting qualifications and procedures were listed.

What is stirring in Electoral College reform?

During the summer and fall of 1969 the Senate full Judiciary Committee stalled consideration of the proposed constitutional amendment reported by the Subcommittee on Constitutional Amendments on May 26. This is Senator Bayh's SJ RES 1, amended to be, in effect, Senator Mundt's SJ RES 12 for-the-district plan.

Opposition to a direct popular vote plan is being voiced in a number of quarters. For instance, the New York Times Magazine of November 23, 1969, had a lead story titled "A Bad Idea Whose Time Has Come" by Irving Kristol, Henry Luce Professor of Urban Values at New York University, and Paul Weaver, assistant professor of government at Harvard. Neither of these men testified at any of the 1966-67 or 1969 Senate or House hearings.

Also, the Farm Bureau has purportedly selected 13 states in which to focus on preventing ratification of any direct popular plan amendment. For another viewpoint about prospects for reform, look up in your local library the Kiplinger Washington letter for December 19. It is rumored that a group of young liberal lawyers with plenty of funds will also attack the direct popular vote plan on the basis that minority groups in urban centers may lose their political clout. (It is argued by other liberals that this particular kind of clout does not in reality exist as far as swinging presidential elections is concerned.) A young lawyer named Myron P. Curzan, from Arnold and Porter (Abe Fortas' former law firm in Washington), is promoting a hybrid plan for Electoral College reform called the "Federal System Plan." Mr. Curzan was formerly on the staff of Senator Robert Kennedy.

In the Christian Science Monitor of January 9, an Associated Press story stated that Senator Bayh blamed the stalemate on

"what he termed 'the obstructionist tactics of opponents of direct election.' This was after Senator Strom Thurmond (R-S.C.) objected to the Judiciary Committee's sitting while the Senate was debating the big tax-reform bill. However, the committee did agree to take up the amendment for discussion but not necessarily to vote on it, at a meeting this month.... Even if the direct election amendment should finally win committee approval, it could have an even harder time in the Senate itself.... A filibuster against it is a possibility."

Whether a proposed constitutional amendment incorporating a direct popular vote method will be recommended favorably for Senate floor debate depends on decisions made by 17 Senators from 15 states -- members of the Senate Judiciary Committee.

WHAT CAN THE LEAGUE DO TO GET
A DIRECT POPULAR ELECTION CONSTITUTIONAL AMENDMENT?

We can ACT NOW -- fast and furiously and thoroughly. Your League hopefully has already begun to do everything outlined in the TIME FOR ACTION from Mrs. Benson. We hope you are also engaged in all the innovative action possibilities your League board and the Electoral College Committee can dream up for members and for various segments of your community. Ask your League president for copies of the TIME FOR ACTION. Order additional copies from the national office TODAY. Hold an Electoral College Committee meeting to discuss ACTION. Time is absolutely of the essence in the situation in which Electoral College reform finds itself right now. Do keep in mind that the League campaign must be waged at all three levels -- national (first the Senate Judiciary Committee and then the whole Senate), state (with your legislators) and local (to convince important individuals and groups in your community whose opinion is important to your Senators). And it cannot be won by just a letter from the President in the name of the League. Each League member and every possible contact she has must also get into the drive. Only if this action campaign quickly becomes an ever-widening circle can we hope to change the minds of sufficient Senators to achieve success. And the time is NOW.

The press has labeled us "a powerful ally" for direct popular election and "one of the strongest women's lobby groups." Let's prove just how powerful and how strong the League can be by carrying through an intense, well planned and thorough campaign --

- 1) to get favorable Senate Judiciary Committee and full Senate votes
- 2) to get the proposed amendment ratified by the states

-- and all this in time for the 1972 presidential election. A tall order but not an impossible one!

Postscript:

Although the League is now in the ACTION phase of its Electoral College work, we would like to call your attention to a book being published in March by Johns Hopkins Press in Baltimore. The Supreme Court and the Electoral Process, by Richard Claude, is a scholarly but fascinating book with chapters on the Voting Rights Act of 1965, Judicial Review of State Legislative Apportionment, Voting and Representation, Voting for the President and Nationalization of the Electoral Process. This is a reference work, a comprehensive study which covers all of the constitutional law affecting voting rights in this country. The author teaches graduate level government and political science at the University of Maryland. The price will be \$10. Perhaps you might like to urge your library to purchase it.

REPRESENTATIVE GOVERNMENT

APPORTIONMENT

Support of apportionment of both houses of state legislatures substantially on population.

Recent Happenings in Wisconsin. The petition to Congress to call a constitutional convention which would propose a Dirksen-type amendment to the US Constitution, allowing apportionment of one house of a bicameral legislature on factors other than population, was decisively defeated in the Wisconsin Assembly on November 5, 1969. The vote was decisive -- 62 against, 36 for. The Wisconsin League of Women Voters had spearheaded an all-out effort in opposition, involving not only League members but various groups in a state-wide organization: the Wisconsin Committee for One Man, One Vote. With Mrs. John Toussaint, president of the Wisconsin League, acting as chairman, this organization included such groups as the AFL-CIO, the Wisconsin Farm Union, the American Association of University Women, United Auto Workers and church groups.

In the 1969 session, however, the Assembly in Wisconsin passed another resolution for a convention to propose popular election of U.S. Supreme Court Justices. Speaker of the Wisconsin State Assembly Harold Froehlich was quoted as saying that, if the Wisconsin legislature should pass this resolution, Wisconsin might be added to the 33 states having passed the apportionment resolution, thus making 34, the number required to call a convention.

When the 1969 Wisconsin legislative session again met for two weeks in January 1970 the Senate did not consider the resolution concerning popular election of U.S. Supreme Court Justices. The legislative session will not reconvene until January 1971 unless called into special session. The League, of course, has no position on popular election of U.S. Supreme Court Justices.

Other News. The Dirksen-type petition for a constitutional convention has appeared in the 1970 session of the New Jersey legislature. It was introduced in the New Jersey General Assembly and referred to a committee.

General Alert. On January 9, 1970, a memo was sent to all state Leagues to be on the alert for introduction of the petition on apportionment. Passage by only one more legislature would bring the number of petitioning states to 34, the required number. Leagues in 33 states should also be watching for opportunities to support rescission of petitions already passed, if their legislatures are meeting in 1970. While the Oklahoma petition may have been declared no longer valid by the state attorney general and rescissions may have been passed in one house in several states, there has not yet been a rescission passed by both houses of any bicameral legislature. (See the September 1969 National Board Report, Apportionment Section, for complete run-down of current status of legislative petitions on apportionment.)

COMMITTEE SECTION

REPRESENTATIVE GOVERNMENT

Some commentators say that the apportionment issue is dead. There is still activity around the country to add petitions. The status of those already passed is not clear. The Constitution does not clarify who is to determine the life of a petition, how long a petition is valid or whether or not rescission by one house invalidates a petition. There is also no implementing legislation passed by Congress to establish any rules. A total of 34 states petitioning for a convention on apportionment would put the matter of these determinations on the floor of Congress. Those state Leagues which have put considerable time and effort into opposing state resolutions, whether they have won or lost their fights, are aware of the thin margin of safety.

DISTRICT OF COLUMBIA

Support of self-government and representation in Congress for citizens of the District of Columbia.

D.C. Petition Drive -- April 15-22

The D.C. Petition Drive is well underway:

- . A press conference to launch the drive officially is to be held in Washington, D.C., by Mrs. Benson on February 3.
- . Many national organizations have already responded to Mrs. Benson's recent letter with their suggestions for ways to cooperate.
- . The national D.C. Petition Committee is making final arrangements for the presentation to Congress of the petitions during our national convention in May.

An array of materials is available:

- . The February/March NATIONAL VOTER contains a copy of the petition form, with information on the back of the sheet about the plight of the citizens of the District of Columbia, their need for help and details about the Petition Drive.
- . A colorful bumper sticker, with the slogan D.C. LAST COLONY, is appearing on more and more bumpers around Washington. Hopefully, cars from Maine to California and in between will soon be sporting the attractive (and easy to remove) red-and-white bumper sticker.
- . A give-away size pamphlet, Washington, D.C., The Last Colony, is now available for your orders. A number of free copies is being sent to every League right away. Minimum order is 100 copies at \$2.
- . The Facts and Issues - The Nation's Capital: 'A Nice Place to Visit But' costs 25 cents, 15 cents a copy for orders of 50 or more.

COMMITTEE SECTION

REPRESENTATIVE GOVERNMENT

The special Petition Drive materials -- letter labels and the bumper stickers -- being sold by the League of Women Voters of the District of Columbia are to be ordered directly from

Mrs. W. J. Gallman

These and other materials (plus order blanks) will be in the D.C. Petition Drive Kit to be mailed at the end of January to each local and state League president and on the Duplicate Presidents Mailing.

ELECTORAL COLLEGE

A study of the Electoral College

Where Are We Now?

All the presently contemplated national publications on the Electoral College and the Consensus Report Form have been distributed to local and state League presidents--the major publication Who Should Elect the President?, the Facts & Issues: The Electoral College--What Choices for Change?, the Leaders Guide, May 1969 which contains suggested discussion questions essential to the consensus-reaching process and of course the earlier Leaders Guide of August 1968 plus the basic explanation of the Electoral College in the 1968 Election Issue of THE NATIONAL VOTER. We hope every member has the FACTS & ISSUES (only \$1.75 for ten copies) and at least every committee member owns Who Should Elect the President? (\$1.50 - 10 percent discount on orders over 50). The Leaders Guide, May 1969 is 50 cents.

Promotion of Publications - Now is the Time!

Public interest in Electoral College reform should be high as a result of the action in the House of Representatives on September 18. And while you are busy with consensus meetings with one hand, with the other hand do plan promotion in the community of Who Should Elect the President? and the Facts & Issues. Once they are seen by the public or described by the media, they sell themselves. But only YOU can get them into the hands of all the newspapers editors, the political editors, and chief editorial writers of your newspapers; the general managers, program directors, and editorial writers of your radio and TV stations; legislators and party chairmen; particularly those people in your school systems who decide upon teaching aids and the contents of school libraries.

The national office sent Who Should Elect the President? to the members of the Senate Judiciary Committee and of the House Committee on the Judiciary.

Examples of comments we have received include:

Senator Hugh Scott (Pennsylvania)

"Your book is one of the most comprehensive on the subject of Electoral College reform that I have ever seen, and I want to commend you for your excellent work. I believe that it will go a long way toward public education on a matter which is so vastly important that it affects the very lives of over 200 million Americans. Again, my heartiest congratulations on a job well done!"

This Committee Section available on direct order from national office for 10¢

Senator Joseph D. Tydings (Maryland)

"It is a very intelligent and informed presentation of the problem. Unfortunately, this is an area in which many people form views without understanding fully the question to which they are addressing themselves. Your volume will offer the opportunity for a well-reasoned approach to the problem."

Representative Peter W. Rodino, Jr. (10th District, New Jersey)

"As always, the League is serving the vital purpose of educating the public in the area of voting. The book is excellent in its straightforward, clear and objective presentation of the problem. I look forward to using it myself as a ready reference."

Flyers describing Who Should Elect the President? are available free from the national office.

Consensus

Completed consensus reports are beginning to trickle into the national office and this is most helpful. Please send in just as soon as possible after consensus-reaching meetings the green report form which was mailed to each League in triplicate in August. (Send one copy to your state League and keep one in your file.)

The consensus deadline is November 30, 1969. After evaluating the contents of your consensus reports, the national Board at its January 1970 meeting will determine whether or not the League of Women Voters has reached a position and will formulate the League position if there is substantial agreement. The contents of your reports--the shadings, the emphases, etc., must first be analyzed, compiled, and characterized for presentation to the national Board in meaningful fashion. Replies are analyzed by size and type of League, by geographical area of the country, separately and then combined (e.g., small, medium, or large Leagues in, for example, the southwest, northeast, and north central areas of the country).

So far as possible, reports received after November 30 will be included in the overall analysis. Please send in the reports, even though scheduling difficulties make them late.

A First in Electoral College Reform

Again--the League was there! During the September national Board meeting the House of Representatives took historic action when it overwhelmingly passed a proposed constitutional amendment for the direct election of the President and Vice President. Mrs. Griffith L. Resor, Jr., national Board chairman, and Mrs. William J. Hamm, the national staff person for the Electoral College item, observed the vote which came after six days of debate on HJ RES 681.

As you well know, this is the first time a direct popular election plan has ever been voted upon by either House or Senate, and not since 1950 has the House voted upon any plan to reform the Electoral College system. Just before the vote was taken, Representative Emanuel Celler of New York, chairman of the House Committee on the Judiciary and chief sponsor of the resolution, said its approval would be "the crowning achievement of my whole life."

The vote was 339 to 70; 82.8 percent of those who voted approved. The breakdown was 185 Democrats, 154 Republicans for, and 44 Democrats and 26 Republicans against. Opposition to the resolution came from six southern states--Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee--and from three small states--Alaska, Nevada, and South Dakota. Six other small states were evenly divided in support and opposition--Idaho, Montana, New Hampshire, New Mexico, North Dakota, and Utah.

Major provisions of the direct election amendment as passed are

- . the people shall elect the President and the Vice President;
- . the President and Vice President are voted upon as a pair;
- . a run-off election between the two pairs of top candidates is held if no pair of candidates receives 40 percent of the popular vote;
- . Congress may set uniform residence requirements for presidential elections;
- . Congress may act to assure that the names of any major party presidential candidate for President and Vice President are assured a place on the ballot in every state;
- . Congress may by law provide for the case of the death or inability or withdrawal of any candidate for President or Vice President before election and for the case of the death of both the President-elect and Vice President-elect.
- . This amendment to the Constitution shall take effect one year after the 21st day of January following ratification.

Seventeen amendments to the direct election resolution, HJ RES 681, were defeated, including substitute amendments for a district plan (by Representatives Dowdy of Texas, Dennis of Indiana, Poff of Virginia); for a proportional plan (Rep. Poff); for a proportional plan to be used as a contingent election (Rep. Pucinski of Illinois); for ratification by state conventions rather than by state legislatures (Rep. McClory of Illinois) to bind electors and change the present contingent election to give a vote to each member of the House (Rep. Eckhardt of Texas); to change the specification for victory in a direct popular election from the proposed 40 percent to 45 percent (Rep. Rogers of Colorado); to 50 percent (Rep. Waggoner of Louisiana); and to 35 percent (Rep. Fish of New York). One proposed amendment to the resolution called for striking out the

word "residence" in the clause "and for election of President and Vice President the Congress may establish uniform residence qualifications" (Rep. Conyers of Michigan).

Other attempts to amend HJ RES 681 would have permitted the states to choose the method of reform from among the automatic, district, proportional, or direct plans (Rep. Wylie of Ohio); would have substituted a contingent election in a joint session of Congress (Rep. Coughlin of Pennsylvania); would have given Congress direct responsibility to establish uniform qualifications for electors of the President and Vice President and for setting requirements for getting on the ballot (Rep. Ryan of New York). Rep. Ryan also offered an amendment for a separate vote for President and Vice President. An amendment to prevent the President and Vice President from being inhabitants of the same state was offered by Rep. Hutchinson of Michigan.

Only one amendment was accepted--that of Rep. Poff of Virginia which added the word "inability" to the "death provision." Just before the final vote on the resolution, a motion to recommit the resolution to the House Committee on the Judiciary proposed by Rep. Dennis of Indiana was defeated. The vote on this was 162 yeas, 245 nays, not voting 23.

The House of Representatives floor debate makes fascinating reading. The CONGRESSIONAL RECORD, Volume 115, page references are September 9, H 7705-7709 on the adoption of the Rule. For the debate on HJ RES 681 and proposed amendments, see the CONGRESSIONAL RECORD of September 10, H 7745-7762; September 11, H 7782-7823; September 15, H 7872-7893; September 16, H 7945-7962; September 17, H 7980-1 and H 7982-8006; September 18, H 8104-8143.

Senate Prospects

As of September 23, the Senate Judiciary Committee had not scheduled consideration of any Electoral College reform proposals, although it is predicted that consideration of Electoral College reform will take place soon.

Senator Birch Bayh of Indiana, chairman of the Subcommittee on Constitutional Amendments of the Judiciary Committee, said on the floor of the Senate on September 19 that 43 Senators were co-sponsors of his SJ RES 1 for direct election. He continued--

"The situation on the floor of the Senate is a tenuous one. I know that more Senators support direct election of the President than any other plan. But I cannot honestly say if we have the necessary two thirds needed for passage.

"To date, we have not had the active support of President Nixon. In February, the President said that he still agreed with his statement during the campaign -- that he personally favored direct election, but felt it did not have the best chance of passing. The President indicated, however, that he would back any plan Congress passed. I hope the President will not wait for Senate passage of electoral reform to give us his active support."

On September 30, President Nixon issued a statement giving his support to the direct popular election plan of reform. According to THE NEW YORK TIMES of October 1:

"...he said that his change of heart had been impelled by 'an entirely new factor' in the electoral reform picture, the overwhelming approval of the direct plan by the House earlier this month. 'It is clear that unless the Senate follows the lead of the House, all opportunity for reform will be lost this year and possibly for years to come.'

"Mr. Nixon's endorsement of the direct plan seemed sure to improve its somewhat uncertain prospects of passing the Senate. Backers of the reform were confident that the President could sway several wavering Republicans into supporting the program when it reaches the floor in a few weeks."

A change in the membership of the Senate Judiciary Committee has taken place which may (in the opinion of Senator Tydings) hasten a direct election proposal. Senator Robert Griffin (R., Mich.) was assigned on September 16 to the late Everett Dirksen's Senate Judiciary Committee seat. (For the full membership of this Committee, see page 99 of Who Should Elect the President?)

As you may have noticed in THE NEW YORK TIMES of August 8, Senator Griffin this summer conducted a poll of almost 4000 legislators from selected states (27 states of varying sizes). Results were encouraging to proponents of the direct popular vote. Of the legislators responding, 64 percent said they favored ratification of the direct election. Of the 27 states surveyed, only Idaho and North Dakota were opposed.

The following states were surveyed: Alabama, Alaska, Arkansas, Delaware, Georgia, Hawaii, Idaho, Louisiana, Maine, Maryland, Mississippi, Montana, New Hampshire, New Mexico, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia and Wyoming. (Before the survey, Senator Griffin said, he favored the proportional plan.)

League Action

If the League of Women Voters of the U.S. has reached a position on electoral college reform in 1970 and if both houses of Congress have already passed by a two-thirds vote an amendment embodying a particular type of reform authorized by the League's position, there would still be opportunity for Leagues to act at the state level because three fourths of the states must ratify a constitutional amendment within a specified number of years (usually seven).

New Sources

Since the last National Board Report, two new government publications have become available--

- the hearings before the Senate Subcommittee on Constitutional Amendments in the 91st Congress entitled "Electing the President." More than a thousand pages, this contains the testimony and related materials presented to the Subcommittee during hearings on January 23 and 24, March 10, 11, 12, 13, 20 and 21, April 30, May 1 and 2, 1969.
- the Report of the Committee on the Judiciary, U.S. House of Representatives, with additional, minority, individual and separate views on HJ RES 681 -- this was the Resolution passed by the House on September 18, 1969.

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Committee Section
Electoral College

National Board Report

September 1969

Facts & Issues

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

The Electoral College—What Choices for Change?

On November 5, 1968, over 73 million citizens went to the polls to indicate their choices for President and Vice President of the United States—yet they actually voted for neither of them but for electors whose names most citizens did not even know. In fact, in some states electors' names did not even appear on the ballot; the names of presidential and vice presidential candidates appeared, the state laws providing that a vote for a specific candidate was a vote for his party's electors.

All during the evening of November 5 and the next day, the major television and radio networks broadcast their predictions about which candidates would be elected. As returns began to come in, state by state, computers spewed out *popular vote* totals and predicted whether a certain state would give its *electoral votes* to Richard Nixon, Hubert Humphrey or George Wallace, the three major contenders. By late morning of November 6, Mr. Humphrey had conceded defeat; later, citizens heard Richard Nixon deliver his victory speech. But the actual voting by electors did not take place until December 16. Then, in their state capitals, electors cast their votes by ballot for President and Vice President. Their votes were certified, sealed and sent to the President of the Senate,¹ who, in the presence of the two houses of Congress, counted them on January 6, 1969. Official announcement of the election results was not made until January 6.

If a voter on November 6, 1968, told you how he had voted, he probably would have said, "I voted for Nixon (or Humphrey or Wallace)." The voter generally considers he is casting his ballot for a candidate, even though he may know he is actually voting for electors. However, he may be unaware that a *majority* of the popular vote cast within a state is not required in the "winner-take-all" system, in which all a state's electoral votes go to the candidate with the highest number of that state's popular vote. When there are three or more candidates, a candidate with a plurality will receive all that state's electoral votes. For example, in the 1968 election, the "winner" in each of four states had less than 40 per cent of the popular vote.

WHY THE ELECTORAL COLLEGE SYSTEM?

During the Revolutionary War, the Articles of Confederation were drawn up by the Continental Congress, organized to conduct the war, and accepted by all 13 former colonies. But when the war had ended, it was evident that the articles with their limited provisions would not suffice for the government of a nation. So in 1787 the states, except Rhode Island, sent delegates to a convention in Philadelphia to devise limited changes. Instead, they proposed an entirely new constitution intended to be more adequate for the new nation's needs.

Each state was willing to delegate power (although differing among themselves on which powers) to a federal government. The former colonies feared a strong central

government and also the "whims" of the populace.² Therefore, the delegates set up balances of power—among the legislative, executive and judicial branches of the federal government and between the federal government and the states. They proposed two houses for Congress, one with representation based on population and one based on states *per se*. The executive, too, was to be selected with this kind of balance: the number of electors for each state was to equal the number of representatives (based on population) plus the number of senators (based on states).³

The U.S. Constitution provides that presidential electors be appointed by each state "in such manner as the Legislature thereof may direct." The original intent was probably for these electors to exercise their choices as to whom they believed most qualified to serve as President. Because they were authorized by the Constitution to choose electors, legislatures have since chosen electors by whatever method best suited their political purposes. As the two-party system began to develop in the United States, the practice of nominating electors by state party conventions arose. Such electors are expected, if they win in the general election, to vote for their candidate's party. Some electors have "defected," casting their votes for candidates other than those on their party ticket—but in no case has such defection influenced the election outcome.

WHAT MOVES FOR CHANGE AND WHY?

Although many resolutions for constitutional amendments to abolish or modify the Electoral College system have been introduced, none has been submitted by Congress for ratification by the states (except the 12th Amendment, providing for separate electoral ballots for President and Vice President, and the 23rd Amendment, which does not change the system but provides for electors for the District of Columbia).

The Constitution also provides that, should no candidate receive a majority of the electoral votes, the President shall be elected in the House of Representatives, from the persons, not exceeding three, having the highest totals. Each *state* shall be entitled to one vote. The Senate shall select the Vice President from the two highest contenders, with each *senator* having one vote.

In 46 presidential elections, including the first in 1789, the House of Representatives has twice chosen the President because no candidate had a majority of electoral votes. (Circumstances of choice of Jefferson in 1800 could not have occurred after passage of the 12th Amendment.)

But in the 1968 election, which threatened to be extremely close, the possibility existed that no candidate would have a majority of electoral votes. Many observers

² The Constitution as drafted did not provide for direct popular elections for any federal offices except for seats in the House. It was not until ratification of the 17th Amendment in 1913 that the Constitution required direct popular election of Senate members.

³ The document that came out of the Constitutional Convention in 1787 was a product of compromises both to reach agreement among delegates and to try to insure acceptance by both large and small states.

¹ In Vice President Humphrey's absence, Senator Richard Russell (D., Ga.), as president *pro tempore* of the Senate, presided.

Further, the votes of defeated candidates would be lost in each district, as they now are in each state, by a "winner-take-all" district electoral vote plan.

Theoretically, in a three-candidate race, it would be possible in a state to have electoral votes for all of three candidates; for example, a candidate might have a higher statewide popular vote than either of the other two contenders but might not have won a single district if the race in each of the districts had been closely contested. In such an event, even greater disparities between electoral votes and the popular vote might result.

The Proportional Plan

Proportional plan advocates say: It would reflect more closely the popular vote and retain the weight of two electoral votes for each state, preserving in the election of the President the federal nature of the United States. It would encourage the growth of the two parties in one-party states by reflecting more accurately the minority party's weight. It would prevent the exaggeration of the strength of splinter parties; their weight would be reflected only in proportion to their actual numbers with their bargaining power reduced.

Opponents to the proportional plan say: It would still be possible to elect a man with a minority of popular votes, because actual numbers of persons going to the polls would not be reflected in the electoral vote count. It might also weaken the two-party system by making more possible winning of electoral votes by splinter parties.

The proportional plan retains the weight given to states *per se* by retaining the two electoral votes for each state and by failing to reflect actual voting participation. It retains also the greater proportionate weight given to states of smaller populations.

Direct Election of the President

Those who support direct election of the President by popular vote say: The presidency should have one constituency, the people—not people and states. It is the simplest and most direct way to elect the President and the most popular among citizens, according to recent polls. It would remove legislative control over choice of electors (such practices as unpledged states of electors) and the possibility of electors' defection. By eliminating the two electors for each state, regardless of population, it would put election directly in the hands of the people.

It would invigorate the two-party system, for every vote would count in an election; even in states preponderantly one party, the minority party votes would count in the nationwide totals.

Direct popular election might encourage wider citizen participation for another reason. States under the Electoral College system receiving their full state electoral vote regardless of the percentage of eligible voters that ballot for President would lose that advantage. For example, in the 1968 elections, nationwide about 61 per cent of the eligible voters voted. In five states, less than 50 per cent of those eligible voted in the presidential election; in 20 states—including the five with less than 50 per cent—less than 60 per cent of eligible voters cast ballots for President. But in nine states, over 70 per cent of those eligible voted.

As the President and Vice President are the only elected officials in the federal government directly responsible to all the people, the people ought to be directly and equally involved in their selection.

Opposing arguments to direct popular election of the President are: The weight given to states is more apparent than real (see argument page 3 by those wishing to retain the Electoral College system).

Direct election would lead to pressures for national election laws (e.g., for setting uniform voting age) and would jeopardize state control over voting requirements for other offices. It would generate pressures to make the nominating process uniform: Should there be presidential primaries in every state? or party conventions?⁵

Direct election might encourage the rise of splinter parties, since it might be possible for a combination of them to keep any candidate from getting 40 per cent (or whatever might be required) of the vote and put them into bargaining positions. It might also encourage aspirants defeated in the nominating process to run in the popular elections, necessitating many presidential election run offs and increasing opportunity for bargaining coalitions in the run off process.

WHAT ADDITIONAL CONSIDERATIONS?

A number of matters related to change in the method of electing the President should be considered:

- If contingent election by the House in the event of ties is to be eliminated, should a successful candidate have a majority or a specified percentage (40 per cent? 45 per cent? less?) of the popular vote to win? Or should there be a popular vote run off between the two top contenders? Should the method of contingent election in the House be retained but changed to allow each representative a vote instead of one vote for each state? (At present, the District of Columbia would have no voice in a contingent election. Although it has three electoral votes, it has no representatives in Congress.) Or should a contingent election of both President and Vice President be held in a joint session of both houses of Congress?

- If the Electoral College is to be retained, should the electors be pledged and should all states be required to run slates of pledged electors?

- What direct or indirect effects might a particular change have?

- What are the most important considerations to take into account in determining how to elect the President?

- If massive reform is required, which of the possible plans or combinations promise fewest possible defects and greatest number of advantages over the present system?

WHAT PROPOSALS POLITICALLY MOST POSSIBLE?

In a message to Congress, February 20, 1969, on Electoral College reform, President Nixon said:

"I have in the past supported the proportional plan. But I am not wedded to the details of this plan or any other specific plan. I will support any plan that moves toward . . . the abolition of individual electors; allocation of presidential candidates of the electoral vote of each state and the District of Columbia in a manner that may more closely approximate the popular vote than does the present system . . . making a 40 per cent electoral vote plurality sufficient to choose a President."

In Congress, the two plans to date receiving the most attention are the direct popular election of the President and the district plan.

Whether or not in the 91st Congress any particular proposed amendment can muster a two-thirds vote in both houses is not yet clear. A significant factor in the deliberations in Washington about the shape of the proposal is what kind of proposed amendment is most likely to win not only congressional support but also ratification by three fourths of the states.

⁵ The need for uniform election laws and nominating procedures is used as an argument for direct election by its proponents.

thought that George Wallace, the third party candidate, would carry some states and thus receive some electoral votes. That the election might be thrown into the House of Representatives raised the specter of trade-offs between November 5 and the time of the possible House election. If neither Nixon nor Humphrey had a majority of electoral votes, Mr. Wallace could bargain with the two major candidates for concessions or programs in return for the House vote by each state where his electors had won. He would have held the balance of power. There was also the possibility that a President might be elected who had a majority of electoral but not even a plurality of popular votes.

Thus, the 1968 election created in the country and in Congress heightened interest in Electoral College reform. With the citizen's wider exposure to means of understanding the whole process of electing the President through nation-wide television coverage of party conventions and election night activities, vast numbers of people became aware of the mechanics of electing the President and concerned about possible need for change.

WHAT CURRENT POSSIBILITIES FOR CHANGE?

In the States:

State legislatures have control over how electors shall be appointed within their states and, therefore, they have certain options.

The Maine legislature in its 1969 session exercised its prerogative, passing a state law which provided that one elector shall be elected by voters in each of its congressional districts and two elected at large. Maine's four electoral votes could then be split. For example, in one of its congressional districts, the popular vote plurality might be for the Democratic candidate—that electoral vote thus committed to that candidate. The popular vote in the other district might commit its electoral vote to the Republican candidate. The *state's* popular vote plurality might be for the Democratic candidate. Thus there could be a three-to-one split rather than, with the same popular vote pattern, a “winner-take-all” four votes for the Democratic candidate. Similar legislation has been introduced in several state legislatures, including Minnesota, Texas and Michigan.

Another kind of state legislative initiative is passage of a resolution asking for a federal constitutional convention to submit a proposal for a change in method of electing the President (or petitioning Congress to pass such a proposal). A proposed amendment coming from a federal constitutional convention must be ratified by three fourths of the states, just as one passed by a two-thirds vote of both houses of Congress.

Resolutions calling for a direct popular election of the President and abolition of the Electoral College have been introduced in several states, including Massachusetts, Oregon, Pennsylvania and Hawaii.

Except for changes that individual state legislatures may make in appointment of electors, change in method of electing the President requires a constitutional amendment. Amending the constitution requires a two-thirds vote on a proposal by both houses of Congress and ratification by three fourths of the states (either by state legislatures or by conventions called in the states for ratification, as Congress may direct). Another method is petitions of two thirds of the state legislatures. Congress then shall call a constitutional convention for proposing an amendment.

In the Congress:

Congressional initiatives for Electoral College reform include passage of any one of several possible kinds of con-

stitutional amendments for submission to the states. The major choice to be made, if the system for presidential elections is to be changed, is whether to continue to assign weight to states *per se* (a state-related step) in choosing the President. Should states, regardless of their population, continue to have two electoral votes each, a weight of nearly 20 per cent (102 of 538 electoral votes, counting the two state equivalents for the District of Columbia) in election of the President?

WHAT CHANGES TO INSURE WEIGHT TO STATES?

Three of the suggested kinds of changes insure weight for states but make other changes in the system.

The *automatic* plan would abolish the office of electors and assign, on a “winner-take-all” basis, all electoral votes of a state, including two not related to population, to the candidate receiving the highest number of that state's popular votes. Such a plan would avoid not only the possibility of an elector's “defecting” but also of a state's having unpledged electors. (In each of the elections of 1948, 1956, 1960 and 1968, one elector defected; in 1960, electors were unpledged in Alabama and Mississippi.)

The *district* plan would also insure weight for states in presidential elections. It would provide for election of one elector from districts created within a state equal to the number of representatives in Congress (congressional districts could be used) and for election of two additional electors on a “winner-take-all” basis in each state. To make this plan, which now states may choose, mandatory in all 50 states requires a constitutional amendment.

For example, in each of the 38 congressional districts in California, one elector would be chosen on a “winner-take-all” basis for that district. The candidate who received the highest number of popular votes statewide would determine the two statewide electors. Conceivably, then, in California, 20 electoral votes plus two might go to the Republican candidate and 18 to the Democratic candidate, assuming that in the state the total popular vote gave a majority to the Republican candidate. If 20 districts gave slim majorities to the Republican candidate and 18 heavy majorities to the Democratic candidate, two statewide electors might be Democratic.

The district plan might preserve the Electoral College or include automatic features—i.e., assign the electoral votes of each district and the two for the state directly to the candidates, avoiding the chance for defection by eliminating electors; or it could require electors to pledge beforehand to support their party's candidates.

The third possibility for change which insures weight to states *per se* is the *proportional* plan. In this method, each candidate would be allocated the proportionate share of the electoral votes in a state to which his state's popular votes entitled him. For example, in 1968 in New York, Nixon had 44.4 per cent of the popular vote, entitling him under the proportional plan to 19.1 electoral votes; Humphrey, 50.2 per cent of the popular vote, or 21.6 electoral votes; Wallace, 5.2 per cent, or 2.2 electoral votes (other candidates received 0.2 per cent of the popular vote). Under the present Electoral College “winner-take-all” system, all of New York's 43 electoral votes were in Humphrey's column.

While all of these plans as described provide weight of two electoral votes for each state, any of them could be used in plans that would eliminate the two state votes, or assimilate them into the system used, but retain the essence of the federal concept.

However, not even a proportional plan eliminating the two state votes would necessarily approximate direct election of the President; votes in states in which voter turn-

out is small would have weight in selecting the President out of proportion to the percentage of eligible voters actually voting in their states in the presidential election. In all three plans—automatic, district, proportional—the electoral vote for the state would be set, regardless of actual voter turnout. That is, should only one voter go to the polls in Arizona, for example, all five of Arizona's electoral votes would go for the choice of this single voter.

Direct election of the President by popular vote, eliminating the two state electoral votes, would remove all weight given to states *per se* under the present system. It would place an equal value on every citizen's vote cast in a presidential election. The result of direct election would be based solely on the will of those who participated.

To effect any of these plans requires a constitutional amendment, except that individual state legislatures may appoint electors in ways other than the current practices.

WHAT FACTORS TO CONSIDER IN REFORM?

First of all, amending the Constitution is a difficult and serious matter, not to be undertaken lightly. One should take into account whether or not change is needed; that is, has the Electoral College system served the country adequately? Are its imperfections, if any, more or less grievous than those other methods might incur?

If reform is indeed necessary, which shall we choose? While no one can predict for certain just what the possible effects of any changes will be, what might they be?

The following are some pro and con arguments:

Retaining the Electoral College System

Those who wish to retain the system say: It has served us well for almost 200 years. Any system that preserves the weight for states retains the possibility for election of a minority President and is no improvement on the present system. Only twice, in 1876 and 1888, did a candidate lose who actually had a majority of the popular vote (in 1876, returns were disputed in four states).

The apparent advantage for less-populous states is not so great; a candidate under the present system can carry a large state, which is more likely to have a vigorous two-party system, by a small margin and gain more electoral votes than in several small states. In states where the “majority” population is fairly evenly divided between the two major parties, a minority in terms of interest not related to parties can exercise a choice.

The “winner-take-all” feature discourages the growth of splinter parties, which have made democratic government by coalition difficult but necessary in some European countries.

The exaggeration through the electoral vote of the winner's margin of victory is not necessarily an evil; for after a bitterly contested election, the size of the electoral vote may help the new President establish a broader popular support than a slim edge in the popular vote, more visible if it were the only measure of his victory.

Reforming or Abolishing the Electoral College

Proponents of reforming or abolishment say: Presidents have been elected who trailed their opponents in the popular vote; the possibility always exists.

The Electoral College system was never intended for bloc-committed voting by unknown electors but for deliberative choices by well-known, respected persons, who would both nominate and elect the President and Vice President. Since such functions for electors no longer prevail, the system is no longer relevant.

Voters of either major party in predominantly one-party states are not as motivated to go to the polls under the

“winner-take-all” system; there might be more citizen participation under some other plan.

In elections in close states, the premium for fraud is high, since the swing of a few votes can determine the state's whole electoral vote. Also, in large states in which the two major parties are fairly evenly divided, splinter parties can develop bargaining power disproportionate to the numbers of their adherents.

The present provision for a contingent election of the President in the House of Representatives in the event of tie, in which each state casts but one vote,⁴ is inappropriate for a position so important in today's world as the U.S. presidency. It also conceivable, since the Constitution provides for contingent election for Vice President to be held in the Senate (each senator casting a ballot) for the House to elect a President of one party and the Senate a Vice President of another party.

Since the President and Vice President are the only elected officials with a nationwide constituency, their election should be more directly related to this constituency than the present system. In a presidential election, each vote should have equal weight. Where a voter lives should not negate or inflate the value of his vote.

The Automatic Plan

Those who support the *automatic plan* generally favor the present Electoral College system but wish to avoid defection of electors. Therefore, their arguments, with the exception related to defection, are primarily similar to those for no change.

Those who *support broader reform or abolition* of the Electoral College system feel defection is not the chief or only defect in the present system. They feel this plan does not address itself to what they believe to be more serious inadequacies in the present system.

The District Plan

District plan supporters claim: It would provide for presidential elections the same type of representation prevailing in congressional districts and would more accurately reflect the popular vote. It would encourage development of the minority party in one-party states, since it would encourage its winning perhaps a district or two. It would also make less possible the influence of bad weather on election day or vote fraud involving a small number of votes to swing the vote of an entire state. It would mitigate the effect of statewide “winner take all,” limiting it to a district “winner take all.”

Opponents to the *district plan* say: It might encourage gerrymandering of congressional (or other designated) districts. It might minimize influence of minority groups by encouraging drawing of district lines in such a way as to put minorities all in one district or divide them so they could win no district, thus mitigating their influence on statewide totals. Presidential campaigns might concentrate on marginal congressional districts and limit wider citizen contact with candidates.

Election of minority presidents would still be possible. The district plan, according to its opponents, has little advantage over the present Electoral College system. In fact, it might even reduce the likelihood of a candidate's receiving a majority of electoral votes. It also would not reflect citizen participation—a light voter turnout in one district would have the same value (one electoral vote) as a heavy turnout in another. It might reflect participation even less than the statewide “winner-take-all” system.

⁴ If a state delegation is evenly divided, that state does not have a voice in the choice of President.

WHAT LIES AHEAD

In this second year of League study about the electoral college, League members will be reaching conclusions and reporting their thinking about whether change in the method of electing the President is needed and, if so, what changes they prefer.

CONSENSUS: As soon as possible after your League has finished its consensus reaching, please send one copy of the completed consensus report to the national office. By mailing your report promptly, you will help increase the speed and efficiency with which reports from 1250 local Leagues can be analyzed and compiled. Happiness is a lot of consensus reports read and recorded before the deadline for consensus!

THE CONSENSUS DEADLINE HAS BEEN CHANGED TO NOVEMBER 30, 1969. Have your consensus report in the national office on that day.

So far as is humanly possible, consensus reports received after the deadline date will be included in the final report prepared for the January meeting of the national board. But try to get your consensus report in before it must contend with the holiday season, Christmas mail glut, and influx of program suggestions into the national office.

Our goal is to have consensus input include the thinking of every League. Therefore, if some unavoidable situation delays consensus in your League, send in your report eventually, no matter how late it may be. Your League belongs in the process!

MEETINGS: For suitable member preparation the national board recommended two discussion meetings plus information in local League bulletins and fact sheets and in national League publications. The national board suggested that Leagues hold the first and background-building meeting after January 1969 and the second and consensus-reaching meeting in the second year of the program biennium. (NATIONAL BOARD REPORT, May 1968, p. 11 and September 1968, p. 7)

- For Leagues that have two meetings still ahead, this Leaders Guide contains two suggested discussion outlines, the first for a meeting to build background and the second for a meeting in which to reach consensus.
- For Leagues that have already held one meeting on the Electoral College, the second outline is the significant one. It includes discussion of the topics to which the consensus questions refer.
- For Leagues whose first meeting on the Electoral College covered some of the material in each of the two suggested discussion outlines, an adaptation combining the two is in order. In adapting, carefully note the relation between consensus questions and topics in Discussion Outline II.

MATERIALS: One of the most challenging League tasks is to fashion a 90-minute, stimulating, purposeful discussion, in which members participate easily, on a program item. All electoral college chairmen and committee members should read the League publication, **MEANINGFUL MEETINGS**, Pub. No. 319, 1966, 14 pp., available from the national office (40 cents), and probably still somewhere in your League's files (ask your president). **MEANINGFUL MEETINGS** asks resource committees planning a meeting to ask themselves these questions:

- 1) What can informed citizens decide in this area?
- 2) What do they need to know--to make informed decisions?
- 3) What do we (the resource committee) need to know--to make simplification safe?

III. Secondary choices:

A. If states, as units retain a direct role in the election process

1. If you are keeping a state-related step, do you prefer to keep or abolish the office of elector?
2. If you keep the office of elector, should the Constitution require electors to cast their votes for the candidate on whose slate they were elected?
3. If you keep the office of elector, do you wish to continue to have the winning slate take all the electoral votes for the state?
4. Or do you want the state's electoral votes divided among the different candidates in proportion to each candidate's share of the popular vote?
5. Or do you prefer intrastate districts whose votes will be counted separately, giving the electoral vote of each district to the candidate receiving a plurality in that district? Should these districts coincide geographically with congressional districts? If so, what about the two additional electoral votes each state now has?
6. How many electoral votes should be required for victory? a majority? a plurality? some specific percent?

B. If election is to be by popular vote

1. Will election of the President by popular vote make it necessary to have, for presidential elections only, some uniform system of voting qualifications and vote counting? uniform standards for contesting votes and resolving challenges?
2. What proportion of the popular vote should be required to elect the President? a majority? a plurality? some fixed percent?

C. When a contingent election is necessary because no candidate has received the votes necessary for victory

1. Do you want the contingent election held in the Congress? by just the House for presidential elections and just the Senate for vice presidential elections? or by both Senate and House to elect for both offices?
2. If the contingent election is by Congress, should each state delegation have one vote? or should voting be by individual members?
3. Or should there be a national direct vote run-off contingent election?
4. If there were to be a national run-off, should it be between the two highest or the three highest candidates?
5. What should be the specification for victory in the run-off? a majority? a plurality? a fixed percent of votes?

IV. **Recapitulation:** Looking back over our discussion, do you agree that we have made the following secondary choices ...?

To answer these questions in reverse order

3) Electoral college chairmen and committee members need to know what is in the League publication WHO SHOULD ELECT THE PRESIDENT? Pub. No. 346, 158 pp., \$1.50. Many committees have already obtained this information from the sources suggested in earlier League materials (see p. 1) and through wide additional reading, but the League pamphlet packages it handily under one cover.

2) As many members as possible should read WHO SHOULD ELECT THE PRESIDENT? This League publication, written in popular style, distills a tremendous amount of scattered material that is essential for decision-making.

Every member should reread THE NATIONAL VOTER articles on how the electoral college method works and how a President would be elected under the present system if no one received a majority of electoral votes. (see p. 1)

Every member should read the FACTS & ISSUES on reform proposals. This piece will be published before fall.

1) For what informed citizens can decide about the presidential election process, see pp. 4-6 for Discussion Outline II.

Suggested Discussion Outline

I THE ELECTORAL COLLEGE METHOD

(The questions are suggested as a MEANS TO DISCUSSION, to elicit viewpoints not answers.)

I. Goal: Through discussion, to build understanding of the origin, development, and present method of electing the President and Vice President.

II. Opening statement: We all know that under the present system the people choose the President and Vice President only indirectly. League electoral college watching has made some less visible parts of the process clearer to us. But to decide whether the system should be changed and if so, how, we need to understand compromises that produced the system, the manner in which it has operated in ordinary and extraordinary presidential elections, and the inherent dangers its critics claim for it.

III. Origin: In the context of the time, was the 1787 electoral college system compromise reasonable and suitable--for the new nation? the state? the voters?

IV. History: How has the development of political parties and nominating systems affected the role of the presidential elector as a free agent?

Did election of three 19th century Presidents with neither a majority nor a plurality of popular votes demonstrate that the electoral college system was an asset or a liability to the nation?

How and why have the 20th century cliff-hanger elections affected public attitudes toward the electoral college system?

In your opinion does present public concern about the electoral college system stem from third party strengths? the contingent election system? bloc voting by minorities? the prospect of a President elected by a minority of the popular vote? Are these concerns valid?

Should the one man-one vote concept apply to presidential elections? Or are there historic and political concepts applicable only to election of the President?

V. Recapitulation: From the views expressed, it seems to me that most of us think ... but some of us ... and others ... Is this what you have been saying?

From our discussion would you say we look with favor or with disapproval on changes in the system of electing the President?

What seem to be the main reasons for our attitude (or lack of one)?

Looking ahead to the next meeting, at which we will be reaching consensus, are there parts of the electoral college system you think still function well? Are there parts that no longer seem to function properly?

VI. Summary: After a short summary of the conclusions reached since the recapitulation, the last question to discuss or to think about at home is this:

Does there now seem to be the combination of pressure, people, politics, and priorities needed to bring about change?

Suggested Discussion Outline

II CHANGES IN THE ELECTORAL COLLEGE SYSTEM

I. Goal: Through discussion, to reach agreement on whether or not to change the presidential election system and to express preferences on kinds of changes.

II. Opening statement: Whether or not we have decided we want the electoral college system of electing the President and Vice President changed, it behooves us to understand changes being proposed. We've put up this big chart of the chief types of reform proposals. To decide what plan for change we prefer, if change there is to be, we need to consider our preferences for handling the different steps in the election of the President. These secondary choices affect and may even determine our final plan preference.

SUGGESTED VISUAL AID CHART

<u>AUTOMATIC</u>	(abolish electors and write into the Constitution a state-wide, winner-take-all system of distributing electoral votes)
<u>DISTRICT</u>	(winner-take-all system within districts comparable to congressional districts)
<u>PROPORTIONAL</u>	(split state's electoral vote among candidates in proportion to popular vote received)
<u>DIRECT POPULAR VOTE</u>	(abolish present system and have people elect the President directly)

V. Choices for Change: With our discussion of the possibilities fresh in mind

A. Are we in agreement that there should, or should not, be a change in the method of electing the President and Vice President?

B. If a change is to be made, do we prefer

1. election by direct popular vote?

OR

2. retention of a state-related step in the election process?

VI. Priorities: Among all the suggestions for changing the method of electing the President and Vice President, which changes do you think are most urgent?

VII. Summary: Using the consensus questions listed below, summarize by giving the points on which you think member consensus was reached. Mention the topics on which the group did not reach agreement. Summarizing will check whether the recorder and discussion leader have heard and interpreted correctly.

In V and VI above, members have already been asked consensus questions I, II, and IV below.

Preferences requested in each part of consensus question III were expressed in discussion of questions posed in "Secondary Choices" in outline, p. 5.

CONSENSUS QUESTIONS

(official consensus report forms--green--will come to your League by September 1)

I. Is a change needed in the method of electing the President and Vice President of the United States? Yes _____ No _____
(check consensus of your League)

II. If a change is made in the method of election, does your League prefer that the President be chosen by
direct election by popular vote _____
OR
by an election process that includes a state-related step _____

III. If the method of election is changed, what provisions would your League prefer for

1) the vote necessary to elect?

2) contingent elections?

3) retaining the office of elector?

4) requiring in the Constitution that electors vote for the candidate on whose slate they were elected?

5) distributing the electoral votes among the various candidates?

IV. If provisions for electing the President and Vice President are to be altered, what changes in the method of election does your League consider most necessary?

ELECTORAL COLLEGE

N.Y.	43	Ind.	13	Minn.	10	Ark.	6	N.M.	4
Calif.	40	N.C.	13	Iowa	9	Colo.	6	N.D.	4
Pa.	29	Ga.	12	Ky.	9	Ore.	6	R.I.	4
Ill.	26	Mo.	12	Wash.	9	Ariz.	5	S.D.	4
Ohio	26	Va.	12	Conn.	8	Neb.	5	Utah	4
Tex.	25	Wis.	12	Okla.	8	Hawaii	4	Alas.	3
Mich.	21	Tenn.	11	S.C.	8	Idaho	4	Del.	3
N.J.	17	Ala.	10	Kan.	7	Maine	4	Nev.	3
Fla.	14	La.	10	Miss.	7	Mont.	4	Vt.	3
Mass.	14	Md.	10	W.Va.	7	N.H.	4	Wyo.	3
D.C.	3	TOTAL ELECTORAL VOTES			538	NEEDED TO ELECT			270

Leaders Guide 1969

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, [REDACTED]
PUBLICATION NO. 350

MAY 1969

PRICE: 50¢

WHERE WE ARE

In this non-mini item of maxi-importance, Leagues utilized the once-every-four-years opportunity to observe a presidential election from pre-nomination of candidates through inauguration of a new President. To assist in election watching and in following proposals for change in the system of choosing the President, your League received

National League materials: 1968 and early 1969

- reading and clipping suggestions, NATIONAL BOARD REPORT, May 1968, pp. 9-12
- background on possibilities arising from a third party candidacy, "Wallace Candidacy Raises Fear of Electoral Stalemate," CONGRESSIONAL QUARTERLY, July 1968, 13 pp.
- electoral college capsule quizzes and reading list, "How to Watch the Choosing of a President," ELECTORAL COLLEGE LEADERS GUIDE 1968-1969, 4 pp.
- explanation of how the Electoral College works, "Who Chooses the President? Do You?" THE NATIONAL VOTER, September 1968, pp. 1, 4 (still available from national office)
- suggestions for go-see trips to state capitals for casting of electoral votes; suggestions for focusing attention on party nominees for presidential electors; additional readings, NATIONAL BOARD REPORT, September 1968, pp. 7-12.
- steps in electing a President if no candidate receives a majority of electoral votes, "No Electoral Vote Majority--A Contingent Election?" THE NATIONAL VOTER, October 1968, p. 2 (still available from national office)
- description of electoral vote counting in Congress and debate on objections to vote of "defector elector," Mrs. Griffith L. Resor, Jr., "The League Was There," MEMORANDUM to state and local presidents, January 15, 1969, and THE NATIONAL VOTER, January-February 1969, p. 8
- resolutions introduced in the opening days of the 91st Congress to amend the electoral college system; consensus subject matter in general; short discussion of scope, NATIONAL BOARD REPORT, January 1969, pp. 11-13

AUG 29 RECD

This Form is going on the
Duplicate Presidents Mailing

August 15, 1969

CONSENSUS FORM for the ELECTORAL COLLEGE ITEM

To: Presidents of Local Leagues (copy to State League Presidents)

From: Mrs. Griffith L. Resor, Jr., Electoral College Chairman, National Board

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* * *

(OVER -- OVER -- OVER for the CONSENSUS FORM)

requiring in the Constitution that electors vote for the candidate on whose slate they were elected?

(see discussion outline p. 5, A - 2)

distributing the electoral votes among the various candidates?

(see discussion outline p. 5, A, 2 - 5)

IV. If provisions for electing the U.S. President and Vice President are to be altered, what changes in the method of election does your League consider most necessary?

(Please list, in order of urgency with the most urgent first, the changes your League considers most necessary in method of election. See discussion outline p. 6, VI)

Report on Consensus Reached on

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- (2) Report as specifically as you can on any conclusions your members reached on discussion outline topics related to each consensus question.
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Yes _____ No _____

Give the reasons for your answer:

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(see discussion outline p. 6, V, B - 1 and
p. 5, III, B - 1 and 2)

OR

an election process that includes a state-related step? _____

(see discussion outline p. 6, V, B - 2 and
p. 5, III, A, 1 - 6)

(Please use a checkmark to indicate the consensus reached by your League)

Give the reasons for your answer:

- III. If the method of election is to be changed, what provisions would your League prefer for

the vote necessary to elect? _____

(see discussion outline p. 5, III, A - 6, B - 2, C - 5)

contingent elections? _____

(see discussion outline p. 5, III, C, 1 - 5)

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Extra
AUG 29 REC'D

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contingent elections?

(see discussion outline p. 5, III, C, 1 - 5)

retaining the office of elector?

(see discussion outline p. 5, III, A - 1)

WHO SHOULD ELECT THE PRESIDENT? brings you the thinking of prominent individuals and groups on such relevant questions as these.

WHAT DO YOU THINK?

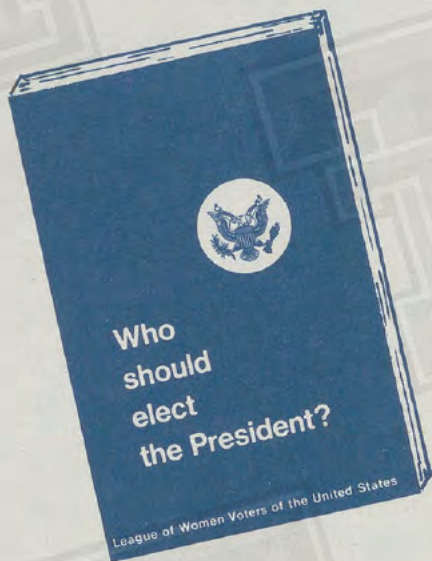
- Is change needed in the method of electing the President of the United States?
- How do federalism, states' rights and the popular will relate to electing the President?
- Should the one man, one vote concept apply to presidential elections?
- Should the state have a direct role in the presidential election process?
- What is the likely effect of Electoral College reform proposals on political parties?
- Should the U. S. Constitution provide for popular voting for presidential electors or candidates, and the winner-take-all system of allocating a state's electoral votes?
- What kind of contingent election is preferable—a joint session of Congress, for example, or a popular run-off election?
- If a President's electors received fewer popular votes than those of his opponent might this fact limit the effectiveness of his administration?
- Why has any kind of presidential election reform been so elusive?

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- business, professional and labor people who grasp the far-flung implications of election reform but have no time to dig into lengthy sources
- members of Congress, federal officials, the judiciary, their staffs
- state legislators and governors, state and local officials, politicians
- young men and women especially, who realize that how a President is to be elected in the future can have a direct effect on THEIR world!

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In popular, objective style, WHO SHOULD ELECT THE PRESIDENT? crystalizes the choices to be made in changing the presidential election process and the assets and liabilities of various reform proposals. It describes the fascinating combination of pressures, people, politics and priorities that are essential for achieving major electoral reform.

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League of Women Voters
of the United States

Memorandum

34

June 30, 1969

This is going on

Duplicate Presidents mailing

TO: Local and State League Presidents
FROM: National Office
RE: Who Should Elect the President?

Pressures, people, politics and priorities...and how they swirl around America's Electoral College system. That's what Who Should Elect the President? is about.

Since the adoption of the Electoral College item a year ago, League members have been looking forward to this, the League's own publication on the Electoral College. Now it's off the press, and en route to Leagues (sent book rate because of its size.) It is also being mailed to all members of the full Judiciary Committees of both the House and the Senate. (See pp 99-100 of the booklet.)

This informative, handsome, fact-filled, highly readable booklet is not only what you, the League member, need to enable you to study the electoral system effectively. It's also what John Q. Citizen needs to help him through the electoral maze...You name it...it's there...160 pages of well organized material.

Enclosed is a flyer describing the booklet, giving a suggested list of individuals and organizations to share it with, and including an order blank...If your League can afford to distribute copies of Who Should Elect the President? to key people in your community, do so by all means. If you can't afford to give the booklet away, give away the flyers. Some suggestions for distribution:

Who Should Elect the President?
(160 pp; \$1.50) Give to:

Principal of each grade and high school
President of each local college and university

Editors, station managers, well-known columnists and commentators if your community has them

Heads of large organizations

Key business and professional leaders

Your Congressman; your mayor, your county superintendents

Get on the bandwagon now to get your community thinking about it...Who Should Elect the President?

Electoral College flyer. (4 pp; 75 cents a hundred.) Give to:

Teachers of civics, government, history, current events, etc.

Reporters, editorial writers, section editors, political writers

Librarians; heads of smaller organizations, women's groups, church study groups, etc.

Business and professional people

Other local officials

League of Women Voters
of the United States

1/29 rec'd
Memorandum

This is going on
Duplicate Presidents Mailing

January 15, 1969

TO: Local and State League Presidents
FROM: Mrs. Griffith L. Resor, Jr., Chairman, Electoral College Item
RE: Electoral College Happenings

THE LEAGUE WAS THERE

In the Nation's Capital-----

The League was there on January 6, 1969 when the presidential electoral votes were opened and counted in the presence of the Senate and the House of Representatives (as provided in Amendment XII of the U.S. Constitution). Since the National Board of the League of Women Voters was meeting in Washington on that date, the Electoral College Committee all went to the joint session of the House and Senate, each of us having secured a precious ticket from her Senator or Congressman (each of whom was allotted just one ticket). The House was called to order by Speaker John W. McCormack. The Senators then walked in preceded by two pages each of whom carried a shiny wooden box containing the ballots which had been cast in the 50 states and the District of Columbia on December 16.

Ordinarily, these would be opened by the Vice President in his capacity as President of the Senate but Mr. Humphrey was spared this task because he was attending Trygve Lie's funeral in Norway. Senator Richard B. Russell (D., Ga.) presided as President pro tempore of the Senate. Since the retirement of Senator Carl Hayden of Arizona, Senator Russell is the ranking Democrat (longest seniority) in the Senate and has been elected President pro tempore of that body. Tellers were Senator Carl T. Curtis (R., Neb.) and Senator B. Everett Jordan (D., N.C.) and Representative Samuel N. Friedel (D., Md.) and Representative Glenard P. Lipscomb (R., Calif.).

Each state was called, its "certificates" examined for authenticity and then declared to be in order, and the total electoral vote for the candidate for President and for the candidate for Vice President was read aloud. The attention paid by the members of Congress to this process was something less than total.

However, as the tally neared North Carolina, the chamber began to quiet down and order finally prevailed. Sure enough, the counting of North Carolina's electoral votes for President, -- "12 votes for Richard Nixon, 1 for George Wallace" -- was challenged by Rep. James G. O'Hara (D., Mich.) who sent to the Clerk's desk a written objection signed by Senator Edmund S. Muskie (D., Maine) and himself, in which 37 members of the House of Representatives and six members of the Senate had joined. /The Senators were Fred Harris (Oklahoma), Gale McGee (Wyoming), Warren Magnuson (Washington), Walter Mondale (Minnesota), Jennings Randolph (West Virginia) and Hugh Scott (Pennsylvania)--all Democrats except Senator Scott./ They objected to the fact that Dr. Lloyd W. Bailey of Rocky Mount, North Carolina had been elected as a member of the North Carolina slate of Republican electors, but on December 16 had cast his vote for Wallace.

The counting of the electoral votes of the states stopped right then and the provisions of a statute written in 1887 took over. The Senators withdrew to their own chamber and then as the law provides, each house debated for two hours, speeches limited to five minutes for each speaker. Senators Muskie and Dirksen got a little extra time when their colleagues asked them open ended questions. Time for pro and con speakers was allotted by the majority and minority leaders. In the Senate actually the new whip, Senator Edward Kennedy, did this for the Democrats and Senator Everett Dirksen, the majority leader, for the Republicans.

Nearly everyone on either side advocated change in the Electoral College. Arguments for sustaining the objection pointed out that since he had ceased to be a free agent when he accepted the nomination by the Republican party, the "faithless elector" was morally bound to vote for Nixon since the people who elected him had done so for that very purpose and another complete slate for George Wallace had been on the North Carolina ballot. Those opposing the objection pointed out that the U.S. Constitution was written to leave the electors as free agents to exercise their best judgment and North Carolina does not have a law binding the electors to vote for the candidate whose party has nominated them. The point was made that a precedent might be set that would result in Congress changing the votes after future elections, and a contrary point was made that if Congress did not challenge this electoral vote, it was relinquishing its responsibility in the matter of counting the electoral votes. There have been 16,510 presidential electors in our history, only six of whom have been "faithless."

After debating for two hours, the Senate defeated the objection, 58 to 33, and the House defeated it 229-169. In the Senate 20 Democrats and 13 Republicans voted for the objection while 28 Republicans and 30 Democrats opposed it. Voting to sustain the objection in the House were 119 Democrats and 50 Republicans; opposed were 104 Democrats and 125 Republicans.

The Senators then returned to the House; the votes on the objection by each house were announced and the counting of the electoral votes took up where it had left off. The complete count was Nixon 301 votes, Humphrey 191 and Wallace 46. These lengthy proceedings were unprecedented and gave hope to the advocates of reform for the Electoral College.

Most of the League of Women Voters of the United States Electoral College Committee had long since left for other duties but Electoral College staff Mrs. Hamm kept track of the Senate debate while I observed the House debate. After four and a half hours, we were impressed afresh with the wondrous ways in which democracy works. We told each other how much interest there was in Electoral College reform but also reminded one another that since 1947 more than 255 amendments relating to the method of electing the President have been proposed with no success at all, 50 in 1967-68, none of which was even reported favorably to House or Senate, and a goodly number in the 91st Congress already!

##

AND IN STATE CAPITALS - - - - -

December 16, 1968 the League was THERE when the members of the Electoral College in the various states cast their ballots for President and Vice President of the U.S. The Secretaries of State, Attorney Generals or Governors rallied from the initial shock of finding so many people interested in watching the presidential electors cast their ballots and in nearly every state welcomed League observers. (Because of the holidays, no doubt, only scattered reports have reached the national office so far, and are they ever fascinating! Please send us a note or a clipping of YOUR experience.)

Thirty members of the League of Women Voters of Kansas attended the official ceremony of the casting of the electoral votes in Topeka on December 16. The Kansas League issued a press release about the unique GO SEE and articles appeared in at least three newspapers in the state with pictures which identified League members in the background. The electors were interviewed after the ceremony, and were on TV, again with the League as background identified as observers.

The LWV of Oregon and the LWV of Oklahoma sponsored GO SEEs also. In Ohio 70 League members were in attendance and afterwards had a luncheon meeting and discussion of the item. The Columbus League had arranged for wonderful coverage of the League's interest as well as of the election. In Columbia, South Carolina, members of five Leagues including the state President, Mrs. Bumgardner, were the only observers except one person from the Republican party. Mrs. Bumgardner was interviewed and her picture in the paper and on TV showed the League of Women Voters button. "If it accomplished nothing else, (and it certainly did accomplish a great deal) it proved without a doubt the value of wearing the button."

Connecticut Leagues planned to attend the ceremony at Hartford and League members in Helena, Montana observed in their state. GO SEEs were planned in Pennsylvania and in Illinois. In Wisconsin, the League's observation was preceded by a talk by a political scientist. The presidential electors were invited to this meeting.

In Austin, Texas, 19 League members attended the ceremony and also heard an assistant of Senator Yarborough discuss the Senator's modified proportional electoral reform proposal that will be introduced in this session of Congress. The Jefferson City, Missouri League entertained the presidential electors at a party after their labors. In Minneapolis, the League's interest and information stimulated Minnesota state officials to look more carefully into the proper procedure. After a comedy of errors, before they adjourned, the presidential electors in a resolution asked the 1969 legislature to make a thorough investigation of the electoral college system especially the binding of electors.

##

OUTLOOK FOR CONGRESS

The Senate Subcommittee on Constitutional Amendments will hold supplemental hearings January 23 and 24. One witness may be the "defector elector" from North Carolina. The hearings will be covered by the League. Hearings were held by this subcommittee (chairman, Senator Birch Bayh, D., Ind.) on 18 days in 1966-67 with no recommendation regarding reform in the method of choosing the President forthcoming. In the House hearings will be held for the first time since 1951. The Judiciary Committee (chairman, Emanuel Celler, D., N.Y.) will begin hearings on February 5.

##

OUTLOOK FOR THE LEAGUE

We have not forgotten that some Leagues are anxiously scanning the mails for national publications on the Electoral College. What began as a "mini item" proves to require a lot of information in order to study it effectively. What was promised as a Current Review for the end of 1968 has developed as a pamphlet packed with necessary material. It is virtually finished and should be in your hands sometime next month. Table of Contents is attached. The pamphlet will be accompanied by discussion questions and a Leader's Guide for the benefit of the Electoral College chairman. A Facts & Issues is in the works, designed as an every member piece on various proposed reforms.

Consensus questions will be in the Leader's Guide with a consensus deadline of November 1, 1969.

- - -

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(OVER)

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JAN 10 RECD

League of Women Voters of Texas

MRS. WILLIAM E. JOOR, President

TO: Local League Presidents and Electoral College Chairmen January 1969
FROM: Mrs. Walter E. Caine, National Program
RE: Meeting of the Electoral College in Texas

I think you will be interested in this report which has been sent to Mrs. G. L. Resor, Electoral College Chairman, League of Women Voters of the United States.

(OVER)

Report of the Electoral College in Texas---December 16, 1968

Following lunch at the Driskill Hotel, at which 19 women participated, we went to the State Capitol and met in the Senate Committee Room #1. Senator Yarborough's assistant explained to us the history of the Electoral College, of which we were familiar, and the possible methods of reform within the Electoral College, of which we were also familiar. He then explained the bill which Senator Yarborough plans to submit at this session of Congress, which he calls a modified proportional plan. Instead of one candidate getting all the electoral votes in one state, they would get a proportion, depending upon how many votes they received. If the contest went to the House of Representatives, instead of each state casting one vote, the three highest candidates would receive a total vote depending upon how many representatives and senators there were present and voting. Senator Yarborough feels that a simple direct vote would provide complications, such as how would a recount be treated.

We then adjourned to the gallery of the Senate Chamber and watched the Secretary of State call the roll. Two electors were absent. Supreme Court Justice Meade Griffin administered the oath of office to the remaining twenty-three, in which they swore that they (the electors) had not given any money, reward, etc. for the job they held. Cecil E. Burney was elected permanent chairman of the electors, with Mrs. Hazel Casey elected secretary. Mr. Will Davis and Dr. E. C. Baum were elected to fill the vacancies that existed. In the original twenty-five electors, the minorities were represented by one woman, one Negro and one Latin American. The votes for President and Vice President were cast separately on plain paper. Electors were expected to write in the names of the candidates. For the Presidential ballot, one man forgot to sign his ballot, and this was remedied. There were twenty-five unanimous votes for Hubert Humphrey and twenty-five unanimous votes for Ed Muskie.

Miscellaneous business followed. A long tedious prayer was offered by Ralph Spence of Tyler, who largely prayed for our new government and new President. Mrs. Mary Kate Wall of the Secretary of State's Office then explained that the electors would be paid twice the per diem pay for a state legislator, but that their money had not been appropriated, so a bill would have to be introduced. They could expect a paycheck for expenses of travel and pay sometime after June 1st. It was not clear to them how much the per diem would be since we now have an annual salary for legislators. The Attorney General would have to rule on this.

Mr. Will Davis, who is past chairman of the Democratic Party in Texas then announced that the Electoral College had served its country well electing good Presidents, so we should keep it. Dr. Baum then congratulated Mr. Davis, as past chairman of the Democratic Party, since Texas was the most populous state with a Democratic administration, and of course he suggested that this was all due to Mr. Davis. Then Mr. Sterling Steves, a lawyer from Fort Worth, spoke to the discussion of the Electoral College saying that the time had come to abolish the College, and that the problems were most acute during this past election. He suggested one man, one vote. Woodrow W. Bean then spoke to the discussion saying that he was there to vote himself out of a job, and that they should never again send electors to Austin. Mr. Spence from Tyler felt that under one man, one vote, the metropolitan areas would elect the President and to make the government responsive to the needs of all we need to keep the Electoral College. Mr. Cliff Vernon then announced that he wasn't prepared to talk about the Electoral College, but he had a speech in his pocket listing all the disadvantages of a direct popular vote. He wanted us to keep the Electoral College, just as it is, people hadn't given thought to the other plans. Then a student from the University of Texas asked for some time and he introduced a resolution commending the boys in Vietnam and asking for signatures.

The entire ceremony lasted one hour and one half. Aside from wives of electors, the League was the only group there, but we did not get official recognition.

Austin League of Women Voters
Phyllis McMillan, President

E. College

July 12, 1968

Dear Jean: cc - Ruth J

I am sending you a bunch of newspaper clippings which I thought you might like to browse through. These all deal with the Electoral College system. Some date back as far as 1960 which antiquity reveals that this has long been an item in which I have had much interest. In fact, my interest dates back several years before 1960.

I have been writing for certain pieces of material available on the EC item and have received part of them. I expect you probably will have much the same, but I will bring what I have to the September Board Mtg. so we can compare notes on who has what. Meantime I hope to read what I have been able to gather, and can pass anything on to you that you may not have.

Hope you are having a nice, relaxing summer.

Love,

Ruth M.

3/69 @ Council -

gave 2 copies of this to Laine

Also ABA booklet "Elec. the Pres"

A Report of the Comm. of Elec. College Reform

JUN 19 RECD
1968

**Electing the President
and Vice President of the
United States**

by

Direct, Nationwide Popular Vote

Recommendations

of the

American Bar Association



Electing the President

which could not be construed so as to nullify by implication the proscriptions of the Twenty-fourth Amendment (anti-poll tax) with respect to voting in federal elections. In addition, there should be a permissive clause in any amendment allowing the states to adopt less restrictive residence requirements for voting in presidential elections. This is necessary in order not to invalidate the laws of those states that have established special residence requirements for voting in presidential elections. These laws extend the right to vote either to new residents, even though they do not meet the residence requirements for voting in other elections, or to former residents until they are eligible to qualify to vote in their new states.

We also recommend that Congress be given the reserve power to adopt uniform age and residence qualifications. It is probable that, as with other reserve powers, Congress might not have to exercise this power, particularly in view of the increasing tendency on the part of the states to make uniform their

qualifications for voting in elections. This tendency is certainly to be encouraged. Thus, forty-six states now have age twenty-one as the minimum voting age; and more than one third, with others soon to follow, have adopted special residence requirements for voting in presidential elections. Moreover, the Twenty-fourth Amendment prevents a state from imposing a poll tax or other tax as a condition for voting in federal elections.

Should the need ever arise for Congress to adopt uniform age and residence requirements for presidential elections, it should have the power to do so. It can be argued that Congress now has this power,¹⁴ but, in any event, the existence of such power should not be in doubt under a system of direct election.

Death of a Candidate

Almost all of the pending proposals would remedy the defects in our system caused by the death of a candidate. An amendment dealing with direct election should embody the

necessary provisions to eliminate any possible gaps caused by such an eventuality. We have no specific provisions to recommend, believing that this is a matter which can best be worked out after Congressional hearings. We suggest that serious consideration be given not only to a case of death occurring after the election but also shortly before the election. It would seem that various contingencies might best be dealt with by the amendment empowering Congress to provide for such cases by statute.

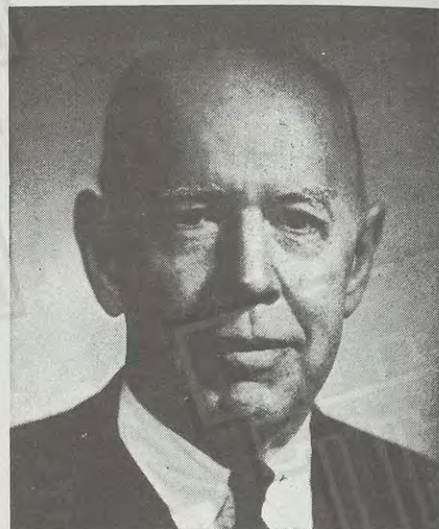
A system of direct election would reduce some of the risks inherent in the present system because the results of the election would probably be known far sooner than at present, where forty-one days must pass before the electors meet and another few weeks elapse before their votes are counted before a joint session of Congress.

14. See, e.g., *Katzenbach v. Morgan*, 384 U. S. 641 (1966).

For further information contact
American Bar Association
Washington Office
1705 DeSales Street, N.W.
Washington, D.C. 20036

The President's Page

Orison S. Marden



FOR THE SECOND TIME in three years the American Bar Association is playing a historic role in seeking amendments to the United States Constitution. A new Association proposal, calling for the direct popular election of the President and Vice President, was approved by the House of Delegates at its meeting in Houston last month.

Just three days before the Houston meeting, the Twenty-fifth Amendment became part of our Constitution following ratification by the thirty-eighth state. This amendment contains provisions recommended by a distinguished study commission of the Association to close a critical constitutional gap by assuring continuity of leadership if the President should be unable to perform his duties because of illness or injury. The proposals of the new Association Commission on Electoral College Reform for the popular election of our national officers are surely of equal importance. If one may judge from initial reactions in the press and Congress, the new recommendations are gaining widespread support.

They have broad bipartisan sponsorship in Congress, where hearings have been called by Representative Emanuel Celler of New York, Chairman of the House Judiciary Committee, and Senator Birch Bayh of Indiana, Chairman of the Senate Judiciary Subcommittee on Constitutional Amendments. Senator Bayh also is principal sponsor of S. Res. 2, a bill containing the specific recommendations of the Association's commission.

The fact that the commission was able to reach a consensus, after an ex-

haustive study of all pending proposals for reform, is in itself strong evidence of growing support for direct election as the most satisfactory alternative to the electoral college system.

The commission is composed of very independent men representing important segments of American life. Their names will be found, along with the recommendations of the commission, in this issue of the *Journal* (see page 219).

Dean Robert G. Storey, who served as commission chairman, has stated that while commission members had some differences as to language and detail, there was a general consensus in favor of the direct election plan now proposed.

There is space here for only the briefest summary of the commission's report, which condemns the electoral college as "archaic, undemocratic, complex, ambiguous, indirect, and dangerous". It argues effectively that direct election can correct these faults without impairing either the two-party or federal systems, if the winning candidate is required to receive at least 40 per cent of the total vote and a runoff between the two top candidates is held when no candidate receives the required plurality. These two requirements, the commission believes, will discourage factions and splinter groups from running their own candidates and make it unlikely that runoffs will be required.

In citing defects of the present system, the commission stresses "the ever-present possibility of a person being elected President with fewer popular votes than his major opponent". This has happened three times, the

commission notes, and was narrowly avoided in other elections, most recently in 1960. It is theoretically possible, the commission adds, to win a majority of the electoral vote by polling only 25 per cent of the popular vote.

Other important defects cited by the commission include those that make it possible for presidential electors to vote against the national candidates of their party; require an unrepresentative system (one vote per state) if the election is thrown into the House of Representatives; give excessive power to organized groups in states where parties are evenly divided and relatively few votes can shift the entire electoral vote; and allow for abuse or frustration of the popular will because state legislatures have plenary power to establish the method of appointing electors.

In addition to correcting these defects, the commission adds, direct election would "minimize the effect of accident and fraud in controlling the outcome of an entire election" and "put a premium on voter turnout and encourage increased political activity throughout the country".

A wealth of historical data is provided to bolster these and other conclusions in the report, which is available to members from the Association's Publications Department in Chicago. I hope many of you will take the opportunity to read it in full and personally join in the growing movement for reform of our vital Presidential election process.

Electing the President

Recommendations of the American Bar Association's
Commission on Electoral College Reform

On February 13, 1967, the House of Delegates of the American Bar Association adopted the report of the Commission on Electoral College Reform, thus placing the Association on record as favoring a constitutional amendment to provide for the direct election of the President of the United States.

The Commission on Electoral College Reform was authorized by the House of Delegates in February of 1966, and appointments to it, which were not limited to members of the Association or to lawyers, were made by Edward W. Kuhn, then President of the Association. Different walks of life, professions and parts of the United States were represented on the commission. Robert G. Storey, President of the Southwestern Legal Foundation, Dean Emeritus of the Southern Methodist School of Law and a former President of the Association, served as chairman.

In addition to the recommendations for electoral college reform printed below, the commission report contains background and historical material under these chapter headings: "Constitutional Convention of 1787", "Ratifying Conventions", "The Electoral College and the Constitution", "The Electoral College in Practice" and "Reform of the Electoral College System". In a foreword Dean Storey outlines the approach and work of the commission and states that the commission reached a consensus, adding: "Although there was general agreement on the recommendations, it should be understood that not every member of the commission subscribes to every recommendation. There was, however, unanimous agreement on the need for substantial reform in the present system."

We publish herewith the recommendations contained in the commission's report.

IT IS THE CONSENSUS of the Commission that an amendment to the United States Constitution should be adopted to reform the method of electing a President and Vice President. The amendment should:

1. Provide for the election of the President and Vice President by direct, nationwide popular vote;

2. Require a candidate to obtain at least 40 per cent of the popular vote in order to be elected President or Vice President;

3. Provide for a national runoff election between the two top candi-

dates in the event no candidate receives at least 40 per cent of the popular vote;

4. Require the President and Vice President to be voted for jointly;

5. Empower Congress to determine the days on which the original election and the runoff election are to be held, which days shall be uniform throughout the United States;

6. Provide that the places and manner of holding the presidential election and the inclusion of the names of candidates on the ballot shall be prescribed in each state by the legislature

thereof, with the proviso that Congress may at any time by law make or alter such regulations;

7. Require that the voters for President and Vice President in each state shall have the qualifications requisite for persons voting therein for members of Congress, with the proviso that each state may adopt a less restrictive residence requirement for voting for President and Vice President provided that Congress may adopt uniform age and residence requirements; and

8. Contain appropriate provisions in case of the death of a candidate.

Direct, Nationwide Popular Vote

The electoral college method of electing a President of the United States is archaic, undemocratic, complex, ambiguous, indirect and dangerous. Among other things, the present system allows a person to become President with fewer popular votes than his major opponent; grants all of a state's electoral votes to the winner of the most popular votes in the state, thereby cancelling all minority votes cast in the state; makes it possible for Presidential electors to vote against the national candidates of their party; awards all of a state's electoral votes to the popular winner in the state regardless of voter turnout in the state; assigns to each state at least three electoral votes regardless of its size; fails to take into account population changes in a state between censuses; allows for the possibility of a President and a Vice President from different political parties; and employs an unrepresentative system of voting for President in the House of Representatives.

It is claimed that the system gives too much weight to some voters and too little to others; discourages voter turnout in many states; gives excessive power to organized groups in states where the parties are evenly matched, since such groups sometimes are able to swing the entire electoral vote of a state to one candidate or the other; limits campaigns to pivotal states and nominations for the Presidency to persons from large states; places an undue premium on the effects of fraud, accident, and other factors since a slight change in the popular vote may determine who receives a state's entire electoral vote; and allows for possible abuse and frustration of the popular will because state legislatures have the plenary power to establish the method of appointment of electors.

While there may be no perfect method of electing a President, we believe that direct, nationwide popular vote is the best of all possible methods.¹ It offers the most direct and democratic way of electing a President and would more accurately reflect the will of the people than any other system. The vote of every individual in the constituency

(including the District of Columbia) would be of equal weight, as it now is in elections for the United States Senate and House of Representatives and for statewide, municipal, county, town and village offices throughout the United States.

Direct popular vote would eliminate the principal defects in the present system. It would eliminate the unit vote rule or the winner-take-all feature which totally suppresses at an intermediate stage all minority votes cast in a state. It would do away with the ever-present possibility of a person being elected President with fewer popular votes than his major opponent, as has happened on a few occasions in American history. It would abolish the office of Presidential elector, which is an anachronism and a threat to the smooth functioning of the elective process. It would minimize the effects of accident and fraud in controlling the outcome of an entire election. It would put a premium on voter turnout and encourage increased political activities throughout the country.

We do not consider the objections that have been made to direct popular vote as sufficient to overcome the numerous advantages which attach to such a method.

Perhaps the most important objection that has been voiced to direct election is that it would lead to a proliferation of parties and weaken the American two-party system. The winner-take-all feature of the electoral college system undoubtedly is conducive to the bipartisan pattern by limiting the effectiveness of votes for minority-party candidates, although there have been times when third parties have played an important, if not decisive, role in Presidential elections.

It should be noted that several factors, not the electoral college alone, have worked to produce our two-party system. Authorities who have studied our party system in great depth attribute the dualism to both noninstitutional and institutional factors.² There is general agreement that, institutionally, the selection of representatives by plurality vote from single member districts has strongly encouraged and re-enforced the two-party structure.

Neither this factor nor other contributing factors would be changed by direct election of the President. They would continue to operate to support the two-party system.³ Moreover, our recommendations do include factors which, we think, would have a substantial tendency to support the two-party system.

We recommend that a candidate should receive at least 40 per cent of the popular vote in order to be elected President. A 40 per cent plurality requirement would encourage factions and splinter groups to operate, as now, within the framework of the major parties, since only a major candidate would be in a position to obtain such a vote. At present, third parties have the power to "tip the balance" in a relatively close election by drawing crucial votes from a candidate. The power of third parties would be considerably reduced under a 40 per cent rule because the likelihood of a third-party candidate obtaining 20 per cent of the popular vote is small. A group existing outside of either of the major parties would not be able to thrive in view of the certainty of defeat.

We further recommend that there be a national runoff popular election between the top two candidates in the event that no candidate receives at least 40 per cent of the popular vote. A runoff between the highest two would seem to have the tendency to limit the number of minor party candidates in the field in the original election because it is improbable that a minor candidate would be one of the top two; and the influence of such a group would be asserted more effectively, as now, before the major party nominations and platforms are determined.

1. Our recommendations are applicable to both the President and Vice President, who, we believe, should be voted for as a team, i.e., there should be but one vote for the two officers.

2. See, e.g., KEY, *POLITICS, PARTIES & PRESSURE GROUPS* 205-211 (5th ed. Thomas Y. Crowell Co. 1964); SCHATTSCHNEIDER, *PARTY GOVERNMENT* 65-84 (Farrar & Rinehart 1942); SINDLER, *POLITICAL PARTIES IN THE UNITED STATES* 49-59 (St. Martin's Press 1966).

3. The Presidential Election Campaign Fund established by Public Law 89-809 (1966) surely will be a new factor tending to preserve the two-party pattern. Under this law minor parties are entitled to receive no payments unless they polled more than 5,000,000 votes in the preceding presidential election.

In addition, it should be mentioned that it is no easy matter for a group to become a national party. It would have to comply with the various state requirements for the formation of a party. These requirements are not easily met by minor parties.

It is also said that direct election of the President would wipe out state lines or destroy our federal system. The following should be noted:

The President is our highest nationally elected official. He occupies the most powerful office in the world. The problems and the issues with which he deals are largely national in character. It is only fitting that he be elected directly by the people.

Under direct election as embodied in our recommendations, states would continue to play a vital role in the elective process. They would continue to have the primary responsibility for regulating the places and manner of holding the Presidential election, for establishing qualifications for voting in such elections, and for controlling political activity within their state boundaries.

We do not believe that our federal system would be destroyed by direct election of the President and Vice President. As Senator Mike Mansfield has stated:

In addition to Dean Storey, other members of the commission were:

Henry Bellmon, Governor of Oklahoma;

Paul A. Freund, professor of law at the Harvard Law School;

E. Smythe Gambrell, a practicing lawyer of Atlanta, Georgia, and a former President of the Association;

Ed Gossett, a practicing lawyer of Dallas, Texas, and a former Representative in Congress;

William T. Gossett, a practicing lawyer of Detroit, a former President of the American Bar Foundation and former General Counsel of the Ford Motor Company;

William J. Jameson, United States District Judge for the District of Montana and a former President of the Association;

Kenneth B. Keating, Associate Judge of the Court of Appeals of New York and a former United States Senator;

Otto Kerner, Governor of Illinois and a lawyer;

James C. Kirby, Jr., professor of law at Northwestern University Law School;

James M. Nabrit, Jr., Deputy United States Representative to the United Nations and President of Howard University (on leave);

Herman Phleger, a practicing lawyer of San Francisco and former legal Adviser to the Department of State;

C. Herman Pritchett, professor of political science at the University of Chicago and a former President of the American Political Science Association;

Walter P. Reuther, President of the United Automobile Workers; and

Whitney North Seymour, a practicing lawyer of New York City and a former President of the Association.

John D. Feerick of New York City acted as the commission's adviser.

[T]he Federal system is not strengthened through an antiquated device which has not worked as it was intended to work when it was included in the Constitution and which, if anything, has become a divisive force in the Federal system by pitting groups of States against groups of States. As I see the Federal system in contemporary practice, the House of Representatives is the key to the protection of district interests as district interests, just as the Senate is the key to the protection of State interests as State interests. These instrumentalities, and particularly the Senate, are the principal constitutional safeguards of the Federal system, but the Presidency has evolved, out of necessity, into the principal political office, as the courts have become the principal legal bulwark beyond districts, beyond States, for safeguarding the interests of all the people in all the States. And since such is the case, in my opinion, the Presidency should be subject to the direct and equal control of all the people.⁴

4. 107 CONG. REC. 350 (1961).

5. See pages 35-36 *infra*. [The reference is to pages 35 and 36 of the Commission's report. On those pages, the Commission explains that on July 20, 1966, the State of Delaware moved in the United States Supreme Court for leave to file a complaint against the other forty-nine states and the District of Columbia, asking the Supreme Court to "issue an injunction against the continued use of the general ticket or state unit system as such" and urging that the present system of electing a President is unconstitutional. Delaware suggested that the Court first decide the constitutionality of the present system and then "conduct separate and further hearings on the appropriate remedy". If the Court saw "fit to 'open the door' and point the way through equitable interim relief", Delaware asserted, "... the ultimate result might be the submission of a proposed constitutional amendment for direct national elections".

[Later twelve other states moved to be joined with Delaware as plaintiffs—Arkansas, Florida, Iowa, Kansas, Kentucky, North Dakota, Oklahoma, Pennsylvania, South Dakota, Utah, West Virginia and Wyoming. The State of New York opposed the motion. The Supreme Court denied Delaware's motion on October 17, 1966, without opinion, 385 U. S. 895, and subsequently denied rehearing, 87 S. Ct. 387.]

ing electoral reform. The published results revealed that over 59 per cent of the more than 2,200 legislators who responded indicated that they would support a direct popular vote for President.⁶ We are advised that since the published results, over 1,000 additional legislators have responded, with a similar ratio of support for direct popular vote. This support, moreover, comes from both small and large states in all parts of the country.

In summary, direct election of the President would be in harmony with the prevailing philosophy of one person, one vote. "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote."⁷ This equality in voting should extend above all to the Presidency.

Plurality of At Least 40 Per Cent

We recommend that a candidate should receive at least 40 per cent of the popular vote to be elected President. We chose a 40 per cent limitation rather than a lesser or greater one for several reasons.

A figure less than 40 per cent would not furnish a sufficient mandate for election to the Presidency. It also could have the effect of weakening the two-party system by encouraging the formation of splinter parties, since a figure less than 40 per cent would increase the chances of a minor party candidate being able to become President.

On the other hand, a majority vote requirement or a limitation of greater than 40 per cent would increase the possibility of having to use the machinery established to handle a case where no candidate receives the required vote. That this possibility would be increased is underscored by the fact that fourteen Presidents received less than a majority of the popular vote. Eleven of the fourteen received between 45 and 50 per cent, and one between 40 and 45 per cent. Abraham Lincoln received 39.79 per cent in 1860, but his name did not appear on the ballot in ten states. John Quincy

Adams received 30.54 per cent in 1824, but Andrew Jackson received 43.13 per cent, and six states did not choose their electors by popular vote.

Guided by what is reasonably foreseeable under a method of direct election, a figure of 40 per cent would render extremely remote the possibility of having to resort to the contingent election procedure. A 40 per cent rule, as noted, would be conducive to the maintenance of our two-party tradition, and it would be consistent with the principle of plurality voting which operates in Congressional elections and in elections for statewide and local offices throughout the United States.

National Runoff Between Highest Two

Although we believe that the use of any contingent election machinery would be rare, it nevertheless is essential to provide in an amendment for the case where no candidate receives the required vote. In such event, we recommend that a national runoff election be held between the two top candidates.⁸ This would assure that whoever was elected President was the winner of the most popular votes, and it would keep the election of the President where it belongs—directly with the people.

The present procedure of handling a contingent election not only is archaic and undemocratic but is fraught with perils. Under it, the House of Representatives chooses the President from the top three candidates, with each state having one vote regardless of its population. If a state delegation is evenly divided, the delegation will have no vote. In casting their votes, the state's representatives can disregard completely the popular vote received by the candidates in their state or in the nation at large. As the political alignment of the House of Representatives in 1948 demonstrated, an election there could well have resulted in a deadlock. Moreover, since the Senate selects the Vice President under present contingent election procedure, there could be a President from one party and a Vice President from another. This is possible because the political alignment of each House

might be different, the method of voting and the requirement for election is not the same in each house, and the House selects the President from the "highest three" while the Senate chooses the Vice President from the "highest two".

We gave serious consideration to the proposal that the contingent election procedure be changed to a joint session of Congress with each member having one vote. This method is certainly superior to present procedure, but it is not as desirable as having the people elect the President under all circumstances.

Realistically, an election in Congress is likely to involve political deals and pressures and to place the President in a position of indebtedness to those who voted for him. It could result, as past history shows, in members casting their votes contrary to the popular vote received by the various candidates in their districts or states or in the nation at large. If voting in Congress followed party lines, and the winner of the popular plurality in the nation were a member of the minority party in Congress, he would lose the election.

Significantly, following the election of 1824, the last time the House of Representatives had to choose the President, a concerted effort was made to amend the Constitution to eliminate the possibility of an election ever again devolving on the House. In 1826 a resolution to this effect passed the House by a vote of 138 to 52.⁹

It has been suggested that, with provision for a runoff election, voters might be more inclined to cast "protest" votes for minor candidates in the original election on the assumption that they will have another opportunity to make their votes "count". We do not subscribe to this view. In a close election where a runoff would be a real possibility, we believe voters would be more inclined to vote for a candidate with an actual chance of election.

Admittedly, there are some practical objections to a national runoff, but we

do not think that they are by any means such as to make it unworkable. Our surveys and inquiries indicate that the runoff has worked successfully in various states and in foreign countries where it is used in connection with the direct election of a President. In the recent presidential election in France, for example, no candidate received a majority of the popular vote, which required a runoff to be held between the top two candidates fourteen days later. Almost 23,900,000 votes were cast in the first election; more than 23,700,000 in the runoff.

In the United States the runoff has been used extensively for many years in primary elections in the South, where nomination by a single party has been tantamount to election.¹⁰ In recognition of this fact and in order to prevent the nomination of a person with possibly a small minority of the total vote, the runoff was developed. It usually is brought into play where no candidate receives a majority of the popular vote in the first primary.

With respect to a national runoff, we suggest that the date for the second election not be written into the Constitution. It should be left for implementing legislation, as the Constitution now provides for the date of the original election.

We recommend that the amendment specifically authorize Congress to determine the days for the original election and the runoff election. The former is necessary because the present language of the Constitution is cast in terms of the day for the selection of the electors.

Decision upon the runoff date should involve a detailed consideration of the time needed by the states for canvassing and certifying votes, deciding disputed questions, and handling the details for a second election. The replies of various state election officials to our inquiries indicate that at least several weeks would be required before a runoff could be held. In that connection, we note that the present runoff dates in the Southern state primaries are approximately five weeks after the first election in one state, four weeks in three, three weeks in three and two weeks in two states.

There now exist state procedures for canvassing the popular vote, certifying the number of votes received by each candidate and deciding election contests pertaining to the selection of the electors, who are required to meet to cast their votes on the Monday after the second Wednesday in December (or forty-one days after the November election). Many of these procedures, with appropriate amendments, could be used if the President were elected directly in November. In the case of a runoff, they would have to be re-employed after the runoff in declaring the results.

Under present federal law, if a contest arises in any state over the appointment of electors, the state itself is authorized to determine the contest.¹¹ It must do so by a "final determination" at least six days before the meeting of the electors in December. If the state so determines, its determination is conclusive when certified by the Governor under the state's seal. If the state does not so determine, the approval of both houses of Congress is necessary before the state's electoral vote can be counted. It is not, however, until January 6 that the electoral votes are counted before a joint session of Congress. It would seem that much of this procedure could be adapted to a system of direct election.

We have no doubt of the American capacity to work out the practical aspects of a runoff election, as have other nations and certain states.

Election Regulations

We recommend that the state legislatures continue to have, as at present, the primary responsibility for prescribing the places and manner of holding the presidential election and for including the names of the candidates on the ballot. These matters have been handled locally since the first presidential election and, if possible, should continue to be so dealt with under a system of direct election. However, we believe that Congress should have the reserve power to make or alter such regulations. Congress now has this power with respect to the places and manner of holding the election for the House of Representatives and the man-

ner of holding the senatorial election.¹² There is no sound reason why Congress should not have the same power in a presidential election.

Under a system of direct election, it is of great importance that the names of the major candidates appear on the ballot in every state. We recommend, therefore, that Congress be given the power to deal with a case where a state attempts to exclude the name of a major candidate from the ballot. In making this recommendation, we are influenced by the fact that there have been times in the history of our country when the name of a major candidate did not appear on the ballot in every state. As has been stated, in 1860 the name of Abraham Lincoln was left off the ballot in ten states. Similarly, in 1948 and again in 1964, the voters of one state were not afforded any opportunity to vote for the national candidates of the Democratic party because of the device of unpledged electors.

Consequently, it is essential that Congress have the power to deal with such a case.

Voting Qualifications

Under the Constitution the appointment of electors lies with the state legislatures. As with other aspects dealing with the appointment of electors, the states set the qualifications for voting for electors. Direct election of the President would require some provision in the Constitution regarding the qualifications for voting in a presidential election. The Constitution now provides that the qualifications for voting for Congressmen and Senators are the same as those for members of the most numerous branch of the state legislatures.¹³ The actual qualifications are defined by state law.

We recommend that the qualifications for voting in a presidential election be the same as those for voting for members of Congress. This would make substantially uniform the qualifications for voting in both state and federal elections. Of course, any amendment will have to use language

6. Congressional Quarterly Fact Sheet on Electoral Reform, December 16, 1966.

7. *Gray v. Sanders*, 372 U.S. 368, 381 (1963).

8. The theoretical possibility of ties also will have to be dealt with in the amendment.

9. II *Register of Debates* (pt. II), 19th Cong., 1st Sess. 2003 (1826).

10. See EWING, *PRIMARY ELECTIONS IN THE SOUTH* (University of Oklahoma Press 1953).

11. 3 U.S.C. §§ 5, 6, 15 (1964).

12. U.S. CONST. art. I, § 4, cl. 4.

13. U.S. CONST. art. I, § 2, cl. 1; amend. XVII.

in Organizational Handbook file

10-21-68

Dear Jean:

Just a note to say I appreciate your material on National Program for the Organizational Handbook very much. It probably will not need cutting since it is not very long. Of course, we may have to cut everything when all is finally together. I'll send you copies of any revisions suggested.

While writing, want to say your "Water Glossary" for the November VOTER is excellent. Hope Helen has room for it. for I am sure most members are pretty vague about most of the water terms.

Zaida Luthey seems pleased at the opportunity to go to the Water meeting in Utah. She tells me Betty Anderson has accepted also. You three will make a good team to represent Texas.

The virus turned into more of a flu episode, but I finally won out and hope I am through with that sort of thing for the winter. I am eating Vitamin C pills like popcorn.

Ruth M.

Water Glossary

Here are a few terms often found
when reading articles on water:

Estuaries—tidal stretches of coastal rivers where salt and fresh water meet.

Acre-foot—amount required to cover one acre one foot in depth or 325,851 U.S. gallons.

Surface Water—water that flows or rests on the surface of the earth.

Ground Water—subsurface water occupying the saturation zone, from which wells and springs are fed.

Aquifer—a geological formation of earth, gravel or porous stone that is water-bearing. Example: the Edwards Aquifer, a complex underground water formation which is the principal water supply of San Antonio.

Recharge—the process by which water is added to an aquifer, either by natural or artificial means.

Runoff—that portion of the earth's water supply that is transmitted through natural surface channels.

Ruth Martin from Cairne
For the November bulletin
Helen says she'll use
it if she can. Ruth
Tom OK'd it.

OCT 10 REC'D

August 22, 1968

TO: Caine cc - Joop
FROM: Martin
RE: Electoral College System map and article from Houston Post

WOW! what a fine map and article! This should be the biggest help on the EC item that we have yet seen. It is written in plain, understandable words that should make the system easy for each reader to digest. And its timeliness is perfect. So glad you found it.

I heartily agree that the SB should do some advance planning and send out instructions that would insure - or at least almost insure - being able to tell who does what on the LL boards. This is particularly pertinent re the National item, as you pointed out. Let's not forget this when the time comes. Would it help to put this in your pre-Board report for the September meeting so the thought will be on paper and not get lost? We need to do everything that we can to make improve communications between the SB and the LLs. So often we seem to be writing in the dark to a person we do not know. The only times that I regret the large size of Texas is when I realize how few face-to-face meetings we can have with LL members. For instance, if you could have a meeting with each LL National Program chairman. But, without more money this is merely dreaming; isn't it?

LWVT

AFTER THE ELECTORAL COLLEGE

William J. D. Boyd

NATIONAL
MUNICIPAL
LEAGUE

AFTER THE ELECTORAL COLLEGE?

WILLIAM J. D. BOYD
Senior Associate
National Municipal League

NATIONAL MUNICIPAL LEAGUE
Carl H. Pforzheimer Building

September 1968

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Foreword

Foreigners are puzzled and bewildered by the manner in which the President of the United States is chosen; and so, to tell the truth, are most Americans.

There is a growing realization on the part of the relatively few who really understand it that the Electoral College was an edifice of compromise designed to grace a campus that ceased to exist long ago, and that, in fact, its continuance may constitute a genuine peril. Widespread understanding of the problem and the proposed solutions is an urgent need.

This pamphlet is intended as a general introduction to the subject. For those who wish to go into the matter more deeply there are other more detailed publications. A recent scholarly book is *The People's President* by Neil R. Peirce.

Opposition to the Electoral College is increasing, with a variety of reforms being suggested. Several of these, with the arguments pro and con, are presented here. Any specific change, however, will require approval by three-fourths of the state legislatures. Therefore, no matter how ominous the peril, the cure will not be achieved speedily.

ALFRED WILLOUGHBY
Executive Director

September 1968

The Problem

The President of the United States is inaugurated on the 20th of the January following his election. What if, on some January 20th, no one had been elected? Ridiculous? Certainly. Impossible? Not in the least! What if the presidential candidate who won the most votes was displaced by the runner-up? Impossible? It has happened three times!

Every four years, the most powerful nation runs the grave risk of being thrown into a constitutional crisis that, at best, would adversely affect public confidence and, at worst, could lead to civil insurrection or sneak attack from abroad.

The culprit is an almost 200-year-old electoral system that has prompted senators, congressmen, civic leaders and such influential organizations as the American Bar Association to call for reform.

Few issues so preoccupied the delegates to the Constitutional Convention of 1787 as did the office of chief executive of the fledgling nation. Should he be a king? Should there be a single or a plural executive? Should he be able to succeed himself? Should he have veto power? Finally, and probably most difficult, how should he be selected?

Their answers constituted a valuable contribution to the development of free government, but one which already has required much re-thinking and modification. *Five* of the 15 amendments adopted since the Bill of Rights have dealt with the election, inauguration, term of office or line of succession of the President. Thus, the American people revere the handiwork of the founding fathers, *except* when dangers in the system of election and succession to the Presidency become apparent.

The constitution's draftsmen displayed great foresight, but they could not know that the development of organized political parties and the emergence of this country as the world's dominant power would render rather academic their system of "electors" who were to protect us from internal factionalism and external domination. They created an institution suited to a time when there were no railroads, telegraphs or major newspapers, when communication was dependent on horses or coast-wise sailing boats and travel between some of the state capitals took weeks.

Creating the College

The delegates to the Philadelphia convention approved several methods of selecting the President, only to reject each in subsequent votes. On at least four occasions they approved selection by the national legislature. Twice they left it to the state legislatures to choose Electors. Though there was some sentiment for it, they twice rejected direct popular election.

Among the founding fathers were men with extraordinary knowledge of history and political philosophy, a knowledge which lent perception to their debates, and they were fully aware of the many potential pitfalls in the system they were creating.

The only republican form of government that had existed anywhere since the days of the Roman consuls was in the city-states of northern Italy where the intricacies and quarrelsome nature of politics had done little to gain respect for that form of government or provide guides for its development. Nonetheless, the men gathered at Philadelphia in 1787 were determined that the executive should not be a king who might become a tyrant, or the tool of powerful social or economic interests.

Big versus Small States

There were also conflicts among the new states, with concern over big-state dominance and small-state provincialism. If the President were elected directly by the people, it was feared that the inhabitants of the big states would vote only for one of their own, freezing out the smaller states, or that a demagogue might capture the public's favor, as Plato and Aristotle had warned.

Were the chief executive to be chosen by the national legislature, the fear of cabal and corruption haunted the delegates.

After settling the problem of whether the position of chief executive should be a strong one held by a single individual, and determining the length of his term and his eligibility for reelection, the delegates reached a stalemate over the manner of his selection. Actually, all of the issues were so intertwined that, when the final question was resolved, some changes were made in earlier decisions. Finally, they agreed on the appointment of a committee on postponed matters which came to be

known as the Committee of Eleven. The work of this group is one of history's outstanding examples of compromise.

Committee of Eleven

All simple solutions had to be rejected because they automatically alienated one bloc or another. In basic outline, the committee established the system we have today—a complex and cumbersome mechanism. The President would be chosen by Electors who would meet and cast votes in their separate states. These were to be selected in the manner prescribed by the legislatures of the individual states. This solved several dilemmas. The chief executive, who was to be eligible for reelection, would not be beholden to the national legislature for his office. Those who favored eligibility for reelection thought it would be an incentive for a man to perform with excellence. This could be accomplished only if he were independent of his legislators. Otherwise, it was felt, an incumbent President, in order to achieve reelection, would so cater to Congress that he might be virtually powerless during his first term.

Having the Electors meet in their respective states provided two advantages. First, since the Electors would not be brought together as an entire group, they could not conspire among themselves. Second, being dispersed across the country and selected only a few weeks before they performed their duty, they would be sufficiently unknown and remote as to be relatively immune from bribery by foreign powers. The Polish monarchy provided the delegates with an excellent example of such dangers. The kings of Poland, though chosen for life, were not hereditary sovereigns. Their selection was in the hands of the nobility, who being easily identifiable individuals, had fallen prey to handsome temptation from Russian, Saxon, French and Hapsburg interests. Disputes over the Polish throne had led to more than one European war. Fearful that France or Britain might try to dominate the new nation, the delegates saw the potential for bribery as very real. The Committee of Eleven also knew that a system of intermediate Electors was a nearly unanimous second choice. It made compromise easy.

Election by the House

If the Electors gave no candidate a clear majority, the committee suggested that the Senate should select the President. This was one of the

few proposals rejected. The delegates refused to give this power to the Senate because it already had been assigned authority to ratify treaties, approve the President's appointments and act on the impeachment of the President. While everyone assumed George Washington would be the immediate and unanimous choice for the first President, there was doubt that such agreement would be reached on his successors. There was a general belief that nine out of 10 elections would end with no man receiving a majority in the Electoral College. It was feared, therefore, that the Senate, with all its other powers in close relationship to the Presidency, would become an oligarchy. Since the senators were to be selected by the state legislatures, not the people, some delegates already viewed the Senate as a possible repository of wealth and aristocracy.

The small states, fearing that most elections would end with no candidate having a majority in the Electoral College, wanted no part of any system in which the populous states would cast the all-decisive vote. They opposed the idea that each state cast votes in proportion to its population, so the election was placed in the House of Representatives, with each state, regardless of size, casting one vote.

The initial provision also called for the representatives to make their selection from among the five candidates who had received the most votes in the Electoral College. This, too, was a concession to the small states: the more men involved, the more likely that one would be a resident of a small state. Although part of the original constitution, this provision was amended in 1804 to selection from among the three top candidates.

Intricate Creation

Everyone got something. Although, as earlier noted, it was to become the most amended section of the constitution, it was the least criticized of any major provision in the debates on ratification during the winter of 1787 and much of 1788.

The big states received an important voice in the partially population-based apportionment of the electoral votes. The small states were assured of equal strength in the event no man received a majority. All other pitfalls had been circumscribed as much as possible, and both egalitarians and aristocrats could take comfort in the fact that state legislators would determine the manner in which Electors were chosen. John P. Roche, writing in the December 1961 issue of the *American Political Science Review*, called the final compromise "a jerry-rigged improvisation which

has subsequently been endowed with a high theoretical content." He also appraised it as a "Rube Goldberg mechanism."

The Electoral College

Following each decennial census, the Bureau of the Census of the United States Department of Commerce computes the number of congressmen to which each state is entitled, and the official assignment is done through an act of Congress. The computation seeks to assure that the average population per representative has the least possible variation between the states. It is conditioned, however, upon each state receiving at least one congressman. If the number of congressional seats were to be based exclusively on population, each congressman would represent approximately 400,000 people; but, because the states' populations are not conveniently divisible by exact multiples of 400,000, there is unavoidable distortion. Five states elect only one each and four of these—Alaska, Nevada, Vermont and Wyoming—would not be "entitled" to a congressman by their small populations alone. The distortion caused by giving each state one representative is minor, however, and warranted by the demands of the federal system.

In computing the votes in the Electoral College, each state is assigned one electoral vote for every representative to which it is entitled plus two additional votes—one for each of its senators.

Thanks to the 23rd Amendment, the District of Columbia is entitled (since 1961) to share in electing the President. Although the 800,000 inhabitants of the District still do not have any representative in either the House or Senate, they are now entitled to the number of presidential Electors equal to the number of congressmen and senators they would have if it were a state. But in no event may the District have more electoral votes than the smallest state.

The Electoral Process

When a citizen goes to the polls in November, he is not voting for a presidential candidate but for a slate of Electors pledged, but not bound, to vote for one candidate or another in the Electoral College. Interestingly, there is no federal law requiring that names of Electors or candidates of major political parties appear on every ballot. Thus, in 1948 and 1964, a citizen of Alabama could not cast a vote for the Democratic party nominee.

Also, in less than a third of the states does state law compel Electors to vote as they were pledged. As recently as 1960 an Elector chosen on the Republican ticket refused to vote for that party's nominee and, instead, voted for a man who had not been nominated by any organized party. And the Democratic party candidate suffered more such defections from his ranks in the same election.

The candidate who receives a plurality of the popular vote in a state receives all of the state's electoral votes. In the early days of the Electoral College it was not uncommon for a state to divide its vote. In 1824 New York cast 20 votes for Jackson and 16 for Adams. New York and some other large states soon realized, however, that they could maximize their influence by casting their electoral votes in a bloc. Almost immediately, all states followed suit and a "winner-take-all" system came into being. At times it has had strange results.

Lopsided Margins

The winner-take-all system has generally worked to give the winning candidate a lopsided margin in the Electoral College. In 1860 Abraham Lincoln received less than 40 per cent of the popular vote but almost 60 per cent of the Electoral College. In 1960 John F. Kennedy received 303 electoral votes; Richard Nixon, 219; and Harry F. Byrd, 15. The Kennedy-Nixon election was one of the closest in our nation's history, the two men having received, respectively, 49.5 per cent and 49.3 per cent of the total popular vote. Yet, in the Electoral College, Kennedy had 56.4 per cent to Nixon's 40.7 per cent.

The Voting Procedure

Each state's Electors meet in their respective state capitals and vote for President and Vice President on the first Monday after the second

Wednesday in December. Because of events following the election of 1800, the 12th Amendment specified that the Electors cast separate votes for the two officers. They are forbidden to vote for inhabitants of their own state for both positions.

The electoral votes are forwarded to Washington, D.C., where they are opened by the president of the Senate at a joint session of Congress. This takes place in the week following the reconvening of Congress on January 3. If no candidate has received an absolute majority of the electoral votes, the House of Representatives has until January 20 (inauguration date) to select the President from among the three men who have received the highest electoral vote. Each state delegation casts a single vote, but, if the delegation is evenly divided, it loses its vote. To be elected, the candidate must have a majority of all the states.

Controversial Elections

Twice—in 1800 and 1824—the House of Representatives has been called on to elect the President; on one occasion it chose the less popular of the two major candidates.

1800: There were two Democratic-Republican candidates and three Federalists. While it was generally assumed that the Democratic-Republican Electors were voting for Thomas Jefferson for President and Aaron Burr for Vice President, this was in no way specified on their ballots. Until that time, the constitution provided that each Elector should vote for two candidates; the one receiving the highest number of votes was declared elected President, the next highest, Vice President. When the votes were opened by the president of the Senate, it was discovered that the Democratic-Republican Electors had cast 73 votes for Jefferson and 73 for Burr. Many days of intense debate and negotiation ensued. The Democratic-Republican party was itself torn as Burr sought to obtain the high office for himself. Finally, through the intervention of Alexander Hamilton, the impasse was broken and the election thrown to Jefferson. This election led to the immediate enactment of the 12th Amendment, providing that Electors cast separate votes for President and Vice President.

1824: John Quincy Adams and Andrew Jackson were vying for the office. In a four-way race, Jackson received 153,500 popular votes and 99 of the 261 electoral votes. When the election was thrown into the House, Adams, the candidate with the second highest number of votes,

both popular and electoral, was chosen President. Jackson's supporters always blamed Henry Clay, one of the four contestants, who was appointed secretary of state in the new Adams administration. Jacksonians cried foul. Although the event greatly embittered the politics of the era, it contributed to the development of a real two-party system. Jackson's subsequent election in 1828 marked the beginning of the present Democratic party.

Twice—in 1876 and 1888—the candidate with fewer popular votes won a majority in the Electoral College and became President.

1876: The outcome of this election fundamentally altered the course of American history. Samuel J. Tilden, the Democratic candidate, received an absolute majority of the popular vote with a margin of 250,000 over his opponent, Rutherford B. Hayes. The electoral votes from four states were contested. Competing Democratic and Republican slates came from Florida, Louisiana, South Carolina and Washington, plus one disputed Elector from Oregon. Without any of those electoral votes Tilden had 184, one short of a majority. Since both Louisiana and South Carolina were occupied by federal troops that were keeping Reconstruction governments in power, there seems little question that Tilden had won a majority of the vote in both of those states and deserved their electoral votes. Only one vote would make Tilden the victor. Again a political deal was forged. The Republican Electors from those states were recognized, in return for which the new administration would withdraw federal troops from the south and end Reconstruction. Hayes won 185 votes to 184. The national government began its long period of disinterest in the treatment of the Negro minority in the south.

1888: Grover Cleveland, the Democratic candidate, received more popular votes than Benjamin Harrison but Harrison received a majority of the Electoral College. It is interesting to note that, had Cleveland received only 14,000 more votes in the state of New York, he would have won its electoral vote and the Presidency.

Impact of the System

The vagaries of the Electoral College have determined not only which man is elected, but also, to a considerable degree, which men may even be candidates. The state of New York has heavily dominated presidential politics. From 1804 through 1964, the winning candidates in 35 of the 40 elections were those who had New York's support. In four of the other five, New York voted for its current or former governor, who ran second. In the fifth, 1856, the presence of a third-party candidate, Millard Fillmore of the American (Know-Nothing) party, a former President and former candidate for governor of New York, divided the vote so that the state's electoral vote went to the newly established Republican party and its candidate, John Fremont.

New York's dominance has not been accidental. Because the Electoral College does not assign votes exclusively on the basis of population, New York did not have the full strength its population would have warranted, but, even so, from 1804 through 1868, it always cast more than 10 per cent of the total electoral vote. At no time since 1804 has it cast less than 8 per cent of the total.

New York's importance did not stem from size alone. It came also from the fact that the country never enjoyed a true two-party system everywhere, for, even in the early days, most states showed a clear-cut preference for one party or the other. For example, from 1789 until 1928, Virginia consistently cast all of its electoral votes for the Democratic candidate, the only exception being 1872 when the state was controlled by Reconstruction forces. As the nation expanded it became an almost iron-clad rule that the Democratic party would carry every state in the south and all the border states with the occasional exception of Maryland. By the same token, the Republican party (and its predecessor, the Whig party) had a solid grip on the New England states and the states coming into the Union in the far west and the plains. In addition, the important state of Pennsylvania was a virtual Republican fief. From 1860 until the Roosevelt landslide of 1936, Pennsylvania *always* voted for the Republican candidate. Ohio, a frequent home of presidents, and for many years the fourth most populous state, voted for the Republican party in every election from the Civil War to the coming of the New Deal, except in 1912 and 1916. Both the Republican and Democratic candidates for

President in 1920 were from Ohio and the state returned to the Republican fold.

The Swing State

Throughout this era, *only* New York of all the big states tended to be a "swing" state. Just as others showed a preference for Republican candidates from 1860 through 1928, and for Democrats from 1932 through 1964, so New York has followed or perhaps set the national trend. During the long period of Republican rule, from the Civil War to the New Deal, New York voted for the Democratic candidate only in 1868, 1876, 1884, 1892 and 1912. In the elections of 1884, 1892 and 1912 the Democratic party won. As noted, the 1876 election was "stolen" from Samuel J. Tilden, the former governor of New York for whom the state had voted. The one time New York seemed out of step with the rest of the country was in 1868 when it again voted for a former governor, Horatio Seymour, who was soundly beaten in the Electoral College by his Republican opponent, Ulysses S. Grant. In popular vote, however, the election was much closer.

New York's appeal becomes obvious when it is seen that, during the Republican era, the Democratic party could not win a national election without carrying New York, or so both parties seemed to believe.

New Yorkers have been frequent nominees of both parties for the Presidency or the Vice Presidency. Until 1836 many state legislatures chose their state's slate of electors. In the 33 presidential contests since then a New Yorker was one of the two top candidates in 20. In two other campaigns, 1852 and 1856, a New Yorker was an important third-party candidate. In two elections New Yorkers were pitted against New Yorkers—Theodore Roosevelt versus Alton Parker (1908) and Franklin D. Roosevelt versus Thomas Dewey (1944). Ohio has the next "best" record, but it is half of New York's. In 10 out of the 33 elections, Ohioans were among the two top vote-getters. In one other (1912) an Ohioan was the third major candidate, and two Ohioans, Warren Harding and James Cox, ran against each other in 1920.

Almost always, the men named have been candidates "acceptable to New York." Two notable exceptions have occurred in modern times—Alfred Landon in 1936 and Barry Goldwater in 1964—bringing about the two worst electoral defeats the Republican party has ever suffered. There were other times, too, when the unacceptability of a major party candidate in New York has brought electoral defeat: "Rum, Romanism and

Rebellion" cost James G. Blaine the state of New York and the Presidency. William Jennings Bryan's plea for silver and low tariffs so antagonized eastern business and labor interests that, though he ran some relatively close races nationwide, he lost New York plus all the traditionally Republican states by lopsided margins and went down to crushing defeat in the Electoral College.

New York Unique

New York is hardly typical of the rest of the country. Indeed, it might be argued that, almost from colonial times, it has had a unique political, economic and social structure. Yet this very uniqueness was built along lines which the rest of the nation was to follow. The development of the country as a giant industrial and financial center was heavily influenced not only by the location of much of the capital in New York City but also by the political impact New York had on the Presidency. The "Eastern Establishment" had a profound influence on the industrial evolution of the country during the 70-year dominance of the Republican party. New York was also among the first of the states to experience the rise of organized labor and the political power of minority groups. Winning the support of these groups in all the states, but especially in New York, became an indispensable factor in Democratic victories after 1932.

There is no way of knowing what would have happened had New York not played such an important role. Would the same kinds of men have been nominated? Even though the Electoral College has deprived relatively few men of their right to the Presidency, it seems likely that some of them would never even have been in contention if New York, with its great bloc of electoral votes, had not loomed so large.

"National" Politics

Now, however, something remarkable has happened. Only since World War II has politics become truly national. In the last 20 years, for the first time in history, the Democrats have been able to elect a governor, a United States senator, or a congressman from every state. In one presidential election or another during the last 20 years the Democratic party has carried each of the states. The Republicans, during the same period, have carried all but Arkansas and North Carolina. Republicans have won governorships, Senate or congressional seats in all states but Louisiana and Mississippi.

New York, while important, is no longer crucial. California is evolving rapidly as not only the equal but perhaps also the "superior" in influence of New York, becoming a bellwether of social, economic and political development. The worship of the automobile, the surfing craze and the Hippie movement are not isolated California phenomena infecting the nation. That state's wide-open, free-wheeling, big-spending style of politics would appear to be more nearly the wave of the future than the organized machine politics long associated with the Empire State.

But it seems doubtful that California can ever dominate the Electoral College as New York did. Both population and politics are shifting. In 1970 the center of population will be approximately half-way between the points at which the Ohio and Missouri rivers flow into the Mississippi. South and west of that point will live one half of the population. The northeast quadrant of the country, while still the most heavily industrialized and most densely populated, no longer represents a majority of the people. Just as "the frontier" died by the 1920s, so the old "eastern dominance" will be dead by the 1970s. More and more of the large states have shown a close two-party balance and the capacity to switch allegiance. The Electoral College mechanism is being put to a severe test as to whether it can reflect the type of social-political transition currently taking place.

Dangers of the System

The greatest single danger inherent in the Electoral College system is the possibility of a deadlock and a vacancy of uncertain duration in the Presidency. Also, as noted earlier and has occurred, a man who received fewer popular votes than his opponent can get elected. The repercussions of those three elections—Jackson in 1824, Tilden in 1876, Cleveland in 1888—were nowhere nearly as severe as they might be today, for then there was a much more restricted franchise. Property, race and sex qualifications disfranchised the overwhelming majority of the people in 1824 and more than a majority in 1876 and 1888. Also, the United States Senate was not popularly elected. The public simply did

not have the same concept of its "will" being thwarted that it would today.

Since 1948 presidential elections have been more volatile than at any previous time. The elections of 1948 and 1960 were two of the closest, with the winners failing to receive majorities of the popular vote. On the other hand, the elections of 1952, 1956 and 1964 have been of landslide proportions.

The accompanying dangers, unthinkable a few years ago, are distinct possibilities which might continue for many years. Unless the political situation acquires a placid character not now readily discernible, reform of the Electoral College is almost certain to be a top priority.

Disaster Possible

Here is how the disaster could come about. Were there to be a strong third-party movement (such as George Wallace's American Independent party), it might garner a sufficient number of electoral votes to prevent either major party candidate from getting a majority in the Electoral College.

If New York and California were to go for opposing candidates and Pennsylvania and Illinois cast ballots in conflicting directions, and the same thing happen between Ohio and Texas, the major party candidates could easily divide the electoral vote between them so that even an insignificant third party could keep anyone from getting a majority.

This would mean that the election would be thrown into the House of Representatives, as in 1800 and 1824. As deep as the bitterness was then, it was nothing compared with the violent reaction likely today.

In the House, where each state casts one vote, it is possible that those states having an even number of congressmen may have tie votes, be unable to reach agreement and, therefore, cast no vote at all. Presently, 27 states are in that position, including California, Illinois and Ohio, plus many of the medium-sized states. Were it a bitterly contested election, in which neither major party would show any willingness to compromise, a deadlock could develop in which no man could receive the support of the majority of the states. Theoretically, as pointed out by Russell Baker in his political satire, *Our Next President*, this could be resolved by having the United States Senate elect a Vice President to serve as acting President for the remainder of the term. One difficulty with this solution, however, is that there are always an even number of senators. If the Senate split 50-50, we would have no President, no Vice President. Then,

section 3, Article XX of the constitution authorizes Congress to name someone to act as President. Granted, this presupposes a freak combination of circumstances. But, the events of the past few years should have made people extraordinarily wary of any situation that "can't happen."

Election by the House

The chances of an election being thrown into the House are far greater than the other combination of events occurring. It could be, therefore, that an election might take place in the House, with the man selected being the one who receives the smallest popular vote. In 1956, for example, Dwight Eisenhower got one of the biggest electoral votes in history, yet his party did not have control of the House of Representatives. Had he won a relatively impressive popular plurality but failed to get a majority of the electoral votes, he almost surely would *not* have been elected by the members of Congress.

Also, a party could have control of a majority of the state congressional delegations but be a minority of the total House membership. The dominant party could have lopsided majorities in the New York, California, Pennsylvania, Illinois and Ohio delegations, which range from 41 to 24 seats. This, plus moderate strength elsewhere, could give it a majority of the total House membership. Yet, if one party's strength were concentrated in the big states, the minority party, through control of many small states, could still elect the President. The five large states mentioned have 154 members of Congress but have only one vote each for President; the five smallest states also have one vote each for President and could nullify the big-state vote.

If the election were thrown into the House, as few as 59 of the 435 members of Congress from the least populous states could select the President. Thus, representatives of less than 13 per cent of the people could elect the candidate who ran second or third in popular favor.

Prominent political and civic leaders have obviously had visions of this kind of thing. It is the chief reason for the current rising call for reform. The internal dissension and violence that have erupted in the past few years might prove to be only mild rehearsals for the convulsive reaction that could sweep the nation. Any such internal unrest would, of course, multiply the external dangers to our political and economic system.

Alternative Reforms

The Subcommittee on Constitutional Amendments of the United States Senate Committee on the Judiciary has held hearings on proposals on numerous occasions, one of the most extensive being in 1955. Still nothing gets done. One reason is that, while the necessary two-thirds vote in both houses of Congress could probably be assembled for change *per se*, it has been difficult to marshal such support behind any one proposal. The following are some of the alternatives that have been suggested:

Alternative 1: The Electoral College would be retained exactly as it is except that each Elector would be required to cast his vote for the candidate who won a plurality of the popular vote within his state.

Pro: This would eliminate the act of independent judgment, once considered so important, which has now become an irritant. (For example, one Oklahoma Elector, legally pledged to the Republican candidate in 1960, refused to vote for Richard Nixon, and six unpledged Democratic Alabama electors refused to vote for Kennedy.)

Con: This change would simply freeze into the constitution one of the greatest criticisms against the Electoral College, the winner-take-all system. It would do nothing to solve the more fundamental problem of the initial inequity in apportioning the electoral votes and the dangers inherent in possible deadlock when no one receives a majority.

Alternative 2: The office of Elector would be abolished but the electoral vote retained. The winner of the plurality in a state would receive all the state's electoral votes. If no candidate receives a majority of the electoral votes, the President would be selected by a joint session of Congress with each senator and congressman casting one vote.

Pro: The useless office of Elector is eliminated, as well as the present inequity of having the House members vote by states rather than as individuals.

Con: The essential inequity in the apportionment of electoral votes is not corrected. Throwing the election of the President to the entire Congress, while superior to the present system, might lead to even more extensive wheeling and dealing. The very thing the founding fathers feared in congressional election of the President might well take place. Cabinet offices and a variety of other appointments might be bargained off in

return for support to such a degree that the incoming President would have a badly tarnished image. Also, his power to act as an independent chief executive might be compromised.

Alternative 3: The Electoral College would be retained without Electors. Provisions would be made for a run-off election if no one received a majority. The first election would be set for the second week in October. If a run-off were necessary, it would be held on the traditional election day in November. The winner-take-all system would be used in both elections.

Pro: This combines the virtues of the first two alternatives and provides a superior mechanism for choosing the President in the event no one gets a majority on the first vote.

Con: It does nothing to change the inequity in the apportionment of electoral votes to the states. It still leaves it possible for a man with a minority of the popular vote to get a majority of the electoral vote since it retains the winner-take-all system.

Alternative 4: The district system would retain the Electoral College but the post of Elector would be abolished. A candidate would receive one vote for each congressional district he carried plus two for having won a plurality of any statewide vote. If no one received a majority, a joint session of the House and Senate would choose from among the three top candidates.

Pro: One of the chief complaints against the winner-take-all system is that millions of votes are wasted when a candidate fails to achieve a plurality. An example was the 1948 election in California when Thomas E. Dewey's 1,900,000 votes went for naught because Truman received a bare 18,000 more. There would still be some wasted votes but fewer than now. The man who ran a close second in a state would still be apt to pick up some electoral votes. The district system would, therefore, reflect much more accurately the public sentiment within each state. Proponents of the system claim it would deemphasize the importance of the big states. It is argued that having the election of the President tied to congressional districts would be a more rational system and make less likely the situation of a chief executive of one party and a Congress of the other.

Con: Again, this system would do nothing to correct the inequitable apportionment of electoral votes. It would, in fact, increase it to a considerable extent. The smaller states which are grossly overrepresented in the Electoral College are the ones which tend to vote most solidly for

one party. The district system would eliminate the situation wherein the winner of the popular vote emerges with a disproportionately big margin in the Electoral College. It could, however, result in the election of more minority Presidents than under the present system. In 1960, for example, Richard Nixon would have won under the district system with 278 electoral votes to John F. Kennedy's 245, even though Kennedy got a plurality of the popular vote. Contrary to the argument that it would make a party division between the chief executive and Congress less likely, the same election resulted in a Democratically controlled Congress.

Furthermore, the district system increases the likelihood of wildly gerrymandered congressional districts. Because of the Supreme Court's "one man, one vote" rulings, since 1964 the nation has been exposed to the wholesale redrawing of congressional district lines. Although congressional districts are more nearly equal in population than at any other time (a fact which makes the district system even more desirable than when it was first proposed), the redistricting process has provided even more examples of the art of rigging district lines for partisan advantages. In some states the incumbent congressmen of both political parties struck an agreement as to where the lines should be placed. Certain Republicans are not unwilling to have a normally Democratic neighborhood, town or county included in their districts when they have great voter appeal in that area. The same is true, of course, for many Democrats with appeal to Republican voters. If presidential politics is injected into the picture, however, monumental struggles at the state houses following each decennial census seem inevitable. At present there is no law prohibiting the drawing of congressional districts any time a state legislature chooses to do so. So there is some risk that a newly dominant party might redraw all of a state's congressional districts immediately before a presidential election. It is difficult enough for the federal courts to pass on the validity of congressional districting without drawing the judiciary, appointed by the President, into presidential politics.

Alternative 5: The proportional division reform would split the electoral vote of each state to the nearest one thousandth of a per cent according to the popular vote each candidate received. For example, a candidate who receives 50.986 per cent of the total popular vote in New York would receive 21.922 of its 43 electoral votes. If the election were inconclusive, a joint session of Congress would choose between the two top candidates.

Pro: This system would virtually wipe out all vestiges of discrimina-

tion against the candidate who fails to gain a plurality of the popular vote in a state. It decreases the likelihood of a man winning a minority of the popular vote but getting the majority of the electoral vote.

Con: The very fact that the proportional system has been so refined makes it all the more reflective of the initial inequities in apportioning electoral votes to the states. The very "fairness" of the proportional system increases the unfairness of the electoral vote system itself.

If the proportional system had been in effect from 1860 through 1964, and if there were no provision for a run-off, 10 elections would have ended up in the Congress because of minor parties splitting the vote. Perhaps the most notable example is 1924 when Calvin Coolidge won 54 per cent of the popular vote, but, because Robert La Follette's Progressive party was popular in many sparsely populated states that are over-weighted in the Electoral College, no one would have received a majority of the electoral vote.¹

The proportional electoral system might encourage third parties to enter candidates so as to split the vote in order to throw the election into the House. No major plan for a proportional system has included a run-off between the two top candidates, which would appear necessary to prevent a multitude of splinter parties. Even then, the unfair distribution of electoral votes would give any candidate with strong appeal in the less populous states undue advantage.

¹ For further statistics on the district and proportional systems applied to past elections, see Neal R. Peirce, *The People's President* (New York, Simon and Schuster), 1968, p. 358.

One Man, One Vote

Suits were filed in 1966 and 1968 in California, Delaware and Virginia challenging the system by which the candidate receiving a plurality receives all the electoral votes of a state. (The Supreme Court has thus far refused to accept jurisdiction in such cases and has rejected the Delaware complaint.) Plaintiffs in these suits allege that the system is a violation of the doctrine of "one man, one vote," a doubtful point in view of the court's interpretation of the equal protection clause of the 14th Amendment.

Within a state, each citizen has exactly the same opportunity as any other to gain all the state's electoral votes for his candidate. And, in any election under the Anglo-American system, the votes of the loser are "wasted." Those challenging the winner-take-all system complain that, in states like New York or California, millions of people might vote for a losing candidate who comes within very few votes of a plurality. This, they say, is a violation of "one man, one vote." If that is the case, then our entire electoral system violates the doctrine. Any time a voter is on the losing side in any election he has, according to the plaintiff's reasoning, become the victim of a violation of "one man, one vote." It is the intention of the single-member district, plurality voting system to produce only one winner.

A much stronger case might be based on the fact that the Electoral College violates the doctrine of "one man, one vote" in the apportionment of the votes among the respective states. For example, following the 1960 census, Alaska was assigned three electoral votes and New York received 43—a ratio of approximately one to 14. New York actually had more than 75 times the population of Alaska.

Even if a system were established apportioning the present number of electoral votes on the basis of population, but guaranteeing each state at least one vote, the difference between New York and Alaska would be 50 to one. Putting this in terms of popular votes, it can be said that, in the election of 1964, each electoral vote in California was equal to 176,440 popular votes; in New York, 166,656; in Vermont, 54,181; and in Alaska, a scant 22,420. If one is to apply the "one man, one vote" doctrine to the Electoral College, a violation is clearly taking place on a national scale. But *within* each state complete equality is maintained.

Great Weakness

Perhaps the strongest single criticism of both the proposed proportional division and district system reforms is that neither begins to solve the problem of the unequal initial assignment of electoral votes to the states. The only fair way to apply the proportional method would be to reassign them on the basis of population. Even then, were the Electoral College to remain at its present size (538), a minimum guarantee of at least one vote to each state would create distortion. If applied to the 1964 election, for example, a large state with an even number of electoral votes, such as New York which would have 50, could have its vote divided so that one candidate would receive 25.025 electoral votes and another would get 24.975. If the loser in New York carried sparsely populated Alaska by 52.5 per cent of the vote, he would get .525 of an electoral vote, the other candidate, .475. The winner in New York would have come out with a net gain of .050 of an electoral vote, while his opponent, in carrying Alaska, would have achieved exactly the same result.

Either way, the result is patently unfair. The candidate carrying Alaska had to win a full 5 per cent more of the vote in order to equal the .5 of one per cent margin his opponent achieved in New York. Yet, to get that margin in New York, it required 7,167 popular votes; the 5 per cent margin in Alaska required only 2,217.

The only solution to this would be to expand the Electoral College to 2,000 or more votes. If it is to become that large, why not just abolish it and put the presidential election, like every other, on the basis of direct popular vote?

There seems to be no way that the district system could correct the inherent inequities of the present distribution of electoral votes. As noted earlier, under the district system a man would win an electoral vote for each congressional district in which he received a plurality and two votes for winning statewide. One candidate could carry 19 of California's congressional districts and his opponent could carry the other 19. The one receiving a statewide plurality would get a net gain of two electoral votes from California. Whoever carried Alaska, however, automatically would get not only the one electoral vote for the congressional district (there is only one) but also the two statewide votes—a net gain of three. Since there are five states that have only one congressional district, a candidate could gain much if he were to carry all of them and just hold even with his opponent in the five largest states. The five smallest states represent

less than one per cent of the nation's population, the five largest, 36 per cent.

More Problems

There are other problems, of course, in any system which retains the Electoral College. California has enjoyed a spectacular growth. New York, with 43 electoral votes, had fewer people voting in 1964 than did California with 40 electoral votes. Part of this can be ascribed to differences in voter turnout, but probably more important is the fact that California had passed New York in population in the period between the taking of the census and the 1964 election.

The rate at which population is shifting seems to be accelerating. Therefore, the electoral votes assigned to a state in the early part of a decade may be substantially out of line later in that decade. Unless a special census were held and new assignments of electoral votes made before each presidential election, there is no way to reflect the changing tide of population. A shift to direct popular vote would, of course, immediately reflect that change.

Finally, another weakness of both the proportional division and district systems which defies correction is the fact that voters do not go to the polls in the same proportions throughout the country. For example, although Connecticut and South Carolina have almost identical populations and each has eight electoral votes, 1,200,000 people voted in Connecticut and only 500,000 in South Carolina in 1964. Their electoral votes were of equal weight, however, and would continue to be so under either the district or proportional systems.

Direct Election of the President

After exhaustive analysis of the alternatives available, the American Bar Association's Commission on Electoral College Reform proposed "the direct election of the President by the people of the several states." The draft of their proposed constitutional amendment was introduced jointly in 1967 by Senate Republican Leader Everett McKinley Dirksen of Illinois and House Judiciary Committee Chairman Emanuel Celler, Democrat of New York.

Under the ABA plan the President and Vice President would be directly elected by the people. As at present, the legislatures of the various states could prescribe qualifications respecting age and residence of voters. The ABA proposal would grant to Congress, however, the power to establish uniform qualifications in these matters if necessary. The candidate receiving the largest number of votes, if it was at least 40 per cent of the total, would be declared the victor. If no one received 40 per cent there would be a run-off election between the two leading candidates.

A direct vote system has many obvious virtues. It is in harmony with American political tradition since all other elections are similarly based.² Each time the American Institute of Public Opinion (Gallup Poll) asks people whether they would approve abolition of the Electoral College in favor of popular election, upwards of 65 per cent approve and less than a fourth oppose the idea.

It would never be possible for a candidate receiving fewer votes than his opponent to become President. Each voter would be treated equally, not only within his own state but also nationwide, including the District of Columbia.

No one's vote would be wasted anywhere. Under the present system all voters who vote for the candidate losing in their state have, in effect, had their influence cancelled. Under the district system every voter within each congressional district who backs the local loser would lose his vote on the national level. Under the proportional system the resident

² Only two states, Georgia and Maryland, have had any indirect method of nominating major public officials, but their mini-electoral colleges were declared invalid by the Supreme Court in 1963.

of any big state, while not losing his vote, would have it greatly devalued because of the malapportionment of the Electoral College.

The provision for a run-off is not unique. It is the only fair way. Most people have voted in some type of run-off election at one time or another, if not in a state or local election, then in some club or fraternal organization.

Only once in the nation's history has any candidate for President failed to receive 40 per cent or more of the vote, even when there have been powerful third- and fourth-party movements. The one exception was in 1860 when Abraham Lincoln received 39.8 per cent of the popular vote even though there were no Republican Electors on the ballot in 10 of the 33 states. If past history is any guide, a run-off election is extremely unlikely. Even if it were required, however, it would not be an extraordinary concept for people to accept.

Why No Reform?

If this system is the most equitable of all proposed reforms, with overwhelming public support and the backing of many key members of Congress, why has it never been adopted?

The reasons are many and complex. One of the most important is the reverence with which the American people view the constitution. The constitution has been changed only when crisis or the threat of crisis has become fairly discernible. The deadlock of 1800 brought speedy enactment of reform in the way the Electors cast their votes for President and Vice President. The trauma surrounding the assassination of John F. Kennedy in 1963 hastened enactment of a provision concerning the disability of the President, succession to that office and filling a potential vacancy in the Vice Presidency when he becomes President.

Historically, the smaller states have enjoyed their overrepresentation in the Electoral College. Still fearful that the "big states" will dominate, many adherents of states' rights have clung to the present distribution of the electoral votes. Others have thrown their support behind a district or proportional division reform since they retain all the inequities the small states feel are to their advantage and yet destroy the winner-take-all features which enhance the power of populous states.

The larger states have believed it essential that the winner-take-all system be continued. John F. Kennedy, when still a member of the United States Senate, delivered one of the most impassioned and persuasive defenses of it. His reasoning was as follows: At that time, vir-

tually every state legislature was badly malapportioned, favoring the rural areas over the cities and suburbs. At the same time there were gross inequities in the manner in which many states drew their congressional district lines. Again, rural areas were favored over the suburbs and big cities. The United States Senate consists of two men from each state, irrespective of the population differential. Hence, only in the office of the President could the urban-suburban majority make its sentiment felt. A shift to the district or proportional system would have destroyed this one source of influence for the metropolitan area resident. Until some adjustments were made in the other inequities within our system, John Kennedy appealed, out of a sense of fair play, for the retention of another type of "check and balance."

Times Have Changed

Conditions have suddenly changed. An idea seems to have come of age. Residents of the small states, aware that the winner-take-all system is increasingly depriving them of their voice in selecting the President, are endorsing the idea of direct popular vote. It has been receiving the support of senators from small New England states and rural southern constituencies, too. All 50 state legislatures have now been reapportioned on the basis of population and the nation has recently undergone a massive redrawing of congressional districts. The compensating inequities are being eliminated. Hence, the balance of injustices inherent in the Electoral College seems to be tilting toward the big states. Although they are still underrepresented in the Electoral College, it is true that, after 1972, a bare plurality of the 10 largest states could elect a man President even if he failed to get a single vote in all the remaining 40. Such an extreme example is unlikely, but a minority President is a distinct possibility.

Finally, a vision of crisis and disaster has become sufficiently clear to make people willing to approach the much-amended Article II of the constitution with a more critical eye.

Against Direct Election

There are still other less selfish, less provincial, less archaic arguments against going to direct election of the President:

1. It could lead to the development of splinter parties. Opponents note that there might be greater incentive for third parties to enter the picture in the hope of preventing any candidate from receiving 40 per

cent of the popular vote. While they would have no hope of winning the Presidency for their own man, they would be in a powerful bargaining position to throw their support to one candidate or the other in the run-off.

Is this necessarily true? Under the present system any party with a small regional appeal can split the vote of the major parties and have an excellent chance of receiving all the electoral votes of some states, courtesy of the winner-take-all system. Historically, the larger third-party movements in the United States have been provincial in their appeal. Former Governor George Wallace of Alabama made no secret of the fact that his strategy was to capture several southern states for himself and divide the vote in a sufficient number of northern industrial states to split them between the major party contestants and throw the election into the House of Representatives. In the House, if there is a close division between party control of the 50 state delegations, behind-the-scenes bargaining is far more possible than before the electorate at large. The deadlock of 1876 was easily broken when southern representatives struck a bargain with the Republican presidential aspirant in order to achieve certain advantages for their region. Governor Wallace's statements about a "deal" regarding less vigorous federal enforcement of civil rights legislation smacked strongly of exactly the same idea.

The Populist movement and, later, the Progressive party of the 1920s (not to be confused with the party led by Theodore Roosevelt) had their greatest strength in the states of the upper midwest and the plains. Such geographic groupings of states under the present system are all the more potent. We are becoming a more genuinely two-party nation. The industrial states where party competition has become extraordinarily intense could cancel each other out, giving a less-populated geographic bloc the opportunity to throw the election into the House where their representatives could bargain unseen by the public.

Any candidate in a popular run-off who makes a deal with a splinter party exposes himself to immediate loss of some of his supporters. If a candidate of the militant new left or extreme right were suddenly to switch and endorse a candidate who only weeks before he had pilloried, the public would "smell a rat."

Under the district system a third party could gain strength. A small party with a narrow appeal to any one major ethnic group, for instance, could count on carrying some congressional districts scattered throughout the country, picking up whole electoral votes. Congressional elections of

the President might then become as commonplace as the founding fathers first feared.

The proportional system also works to the advantage of a small party that can poll 5 per cent or more of the popular vote within a state. Particularly, since the Electoral College is weighted to favor less populous areas, candidacies on the basis of race or economic interests (perhaps in combination) could have great potential.

In short, the nation has arrived at a point where any electoral system might give rise to a third-party movement. On the basis of past voting records, however, it would seem that such a movement would be more likely under the present system or its district or proportional division alternatives. All governors are elected by direct popular vote, and no third-party candidate has been able to deprive the major parties of that office for many years. Nationwide, a similar pattern is probable.

All the states have much to gain from a shift to direct popular election of the President. The advantage of the winner-take-all system for the big states cannot begin to offset its disadvantages if the trend toward two-party competition continues. The propensity of the big states to nullify each other was clearly demonstrated in the elections of 1948 and 1960. In 1948 New York went to the Republicans; in 1960, to the Democrats. Its favorite was the winner in 1960, but not in 1948. In California the exact opposite was true—in 1948 it went with the Democratic winner; in 1960, the Republican loser. Pennsylvania followed the New York example. Illinois seems to have made a correct "guess" both times, but the state's 1960 election results are still in dispute. Out of 4,750,000 votes cast, less than 9,000 separated the winner and loser. Ohio went for Truman in 1948 and Nixon in 1960, and so it has gone among all the pivotal states.

One of the most consistent complaints of small-state representatives has been that the present electoral system forces the parties to concentrate their efforts in just a few of the largest states. The direct popular vote could do much to correct this. In 1948 the two biggest states carried by President Truman were California and Illinois. His popular vote margin, however, was larger in Oklahoma, Missouri, West Virginia, Kentucky, and six other less populated states than in California and Illinois combined. Montana, New Mexico and Utah each provided a greater margin than California alone.

In 1960, when he received 49.3 per cent of the total popular vote, Richard Nixon carried California by a bare 36,000 votes. Indiana and Iowa gave him margins of more than 200,000 votes each, and some of the

sparsely populated plains states produced margins of 50,000 to 150,000 votes. Although the parties cannot ignore the larger states, they would have great incentive to get out the vote in the small states where they were strongest, or to campaign in all states and not "write-off" some areas as beyond redemption. A direct popular vote system would aid development of a true two-party system and continue the trend toward nationalization of the vote.

2. Vote fraud would increase. Would it really? Twenty-seven electoral votes depended on the closely contested Illinois vote in 1960. Many still claim that those 27 votes and the election were stolen. In conjunction with the equally close election in a couple of other states, it meant the difference between choosing President Kennedy and throwing the election into the House of Representatives. Under the present system, particularly in the states with large electoral votes where the popular margins have tended to be very close, fraud is terribly tempting. In New York the perpetrator of vote fraud might be responsible for delivering to his candidate 16 per cent of all the electoral votes needed to elect him President. It is a much more tempting prospect than acquiring a few thousand votes out of a total in excess of 70 million. Under the district system vote fraud could become extraordinarily prevalent since so many congressional districts are under the total control of a single political machine, be it urban or rural. Under the proportional system the temptations might not be as great as with either the present or district systems, but, since each vote stolen will represent a percentage of an electoral vote, it becomes more enticing than under the direct election system where one vote counts as only one vote.

3. The federal government would take over all election machinery. The specter of voting fraud and the proposed constitutional provision granting Congress power to establish a uniform voting age and residence requirement bothers some people. To begin with, any election for a federal position—congressman, senator or Elector of the College—is subject to investigation by federal authorities at the present time. Stealing votes in these elections is a federal offense. No increased federal intervention need be feared, particularly if, as noted above, vote fraud would become less meaningful.

It is possible that, if some states were to develop radically different age and residence requirements, an unfair advantage might accrue to the states with a short residence and low voting age. Only then would the federal government be apt to enter the picture, and it would be ruling only on a voter's right to cast a ballot in a federal election. If

California were to allow 18-year-olds to vote, swelling its electoral rolls by hundreds of thousands, Congress might take action restricting the age to 21. The result would be that 18-year-olds would continue to have the right to vote for any state or local official but not for members of Congress or the President. Congress could lower the voting age for a national office, but it would still be within the power of the states to place restrictions on state and local elections. The infringement on "states' rights" seen in this provision is more imagined than real.

Conclusion

From its inception the Electoral College has been the object of criticism, sometimes vigorous, sometimes only crossly nagging. But the current heavy barrage against it is different and is unlikely to abate until there is substantial change. Never before have influential national organizations adopted reform of this venerable institution as high policy. Never before have the leaders of both parties been in such solid agreement on the issue.

While the exact form or the precise wording of an amendment instituting change may not be certain, it appears the Electoral College will not prevail much longer, at least in its present form.

WALLACE CANDIDACY RAISES FEARS OF ELECTORAL STALEMATE

The third-party candidacy of former Alabama Gov. George C. Wallace (D 1963-67) has raised widespread speculation that he might win enough Southern-based electoral votes to deprive either the Republican or Democratic Presidential candidate of an electoral vote majority. Should this occur, the 1968 election might be the first since 1824 to be referred to the House of Representatives for final solution. Latest Gallup Poll figures show Wallace's percentage of the popular vote up to 16 percent—34 percent in the South and 10 percent in the North.

No observer doubts that a major third-party candidate like Wallace, by siphoning off popular votes from the two major-party candidates, can have an important impact on the crucial electoral vote outcome. A minor-party contender—either a conservative like Wallace or a left-wing peace candidate on the other end of the spectrum—can play a key role in determining which major party wins the most electoral votes, even if the minor party's own popular vote, as in many past years, declines sharply from early expectations. In 1948, for instance, the vote for the left-wing Progressive party led by former Vice President Henry A. Wallace was only 2.4 percent of the national total but accounted for more than the margin of defeat which cost President Harry S. Truman the 74 electoral votes of New York, Michigan and Maryland. The States Rights (Dixiecrat) movement led by South Carolina's Strom Thurmond also won only 2.4 percent of the national popular vote but cost Truman the 39 electoral votes of four normally Democratic Southern states. (Truman was fortunate to enjoy a 4.5 national percentage point lead over Republican Thomas E. Dewey and thus won election with 303 electoral votes, 37 more than the bare majority of 266 required for victory in that election. *For the vote in all Presidential elections, see Weekly Report p. 1297.*)

Having an impact on the major-party vote, however, is different from seizing a balance-of-power position in the electoral college or in House voting for a President. Major hurdles, both in the politics of 1968 and the way the electoral college system operates, stand between Wallace and the position he seeks as power broker in a stalemated Presidential election.

An example of major-party determination to freeze Wallace out of a powerful bargaining position was apparent the week of July 8, in statements by Republican and Democratic officials. They reacted positively to a proposal that House Members pledge in advance to vote for whichever Presidential candidate had received a plurality of the popular vote, should there be an electoral college stalemate resulting in referral of the election to the House.

This Congressional Quarterly Fact Sheet reviews the potential effects of a major third-party candidacy under the existing electoral system, the likelihood of an electoral stalemate in 1968, and the various political

and legal contingencies which might arise. Sections of the Fact Sheet are abridged from a recent book on the electoral college system, *The People's President* (Simon & Schuster, 1968), by Neal R. Peirce, political editor of Congressional Quarterly.

Wallace's Plans

Wallace has repeatedly said he hopes to win the 1968 Presidential election on his own right, by capturing enough states to pile up a majority in the electoral college. He points out that a candidate needs only a plurality, not an absolute majority, of the popular vote to win all of a state's electoral votes and suggests that his own popularity may be at or above the 34 percent of the popular vote necessary to win states in a close three-way contest. (Wallace could not, of course, win a state with 34 percent of the popular vote unless the major party candidates split with just 33 percent each.)

Having first asserted his hopes of being elected President himself, Wallace has frequently acknowledged that he might fall short of winning but still be in a balance-of-power position. This could be the case if both major-party candidates fall short of the absolute electoral vote majority (270 of 538) required for election as President. Wallace has fostered the idea that he might then embark on negotiations with one of the major parties. Asked during a May 1967 interview with the *Richmond News Leader* if he would try to make "a deal" with one of the major parties under those conditions, Wallace said: "When you say enter into a 'deal,' of course the word 'deal' doesn't sound good. Enter into a solemn covenant with the people of our country, face to face with them. That we will provide a change in domestic policy, we will allow representation upon the Supreme Court of the United States of people who had

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experience in the judicial field, instead of putting political hacks on the Court."

In a statement released by his campaign headquarters later in 1967, Wallace went into some detail on what might happen if he won enough electoral votes to hold the balance of power. Quotes from the Wallace position paper:

"To win the general election, a candidate must receive a majority vote in the electoral college. This means at the present time he must get 270 of the 538 votes in the electoral college. Actually, the popular vote is not decisive. The electoral vote is what counts.... Many experts agree that with a strong independent candidate running in 1968, it would be most difficult for either of the two major parties to get 270 electoral votes. So what happens? The House of Representatives picks the President from the top three candidates."

Wallace goes on to point out that in an election by the House, each state has a single vote, determined by majority vote of its delegation, that when a delegation splits evenly it loses its vote, and that an absolute majority of the states (26) is required for election. In this situation, Wallace says, "the independent party candidate suddenly finds himself in an enviable position.... He would be in a position to bargain for concessions by the other parties."

But even if Wallace were to win enough states to deprive either of the major-party candidates of a prospective electoral majority, the election might never reach the House. As Wallace outlines the situation: "If the election is that close, it is entirely possible that it might be settled by negotiation in the electoral college

before it reaches the House of Representatives. Before you go into the House, you go into the electoral college. If we hold the balance of power, we may decide the question in the electoral college because one party may have a major concession to make to the people of our country, a solemn covenant to them." Wallace goes on to point out that Presidential electors are "free agents." One of the major parties, he proposes, might be willing "to make a covenant (not a deal) with the American people. They might...see this is a great movement and be willing to concede that local government ought to be restored and that they cannot run the school systems, the hospitals and other domestic institutions. They might say that and make a covenant with the American people, and when they do that, we might decide to let our votes go to them, if we felt we didn't have a chance in the House."

At a press conference in Pittsburgh, Pa., Feb. 19, 1968, Wallace was even more specific about the conditions he would lay down for throwing his support to one of the major candidates if he failed to win the election himself. Wallace said he would release his electoral votes to the candidate who promised to support:

1. Criminal indictment "of people advocating a Viet Cong victory" (also stated as "punish treason by putting some of these (Vietnam) dissenters in jail");
2. Elimination of the federal antipoverty program, which has "made a few people rich and done nothing to help the poor";
3. A drastic curtailment of the foreign aid program, including elimination of aid to all nations not assisting the United States in Vietnam.

Constitutional Provisions on Selection of President

The following Constitutional provisions govern the manner of the selection of the President:

Article II, Sec. 1, Clause 2: 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.

Amendment 12 (enacted in 1804, superseding Article II, Sec. 1, Clause 3): 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 House of Representatives, open all the certificates and the votes shall 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. 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 the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March* next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President†—The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article II, Sec. 1, Clause 4: The Congress may determine the time of choosing of the electors, and the day on which they shall give their votes, and the day shall be the same throughout the United States.

Statutory provisions implementing the Constitutional provisions for election of a President are included in the United States Code, Title 3, Chapter 1—Presidential Elections and Vacancies.

*Changed to Jan. 20 by the 20th Amendment, ratified in 1933.

†Under the 20th Amendment, Sec. 3, in case a President is not chosen before the time for the beginning of his term, the Vice President-elect shall serve as President until a President shall have qualified.

4. "A promise to make a strong stand for law and order";

5. "Abandon any type of civil rights legislation";

6. Appointment of "people differently oriented to the Supreme Court" and possibly review of Supreme Court decisions by a tribunal composed of the 50 state chief justices.

7. "Turning back to the people of the states the right to control their democratic domestic institutions" including decisions affecting school and hospital integration, open housing legislation, reapportionment and Congressional redistricting.

In a June 16, 1968, television interview (Issues and Answers—ABC-TV), Wallace reiterated his intention of winning the election outright and repeated his stand on a "covenant" with one of the major parties if he failed.

Constitutional Background

The requirement for an absolute majority in electoral college voting to choose a President was first formulated by the Constitutional Convention of 1787 and redefined in the 12th Amendment (1804). (*For 12th Amendment text, now the governing law, see box, p. 2.*)

A major portion of the debate at the Constitutional Convention over the method of electing a President was consumed by a discussion of large- versus small-state interests. In the electoral college system finally agreed upon, the founders thought they were making a major concession to the large states since those states, through their heavy Congressional representation, would automatically dominate the electoral vote. (Each state is accorded as many electors as it has Senators and Representatives combined.) But the writers of the Constitution believed that many Presidential electors would generally vote for men from their own state or region, making a majority choice in the electoral college unlikely and throwing most elections into the House. Everyone anticipated a virtually unanimous vote for George Washington in the first election, but most of the delegates apparently agreed with George Mason of Virginia that "19 times in 20," the final choice of a President would be made in Congress. (A strong two-party system was not foreseen.)

The major concession to the small states, as the founders saw it, was the provision that in a Presidential runoff in the House of Representatives, each state, regardless of population, would have a single vote. Thus while the large states could in effect nominate Presidential candidates through the electoral college system, the final choice was expected to rest normally with the House, where the small states would have a great advantage.

The growth of a vigorous two-party system quickly altered the nature of Presidential elections by concentrating all the electoral strength on two principal candidates. Only in two elections (1800 and 1824) has one of the major candidates failed to score an electoral vote majority. Even in those elections, it was not big-versus-small state antagonisms but totally different issues which sent the election to the House and determined the final outcome. (*For background on 1800 and 1824 elections, see p. 4.*)

Except for the founding fathers, few Americans have ever found much commendable in the system of contingent election in the House. Thomas Jefferson wrote in

1823: "I have ever considered the constitutional mode of election ultimately by the legislature voting by states as the most dangerous blot on our Constitution, and one which some unlucky chance will some day hit." Martin Van Buren in 1826 declared that, "There is no point on which the people of the United States (are) more perfectly united than upon the propriety, not to say the absolute necessity, of taking the election away from the House of Representatives." Oliver P. Morton of Indiana, a leading reform advocate, said in 1873: "The objections to this constitutional provision for the election of the President need only to be stated, not argued. First, its manifest injustice. In such an election each state is to have but one vote. Nevada, with its 42,000 population has an equal vote with New York, having 104 times as great a population. It is a mockery to call such an election just, fair or republican." Morton then produced figures to show the gross malapportionment inherent in a House election, concluding that "the rotten-borough system was a mild and very small bagatelle" in comparison.

Under the 1960 Census apportionment, 76 Members of the House, drawn from 26 states, could elect a President in a House of 435 Members representing 50 states. The 26 states with an aggregate population of 30.7 million people would be able to outvote 24 states with a total population of 148.6 million.

Likelihood of Electoral Stalemate

Two conditions must prevail to prevent one of the major-party candidates from winning the required electoral vote majority: the presence of one or more potent minor parties, able to capture electoral votes in a number of states, and a very close contest between the two major parties. In 1968, at least one third party—Wallace's—is likely to take a number of electoral votes away from the major parties. And according to many public opinion polls, the two major parties may run very close races in the general election.

Over the course of American history, potent third parties and close elections have rarely coincided. But there have been six elections in which a relatively minor shift of popular votes could have caused an electoral stalemate:

1836—Democrat Martin Van Buren received 764,198 popular and 170 electoral votes, while Whig William Henry Harrison received 549,508 popular and 73 electoral votes. But splinter Whig candidates received 40 electoral votes, and a splinter Democrat received 11 electoral votes. A shift from Van Buren to Harrison of 14,061 votes in one state—New York—would have deprived Van Buren of an electoral college majority. Either the election would have gone to the House, or the splinter Whigs would have unified their votes behind Harrison and made him President despite his clear minority in the popular vote.

1856—Democrat James Buchanan received 1,839,237 popular and 174 electoral votes, while John C. Fremont, the first Republican candidate for the Presidency, received 1,341,028 popular and 114 electoral votes. Millard Fillmore, the last of the Whigs, received 849,872 popular and 8 electoral votes. A shift of 17,427 popular votes from Buchanan to Fremont in two states (Indiana and Illinois) and from Fillmore to Fremont in one state (Delaware) would have deprived Buchanan of an

(Continued on page 1815)

The Two Elections Decided by the House—1800 and 1824

Election of 1800. This election was the last held under the original provisions of the Constitution on Presidential elections. They provided that each elector would have two votes of equal weight, undifferentiated as to his Presidential and Vice Presidential preference, and that the candidate with the most electoral votes (if cast by a majority of the electors) would be President and the runner-up Vice President.

The Federalists backed President John Adams for re-election and Gen. Charles Pinckney for Vice President. The Republicans (Anti-Federalists, or later Democrats) chose Vice President Thomas Jefferson as their Presidential candidate and backed Aaron Burr of New York for Vice President. After a heated campaign, Jefferson and Burr each received 73 electoral votes, Adams 65 and Pinckney 64. By failing to instruct at least one of their electors to withhold a vote from Burr, the Republicans had caused a tie in the electoral vote—necessitating a contingent election in the House.

Starting in late December 1800, when the outcome of the electoral vote had become common knowledge throughout the country, the Federalists laid plans to thwart Jefferson's election. The lame-duck Congress, with a strong Federalist majority, would still be in office for the electoral count, and the possibilities for intrigue were only too apparent. The Federalist plan was to throw the support of the Federalist House delegations to Burr, thus electing a cynical and pliant politician over a man the Federalists considered a "dangerous radical." This became the general Federalist strategy, even though Alexander Hamilton remonstrated against it. "I trust the Federalists will not finally be so mad as to vote for Burr," Hamilton wrote. "I speak with intimate and accurate knowledge of his character. His elevation can only promote the purposes of the desperate and the profligate. If there be a man in the world I ought to hate, it is Jefferson. With Burr I have always been personally well. But the public good must be paramount to every private consideration."

When the House of Representatives met to choose the President on Feb. 11, it became apparent that the advice of Hamilton had been rejected. A majority of Federalists in the House insisted on backing Burr over Jefferson, the man they despised more. Indeed, if Burr had given clear assurances he would run the government as a Federalist, he might well have been elected. But Burr was unwilling to make those assurances; and as one chronicler put it, "no one knows whether it was honor or a wretched indecision which gagged Burr's lips."

In all, there were 106 Members of the House at the time, consisting of 58 Federalists and 48 Republicans. If the ballots had been cast per capita, Burr would have received 53 to Jefferson's 51. But the rule of one vote per state tended to favor Jefferson. On the first ballot, he received the votes of eight states—one short of a majority of the 16 states then in the Union. Six states backed Burr, while Vermont and Maryland were equally divided, so they lost their

votes. By midnight of the first day of voting, 19 ballots had been taken and the deadlock remained.

In all, 36 ballots were taken before the House came to a decision on Feb. 17. Predictably, there were men who sought to exploit the situation for personal gain. Jefferson wrote on Feb. 15: "Many attempts have been made to obtain terms and promises from me. I have declared to them unequivocally that I would not receive the government on capitulation; that I would not go in with my hands tied."

The impasse was finally broken on the 36th ballot on Feb. 17, when Vermont and Maryland switched to support of Jefferson. Delaware and South Carolina also withdrew their support from Burr by casting blank ballots. The final vote: 10 states for Jefferson, 4 for Burr.

Election of 1824. Four men—all members of Jefferson's Republican party, by now known as the Democratic party—competed for the Presidency in 1824. The Congressional caucus system of nominating candidates had broken down, and national party conventions had yet to be invented. So all four ran in the general election: John Quincy Adams of Massachusetts, Henry Clay of Kentucky, Andrew Jackson of Tennessee and William Crawford of Georgia.

The rather incomplete national popular vote total showed Jackson first with 152,933 votes, followed by Adams with 115,696. The electoral count was widely split. Jackson won Pennsylvania, New Jersey and a majority of the Southern states for a total of 99 (out of the national electoral vote pool of 261). Adams won all of New England, a total of 84 electoral votes. Crawford had 41 votes, Clay 37. Thus on Feb. 9, 1825, when the electoral vote had been counted, it was clear that no candidate had a majority and it fell to the House to select the President. In the House, the real choice lay between Jackson and Adams, the top contenders, and the key man whose support had to be obtained was Henry Clay (who was Speaker of the House at the time).

From the start, Clay apparently intended to support Adams as the lesser of two evils. But before the House vote, a great scandal erupted. A Philadelphia newspaper printed an anonymous letter alleging that Clay had agreed to support Adams in return for being made Secretary of State. Clay immediately denied the charge and pronounced the writer of the letter to be "a base and infamous character, a dastard and a liar." But Jackson believed the charges and found his suspicions vindicated when Adams, after the election, did appoint Clay as Secretary of State. "Was there ever witnessed such a bare-faced corruption in any country before?", Jackson wrote to a friend.

When the House met to vote, Adams was supported by the six New England states and New York and, in large part through Clay's backing, by Maryland, Ohio, Kentucky, Illinois, Missouri and Louisiana. Thus a majority of 13 delegations voted for him—the bare minimum he needed for election, since then there were 24 states in the Union at the time. The election took place on the first ballot.

electoral college majority and thrown the election into the House.

1860—Republican Abraham Lincoln received 1,867,198 popular and 180 electoral votes, while Stephen A. Douglas (Northern Democrat) received 1,379,434 popular and 12 electoral votes, John C. Breckinridge (Southern Democrat) received 854,248 popular and 72 electoral votes, and John Bell (Constitutional Union) received 591,658 popular and 39 electoral votes. A shift from Lincoln to Douglas of 18,050 votes in four states (California, Oregon, Illinois and Indiana), or of 25,069 votes from Lincoln to Douglas in New York alone, would have deprived Lincoln of an electoral college majority and thrown the election into the House, where Lincoln's Republicans controlled only 15 of the 34 state delegations.

1892—Democrat Grover Cleveland, running for the third time, received 5,556,982 popular and 277 electoral votes, while Republican Benjamin Harrison received 5,191,466 popular and 145 electoral votes. James B. Weaver, the Populist candidate, received 1,029,960 popular and 22 electoral votes. A switch of 29,654 popular votes in three states (Indiana, New York and Wisconsin) would have denied either major-party candidate a popular vote majority and thrown the election into the House.

1948—Democrat Harry S. Truman received 24,179,345 popular and 303 electoral votes, while Republican Thomas E. Dewey received 21,991,291 popular and 189 electoral votes. Strom Thurmond, the States Rights (Dixiecrat) candidate, received 1,176,125 popular and 39 electoral votes, while Henry A. Wallace, the Progressive candidate, received 1,157,326 popular but no electoral votes. A switch of 12,487 votes from Truman to Dewey in California and Ohio would have denied both candidates an electoral college majority and thrown the election into the House.

1960—John F. Kennedy (D) received 34,220,984 popular and 303 electoral votes, while Richard M. Nixon (R) received 34,108,157 popular and 219 electoral votes. Unpledged elector slates (composed of Southern Democrats opposed to their party's national ticket) received 638,822 popular votes and 14 electoral votes, which they cast for Sen. Harry Byrd Sr. of Virginia in the electoral college. (Byrd also received the vote of one dissident Republican elector from Oklahoma.) A shift of 8,971 popular votes from Kennedy to Nixon in Illinois and Missouri would have prevented either man from receiving an electoral college majority.

Potential States for Wallace

Wallace's chances of winning electoral votes outside the South are considered minimal. The Gallup Poll July 14 reported Wallace's strength at 10 percent outside the South—11 percent in the East, 8 percent in the Midwest and 12 percent in the West. (For purposes of this test, it was assumed that Richard M. Nixon would be the Republican nominee and Vice President Hubert H. Humphrey the Democratic candidate.) A vote total as large as 10 percent might have an important effect on which party won several key Northern states, but it would not result in electoral votes for Wallace himself. (Early in 1968, it was widely assumed that Wallace would hurt the Republicans more than the Democrats in the North. But since then, commentators have been far more cau-

Wallace Vote

Gallup Poll findings on the percentage of a national cross-section of voters likely to vote for Wallace in a Nixon-Humphrey-Wallace Presidential contest:

	July	April
National	16%	9%
Men	20	10
Women	13	9
21-29 years	18	14
30-49 years	14	8
50 and over	18	9
Republicans	8	2
Democrats	16	9
Independents	25	16
College background	8	5
High school	15	10
Grade school	26	12
East	11	2
Midwest	8	4
South	34	26
West	12	4
Protestants	19	11
Catholics	10	4
Professional and Business	8	6
Clerical and Sales	20	8
Manual labor	20	12
Farmers	18	15
Union families	17	9
Non-union	16	9

tious in their analysis of the impact of the Wallace vote—especially since it comes most heavily from educational and income groups that are traditionally Democratic. (See box on Gallup estimate of Wallace vote, above.)

Wallace's significant strength in terms of potential electoral votes is confined to the South. In that region as a whole, he was supported by 34 percent of the respondents in Gallup's July reading of strength in a Nixon-Humphrey-Wallace race. Three months earlier, in April, a similar Gallup Poll had shown only 26 percent South-wide support for Wallace. A Gallup reading in June showed that Wallace was favored by 47 percent of the voters sampled in the five Deep South states—Alabama, Georgia, Louisiana, Mississippi and South Carolina. The consensus at the June 17 Southern Governors Conference was reportedly that Wallace would win the five Deep South states, with their 47 electoral votes, and could possibly take Florida, Tennessee, Arkansas and North Carolina as well, for 44 more electoral votes. Most observers of Southern politics agree

that, with few exceptions, the states Wallace carries would probably go for Nixon in a straight two-way race between Nixon and Humphrey. In Southern states Wallace failed to carry, he might divide each state's conservative vote with Nixon in such a way as to permit Humphrey to carry the state, even with less than a majority of its popular vote. It is this possibility which has prompted some Republican leaders, especially Florida Gov. Claude R. Kirk Jr., to attack Wallace as a major threat to the GOP's chances in the region in 1968.

The political history of the five Deep South states indicates a special affinity for a Wallace type of candidacy. In 1948, Thurmond carried four of these states; in 1960, two of them cast electoral votes for unpledged electors (who subsequently voted for Harry Flood Byrd for President); in 1964, all five went for Goldwater:

DEEP SOUTH ELECTORAL VOTES

State	1948	1960	1964
Alabama	11	6(of 11)	10
Georgia	--	--	12
Louisiana	10	--	10
Mississippi	9	8	7
South Carolina	8	--	8
Totals	38	14	47
	for	for	for
	Thurmond	Unpledged	Goldwater
		Electors	

Before the Deep South bloc is automatically conceded to Wallace, however, the rapid growth of the Negro vote, spurred by the Voting Rights Act of 1965, should be considered. In fact, the increase in the Negro vote since 1964 exceeds the 1964 Goldwater plurality in Louisiana and constitutes a major portion of it in several other states of this region:

SOUTHERN NEGRO REGISTRATION

State	Registered Negroes, 1964	Registered Negroes, 1968	Increase	Goldwater Plurality, 1964
Alabama	111,000	248,432	+137,432	268,353
Georgia	270,000	322,496	+ 52,496	94,043
Louisiana	164,700	303,148	+138,448	122,157
Mississippi	28,500	181,233	+152,733	303,910
South Carolina	144,000	190,017	+ 46,017	93,348

SOURCE OF REGISTRATION FIGURES: U.S.

Commission on Civil Rights; also Voter Education Project of the Southern Regional Council

It should also be noted that Goldwater was the only conservative nominee on the ballot in these states in 1964, while in 1968 Wallace and the Republican nominee will be splitting the conservative vote. Thus Wallace, while likely to win several Southern states, is not automatically assured of a substantial Southern bloc. The extent of his Southern support will depend not only on his own campaign, but on the campaign stances of the major-party candidates, how close the major-party vote is balanced in the South and how much it represents of

the total vote in each state,* and the turnout by newly enfranchised Negroes in the region.

POPULAR-ELECTORAL VOTE RELATIONSHIP

If Wallace does win a number of Southern electoral votes, the next question is, how close must the national election be for Wallace's electors to control the balance of power?

The relationship between popular and electoral votes can never be predicted with surety, but historical patterns do indicate a general correlation between the two. In effect, a popular vote lead has a "multiplier effect" on a candidate's electoral vote total. As the popular vote lead of any candidate increases, the chances increase that he will not only win in the electoral vote, but that his percentage of the electoral vote will be greater than his percentage of the popular vote. In 1948, for instance, President Truman won 52.4 percent of the two-party popular vote but 57 percent of the electoral vote. In 1964, President Johnson won 61.3 percent of the two-party popular vote but 90 percent of the electoral vote.

An added complication appears when a minor-party candidate is able to win electoral votes. Since an absolute majority of electoral votes is required to win election as President, the electoral vote the minor-party candidate receives reduces the pool of remaining electoral votes from which one of the major-party candidates must build his absolute majority. The table below shows the 1968 situation, based on a varying number of possible states for Wallace:

Assuming Following States for Wallace	Electoral Vote Total for Wallace	Percentage of Remainder of National Electoral Vote Pool a Major Candidate Would Need to Win
Ala., Ark., Fla., Ga., Miss., N.C., S.C., Tenn., Texas, Va. (11)	128	66% (270 of 410)
Ala., Ga., La., Miss., S.C. (5)	47	55% (270 of 491)
Ala., Miss. (2)	17	52% (270 of 521)

In order to win his needed 52 to 66 percent of the electoral vote in the rest of the country, however, a major-party candidate would not need a popular vote lead of that magnitude. The "multiplier effect" could be expected to function in the remaining 39 to 48 states where the major-party candidate would have to build up his electoral college majority.

Politically, the key factor would be which of the major-party candidates would be able to win the seven biggest states, which control 210 electoral votes (out of the 270 majority required)—New York (43), California

**Examples: If Humphrey and Nixon each received exactly 33 percent of a state's popular vote, Wallace could win it by taking 34 percent. But if either of the major-party candidates could increase his vote to 40 percent, then Wallace would have to hold the second major-party candidate to only 19 percent of the state vote in order to win the 41 percent he would need for a plurality.*

(40), Pennsylvania (29), Illinois (26), Ohio (26), Texas (25) and Michigan (21). No President has been elected since 1920 without carrying a majority of these states. Truman won four of the seven in 1948, Kennedy five of the seven in 1960, President Johnson all seven in 1964. The average popular vote in these major states has not deviated more than 1 percent from the national result in the past four Presidential elections.

In all probability, a major-party candidate able to outpoll his closest competitor by 2 to 5 percentage points in the major-party vote outside the Wallace states would win a clear electoral college majority. This finding is based on a computer analysis by Dr. Charles Bischoff of Yale University, derived from research originally commissioned for the book, *The People's President*.^{*} Conclusions from Bischoff's study, based on varying numbers of states which Wallace might carry and using the past four Presidential elections as a base of likely voting patterns:

If Wallace carries 11 states (the Old Confederacy)

—For a major-party candidate to win election in this contingency, he would probably have to lead his competitor by a minimum of 4 to 5 percentage points in the popular vote of the 39 other states (and the District of Columbia). This would constitute a 52 to 48 percent or 52.5 to 47.5 percent division of the non-Southern major-party popular vote and would normally translate into the 66 percent of the non-Southern electoral vote needed for election. Any smaller margin would give Wallace an excellent chance to secure the balance of power in electoral college voting. On the average since 1952, a major-party popular vote lead of 3.1 percentage points in the non-Confederate states would have been sufficient to accumulate an electoral vote majority under these circumstances.

If Wallace carries the 5 Deep South states—In this contingency, a major-party candidate would probably win the election if he led his competitor by 2 percentage points in the other 45 states (and D.C.). On the average since 1952, he would have needed a lead of only 1.2 percentage points in the other states' two-party popular vote to win election.

If only 2 states—Alabama and Mississippi—go for Wallace—A 1-percentage-point lead in the popular vote of the other 48 states (and D.C.) would generally (though not always) be sufficient for a major-party victory under these circumstances. Since 1952, the average lead required would have been 0.9 percentage points.

It should be noted, however, that as soon as the popular vote percentage point gap between the two major-party candidates falls below 2 percent, the dangers

increase rapidly that the vagaries of electoral vote distribution may result in the election of the candidate who actually lost in the popular vote—regardless of any third-party candidacy. In his analysis of all states' voting patterns for *The People's President*, Bischoff found that in an election as close as the Kennedy-Nixon contest of 1960 (plurality 112,827), there is no better than a 50-50 chance that the national electoral vote will agree with the national popular vote. With a plurality of about 500,000 (or 0.57 percent based on a 70 million turnout), the verdict would still be reversed one time out of three. Even a plurality of 1 to 1½ million votes (1.1 to 1.7 percentage point lead) would not quite provide three chances out of four that the popular vote leader would win the election, and a 2-million-vote plurality (2.9 percentage point lead) might not suffice one time out of eight.[†]

Consequences of Electoral Stalemate

Should Wallace actually succeed in preventing either major-party candidate from obtaining an electoral vote majority, and thus enjoy his sought-after balance-of-power position, the country would face a period of uncertainty about the identity of the next President. As Wallace himself has made clear, there are two points at which the election then might be decided: among the electors before they actually vote, or failing that, in the House of Representatives.

BEFORE ELECTORAL COLLEGE VOTES

The regular Presidential election takes place Nov. 5, 1968, and, by law, the electors chosen by the people in each of the states must meet in the respective state capitals to vote for President on the first Monday after the second Wednesday in December—in 1968, Dec. 16. (The founding fathers directed that the electors meet in the separate states in the quaint hope that there would be no cabal or collusion among them. *For a more detailed discussion of electoral college law and customs, see 1967 Weekly Report p. 1883-1888.*)

Wallace would thus have 40 days in which to try to drive his bargain with one of the major parties. Assuming (which seems likely) that no fourth party wins any electoral votes and that Wallace electors follow his

^{*}Bischoff's method was to take the actual Presidential vote figures, state-by-state, for several past Presidential elections, isolate an arbitrary number of Southern states (11, 5 and 2, as in the chart above), and then adjust the popular vote for the major-party candidates upward or downward in all other states of the Union to see how large a popular vote lead one candidate would have to receive in those remaining states to win an electoral college majority. For a detailed analysis of Bischoff's methodology, see Peirce, *The People's President*, pp. 141-144. The findings in the book relate to chances of electoral college reversal of the popular vote outcome without regard to a third-party candidacy, but the methodology for the findings reported here were the same.

[†]These probability figures are based on all elections since 1920, including earlier ones in which the chances of electoral vote reversal in the popular vote count were greater than the most recent elections because of the distortions in the popular-electoral vote relationship created by the huge pool of "wasted" popular votes in the then-solidly Democratic South. But the odds of a misfire cited above are probably not inflated, especially under the conditions of 1968, when millions of popular votes may be cast for the regular Democratic and Republican Presidential candidates, perhaps with a strong edge to one or the other, in the very Southern states likely to register a plurality for Wallace. These major party popular votes in the Wallace states would introduce a new "wild card" into the system, very possibly increasing the chances of reversing the popular vote decision beyond the odds in the Bischoff study.

instructions to the letter*, Wallace would have complete power in this 40-day period to decide which of the major-party candidates should be elected President.

The loyalty of his pledged electors might depend upon how good a bargain Wallace was able to drive. There are only 16 states which require electors by law to vote for their party's Presidential candidate—Alaska, California, Connecticut, Colorado, Florida, Hawaii, Idaho, Maryland, Massachusetts, Nevada, New Mexico, New York, Oklahoma, Oregon, Tennessee, Virginia and the District of Columbia, with the possible exception of the border states in this group, none are likely to be carried by Wallace. The fear of political ostracism, not legal penalties, generally prevents electors from voting for anyone but the party's regular candidates.

Even if a state attempts by law to bind electors, there is doubt as to the constitutionality of the practice. Custom may have made electors into little more than instruments of the political parties, but the Constitution provides they shall vote by ballot, a procedure which would seem to imply they are free agents. The preponderance of legal opinion seems to be that statutes binding electors, or pledges they may give, are not legally enforceable. Even in Florida, Oklahoma and New Mexico, which provide that an elector would be guilty of a misdemeanor if he violated his pledge, an elector could vote against instructions if he was willing to bear the penalty—in Oklahoma, a \$1,000 fine.

Bargain with Wallace? The major question of this 40-day period would be whether either major-party Presidential candidate would consent to bargain with Wallace. The candidate might well feel that there would be stigma attached to him—and his party—if he dealt with Wallace as the price for the Presidency. (Former Vice President Richard M. Nixon July 16 told reporters in Philadelphia that “under no circumstances” would he “or Hubert Humphrey,” he was sure, enter into negotiations with Wallace in the event of an electoral college deadlock. Nixon said Wallace represents “a formidable force” in the Presidential election and might well carry three or four Deep South states, but that Wallace would have little “leverage” after Nov. 5.)

Should a secret deal be attempted between Wallace and one of the major-party candidates, the new President might risk later impeachment if the agreement involved nonenforcement of laws (such as civil rights statutes) which he must take an oath to enforce. Most likely, a secret deal would be unacceptable to Wallace and probably could not be kept secret anyway.

**A situation in which Wallace might have trouble controlling his electors would occur if one of the major-party Presidential nominees was within a few votes of a majority and could feasibly deal independently with renegade electors on the Wallace slates. The possibility of unfaithful electors, of course, exists in any close election. In 1960, a regularly elected Republican elector in Oklahoma, Henry D. Irwin, broke his pledge and voted on his own volition for Harry Byrd. (An ultra-conservative, Irwin claimed the founding fathers never intended that the propertyless participate in choosing the President.) Thus either opportunistic or ideological factors could possibly induce one or more electors of either party to jump the traces, a temptation that would probably be all the greater in an election decided by a handful of votes. But of the 15,245 electoral votes cast between 1820 and 1964, only four were indisputably cast “against instructions.”*

If a public arrangement were made—the “solemn covenant” Wallace has spoken of—there might also be constitutional problems.

Even more serious, on a short-term basis, there might be a revolt by electors of the candidate's own party who opposed any deal with Wallace. A Democratic Presidential candidate considering a deal with Wallace might well find single electors or whole groups of electors from liberal Northern states like Michigan or Minnesota threatening to withhold their electoral votes—a step they would be perfectly free, under law, to make. A Republican candidate considering a deal with Wallace might get similar threats from Pennsylvania, Oregon or Colorado electors. These threats would be especially meaningful because the requirement of an absolute electoral college majority for election—270—would remain even if some electors abstained from voting.

Agreement between Major Parties. Another factor, important at least psychologically, would be which of the major parties had accumulated a national popular vote plurality. Indeed, it is possible that the major parties could agree in advance that at this stage—rather than later, in the House—they would arrange to shift enough electoral votes to the popular vote winner to assure his election, eliminating Wallace's leverage.

Under any circumstances, press and general public opinion might be very strong on the party which lost the popular vote, either to throw some of its electoral votes to the popular vote winner, or to let the decision go to the House if the same result seemed likely there. The expectation of the American people that the popular vote winner receive the office might itself be a powerful and limiting damper on the politicians' predilections to horse trade.

Throughout this initial period, the politicians' knowledge of the likely party line-up in a subsequent vote in the U.S. House might be of great importance. If one party's candidate was assured of the support of a clear majority of the state delegations in the House, then the other party would know as a certainty that it must either deal with Wallace at this early stage or sacrifice its chances to win the election. If no party had an anticipated majority of the House delegations—a likely outcome if the election were so close that neither party could win a clear electoral vote majority—the politicians would already be weighing the likely alliances and shifts which would be required to build a majority in the House.

Ted Pearson, a political writer for the *Birmingham News*, June 23 reported that Wallace's strategy in the event he won a balance-of-power position in the electoral college might well be dictated by his own long-term interests as a Southern political leader. Pearson suggested:

“If Humphrey (or the more liberal Democratic candidate, if not Humphrey) were leading Nixon (or the more conservative GOP nominee, if not Nixon), and the newly elected House of Representatives were Democratic, then Wallace would undoubtedly try to deal with the GOP candidate, delivering him the Wallace votes in the electoral college if a ‘covenant’ were arranged.

“In the same situation, but if the new House were Republican, Wallace would probably let the electoral college standoff pass on to the House, where the GOP candidate, if it is Nixon or another more conservative

leader, would be elected. In the event of a Humphrey-Rockefeller-Wallace standoff, however, Wallace would find the going considerably stickier. Neither Humphrey nor Rockefeller sits well with Alabama or the rest of the South, so with whom, or how, would Wallace deal? If he got a 'covenant' from either and made him President, Wallace certainly would then be riding high."

IF ELECTION GOES TO THE HOUSE

Under law, the 91st Congress (to be elected Nov. 5) takes office on Jan. 3, 1969, and a joint session of Congress meets for the count of the electoral votes at noon Jan. 6.*

If, as a result of the electoral vote count made at the joint session, no candidate has a majority of the full national electoral vote apportionment (270 of 538), then—under the wording of the 12th Amendment—the House of Representatives "shall choose immediately, by ballot, the President." Each state is accorded a single vote, and a tie vote or lack of a majority choice in a delegation negates its vote completely. An absolute majority of the states (26) is required for election.

The only precedent to which the House could look in determining how it would elect the President would be the rules adopted Feb. 27, 1825, for use in that year's election.** The House adopts new rules for each Congress, however, and experts on House procedure suggest that if the leaders knew the House would have to elect a President once more, the leaders of both parties would confer and try to develop a new set of rules fair to both sides in the election. The 1825 rules would provide the natural point of reference. For that reason, they are outlined below, with a notation of possible areas of change and interpretation:

1. After the Senators have withdrawn from the House chamber (where the joint session to hear the electoral vote count announced by the Vice President has taken place), a roll is taken to ascertain that a Member or Members from two-thirds of the states are present in accordance with the constitutional requirement for a quorum.

2. The House begins immediately to ballot, with the choice limited to the top three electoral vote recipients. (Thus no dark horse Presidential contender could

be introduced into the contest at this point. In 1969, the choice would presumably be among the Republican and Democratic Presidential nominees and Wallace.) In case there is no majority on the first ballot, the House shall continue to ballot for President, without interruption for other business, until a choice is made. Motions to adjourn must be made by motion of one state, seconded by another, with the question decided by states. Thus no other business could be brought before the House until a President was elected, though the House might adjourn from day to day if a stalemate developed.

3. The doors of the hall are to be closed during balloting, "except against the Members of the Senate, stenographers, and officers of the House." On its face, this rule could be interpreted to bar the press and public during the proceedings. However, this was clearly not the intent of the House when the rule was adopted in 1825. In debating the rules Feb. 7, 1825, the House specifically approved a motion *striking out* these words: "The galleries shall be cleared on the request of the delegation of any one state." In fact, the House galleries have not been closed during a House session in more than a century.

4. The Members are to be grouped by state, starting at the right of the Speaker's chair with Maine and then around the Hall by order of the 13 states and then the remaining states in order of their admission to the Union. This seating order was based on the order in which states were allowed to present petitions in the House in the early years of the Republic. It is no longer employed and House officials state that there is no other clear precedent or alternative pattern by which the various state delegations might be seated together.

5. Each state delegation, sitting as a group, is to have a ballot box into which each Member will put a ballot with his vote. If necessary, tellers will be appointed to count the vote within the delegation. When the vote is ascertained, two duplicates of the result shall be made out and placed in separate ballot boxes presented by the Sergeant at Arms. The two ballot boxes with the votes of the states are then to be counted at separate tables, and the results must agree to be accepted as official.

The intent of this elaborate double-balloting system was doubtless to preserve the secrecy inherent in the constitutional rule for vote by ballot (rather than publicly announced votes), as well as to prevent any kind of fraud or chicanery in the balloting. It should be noted that the secrecy would not only apply to how each Member voted, but also to how the state voted. A check of the House Journal in 1801 and 1825 indicates that in neither year was there any official record of how the various states voted for President, although the information was well known in the capital. In 1825, substitute rules were offered providing for public announcement of the vote for President by state. But the proposal encountered stiff resistance because it would compromise the secrecy rule by revealing how Members from single-Representative states had voted. It was defeated Feb. 7, 1825, by a vote of 52-115.

The same secrecy problem would doubtless appear again if the House had to agree on new rules for electing a President. There have been no new rules or precedents bearing on the point of secrecy in balloting by House Members since 1825. Interestingly, the Constitu-

*The date of Jan. 3 for the new Congress to take office is stipulated in the 20th Amendment to the Constitution and could not be altered by Congress. The Jan. 6 date, however, is determined by legislation and could conceivably be set for a date prior to Jan. 3 if Congress so desired, so that the lame-duck, rather than the new Congress, would make the selection. Should Republicans make major gains in the new House, President Johnson could call the old 90th Congress back to Washington immediately after the election so that a bill setting an earlier date for the electoral count in Congress could be passed. Such a maneuver would probably be too blatant and would almost surely run into a Republican filibuster in the Senate. One of the reasons for the 20th Amendment (ratified in 1933) was to make sure that the newly elected Congress, rather than a lame-duck Congress, would preside over the electoral vote count. Before that date, the electoral vote had taken place in Congress in February, with the new Congress assuming office March 4.

**The 1825 rules appear in Hinds' Precedents of the House of Representatives, Vol. III, p. 292-293 (Washington, 1907); also in Peirce, *The People's President*, p. 335-337.

tion also requires that members of the electoral college vote by ballot in their respective states, also implying a secret vote. But that rule has been increasingly violated through pre-printed ballots or even oral voting. A modern-day House might provide for public balloting, either by state or perhaps even by Member.

6. The 1825 rules provide that a majority vote of each delegation will determine its Presidential vote. If there is no majority choice, the state loses its vote on that ballot. The majority is defined as "the whole number of votes given by such state, or any one balloting." Thus if one or more Representatives from a state cast blank ballots, or absent themselves from the House chamber, a candidate can receive a state's vote without an absolute majority of the delegation supporting him. In 1801 House voting, the Vermont and Delaware delegations were evenly split between Jefferson and Burr for 35 ballots. On the 36th ballot, the Burr backers in these states cast blank ballots, permitting the Jefferson supporters to cast the only effective ballots in those delegations and resulting in Jefferson's election. If called on to write new rules, of course, the House could break with precedent and require an absolute majority vote of the members of a state delegation, regardless of absences or blank ballots.

7. Whenever a majority of the states vote for a single candidate, the Speaker declares the vote and that person is elected President. The Senate is immediately informed by message, and a committee of three is appointed to inform the President-elect of his election. Such official committees, common in earlier years, are no longer employed to inform new Presidents of their election.

Vice President. If there is also no electoral vote majority for Vice President, the Constitution provides that the Senate will proceed to elect a Vice President, with each Member having one vote and a majority vote required. (Only once in history has the Senate been called on to choose a Vice President—in 1837, when President Martin Van Buren's Vice Presidential running mate, Col. Richard M. Johnson of Kentucky, had only 147 electoral votes—one less than a majority. The Senate proceeded to elect Johnson by a vote of 33 to 16 over Francis Granger of New York, the runner-up in the electoral vote for Vice President.)

Deadlock Contingency. Should the House remain deadlocked on the election of a President until Jan. 20, inauguration day, then, under the terms of the 20th Amendment, "the Vice President-elect shall act as President until a President shall have qualified." Presumably, if there were no majority vote for President in the electoral college, there would also be no majority vote for Vice President. But the Senate, in choosing a Vice President, shall choose only from the two *two* electoral vote recipients for that office. Thus it is most likely that a Vice President would be chosen, even if the deadlock continued in the House. (The Senate is expected to remain in Democratic hands, even if Republicans register some gains in 1968. Thus it would probably elect a new Democratic Vice President.) But the new Vice President, who would then become President, would only be an Acting President. He would be subject to demotion at any time in the succeeding four-year period when the House was able to resolve its deadlock and select a President. (If the Senate had failed to pick a new Vice

Major-Party Agreements

Reps. Charles E. Goodell (R N.Y.) and Morris K. Udall (D N.Y.) announced during the week of July 15 that they were drafting a bipartisan compact under which the major parties would agree in advance of the election not to deal with former Gov. Wallace in the event that neighte major party wins an absolute majority of the 1968 electoral vote. Goodell, a prominent GOP House leader and vice chairman of the 1968 Republican Platform Committee, had originally endorsed the idea in a House speech July 9. Democratic National Chairman John M. Bailey July 9 said there was "some merit" in the suggestion, providing it could obtain "broad-based" agreement."

The proposal for an advance agreement by the parties was advanced by Gary Orfield, an assistant professor of government at the University of Virginia, in an article in the *Washington Post* July 7. Excerpts from Orfield's proposal:

"Both parties should agree before the election that if normal procedures fail, they will provide the necessary votes in the House to elect the candidate with the largest popular vote. This would guarantee the most democratic result and would permit the winning candidate to take office without any taint of a divisive political deal.

"The first step would be clear commitments from the leading candidates and in each party platform promising that there would be no bargaining with Wallace under any circumstances. Not only would such a pledge morally bind the parties and reduce mutual suspicion, but it would lessen the incentive for Wallace votes among those who hope to use his candidacy merely to disrupt national policy.

"The party commitments could be further strengthened by pledges from House GOP and Democratic leaders."

Goodell was quite specific in his July 9 remarks, suggesting that every candidate for the House in the 91st Congress "be asked to sign a pledge of support to vote for that Presidential candidate who receives a plurality of the nationwide vote. The pledge," Goodell suggested, "would not be binding on the members of one party if a majority of the members of the other party failed to agree." Goodell also suggested that both parties' platforms include similar pledges.

Some reservations were expressed about the compact idea by House leaders July 17. House Minority Leader Gerald R. Ford (R Mich.) said, "At the moment, I have reservations about signing a pledge that gives up a Constitutional responsibility." House Majority Leader Carl Albert (D Okla.) said, "I'd have to think that one over."

(Editor's Note: It would also be possible, under a bipartisan agreement, for the necessary number of Presidential electors to switch sides to assure election of the popular vote winner, should an electoral vote stalemate threaten. See p. 1818.)

President, the Speaker of the House would become Acting President under the provisions of the Automatic Succession Act of 1947.)

LIKELY HOUSE VOTING

It is generally assumed that a Member of Congress would vote for the Presidential nominee of his party in House balloting, without regard to the actual Presidential election outcome in the state or district he represents. Should a Member stray off his party's reservation, he could be penalized by loss of his committee seniority (like Albert Watson (S.C.) and John Bell Williams (Miss.), stripped of their seniority by the Democratic caucus after they supported Barry Goldwater for President in 1964). A defecting Member could also face retribution by party members when he sought renomination or re-election two years later. There is always the possibility, of course, that a House Member might be so ideologically oriented to the opposition party's Presidential candidate that he would switch sides, or that a House Member might trade off his vote for a judgeship or some other Presidential favor.

The most likely exception to automatic House voting by party would occur in the delegations from normally Democratic Deep South states in which the people had voted for Wallace. The Democratic Members from these states would certainly be in a quandary: desert the Democratic Presidential candidate and face loss of patronage advantages and committee seniority (including many chairmanships), or shun the third-party candidate who carried their state or district and face revenge in the next primary election back home.

Thus there are two important elements in any speculation on a potential House delegation line-up in January 1969: the over-all party balance in delegation control, and how the Deep South states Wallace won would vote in the House.

The National Line-Up: At the present time (pre-election 1968), Democrats outside the five Deep South states control 24 delegations, Wallace has the strongest chance of winning the Deep South states, and 18 delegations are held by Republicans. Three delegations are evenly split. (See box.)

Just a few shifts of seats in 1968 could swing the balance of power to one party or the other. There are 9 states, now split or under Republican control, where the shift of one seat would give the Democrats delegation control: Alaska, Arizona, Delaware, Illinois, Indiana, Montana, Oregon, Vermont or Wyoming. Conversely, there are 7 states where the shift of one seat would swing control to the Republicans: Illinois, Kentucky, Montana, Nevada, Oregon, Pennsylvania or Tennessee. The loyalist Democrats would have to gain only two seats in two key states to gain an absolute majority of the delegations in the next House, but with at least a moderate Republican trend anticipated in the 1968 House elections, that does not seem especially likely. On the other hand, Republicans would have to gain 8 states for a 26-delegation majority—also quite improbable, unless they were sweeping the Presidential election at the same time.

In some respects, the prospects for a House deadlock recall the situation following the 1948 and 1960 elections,

House Delegation Control

90th Congress

Democratic States (outside the Deep South)	Deep South Democratic	Republican	Split Evenly
Arkansas	Alabama	Alaska	Illinois
California	Georgia	Arizona	Montana
Colorado	Louisiana	Delaware	Oregon
Connecticut	Mississippi	Idaho	
Florida	South Carolina	Indiana	
Hawaii		Iowa	
Kentucky		Kansas	
Maine		Michigan	
Maryland		Minnesota	
Massachusetts		Nebraska	
Missouri		New Hampshire	
Nevada		North Dakota	
New Jersey		Ohio	
New Mexico		South Dakota	
New York		Utah	
North Carolina		Vermont	
Oklahoma		Wisconsin	
Pennsylvania		Wyoming	
Rhode Island			
Tennessee			
Texas			
Virginia			
Washington			
West Virginia			

when a very slight popular vote shift would have thrown the election into the House.

Following the 1948 election, with 48 states in the Union and 25 required for election, Northern Democrats controlled 21 delegations, Dixiecrats (Democrats from states carried by Thurmond) controlled 4 delegations, and the Republicans 20. Three delegations were evenly split between the parties. It would appear that neither Truman nor Dewey could have won under these circumstances without making special deals with the Southerners and/or members of the split delegations.

Following the 1960 election, with 50 states in the Union and 26 required for election, Northern Democrats controlled 23 delegations, 2 were from states where the unpledged elector movement was victorious in the 1960 election (Mississippi and Alabama), 4 were held by other Deep South states whose vote would have been questionable, and 17 delegations were controlled by the Republicans. Four were evenly split. Under those conditions, Kennedy might eventually have won, but only after working out special understandings with the Southern and split delegations.

Maneuvering in the House. Even if the delegations from states carried by Wallace were to hold the balance of power in House voting for the President, there is serious question about Wallace's ability to use them for bargaining purposes. House Minority Leader Gerald R. Ford (R Mich.) has suggested: "It would be sounder for people in the House, who represented a vast majority of the voters, to work out a solution for themselves than it would be to have a solution worked out with an individual (Wallace) who represented a very small percentage of the vote."

Even if the major parties were willing to deal with Wallace at this point, could Wallace really manipulate the Southern delegations that might originally side with him because of home-state pressures? They might feel obliged to vote for Wallace himself but rebel if he asked them to switch their votes to the Democratic or Republican nominee as part of some deal he might make.

Assuming the Democrats were quite close to a majority of the delegations, the Southerners might vote for Wallace for a ballot or two but then go to the regular Democratic nominee to protect their committee seniority. On the other hand, if the Republicans were fairly close to a majority of the delegations, and especially if the Republican Presidential nominee had won a clear plurality of the national popular vote, there is the possibility that some Democrats might switch their vote to the Republican column and be free of party discipline because national sentiment was pressing for election of the popular vote winner as President.

Through all of these negotiations, it could be anticipated that the major-party nominees or their agents might be offering policy concessions, "pork barrel" enticements and promises of patronage to pick up support. Powerful lobbies and pressure groups might be lined up to try to influence the legislators. Direct bribery of Congressmen is uncommon these days, but there are scores of ways that money can have a subtler impact.

After reviewing the possibilities of House election of the President with Congressional Quarterly, a senior officer of the House said: "I hope to God I never see the day."

Frequently Asked Questions

Plurality versus Majority: To win a state's electoral vote, must a candidate's elector slate receive an absolute majority of the Presidential vote in the state, or a mere plurality?

Answer: A plurality is sufficient in every state. Georgia, which had previously required an absolute majority (with a runoff two weeks after the general election if none was achieved), in 1968 approved a law switching to the plurality system.

Write-in Votes: Is it possible to write in votes for President?

Answer: Write-ins are extremely difficult because voters technically vote for elector slates of 3 to 43 individuals, not for the Presidential candidates directly. Unless a party has qualified a regular slate of electors in the state, voting for its Presidential and Vice Presidential candidates would be cumbersome if not impossible. A voter would have to write in the names of the elector candidates, requiring widespread distribution of sample ballots. There is some provision for writing in electors in 44 states, but no write-in provision at all in Delaware, Ohio, Mississippi, Nevada, Oklahoma and Ohio, or in the District of Columbia. Even where permitted, the writing in of names may take more time than a voter is allowed to remain in the voting booth.

Some voters, unaware of electoral college law, simply write in the name of a man they would like to see President. But even if counted, such votes would merely be totaled as a vote for that man for Presidential elector, not for President. Unless the candidate were a resident

of the same state, he would presumably be ineligible to be elected a Presidential elector within it.

Only in California is there a provision for write-in Presidential votes for the candidates of parties not regularly qualified for the ballot. If a minor party files a list of electors with the Secretary of State at least 60 days before the general election, write-in votes for its Presidential and Vice Presidential candidates are counted as votes for that elector slate. (In 1964, the Universal Party won 19 votes in California by this method—out of a statewide Presidential vote of 7,057,586.)

Dual Slates: What would happen if two different sets of electors for one Presidential candidate were filed in a state by different parties or groups?

Answer: The candidate's vote would be split, since votes are counted for electors (or elector slates), not Presidential candidates. Because of disputes between various groups of Wallace backers, there has been a possibility of two slates in his behalf in Virginia and South Carolina in 1968. The dual-slate problem in South Carolina was recently resolved by a court order saying Wallace could designate which slate could print his name on the ballot.

In some states, two parties may endorse the same Presidential candidate. In that event, both parties will nominate the same elector slates. This is a common practice in New York state, where Democratic and Liberal party elector slates for President have traditionally been identical.

New Parties: How close to the general election can a new party qualify for the ballot?

Answer: Each state has its own laws on qualification of new political parties or of independent Presidential elector slates. (For a complete review of relevant state laws, see 1967 *Weekly Report* p. 2068. For brief summary of 1968 filing deadlines, see 1968 *Weekly Report* p. 2068.) In some states, the laws are ambiguous and litigation is often required to determine whether a new party can go on the ballot.

Although Sen. Eugene J. McCarthy (D Minn.) has said repeatedly he would not run as an independent Presidential candidate in the general election, various dissident left-wing Democrats, including some avowed McCarthy backers, have begun first steps to qualify a new party for the ballot in several states. Organized activity for ballot qualification apparently got underway after the June 29-30 Chicago meeting of the dissidents, officially called the conference of the Coalition for an Open Convention. (*Weekly Report* p. 1690)

Final state deadlines for qualifying a new party or independent Presidential electors have already passed in 10 states. (*Weekly Report* p. 1765) The new left-wing party might be able to utilize the already functioning ultra-liberal political parties in a few states, such as the California Peace and Freedom party. (*Weekly Report* p. 110) In most cases, however, a new left-wing party would have to start fresh to win ballot qualification.

In 1968, Wallace's forces started early on qualifying him for the ballot, succeeding in 35 states (according to Wallace's headquarters) by early July. It will be possible to vote for Wallace electors in all but a handful of states. The laws of Ohio and Alaska are apparently being inter-

preted to bar Wallace's name from the ballot, though a court challenge is planned in Ohio. Wallaceites won a similar court test in Idaho, obliging that state to create an opportunity for a Wallace elector slate to qualify. (*Weekly Report* p. 1766)

The 1948 elections provide some precedents for new parties seeking to organize in the summer of an election year. The States' Rights (Dixiecrat) party, organized following a Southern walkout from the Democratic National Convention July 12-14 in Philadelphia, nominated then-Gov. Strom Thurmond (D S.C.) for the Presidency July 17 in Birmingham, Ala., and eventually qualified on the ballot of all the Southern states and a few Northern states. In Alabama, Louisiana, Mississippi and South Carolina, however, the Dixiecrats ran as the Democratic party nominees.

The 1948 Progressive party, organized to back former Vice President Henry A. Wallace for the Presidency, held its nominating convention July 22-25 in Philadelphia. It eventually was able to qualify for the general election in about 45 states.

If a fourth party waited until the close of the 1968 Democratic National Convention (Aug. 29) to organize, it could potentially qualify its Presidential elector slates for the ballot in 26 states. In some of those states, however, it would be obliged to gather tens of thousands of signatures by the first days of September. (*See list, Weekly Report* p. 1765)

Parties and States of President and VP: Could the failure of a major party ticket to win an absolute majority in the electoral vote result in a President of one party and a Vice President of the other?

Answer: Yes. The House would pick the new President, the Senate the new Vice President, and there would be no requirement that the two men represent the same party.

Question: Could both the President and Vice President be from the same state?

Answer: In effect, yes. The 12th Amendment says: "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...." If a political party nominated a ticket with two candidates from the same state—such as a Humphrey-McCarthy ticket on the Democratic side, or a Nixon-Rockefeller ticket on the Republican side—there would be no constitutional bar to electors from all other 49 states voting for both men.

The problem would arise with the electoral votes of the candidates' own state. But the problem could easily be resolved. If the ticket had won by a comfortable margin, winning an electoral vote majority without counting the home state's electoral votes, the electors from that state might simply vote for their fellow resident for President but cast blank votes for Vice President. If the election were close and the state's electoral votes were needed to elect the Vice President, he could move out of the state between the general election day (Nov. 5) and the day the electors actually vote (Dec. 16). Then he would no longer be an "inhabitant" of the state in question and would be eligible to receive its electoral votes. (If more convenient under these circumstances, the Presidential candidate could move out instead.)

D.C. Vote in House: If an election went to the House of Representatives for decision, would the District of Columbia have a vote?

Answer: No. D.C. residents have no representation in Congress, even though they are permitted to elect Presidential electors under the 23rd Amendment to the Constitution.

Wallace's Name Is on Ballot in 35 States

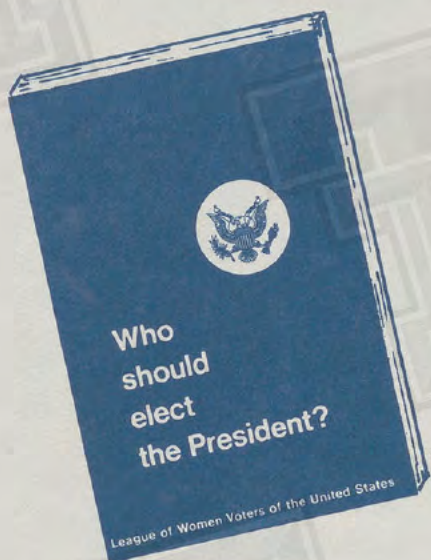
The Montgomery headquarters of former Gov. George C. Wallace (D Ala. 1963-67) July 17 told CQ that he had fulfilled the legal requirements to have his name placed on the Nov. 5 general election ballot in 35 states with a total of 367 electoral college votes. Of the 15 states and the District of Columbia where Wallace has not completed the legal requirements, only in Ohio has the qualification deadline passed. The states in which Wallace has completed requirements are:

Electoral Votes		Electoral Votes		Electoral Votes		Electoral Votes		Electoral Votes	
Alabama	10	Florida	14	Maine	4	Nevada	3	South Carolina	8
Alaska	3	Georgia	12	Maryland	10	New Jersey	17	South Dakota	4
Arkansas	6	Idaho	4	Michigan	21	New Mexico	4	Tennessee	11
California	40	Illinois	26	Mississippi	7	North Carolina	13	Texas	25
Colorado	6	Kansas	7	Minnesota	10	North Dakota	4	Utah	4
Connecticut	8	Kentucky	9	Missouri	12	Oklahoma	8	West Virginia	7
Delaware	3	Louisiana	10	Nebraska	5	Pennsylvania	29	Wyoming	3

In addition, Wallace is close to completing legal requirements in Massachusetts; the deadline for qualification is July 30. The states in which he is not yet qualified are Arizona, Hawaii, Iowa, Indiana, Montana, New Hampshire, New York, Ohio, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, Massachusetts and the District of Columbia. (*For a state-by-state roundup of requirements for qualification, see 1967 Weekly Report* p. 2068.)

"WHAT METHOD OF ELECTING THE PRESIDENT WILL BEST SERVE THE PEOPLE OF THE UNITED STATES — IN THE LAST THIRD OF THE 20th CENTURY?"

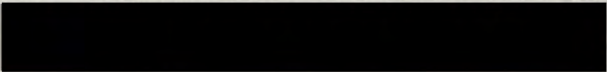
What is YOUR informed opinion on this vital question? Where do YOU stand while Congress, state legislatures, editorial writers and columnists, political scientists and others discuss reform of the Electoral College? Where do you want YOUR elected representatives to stand?



In popular, objective style, WHO SHOULD ELECT THE PRESIDENT? crystalizes the choices to be made in changing the presidential election process and the assets and liabilities of various reform proposals. It describes the fascinating combination of pressures, people, politics and priorities that are essential for achieving major electoral reform.

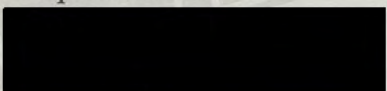
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LEAGUE OF WOMEN VOTERS OF THE UNITED STATES



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WHO SHOULD ELECT THE PRESIDENT? brings you the thinking of prominent individuals and groups on such relevant questions as these.

WHAT DO YOU THINK?

- Is change needed in the method of electing the President of the United States?
- How do federalism, states' rights and the popular will relate to electing the President?
- Should the one man, one vote concept apply to presidential elections?
- Should the state have a direct role in the presidential election process?
- What is the likely effect of Electoral College reform proposals on political parties?
- Should the U. S. Constitution provide for popular voting for presidential electors or candidates, and the winner-take-all system of allocating a state's electoral votes?
- What kind of contingent election is preferable—a joint session of Congress, for example, or a popular run-off election?
- If a President's electors received fewer popular votes than those of his opponent might this fact limit the effectiveness of his administration?
- Why has any kind of presidential election reform been so elusive?

WHO SHOULD ELECT THE PRESIDENT? IS A TIMELY, NONPARTISAN REFERENCE FOR . . .

- all citizens — **EVERYONE** has a stake in electing a President!
- teachers and students — in secondary schools, colleges, graduate schools
- all media — editorial writers, reporters, columnists, magazines, radio, TV
- libraries, clubs, church and community groups, organizations, unions
- business, professional and labor people who grasp the far-flung implications of election reform but have no time to dig into lengthy sources
- members of Congress, federal officials, the judiciary, their staffs
- state legislators and governors, state and local officials, politicians
- young men and women especially, who realize that how a President is to be elected in the future can have a direct effect on **THEIR** world!

NOV 29 REC'D

LEAGUE OF WOMEN VOTERS OF TEXAS



November 25, 1968

TO: Local League Presidents

FROM: Mrs. Walter Caine, National Program Chairman

RE: Meeting of Presidential Electors in Austin on December 16, 1968

The state Board is very grateful to the Austin League for sharing their plans for attending the meeting of the presidential electors on December 16th. We all thank Phyllis McMillan for her invitation to join them in what sounds like a fascinating day.

Please read her enclosed letter right away and let Mrs. O'Bryan know the number from your League who will be able to attend.

I think this is an interesting and worthwhile opportunity for any League member who can be in Austin on this important date.

Remember we are studying the Electoral College and have no consensus at this time -- neither local nor national.

League of Women Voters
of the United States

Memorandum

August 14, 1968

To: Local and State League Presidents for Electoral College Chairmen
From: Mrs. Griffith L. Resor, Jr., National Board Chairman -- Electoral College
Re: Program Materials from National

In the May 1968 National Board Report (page 10) it was suggested for the new Electoral College item that "the rest of this year and the month of January 1969 may profitably be spent by League members in

observing the operation of the Electoral College in the showcase

provided by the presidential election of 1968-69."

We cited as one of the ingredients of watching a presidential election "fascinating and little known state laws (varying considerably from state to state) that determine how and when presidential electors are nominated." Many of these state laws have been getting an extraordinary airing in the press this summer as a result of the third party candidacy of George Wallace of Alabama.

HERE ARE TWO WATCHING TOOLS!

1) A FACT SHEET on the ELECTORAL COLLEGE

with special emphasis on the third party prospects in this election, and a description of how the House of Representatives would go about electing a President.

2) A brief LEADERS GUIDE -- Electoral College Capsule Quizzes --
for observing this presidential election.

The FACT SHEET was published by CONGRESSIONAL QUARTERLY INC. a privately owned, non-partisan news research service, which has for more than twenty years published an authoritative reference on Congress and politics. Sections of the FACT SHEET are from a recently published book listed under Suggested Reading in the May NATIONAL BOARD REPORT -- The People's President by Neal Peirce. This book will be available in paperback in September. (Keep in mind this is copyrighted material which you must put into your own words if you use any of it in writing.)

Despite the very unusual build-up of public interest in the role of the electoral college this summer, the national Board is not urging your League to schedule meetings before the election. But by providing these two leaders tools at this time, we are making it possible for those Leagues who wish to hold meetings on the electoral college in this election period to have background material and for all Leagues to be in a position to answer inquiries that are likely to occur in this unpredictable election year.

(OVER)

MORE MATERIALS ON THE ELECTORAL COLLEGE:

- 1) Soon after September 15 -- the ELECTION ISSUE of the NATIONAL VOTER will have a basic explanation of the structure and function of the Electoral College -- a Voters Service type piece. This NATIONAL VOTER can be ordered in quantity from the national office now -- 15 cents per copy or \$3 per hundred.
- 2) Before the end of the year -- a CURRENT REVIEW with substantive material which will include proposed Electoral College reforms. Discussion questions will accompany this tool.
- 3) Early in 1969 -- a FACTS AND ISSUES for League members and the public.

#

ELECTORAL COLLEGE

N.Y.	43	Ind.	13	Minn.	10	Ark.	6	N.M.	4
Calif.	40	N.C.	13	Iowa	9	Colo.	6	N.D.	4
Pa.	29	Ga.	12	Ky.	9	Ore.	6	R.I.	4
Ill.	26	Mo.	12	Wash.	9	Ariz.	5	S.D.	4
Ohio	26	Va.	12	Conn.	8	Neb.	5	Utah	4
Tex.	25	Wis.	12	Okla.	8	Hawaii	4	Alas.	3
Mich.	21	Tenn.	11	S.C.	8	Idaho	4	Del.	3
N.J.	17	Ala.	10	Kan.	7	Maine	4	Nev.	3
Fla.	14	La.	10	Miss.	7	Mont.	4	Vt.	3
Mass.	14	Md.	10	W.Va.	7	N.H.	4	Wyo.	3
D.C.	3	TOTAL ELECTORAL VOTES			538	NEEDED TO ELECT			270

Leaders Guide 1968-1969

LEAGUE OF WOMEN VOTERS OF THE UNITED STATES, [REDACTED]
PUBLICATION NO. 336 AUGUST 1968

PRICE: 25¢

HOW TO WATCH - - - the CHOOSING OF A PRESIDENT - 1968-69

The world's largest free election is a peculiar combination of a visible, popular, national campaign and of an almost invisible, U.S. Constitution-based election process in the states. It is not only our one national election, but it is also only in part a national election. For this reason, state by state details of how members of the electoral college are nominated, what appears on the presidential ballot, what exactly happens at the step in the choosing process that occurs in mid-December, what weight the vote of an individual citizen in various states has in the final selection of a President -- all these matters should interest voters.

But such in-depth facts are seldom known and rarely discussed by most citizens. They have varying importance -- some fascinating details about the electoral college have little influence on election results. However, any citizen wishing to be politically sophisticated should be aware of -- and perhaps should think occasionally about -- the less visible ingredients of the choosing process.

The ELECTORAL COLLEGE CAPSULE QUIZZES on the following pages highlight these ingredients. Since the answers to the questions vary from state to state, you may, if you wish, ferret them out and build a complete picture for your state of how a President is actually elected. Then you may want to get these questions and answers into circulation. The whole wide world of the electorate is your oyster -- League members through the bulletin and at meetings, the public through the press, radio and TV, and through other organizations. Distribute this information as you would Voters Service material. Page 49 of the new LWVUS Voters Service Handbook is devoted to distribution techniques. Borrow a copy from the President of your League or get one of your own.

In addition to the ELECTORAL COLLEGE CAPSULE QUIZZES, other "watching tools" are or soon will be available: 1) a FACT SHEET with special emphasis on third party prospects in this election, and a description of how the House of Representatives would go about electing a President; 2) a basic explanation of the structure and function of the electoral college in the Election Issue of the NATIONAL VOTER, which you will receive as soon after the Democratic National Convention as possible.

Before the end of the year there will be 3) a CURRENT REVIEW on proposed electoral college reforms and 4) a FACTS AND ISSUES early in 1969 for League members and the public.

IV JANUARY 6, 1969 -- (Continued)

3. Who announces the names of the new President and Vice President of the United States?
4. Has a nominee ever been elected President when the presidential electors of his party have NOT received a majority of the nation's popular vote?

B. Contingent Election -- "...and if no person have such majority..."

1. If no candidate for President or Vice President receives a majority of the electoral votes, how and when is a President elected? A Vice President?
2. What would happen if the election of a President could not be resolved by January 20? Has this ever occurred?
3. Would members of the departing or the incoming House of Representatives vote to select a President if there were no majority in the electoral college?
4. Do they vote as individuals or as state units?
5. Which candidates for President are voted upon by the House of Representatives? By the Senate for Vice President?
6. What happens if a state delegation in the House of Representatives is split down the middle?
7. For the candidate of which party do you think your state delegation in the House of Representatives might vote if called upon to do so in 1969?

* * * * *

V IF DEATH OCCURS -- What would happen in 1968-69 --

- 1.- if the presidential or vice presidential nominee should die before November 5?
- 2.- if between November 5 and December 16?
- 3.- if a President (or a Vice President)-elect* should die between December 16 and January 6?
- 4.- if a President (or a Vice President)-elect should die between January 6 and 20?

* * * * *

C L U E S:

For state laws concerning presidential electors, see Nomination and Election of the President and Vice President of the United States, January 1968. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (75 cents).

For population statistics and 1964 election results by states, see the World Almanac 1968 or the Statistical Abstract of the U.S. in your library. Also Population Estimates -- Current Population Reports, U.S. Bureau of the Census, Superintendent of Documents (see address above), (10 cents).

For percentage of the population of voting age voting in the last presidential election, by states, see Appendix F, The People's President by Neal Peirce, Simon and Schuster. For a state-by-state breakdown on method of choosing electors, see Chapter 3 and Appendix B.

* * * * *

*Officially a President or Vice President is not elected until January 6.

- - - ELECTORAL COLLEGE CAPSULE QUIZZES - - -

I BEFORE ELECTION DAY -- "Each state shall appoint..."

1. In your state have presidential electors always been chosen by popular vote? On an at-large basis?
2. How many presidential electors does your state have?
3. How is this number determined?
4. Is your state one of the twelve which together could elect a President in 1968?
5. How are presidential electors nominated in your state
 - a) for major parties?
 - b) for minor parties?
 - c) for new parties?
 - d) for independent candidates?
6. Who can be a presidential elector?
7. Who are the candidates for presidential elector this year in your state -- for each party? Is there a candidate for elector from your community?
8. How can the typical candidate for presidential elector in your state be described this year -- age, sex, political experience?
9. Is there any indication as to how the candidates for presidential elector in your state feel about their task -- as a perfunctory obligation or an opportunity to exert independent judgment?
10. What is a presidential elector paid?
11. Are presidential electors in your state subject to a state corrupt practices act? In what way?
12. Are the candidates for presidential elector in your state pledged to vote for the presidential candidate of their party? By party rules? By state law? By formal oath?

* * * * *

II ON ELECTION DAY -- NOVEMBER 5, 1968 -- "...in such manner as the legislature thereof may direct..."

A. The Ballot

1. Will the presidential candidates or the presidential electors of the various parties, or both, appear on the November 5 ballot in your state?
2. If the candidates for presidential elector appear on your state's ballot, are their names listed individually to enable voters to vote separately for individual electors of one party? -- Of more than one party?
3. If in your state presidential electors can be voted upon individually, how did the vote for each elector on the winning slate in the last presidential election "stack up"? What was the highest number of votes received by an individual elector? What was the lowest? On what basis was "a" specific vote for the slate established?
4. Is a plurality or a majority of popular vote necessary to elect a slate of presidential electors in your state?

II ON ELECTION DAY -- NOVEMBER 5, 1968 (Continued)

B. The Weight of an Individual Citizen's Vote

1. What is the population of your state (1960)? Has it increased significantly since 1960?
2. Considering your state's total number of electoral votes (which is based on the 1960 census), how many persons in your state are represented by one electoral vote?
3. How does your state's ratio of electoral votes to population line up with the ratio in neighboring states? In Alaska? Georgia? California? Connecticut?
4. What does this mean as far as the possible weight of one person's vote in the various states is concerned?
5. What percentage of persons of voting age in your state voted in the last presidential election?
6. What was the actual weight of a vote for presidential elector in your state in the last election? In neighboring states? In Utah? Mississippi?
7. Why does the individual citizen in states with small populations have a proportionately greater influence on the outcome of the electoral vote of his state than have the voters of states with large populations?
8. What was the actual vote for the presidential electors of the various parties on the ballot in your state in the last election?

* * * * *

III DECEMBER 16, 1968 -- "The Electors shall meet in their respective states and..."

1. How is the date determined when the presidential electors vote for a presidential nominee in their respective states? Has it always been the same?
2. Where and at what time of day does the meeting take place in your state? What takes place at the meeting?
3. In 1964 did all the presidential electors of the winning party come to your state capital to vote on December 14?
4. Are the individual electors certified in any official way?
5. What provision exists for substitutes?
6. How is the balloting carried out in your state? In others? Is it secret?
7. Have presidential electors in your state in this century ever voted for someone for President other than the candidate of their party? Why?
8. The votes of how many citizens in your state were for the losing slates of presidential electors, and therefore were completely negated in the voting for a presidential candidate in the last election?

* * * * *

IV JANUARY 6, 1969 -- "The President of the Senate shall, in presence of..."

A. The Counting

1. What happens if the electoral vote of a state is disputed?
2. Can Congress refuse to count the votes of a state? Under what circumstances?

NOV 12 RECD

LEAGUE OF WOMEN VOTERS OF TEXAS

TO: *Local League Presidents*

FROM: *Mrs. Walter Caine, National Program Chairman*

RE: *Meeting of Presidential Electors in Texas*

November 8, 1968

The state office has checked as carefully as possible on the meeting of presidential electors in Texas and have this information for you:

Electors will meet in the Capitol in Austin in either the Senate or the House Chamber on Monday, December 16th at 2PM. The ballot is secret but we assume the meeting is open to the public. If we obtain any further information on this subject, we will notify you promptly.

* * * * *

AUG 22 RECD

To: RUTH

August 20

From: JEAN CAINE

I am sending the enclosed to Electoral College Chairmen--- or to the presidents if I cannot identify the chairman. I find that many of the Leagues simply listed the National Program chairmen by number (I,II etc.) without any regard to the way in which National numbers the items. I suppose they know who handles what in each case but it is a headache for me! I am sending a memo from SO to this effect with the correct numbering of items but I don't think it will make much of a change. However I want to keep this in mind for the board lists sent by the LLs to SO next year!

THE BAYTOWN VOTER
League of Women Voters of Baytown

"To promote political responsibility through informed and active participation of citizens in government."

Mrs. Mervin Rosenbaum, President
Mrs. Frank Robertson, Co-Editor
Mrs. Robert Oracheff, Co-Editor

424-8765
424-5653
424-7644

July Calendar

July 16	General Meeting (potluck supper)
	Time: 7:00 PM
	Place: Civic Center
July 24	Board Meeting - Civic Center
	Baby-sitting - 1315 Magnolia

PRESIDENT'S CORNER

Wasn't our pollution panel a great success?! Almost 200 people attended and interest ran so high that the moderator had to call a halt at 11:00 PM, even though the meeting had started at 7:30.

Our panelists included Col. Frank Bender, head of the Galveston Bay study; State Senator Chris Cole; Hugh Yantis of the Texas Water Quality Control Board; Ted Wimberly of the Texas Air Quality Control Board; and Charles Wilson of the County Attorney's Office. Representative Rex Braun was unable to attend, but he sent a stimulating letter expressing his viewpoint.

Orchids go to our Air and Water Pollution Chairman, Connie Patton, who coordinated the plans with our co-sponsors, the Bayshore Rod, Reel and Gun Club. Members who assisted with mailing circulars and putting up posters were Ellen DePierri, Dot Rosenzweig, Anna Haley, Jay Robertson, Maria Walker, Ora Mae Harding, and Marianne Ernhart.

A special thank you goes to Nancy Glahn for the great publicity! Our being on the front page of the Sun on four different days contributed much to the large attendance. Martha Mayo was responsible for the coffee break goodies, and she was helped by a large committee.

The panel was a fine kick-off for our local study of air and water pollution. If you would like to serve on the committee

which will be continuing this study in depth, call Connie Patton at 427-4943.

Jean Rosenbaum

JULY MEETING

Our July meeting will be a "kick-off" for the new national item, "A Study of the Electoral College." We will have a potluck supper at the Community Building July 16 at 7 PM; everyone bring their own silver and a dish to pass, (to serve 8.) Plates, cups, iced tea and coffee, rolls and butter will be provided. Guests are welcome; members are urged to bring their husbands.

Following the supper, two guest speakers will present opposing views on the Electoral College. A question and answer period will follow the speakers' presentations.

Nisha Dittman, Chairman for the Electoral College item, is in charge of the evening's program; Martha Mayo is in charge of the arrangements for the supper.

LEAGUERS: DO YOUR HOMEWORK!!! Read the background material included in this issue of the Voter before the July meeting.

IT'S AN OLD STORY!!!!!!

Yes, you've heard it before, but ~~MEMBER-~~
SHIP IS EVERYONE'S JOB. Do you have a friend who would enjoy being a member of League? Please give the name of any prospective member to Mimi Kowalski at 424-8457.

PREPARED!!

Read the following before the July 16 meeting on the Electoral College. Come to the meeting with your questions for our speakers.

THE ELECTORAL SYSTEM

1. Each party chooses its presidential electors at the State Presidential Convention every four years. They are loyal party members and are morally but not legally obligated to vote as instructed.
2. The number of electors is determined by the number of U.S. Congressmen the state has. There are 538 electoral votes, (435 representatives, 100 senators, and 3 electoral votes from the District of Columbia.) A majority for election is 270. Texas has 25 electoral votes because it has 23 representatives and 2 senators.
3. The popular vote for President and Vice President is taken and the party whose candidates receive a plurality* of the popular vote under the unit rule receives all the electoral votes for that state.
4. The electors of the party whose candidates won the popular vote then go to the state capitol and cast their vote for their party's Presidential and Vice Presidential candidates.
5. This is the official electoral vote for that state and is totaled with all the other states' electoral votes.
6. If no candidate for President receives a majority* of the electoral votes of all the states, the House of Representatives chooses the President with each state casting one vote.
7. If no candidate for Vice President receives a majority, the Senate chooses the Vice President.

*Plurality: more votes than any other candidate for that office.

Majority: over half the votes cast for that office.

HISTORICAL BACKGROUND

The Electoral College method was suggested by Alexander Hamilton and selected by the Constitutional Convention in 1787. The members of the Convention did not want Congress to elect the President for fear he might then be under its control. They were afraid of

direct election by the people, feeling the public might be swayed by emotion rather than cool judgement; also that the voters scattered over a vast territory would not be informed of the qualifications of the individual candidates.

The Electoral College was intended to be a council of the country's ablest men, whose function was to elect a President according to the will of the majority of the people. At first, the electors were usually chosen by the state legislatures, and were to meet to discuss the merits of the various presidential candidates, then cast their votes. However, newly formed political parties began to present their own candidates. It, therefore, became the custom for the electors to pledge their votes to one party or the other. Thus, the original intent of the Electoral College was lost sight of, and, for all practical purposes, the President is chosen by the people.

However, it is possible for a candidate to be elected without a majority of the popular vote. This happens when the candidate with the largest popular vote receives the majority of those votes in the states with the smaller electoral representation.

DO UNTO OTHERS....SUPPORT OUR CONTRIBUTORS..
..RETURN THE FAVOR....

FYI

Catch up on your reading this summer, and at the same time increase your knowledge on present-day China. We suggest the following BACKGROUND BOOKS: I Saw Red China by Lisa Hobbs and The East Is Red by Maslyn Williams.

KNOW YOUR FOREIGN POLICY NATIONAL PROGRAM...

.....UNITED NATIONS

The League of Women Voters supports U.S. policies to strengthen the peacekeeping and peacebuilding capacities of the U.N. system.

Details of the Position

1. Improving peacekeeping procedures.
2. Upholding the principle of collective financial responsibility for administration, peacekeeping and development.
3. Continue negotiations to reduce the risk of war.

4. Maintaining the principle of one vote for each member nation.
5. Preserving the integrity of the office of the Secretary-General.
6. Making use of the world Court to settle international disputes.

Important recent events at the U.N. include the appointment of George W. Ball, former Under Secretary of State, to replace Arthur J. Goldberg as the chief U.S. Representative to the U.N.; the U.N. General Assembly's endorsement of the nuclear non-proliferation pact which when it is signed will prohibit traffic in nuclear arms and warfare matériel between atomic haves and have-nots and encourage the spread of peaceful know how and matériel; and the observance by the U.N. of the International Year for Human Rights.

Under the LWV's position, "continuing negotiation to reduce the risk of war," the League can support the U.S. ratification of the nuclear non-proliferation treaty. As the LWV has no position on the U.N.'s human rights conventions, the League's role will be an educational one.

CITY COUNCIL APPROVES BOWIE PARK DEVELOPMENT

The City Council approved bids for the Bowie Park development at its meeting on June 20. For the Baytown League, this was a satisfying conclusion for over a year's active support of this project.

In February, 1967, when the Council first debated specific plans for Bowie Park, the League Board decided to support this park as a first step toward the "improved parks and recreation system for Baytown" which is our League's position on parks.

Recent League action has included the following: on May 20, Jean Rosenbaum sent a letter in the name of the League to each councilman stating our position, and four League members attended the May 23 council meeting because the Bowie bids were on the agenda that night. However, on that date Council was requested to postpone action

because the Chairman of the Parks and Recreation Board was out of town.

In anticipation of the June 20 meeting, Leaguers were urged to call councilmen indicating their individual support of the project. Since Councilman Walker seemed to have many reservations about Bowie Park, Jean and Ora Mae met with him at lunch on June 6 to discuss parks in general and this project in particular. At that time Jean asked if there were any questions the League might answer for him or if there were any other ways we might be of help. He stated that he would like to see a scale model of the proposed development so he could better visualize what we would be getting for our money. So we constructed a model, (with a very small expenditure of money, paper clips and glue, scraps of odds and ends, and the suggestions and moral support of family, neighbors, and friends--a special thanks to Sylvia Scott for ideas.)

In the name of the League, Jean presented the model to the Parks and Recreation Board on June 19. At that time, Mr. Persenaire, Director of Parks and Recreation, and Mr. Foote, Chairman of the Parks and Recreation Board, both expressed their appreciation to the League for its interest and support.

On June 20, Jean also presented the model and again stated the League's position at the City Council meeting. Nine other League members attended this council meeting.

The model will be on display in the Parks and Recreation Department office this summer if any Leaguers would like to see it and have not already had the opportunity.

Thus ends one phase of our support. League members are asked to watch the newspapers for future developments. In particular, look for budget hearings for the 1968-69 fiscal year, and watch for reports from the Capital Improvements Study Committee.

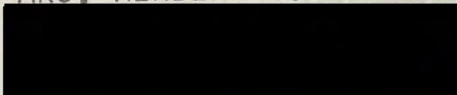
Ora Mae Harding

LEAGUE OF WOMEN VOTERS
BAYTOWN, TEXAS



CITY COUNCIL REPORT
JUL 19 1968

MRS. HERBERT C. MARTIN



JAMES O. EASTLAND, MISS., CHAIRMAN

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STROM THURMOND, S.C.

United States Senate

COMMITTEE ON THE JUDICIARY

JUL 13 RECD

July 9, 1968

Mrs. Herbert C. Martin
Program Vice-President
League of Women Voters of Texas
[REDACTED]

Dear Mrs. Martin:

Thank you for your letter inquiring into the status of electoral college reform. As a supporter of a direct election proposal myself, S. J. Res. 2, I welcome the interest of the League of Women Voters in this question. I am hopeful that after studying the present electoral system, the League will see the need to abolish our outmoded electoral college and substitute direct popular election.

Presently, our hearing record is in the final stage of printing. Your name has been added to the list of persons who will receive the printed record as soon as it is available.

Best wishes.

Sincerely,

Birch Bayh

Birch Bayh, Chairman
Subcommittee on Constitutional
Amendments

Rec'd
9/6/68

BOB PRICE
18TH DISTRICT, TEXAS

AGRICULTURE COMMITTEE

SUBCOMMITTEES:
LIVESTOCK AND GRAINS
DEPARTMENTAL OVERSIGHT
COTTON

Congress of the United States
House of Representatives
Washington, D.C. 20515

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AMARILLO, TEXAS
POST OFFICE BUILDING
PAMPA, TEXAS

JUN 21 RECD

June 19, 1968

Mrs. Herbert C. Martin
[REDACTED]

Dear Mrs. Martin:

Thank you for your recent letter requesting information about the Electoral College System.

I am happy to enclose the report from the Library of Congress which you mentioned along with a list of selected references on the subject.

Please let me know if there is any other way in which I may be of assistance to you.

Sincerely,

Bob Price

BOB PRICE
Member of Congress

BP:vmd

June 11, 1968

The Honorable Bob Price
The House of Representatives
Washington, D.C. 20515

Dear Mr. Price:

Could you obtain for me from the Legislative Reference Service, Library of Congress, a copy of the Robert L. Tienken "PROPOSALS TO REFORM THE ELECTORAL COLLEGE SYSTEM," report of the Legislative Reference Service, Library of Congress, January and April 1966?

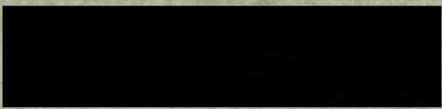
The League of Women Voters is beginning a study of the Electoral College system and needs all available pro and con materials on the subject.

Thank you very much.

While writing, may I take the opportunity to commend you on your frequent reports to the constituents of your district. I hope this practice is continued.

Sincerely,

Mrs. Herbert C. Martin
Program Vice President
League of Women Voters of Texas



Rec'd June 21

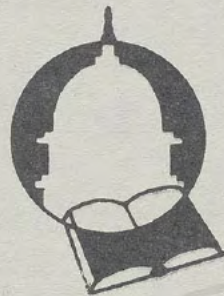
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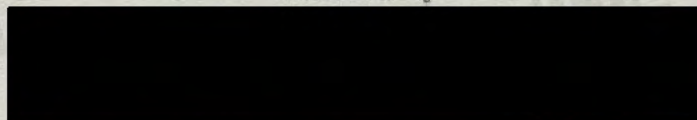
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By

James Traue
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ELECTORAL COLLEGE
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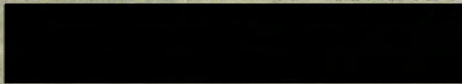
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James Traue
Government and General Research Division
June 2, 1965

Revised by
Mary Jane Fiske
Government and General Research Division
March 18, 1966

June 11, 1968

Senator Birch Bayh, Chairman
Subcommittee on Constitutional Amendments



Dear Senator Bayh:

The League of Women Voters is beginning a study on the Electoral College system and welcomes study material. Will you please send me copies of Hearings on the Electoral College before the Subcommittee on Constitutional Amendments in 1966 and 1967.

Thank you very much.

Mrs. Herbert C. Martin
Program Vice-President
League of Women Voters of Texas
Route 1, Tascosa Road
Amarillo, Texas 79106

June 11, 1968

American Bar Association
[REDACTED]

Dear Sirs:

The League of Women Voters is beginning a study of the Electoral College system and is in need of resource material. Will you please send me the following:

"ELECTING THE PRESIDENT" 1967. 51 pages. A report of the
Commission on Electoral College Reform.

Thank you very much.

Mrs. Herbert C. Martin
Program Vice-President
League of Women Voters of Texas
Route 1, Tascosa Road
Amarillo, Texas 79106

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35¢
(Quarter + a dime)

June 11, 1968

Center for Information on America
[REDACTED]

Dear Sirs:

Attached is thirty-five cents in coins for which please send me the following:

"ELECTING THE PRESIDENT - SHOULD THE ELECTORAL COLLEGE BE CHANGED?"

April 1967 4 pages

Mrs. Herbert C. Martin
Route 1, Tascosa Road
Amarillo, Texas 79106

Rec'd June 21

June 11, 1968

Chamber of Commerce of the United States
[REDACTED]

Dear Sirs:

The League of Women Voters is beginning a study of the Electoral College system and is in need of resource material. Will you please send me a copy of your 4 page "Here's The Issue - Electoral College Reform", November 17, 1967, Volume 6, Number 23.

Thank you very much.

Mrs. Herbert C. Martin
Program Vice-President
League of Women Voters of Texas
Route 1, Tascosa Road
Amarillo, Texas 79106

*Rec'd
6/28/68*

League of Women Voters
of the United States

8/26
Memorandum

August 14, 1968

To: Local and State League Presidents for Electoral College Chairmen
From: Mrs. Griffith L. Resor, Jr., National Board Chairman -- Electoral College
Re: Program Materials from National

In the May 1968 National Board Report (page 10) it was suggested for the new Electoral College item that "the rest of this year and the month of January 1969 may profitably be spent by League members in

observing the operation of the Electoral College in the showcase
provided by the presidential election of 1968-69."

We cited as one of the ingredients of watching a presidential election "fascinating and little known state laws (varying considerably from state to state) that determine how and when presidential electors are nominated." Many of these state laws have been getting an extraordinary airing in the press this summer as a result of the third party candidacy of George Wallace of Alabama.

HERE ARE TWO WATCHING TOOLS!

1) A FACT SHEET on the ELECTORAL COLLEGE

with special emphasis on the third party prospects in this election, and a description of how the House of Representatives would go about electing a President.

2) A brief LEADERS GUIDE -- Electoral College Capsule Quizzes --
for observing this presidential election.

The FACT SHEET was published by CONGRESSIONAL QUARTERLY INC. a privately owned, non-partisan news research service, which has for more than twenty years published an authoritative reference on Congress and politics. Sections of the FACT SHEET are from a recently published book listed under Suggested Reading in the May NATIONAL BOARD REPORT -- The People's President by Neal Peirce. This book will be available in paperback in September. (Keep in mind this is copyrighted material which you must put into your own words if you use any of it in writing.)

Despite the very unusual build-up of public interest in the role of the electoral college this summer, the national Board is not urging your League to schedule meetings before the election. But by providing these two leaders tools at this time, we are making it possible for those Leagues who wish to hold meetings on the electoral college in this election period to have background material and for all Leagues to be in a position to answer inquiries that are likely to occur in this unpredictable election year.

(OVER)

MORE MATERIALS ON THE ELECTORAL COLLEGE:

- 1) Soon after September 15 -- the ELECTION ISSUE of the NATIONAL VOTER will have a basic explanation of the structure and function of the Electoral College -- a Voters Service type piece. This NATIONAL VOTER can be ordered in quantity from the national office now -- 15 cents per copy or \$3 per hundred.
- 2) Before the end of the year -- a CURRENT REVIEW with substantive material which will include proposed Electoral College reforms. Discussion questions will accompany this tool.
- 3) Early in 1969 -- a FACTS AND ISSUES for League members and the public.

#



WALLACE CANDIDACY RAISES FEARS OF ELECTORAL STALEMATE

The third-party candidacy of former Alabama Gov. George C. Wallace (D 1963-67) has raised widespread speculation that he might win enough Southern-based electoral votes to deprive either the Republican or Democratic Presidential candidate of an electoral vote majority. Should this occur, the 1968 election might be the first since 1824 to be referred to the House of Representatives for final solution. Latest Gallup Poll figures show Wallace's percentage of the popular vote up to 16 percent—34 percent in the South and 10 percent in the North.

No observer doubts that a major third-party candidate like Wallace, by siphoning off popular votes from the two major-party candidates, can have an important impact on the crucial electoral vote outcome. A minor-party contender—either a conservative like Wallace or a left-wing peace candidate on the other end of the spectrum—can play a key role in determining which major party wins the most electoral votes, even if the minor party's own popular vote, as in many past years, declines sharply from early expectations. In 1948, for instance, the vote for the left-wing Progressive party led by former Vice President Henry A. Wallace was only 2.4 percent of the national total but accounted for more than the margin of defeat which cost President Harry S. Truman the 74 electoral votes of New York, Michigan and Maryland. The States Rights (Dixiecrat) movement led by South Carolina's Strom Thurmond also won only 2.4 percent of the national popular vote but cost Truman the 39 electoral votes of four normally Democratic Southern states. (Truman was fortunate to enjoy a 4.5 national percentage point lead over Republican Thomas E. Dewey and thus won election with 303 electoral votes, 37 more than the bare majority of 266 required for victory in that election. *For the vote in all Presidential elections, see Weekly Report p. 1297.*)

Having an impact on the major-party vote, however, is different from seizing a balance-of-power position in the electoral college or in House voting for a President. Major hurdles, both in the politics of 1968 and the way the electoral college system operates, stand between Wallace and the position he seeks as power broker in a stalemated Presidential election.

An example of major-party determination to freeze Wallace out of a powerful bargaining position was apparent the week of July 8, in statements by Republican and Democratic officials. They reacted positively to a proposal that House Members pledge in advance to vote for whichever Presidential candidate had received a plurality of the popular vote, should there be an electoral college stalemate resulting in referral of the election to the House.

This Congressional Quarterly Fact Sheet reviews the potential effects of a major third-party candidacy under the existing electoral system, the likelihood of an electoral stalemate in 1968, and the various political

and legal contingencies which might arise. Sections of the Fact Sheet are abridged from a recent book on the electoral college system, *The People's President* (Simon & Schuster, 1968), by Neal R. Peirce, political editor of Congressional Quarterly.

Wallace's Plans

Wallace has repeatedly said he hopes to win the 1968 Presidential election on his own right, by capturing enough states to pile up a majority in the electoral college. He points out that a candidate needs only a plurality, not an absolute majority, of the popular vote to win all of a state's electoral votes and suggests that his own popularity may be at or above the 34 percent of the popular vote necessary to win states in a close three-way contest. (Wallace could not, of course, win a state with 34 percent of the popular vote unless the major party candidates split with just 33 percent each.)

Having first asserted his hopes of being elected President himself, Wallace has frequently acknowledged that he might fall short of winning but still be in a balance-of-power position. This could be the case if both major-party candidates fall short of the absolute electoral vote majority (270 of 538) required for election as President. Wallace has fostered the idea that he might then embark on negotiations with one of the major parties. Asked during a May 1967 interview with the *Richmond News Leader* if he would try to make "a deal" with one of the major parties under those conditions, Wallace said: "When you say enter into a 'deal,' of course the word 'deal' doesn't sound good. Enter into a solemn covenant with the people of our country, face to face with them. That we will provide a change in domestic policy, we will allow representation upon the Supreme Court of the United States of people who had

In This Study

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experience in the judicial field, instead of putting political hacks on the Court."

In a statement released by his campaign headquarters later in 1967, Wallace went into some detail on what might happen if he won enough electoral votes to hold the balance of power. Quotes from the Wallace position paper:

"To win the general election, a candidate must receive a majority vote in the electoral college. This means at the present time he must get 270 of the 538 votes in the electoral college. Actually, the popular vote is not decisive. The electoral vote is what counts.... Many experts agree that with a strong independent candidate running in 1968, it would be most difficult for either of the two major parties to get 270 electoral votes. So what happens? The House of Representatives picks the President from the top three candidates."

Wallace goes on to point out that in an election by the House, each state has a single vote, determined by majority vote of its delegation, that when a delegation splits evenly it loses its vote, and that an absolute majority of the states (26) is required for election. In this situation, Wallace says, "the independent party candidate suddenly finds himself in an enviable position.... He would be in a position to bargain for concessions by the other parties."

But even if Wallace were to win enough states to deprive either of the major-party candidates of a prospective electoral majority, the election might never reach the House. As Wallace outlines the situation: "If the election is that close, it is entirely possible that it might be settled by negotiation in the electoral college

before it reaches the House of Representatives. Before you go into the House, you go into the electoral college. If we hold the balance of power, we may decide the question in the electoral college because one party may have a major concession to make to the people of our country, a solemn covenant to them." Wallace goes on to point out that Presidential electors are "free agents." One of the major parties, he proposes, might be willing "to make a covenant (not a deal) with the American people. They might...see this is a great movement and be willing to concede that local government ought to be restored and that they cannot run the school systems, the hospitals and other domestic institutions. They might say that and make a covenant with the American people, and when they do that, we might decide to let our votes go to them, if we felt we didn't have a chance in the House."

At a press conference in Pittsburgh, Pa., Feb. 19, 1968, Wallace was even more specific about the conditions he would lay down for throwing his support to one of the major candidates if he failed to win the election himself. Wallace said he would release his electoral votes to the candidate who promised to support:

1. Criminal indictment "of people advocating a Viet Cong victory" (also stated as "punish treason by putting some of these (Vietnam) dissenters in jail");

2. Elimination of the federal antipoverty program, which has "made a few people rich and done nothing to help the poor";

3. A drastic curtailment of the foreign aid program, including elimination of aid to all nations not assisting the United States in Vietnam.

Constitutional Provisions on Selection of President

The following Constitutional provisions govern the manner of the selection of the President:

Article II, Sec. 1, Clause 2: 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.

Amendment 12 (enacted in 1804, superseding Article II, Sec. 1, Clause 3): 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 House of Representatives, open all the certificates and the votes shall 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. 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 the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March* next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President†—The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Article II, Sec. 1, Clause 4: The Congress may determine the time of choosing of the electors, and the day on which they shall give their votes, and the day shall be the same throughout the United States.

Statutory provisions implementing the Constitutional provisions for election of a President are included in the United States Code, Title 3, Chapter 1—Presidential Elections and Vacancies.

*Changed to Jan. 20 by the 20th Amendment, ratified in 1933.

†Under the 20th Amendment, Sec. 3, in case a President is not chosen before the time for the beginning of his term, the Vice President-elect shall serve as President until a President shall have qualified.

4. "A promise to make a strong stand for law and order";

5. "Abandon any type of civil rights legislation";

6. Appointment of "people differently oriented to the Supreme Court" and possibly review of Supreme Court decisions by a tribunal composed of the 50 state chief justices.

7. "Turning back to the people of the states the right to control their democratic domestic institutions" including decisions affecting school and hospital integration, open housing legislation, reapportionment and Congressional redistricting.

In a June 16, 1968, television interview (Issues and Answers—ABC-TV), Wallace reiterated his intention of winning the election outright and repeated his stand on a "covenant" with one of the major parties if he failed.

Constitutional Background

The requirement for an absolute majority in electoral college voting to choose a President was first formulated by the Constitutional Convention of 1787 and redefined in the 12th Amendment (1804). (*For 12th Amendment text, now the governing law, see box, p. 2.*)

A major portion of the debate at the Constitutional Convention over the method of electing a President was consumed by a discussion of large- versus small-state interests. In the electoral college system finally agreed upon, the founders thought they were making a major concession to the large states since those states, through their heavy Congressional representation, would automatically dominate the electoral vote. (Each state is accorded as many electors as it has Senators and Representatives combined.) But the writers of the Constitution believed that many Presidential electors would generally vote for men from their own state or region, making a majority choice in the electoral college unlikely and throwing most elections into the House. Everyone anticipated a virtually unanimous vote for George Washington in the first election, but most of the delegates apparently agreed with George Mason of Virginia that "19 times in 20," the final choice of a President would be made in Congress. (A strong two-party system was not foreseen.)

The major concession to the small states, as the founders saw it, was the provision that in a Presidential runoff in the House of Representatives, each state, regardless of population, would have a single vote. Thus while the large states could in effect nominate Presidential candidates through the electoral college system, the final choice was expected to rest normally with the House, where the small states would have a great advantage.

The growth of a vigorous two-party system quickly altered the nature of Presidential elections by concentrating all the electoral strength on two principal candidates. Only in two elections (1800 and 1824) has one of the major candidates failed to score an electoral vote majority. Even in those elections, it was not big-versus-small state antagonisms but totally different issues which sent the election to the House and determined the final outcome. (*For background on 1800 and 1824 elections, see p. 4.*)

Except for the founding fathers, few Americans have ever found much commendable in the system of contingent election in the House. Thomas Jefferson wrote in

1823: "I have ever considered the constitutional mode of election ultimately by the legislature voting by states as the most dangerous blot on our Constitution, and one which some unlucky chance will some day hit." Martin Van Buren in 1826 declared that, "There is no point on which the people of the United States (are) more perfectly united than upon the propriety, not to say the absolute necessity, of taking the election away from the House of Representatives." Oliver P. Morton of Indiana, a leading reform advocate, said in 1873: "The objections to this constitutional provision for the election of the President need only to be stated, not argued. First, its manifest injustice. In such an election each state is to have but one vote. Nevada, with its 42,000 population has an equal vote with New York, having 104 times as great a population. It is a mockery to call such an election just, fair or republican." Morton then produced figures to show the gross malapportionment inherent in a House election, concluding that "the rotten-borough system was a mild and very small bagatelle" in comparison.

Under the 1960 Census apportionment, 76 Members of the House, drawn from 26 states, could elect a President in a House of 435 Members representing 50 states. The 26 states with an aggregate population of 30.7 million people would be able to outvote 24 states with a total population of 148.6 million.

Likelihood of Electoral Stalemate

Two conditions must prevail to prevent one of the major-party candidates from winning the required electoral vote majority: the presence of one or more potent minor parties, able to capture electoral votes in a number of states, and a very close contest between the two major parties. In 1968, at least one third party—Wallace's—is likely to take a number of electoral votes away from the major parties. And according to many public opinion polls, the two major parties may run very close races in the general election.

Over the course of American history, potent third parties and close elections have rarely coincided. But there have been six elections in which a relatively minor shift of popular votes could have caused an electoral stalemate:

1836—Democrat Martin Van Buren received 764,198 popular and 170 electoral votes, while Whig William Henry Harrison received 549,508 popular and 73 electoral votes. But splinter Whig candidates received 40 electoral votes, and a splinter Democrat received 11 electoral votes. A shift from Van Buren to Harrison of 14,061 votes in one state—New York—would have deprived Van Buren of an electoral college majority. Either the election would have gone to the House, or the splinter Whigs would have unified their votes behind Harrison and made him President despite his clear minority in the popular vote.

1856—Democrat James Buchanan received 1,839,237 popular and 174 electoral votes, while John C. Fremont, the first Republican candidate for the Presidency, received 1,341,028 popular and 114 electoral votes. Millard Fillmore, the last of the Whigs, received 849,872 popular and 8 electoral votes. A shift of 17,427 popular votes from Buchanan to Fremont in two states (Indiana and Illinois) and from Fillmore to Fremont in one state (Delaware) would have deprived Buchanan of an

(Continued on page 1815)

The Two Elections Decided by the House—1800 and 1824

Election of 1800. This election was the last held under the original provisions of the Constitution on Presidential elections. They provided that each elector would have two votes of equal weight, undifferentiated as to his Presidential and Vice Presidential preference, and that the candidate with the most electoral votes (if cast by a majority of the electors) would be President and the runner-up Vice President.

The Federalists backed President John Adams for re-election and Gen. Charles Pinckney for Vice President. The Republicans (Anti-Federalists, or later Democrats) chose Vice President Thomas Jefferson as their Presidential candidate and backed Aaron Burr of New York for Vice President. After a heated campaign, Jefferson and Burr each received 73 electoral votes, Adams 65 and Pinckney 64. By failing to instruct at least one of their electors to withhold a vote from Burr, the Republicans had caused a tie in the electoral vote—necessitating a contingent election in the House.

Starting in late December 1800, when the outcome of the electoral vote had become common knowledge throughout the country, the Federalists laid plans to thwart Jefferson's election. The lame-duck Congress, with a strong Federalist majority, would still be in office for the electoral count, and the possibilities for intrigue were only too apparent. The Federalist plan was to throw the support of the Federalist House delegations to Burr, thus electing a cynical and pliant politician over a man the Federalists considered a "dangerous radical." This became the general Federalist strategy, even though Alexander Hamilton remonstrated against it. "I trust the Federalists will not finally be so mad as to vote for Burr," Hamilton wrote. "I speak with intimate and accurate knowledge of his character. His elevation can only promote the purposes of the desperate and the profligate. If there be a man in the world I ought to hate, it is Jefferson. With Burr I have always been personally well. But the public good must be paramount to every private consideration."

When the House of Representatives met to choose the President on Feb. 11, it became apparent that the advice of Hamilton had been rejected. A majority of Federalists in the House insisted on backing Burr over Jefferson, the man they despised more. Indeed, if Burr had given clear assurances he would run the government as a Federalist, he might well have been elected. But Burr was unwilling to make those assurances; and as one chronicler put it, "no one knows whether it was honor or a wretched indecision which gagged Burr's lips."

In all, there were 106 Members of the House at the time, consisting of 58 Federalists and 48 Republicans. If the ballots had been cast per capita, Burr would have received 53 to Jefferson's 51. But the rule of one vote per state tended to favor Jefferson. On the first ballot, he received the votes of eight states—one short of a majority of the 16 states then in the Union. Six states backed Burr, while Vermont and Maryland were equally divided, so they lost their

votes. By midnight of the first day of voting, 19 ballots had been taken and the deadlock remained.

In all, 36 ballots were taken before the House came to a decision on Feb. 17. Predictably, there were men who sought to exploit the situation for personal gain. Jefferson wrote on Feb. 15: "Many attempts have been made to obtain terms and promises from me. I have declared to them unequivocally that I would not receive the government on capitulation; that I would not go in with my hands tied."

The impasse was finally broken on the 36th ballot on Feb. 17, when Vermont and Maryland switched to support of Jefferson. Delaware and South Carolina also withdrew their support from Burr by casting blank ballots. The final vote: 10 states for Jefferson, 4 for Burr.

Election of 1824. Four men—all members of Jefferson's Republican party, by now known as the Democratic party—competed for the Presidency in 1824. The Congressional caucus system of nominating candidates had broken down, and national party conventions had yet to be invented. So all four ran in the general election: John Quincy Adams of Massachusetts, Henry Clay of Kentucky, Andrew Jackson of Tennessee and William Crawford of Georgia.

The rather incomplete national popular vote total showed Jackson first with 152,933 votes, followed by Adams with 115,696. The electoral count was widely split. Jackson won Pennsylvania, New Jersey and a majority of the Southern states for a total of 99 (out of the national electoral vote pool of 261). Adams won all of New England, a total of 84 electoral votes. Crawford had 41 votes, Clay 37. Thus on Feb. 9, 1825, when the electoral vote had been counted, it was clear that no candidate had a majority and it fell to the House to select the President. In the House, the real choice lay between Jackson and Adams, the top contenders, and the key man whose support had to be obtained was Henry Clay (who was Speaker of the House at the time).

From the start, Clay apparently intended to support Adams as the lesser of two evils. But before the House vote, a great scandal erupted. A Philadelphia newspaper printed an anonymous letter alleging that Clay had agreed to support Adams in return for being made Secretary of State. Clay immediately denied the charge and pronounced the writer of the letter to be "a base and infamous character, a dastard and a liar." But Jackson believed the charges and found his suspicions vindicated when Adams, after the election, did appoint Clay as Secretary of State. "Was there ever witnessed such a bare-faced corruption in any country before?", Jackson wrote to a friend.

When the House met to vote, Adams was supported by the six New England states and New York and, in large part through Clay's backing, by Maryland, Ohio, Kentucky, Illinois, Missouri and Louisiana. Thus a majority of 13 delegations voted for him—the bare minimum he needed for election, since then there were 24 states in the Union at the time. The election took place on the first ballot.

electoral college majority and thrown the election into the House.

1860—Republican Abraham Lincoln received 1,867,198 popular and 180 electoral votes, while Stephen A. Douglas (Northern Democrat) received 1,379,434 popular and 12 electoral votes, John C. Breckinridge (Southern Democrat) received 854,248 popular and 72 electoral votes, and John Bell (Constitutional Union) received 591,658 popular and 39 electoral votes. A shift from Lincoln to Douglas of 18,050 votes in four states (California, Oregon, Illinois and Indiana), or of 25,069 votes from Lincoln to Douglas in New York alone, would have deprived Lincoln of an electoral college majority and thrown the election into the House, where Lincoln's Republicans controlled only 15 of the 34 state delegations.

1892—Democrat Grover Cleveland, running for the third time, received 5,556,982 popular and 277 electoral votes, while Republican Benjamin Harrison received 5,191,466 popular and 145 electoral votes. James B. Weaver, the Populist candidate, received 1,029,960 popular and 22 electoral votes. A switch of 29,654 popular votes in three states (Indiana, New York and Wisconsin) would have denied either major-party candidate a popular vote majority and thrown the election into the House.

1948—Democrat Harry S. Truman received 24,179,345 popular and 303 electoral votes, while Republican Thomas E. Dewey received 21,991,291 popular and 189 electoral votes. Strom Thurmond, the States Rights (Dixiecrat) candidate, received 1,176,125 popular and 39 electoral votes, while Henry A. Wallace, the Progressive candidate, received 1,157,326 popular but no electoral votes. A switch of 12,487 votes from Truman to Dewey in California and Ohio would have denied both candidates an electoral college majority and thrown the election into the House.

1960—John F. Kennedy (D) received 34,220,984 popular and 303 electoral votes, while Richard M. Nixon (R) received 34,108,157 popular and 219 electoral votes. Unpledged elector slates (composed of Southern Democrats opposed to their party's national ticket) received 638,822 popular votes and 14 electoral votes, which they cast for Sen. Harry Byrd Sr. of Virginia in the electoral college. (Byrd also received the vote of one dissident Republican elector from Oklahoma.) A shift of 8,971 popular votes from Kennedy to Nixon in Illinois and Missouri would have prevented either man from receiving an electoral college majority.

Potential States for Wallace

Wallace's chances of winning electoral votes outside the South are considered minimal. The Gallup Poll July 14 reported Wallace's strength at 10 percent outside the South—11 percent in the East, 8 percent in the Midwest and 12 percent in the West. (For purposes of this test, it was assumed that Richard M. Nixon would be the Republican nominee and Vice President Hubert H. Humphrey the Democratic candidate.) A vote total as large as 10 percent might have an important effect on which party won several key Northern states, but it would not result in electoral votes for Wallace himself. (Early in 1968, it was widely assumed that Wallace would hurt the Republicans more than the Democrats in the North. But since then, commentators have been far more cau-

Wallace Vote

Gallup Poll findings on the percentage of a national cross-section of voters likely to vote for Wallace in a Nixon-Humphrey-Wallace Presidential contest:

	July	April
National	16%	9%
Men	20	10
Women	13	9
21-29 years	18	14
30-49 years	14	8
50 and over	18	9
Republicans	8	2
Democrats	16	9
Independents	25	16
College background	8	5
High school	15	10
Grade school	26	12
East	11	2
Midwest	8	4
South	34	26
West	12	4
Protestants	19	11
Catholics	10	4
Professional and Business	8	6
Clerical and Sales	20	8
Manual labor	20	12
Farmers	18	15
Union families	17	9
Non-union	16	9

tious in their analysis of the impact of the Wallace vote—especially since it comes most heavily from educational and income groups that are traditionally Democratic. (See box on Gallup estimate of Wallace vote, above.)

Wallace's significant strength in terms of potential electoral votes is confined to the South. In that region as a whole, he was supported by 34 percent of the respondents in Gallup's July reading of strength in a Nixon-Humphrey-Wallace race. Three months earlier, in April, a similar Gallup Poll had shown only 26 percent South-wide support for Wallace. A Gallup reading in June showed that Wallace was favored by 47 percent of the voters sampled in the five Deep South states—Alabama, Georgia, Louisiana, Mississippi and South Carolina. The consensus at the June 17 Southern Governors Conference was reportedly that Wallace would win the five Deep South states, with their 47 electoral votes, and could possibly take Florida, Tennessee, Arkansas and North Carolina as well, for 44 more electoral votes. Most observers of Southern politics agree

that, with few exceptions, the states Wallace carries would probably go for Nixon in a straight two-way race between Nixon and Humphrey. In Southern states Wallace failed to carry, he might divide each state's conservative vote with Nixon in such a way as to permit Humphrey to carry the state, even with less than a majority of its popular vote. It is this possibility which has prompted some Republican leaders, especially Florida Gov. Claude R. Kirk Jr., to attack Wallace as a major threat to the GOP's chances in the region in 1968.

The political history of the five Deep South states indicates a special affinity for a Wallace type of candidacy. In 1948, Thurmond carried four of these states; in 1960, two of them cast electoral votes for unpledged electors (who subsequently voted for Harry Flood Byrd for President); in 1964, all five went for Goldwater:

DEEP SOUTH ELECTORAL VOTES

State	1948	1960	1964
Alabama	11	6(of 11)	10
Georgia	--	--	12
Louisiana	10	--	10
Mississippi	9	8	7
South Carolina	8	--	8
Totals	38	14	47
	for	for	for
	Thurmond	Unpledged	Goldwater
		Electors	

Before the Deep South bloc is automatically conceded to Wallace, however, the rapid growth of the Negro vote, spurred by the Voting Rights Act of 1965, should be considered. In fact, the increase in the Negro vote since 1964 exceeds the 1964 Goldwater plurality in Louisiana and constitutes a major portion of it in several other states of this region:

SOUTHERN NEGRO REGISTRATION

State	Registered Negroes, 1964	Registered Negroes, 1968	Increase	Goldwater Plurality, 1964
Alabama	111,000	248,432	+137,432	268,353
Georgia	270,000	322,496	+ 52,496	94,043
Louisiana	164,700	303,148	+138,448	122,157
Mississippi	28,500	181,233	+152,733	303,910
South Carolina	144,000	190,017	+ 46,017	93,348

SOURCE OF REGISTRATION FIGURES: U.S.

Commission on Civil Rights; also Voter Education Project
of the Southern Regional Council

It should also be noted that Goldwater was the only conservative nominee on the ballot in these states in 1964, while in 1968 Wallace and the Republican nominee will be splitting the conservative vote. Thus Wallace, while likely to win several Southern states, is not automatically assured of a substantial Southern bloc. The extent of his Southern support will depend not only on his own campaign, but on the campaign stances of the major-party candidates, how close the major-party vote is balanced in the South and how much it represents of

the total vote in each state,* and the turnout by newly enfranchised Negroes in the region.

POPULAR-ELECTORAL VOTE RELATIONSHIP

If Wallace does win a number of Southern electoral votes, the next question is, how close must the national election be for Wallace's electors to control the balance of power?

The relationship between popular and electoral votes can never be predicted with surety, but historical patterns do indicate a general correlation between the two. In effect, a popular vote lead has a "multiplier effect" on a candidate's electoral vote total. As the popular vote lead of any candidate increases, the chances increase that he will not only win in the electoral vote, but that his percentage of the electoral vote will be greater than his percentage of the popular vote. In 1948, for instance, President Truman won 52.4 percent of the two-party popular vote but 57 percent of the electoral vote. In 1964, President Johnson won 61.3 percent of the two-party popular vote but 90 percent of the electoral vote.

An added complication appears when a minor-party candidate is able to win electoral votes. Since an absolute majority of electoral votes is required to win election as President, the electoral vote the minor-party candidate receives reduces the pool of remaining electoral votes from which one of the major-party candidates must build his absolute majority. The table below shows the 1968 situation, based on a varying number of possible states for Wallace:

Assuming Following States for Wallace	Electoral Vote Total for Wallace	Percentage of Remainder of National Electoral Vote Pool a Major Candi- date Would Need to Win
Ala., Ark., Fla., Ga., Miss., N.C., S.C., Tenn., Texas, Va. (11)	128	66% (270 of 410)
Ala., Ga., La., Miss., S.C. (5)	47	55% (270 of 491)
Ala., Miss. (2)	17	52% (270 of 521)

In order to win his needed 52 to 66 percent of the electoral vote in the rest of the country, however, a major-party candidate would not need a popular vote lead of that magnitude. The "multiplier effect" could be expected to function in the remaining 39 to 48 states where the major-party candidate would have to build up his electoral college majority.

Politically, the key factor would be which of the major-party candidates would be able to win the seven biggest states, which control 210 electoral votes (out of the 270 majority required)—New York (43), California

**Examples: If Humphrey and Nixon each received exactly 33 percent of a state's popular vote, Wallace could win it by taking 34 percent. But if either of the major-party candidates could increase his vote to 40 percent, then Wallace would have to hold the second major-party candidate to only 19 percent of the state vote in order to win the 41 percent he would need for a plurality.*

(40), Pennsylvania (29), Illinois (26), Ohio (26), Texas (25) and Michigan (21). No President has been elected since 1920 without carrying a majority of these states. Truman won four of the seven in 1948, Kennedy five of the seven in 1960, President Johnson all seven in 1964. The average popular vote in these major states has not deviated more than 1 percent from the national result in the past four Presidential elections.

In all probability, a major-party candidate able to outpoll his closest competitor by 2 to 5 percentage points in the major-party vote outside the Wallace states would win a clear electoral college majority. This finding is based on a computer analysis by Dr. Charles Bischoff of Yale University, derived from research originally commissioned for the book, *The People's President*.^{*} Conclusions from Bischoff's study, based on varying numbers of states which Wallace might carry and using the past four Presidential elections as a base of likely voting patterns:

If Wallace carries 11 states (the Old Confederacy)

—For a major-party candidate to win election in this contingency, he would probably have to lead his competitor by a minimum of 4 to 5 percentage points in the popular vote of the 39 other states (and the District of Columbia). This would constitute a 52 to 48 percent or 52.5 to 47.5 percent division of the non-Southern major-party popular vote and would normally translate into the 66 percent of the non-Southern electoral vote needed for election. Any smaller margin would give Wallace an excellent chance to secure the balance of power in electoral college voting. On the average since 1952, a major-party popular vote lead of 3.1 percentage points in the non-Confederate states would have been sufficient to accumulate an electoral vote majority under these circumstances.

If Wallace carries the 5 Deep South states—In this contingency, a major-party candidate would probably win the election if he led his competitor by 2 percentage points in the other 45 states (and D.C.). On the average since 1952, he would have needed a lead of only 1.2 percentage points in the other states' two-party popular vote to win election.

If only 2 states—Alabama and Mississippi—go for Wallace—A 1-percentage-point lead in the popular vote of the other 48 states (and D.C.) would generally (though not always) be sufficient for a major-party victory under these circumstances. Since 1952, the average lead required would have been 0.9 percentage points.

It should be noted, however, that as soon as the popular vote percentage point gap between the two major-party candidates falls below 2 percent, the dangers

increase rapidly that the vagaries of electoral vote distribution may result in the election of the candidate who actually lost in the popular vote—regardless of any third-party candidacy. In his analysis of all states' voting patterns for *The People's President*, Bischoff found that in an election as close as the Kennedy-Nixon contest of 1960 (plurality 112,827), there is no better than a 50-50 chance that the national electoral vote will agree with the national popular vote. With a plurality of about 500,000 (or 0.57 percent based on a 70 million turnout), the verdict would still be reversed one time out of three. Even a plurality of 1 to 1½ million votes (1.1 to 1.7 percentage point lead) would not quite provide three chances out of four that the popular vote leader would win the election, and a 2-million-vote plurality (2.9 percentage point lead) might not suffice one time out of eight.[†]

Consequences of Electoral Stalemate

Should Wallace actually succeed in preventing either major-party candidate from obtaining an electoral vote majority, and thus enjoy his sought-after balance-of-power position, the country would face a period of uncertainty about the identity of the next President. As Wallace himself has made clear, there are two points at which the election then might be decided: among the electors before they actually vote, or failing that, in the House of Representatives.

BEFORE ELECTORAL COLLEGE VOTES

The regular Presidential election takes place Nov. 5, 1968, and, by law, the electors chosen by the people in each of the states must meet in the respective state capitals to vote for President on the first Monday after the second Wednesday in December—in 1968, Dec. 16. (The founding fathers directed that the electors meet in the separate states in the quaint hope that there would be no cabal or collusion among them. *For a more detailed discussion of electoral college law and customs, see 1967 Weekly Report p. 1883-1888.*)

Wallace would thus have 40 days in which to try to drive his bargain with one of the major parties. Assuming (which seems likely) that no fourth party wins any electoral votes and that Wallace electors follow his

^{*}Bischoff's method was to take the actual Presidential vote figures, state-by-state, for several past Presidential elections, isolate an arbitrary number of Southern states (11, 5 and 2, as in the chart above), and then adjust the popular vote for the major-party candidates upward or downward in all other states of the Union to see how large a popular vote lead one candidate would have to receive in those remaining states to win an electoral college majority. For a detailed analysis of Bischoff's methodology, see Peirce, *The People's President*, pp. 141-144. The findings in the book relate to chances of electoral college reversal of the popular vote outcome without regard to a third-party candidacy, but the methodology for the findings reported here were the same.

[†]These probability figures are based on all elections since 1920, including earlier ones in which the chances of electoral vote reversal in the popular vote count were greater than the most recent elections because of the distortions in the popular-electoral vote relationship created by the huge pool of "wasted" popular votes in the then-solidly Democratic South. But the odds of a misfire cited above are probably not inflated, especially under the conditions of 1968, when millions of popular votes may be cast for the regular Democratic and Republican Presidential candidates, perhaps with a strong edge to one or the other, in the very Southern states likely to register a plurality for Wallace. These major party popular votes in the Wallace states would introduce a new "wild card" into the system, very possibly increasing the chances of reversing the popular vote decision beyond the odds in the Bischoff study.

instructions to the letter*, Wallace would have complete power in this 40-day period to decide which of the major-party candidates should be elected President.

The loyalty of his pledged electors might depend upon how good a bargain Wallace was able to drive. There are only 16 states which require electors by law to vote for their party's Presidential candidate—Alaska, California, Connecticut, Colorado, Florida, Hawaii, Idaho, Maryland, Massachusetts, Nevada, New Mexico, New York, Oklahoma, Oregon, Tennessee, Virginia and the District of Columbia. with the possible exception of the border states in this group, none are likely to be carried by Wallace. The fear of political ostracism, not legal penalties, generally prevents electors from voting for anyone but the party's regular candidates.

Even if a state attempts by law to bind electors, there is doubt as to the constitutionality of the practice. Custom may have made electors into little more than instruments of the political parties, but the Constitution provides they shall vote by ballot, a procedure which would seem to imply they are free agents. The preponderance of legal opinion seems to be that statutes binding electors, or pledges they may give, are *not* legally enforceable. Even in Florida, Oklahoma and New Mexico, which provide that an elector would be guilty of a misdemeanor if he violated his pledge, an elector could vote against instructions if he was willing to bear the penalty—in Oklahoma, a \$1,000 fine.

Bargain with Wallace? The major question of this 40-day period would be whether either major-party Presidential candidate would consent to bargain with Wallace. The candidate might well feel that there would be stigma attached to him—and his party—if he dealt with Wallace as the price for the Presidency. (Former Vice President Richard M. Nixon July 16 told reporters in Philadelphia that “under no circumstances” would he “or Hubert Humphrey,” he was sure, enter into negotiations with Wallace in the event of an electoral college deadlock. Nixon said Wallace represents “a formidable force” in the Presidential election and might well carry three or four Deep South states, but that Wallace would have little “leverage” after Nov. 5.)

Should a secret deal be attempted between Wallace and one of the major-party candidates, the new President might risk later impeachment if the agreement involved nonenforcement of laws (such as civil rights statutes) which he must take an oath to enforce. Most likely, a secret deal would be unacceptable to Wallace and probably could not be kept secret anyway.

**A situation in which Wallace might have trouble controlling his electors would occur if one of the major-party Presidential nominees was within a few votes of a majority and could feasibly deal independently with renegade electors on the Wallace states. The possibility of unfaithful electors, of course, exists in any close election. In 1960, a regularly elected Republican elector in Oklahoma, Henry D. Irwin, broke his pledge and voted on his own volition for Harry Byrd. (An ultra-conservative, Irwin claimed the founding fathers never intended that the propertyless participate in choosing the President.) Thus either opportunistic or ideological factors could possibly induce one or more electors of either party to jump the traces, a temptation that would probably be all the greater in an election decided by a handful of votes. But of the 15,245 electoral votes cast between 1820 and 1964, only four were indisputably cast “against instructions.”*

If a public arrangement were made—the “solemn covenant” Wallace has spoken of—there might also be constitutional problems.

Even more serious, on a short-term basis, there might be a revolt by electors of the candidate's own party who opposed any deal with Wallace. A Democratic Presidential candidate considering a deal with Wallace might well find single electors or whole groups of electors from liberal Northern states like Michigan or Minnesota threatening to withhold their electoral votes—a step they would be perfectly free, under law, to make. A Republican candidate considering a deal with Wallace might get similar threats from Pennsylvania, Oregon or Colorado electors. These threats would be especially meaningful because the requirement of an absolute electoral college majority for election—270—would remain even if some electors abstained from voting.

Agreement between Major Parties. Another factor, important at least psychologically, would be which of the major parties had accumulated a national popular vote plurality. Indeed, it is possible that the major parties could agree in advance that at this stage—rather than later, in the House—they would arrange to shift enough electoral votes to the popular vote winner to assure his election, eliminating Wallace's leverage.

Under any circumstances, press and general public opinion might be very strong on the party which lost the popular vote, either to throw some of its electoral votes to the popular vote winner, or to let the decision go to the House if the same result seemed likely there. The expectation of the American people that the popular vote winner receive the office might itself be a powerful and limiting damper on the politicians' predilections to horse trade.

Throughout this initial period, the politicians' knowledge of the likely party line-up in a subsequent vote in the U.S. House might be of great importance. If one party's candidate was assured of the support of a clear majority of the state delegations in the House, then the other party would know as a certainty that it must either deal with Wallace at this early stage or sacrifice its chances to win the election. If no party had an anticipated majority of the House delegations—a likely outcome if the election were so close that neither party could win a clear electoral vote majority—the politicians would already be weighing the likely alliances and shifts which would be required to build a majority in the House.

Ted Pearson, a political writer for the *Birmingham News*, June 23 reported that Wallace's strategy in the event he won a balance-of-power position in the electoral college might well be dictated by his own long-term interests as a Southern political leader. Pearson suggested:

“If Humphrey (or the more liberal Democratic candidate, if not Humphrey) were leading Nixon (or the more conservative GOP nominee, if not Nixon), and the newly elected House of Representatives were Democratic, then Wallace would undoubtedly try to deal with the GOP candidate, delivering him the Wallace votes in the electoral college if a ‘covenant’ were arranged.

“In the same situation, but if the new House were Republican, Wallace would probably let the electoral college standoff pass on to the House, where the GOP candidate, if it is Nixon or another more conservative

leader, would be elected. In the event of a Humphrey-Rockefeller-Wallace standoff, however, Wallace would find the going considerably stickier. Neither Humphrey nor Rockefeller sits well with Alabama or the rest of the South, so with whom, or how, would Wallace deal? If he got a 'covenant' from either and made him President, Wallace certainly would then be riding high."

IF ELECTION GOES TO THE HOUSE

Under law, the 91st Congress (to be elected Nov. 5) takes office on Jan. 3, 1969, and a joint session of Congress meets for the count of the electoral votes at noon Jan. 6.*

If, as a result of the electoral vote count made at the joint session, no candidate has a majority of the full national electoral vote apportionment (270 of 538), then—under the wording of the 12th Amendment—the House of Representatives "shall choose immediately, by ballot, the President." Each state is accorded a single vote, and a tie vote or lack of a majority choice in a delegation negates its vote completely. An absolute majority of the states (26) is required for election.

The only precedent to which the House could look in determining how it would elect the President would be the rules adopted Feb. 27, 1825, for use in that year's election.** The House adopts new rules for each Congress, however, and experts on House procedure suggest that if the leaders knew the House would have to elect a President once more, the leaders of both parties would confer and try to develop a new set of rules fair to both sides in the election. The 1825 rules would provide the natural point of reference. For that reason, they are outlined below, with a notation of possible areas of change and interpretation:

1. After the Senators have withdrawn from the House chamber (where the joint session to hear the electoral vote count announced by the Vice President has taken place), a roll is taken to ascertain that a Member or Members from two-thirds of the states are present in accordance with the constitutional requirement for a quorum.

2. The House begins immediately to ballot, with the choice limited to the top three electoral vote recipients. (Thus no dark horse Presidential contender could

be introduced into the contest at this point. In 1969, the choice would presumably be among the Republican and Democratic Presidential nominees and Wallace.) In case there is no majority on the first ballot, the House shall continue to ballot for President, without interruption for other business, until a choice is made. Motions to adjourn must be made by motion of one state, seconded by another, with the question decided by states. Thus no other business could be brought before the House until a President was elected, though the House might adjourn from day to day if a stalemate developed.

3. The doors of the hall are to be closed during balloting, "except against the Members of the Senate, stenographers, and officers of the House." On its face, this rule could be interpreted to bar the press and public during the proceedings. However, this was clearly not the intent of the House when the rule was adopted in 1825. In debating the rules Feb. 7, 1825, the House specifically approved a motion *striking out* these words: "The galleries shall be cleared on the request of the delegation of any one state." In fact, the House galleries have not been closed during a House session in more than a century.

4. The Members are to be grouped by state, starting at the right of the Speaker's chair with Maine and then around the Hall by order of the 13 states and then the remaining states in order of their admission to the Union. This seating order was based on the order in which states were allowed to present petitions in the House in the early years of the Republic. It is no longer employed and House officials state that there is no other clear precedent or alternative pattern by which the various state delegations might be seated together.

5. Each state delegation, sitting as a group, is to have a ballot box into which each Member will put a ballot with his vote. If necessary, tellers will be appointed to count the vote within the delegation. When the vote is ascertained, two duplicates of the result shall be made out and placed in separate ballot boxes presented by the Sergeant at Arms. The two ballot boxes with the votes of the states are then to be counted at separate tables, and the results must agree to be accepted as official.

The intent of this elaborate double-balloting system was doubtless to preserve the secrecy inherent in the constitutional rule for vote by ballot (rather than publicly announced votes), as well as to prevent any kind of fraud or chicanery in the balloting. It should be noted that the secrecy would not only apply to how each Member voted, but also to how the state voted. A check of the House Journal in 1801 and 1825 indicates that in neither year was there any official record of how the various states voted for President, although the information was well known in the capital. In 1825, substitute rules were offered providing for public announcement of the vote for President by state. But the proposal encountered stiff resistance because it would compromise the secrecy rule by revealing how Members from single-Representative states had voted. It was defeated Feb. 7, 1825, by a vote of 52-115.

The same secrecy problem would doubtless appear again if the House had to agree on new rules for electing a President. There have been no new rules or precedents bearing on the point of secrecy in balloting by House Members since 1825. Interestingly, the Constitu-

*The date of Jan. 3 for the new Congress to take office is stipulated in the 20th Amendment to the Constitution and could not be altered by Congress. The Jan. 6 date, however, is determined by legislation and could conceivably be set for a date prior to Jan. 3 if Congress so desired, so that the lame-duck, rather than the new Congress, would make the selection. Should Republicans make major gains in the new House, President Johnson could call the old 90th Congress back to Washington immediately after the election so that a bill setting an earlier date for the electoral count in Congress could be passed. Such a maneuver would probably be too blatant and would almost surely run into a Republican filibuster in the Senate. One of the reasons for the 20th Amendment (ratified in 1933) was to make sure that the newly elected Congress, rather than a lame-duck Congress, would preside over the electoral vote count. Before that date, the electoral vote had taken place in Congress in February, with the new Congress assuming office March 4.

**The 1825 rules appear in Hinds' Precedents of the House of Representatives, Vol. III, p. 292-293 (Washington, 1907); also in Peirce, *The People's President*, p. 335-337.

tion also requires that members of the electoral college vote by ballot in their respective states, also implying a secret vote. But that rule has been increasingly violated through pre-printed ballots or even oral voting. A modern-day House might provide for public balloting, either by state or perhaps even by Member.

6. The 1825 rules provide that a majority vote of each delegation will determine its Presidential vote. If there is no majority choice, the state loses its vote on that ballot. The majority is defined as "the whole number of votes given by such state, or any one balloting." Thus if one or more Representatives from a state cast blank ballots, or absent themselves from the House chamber, a candidate can receive a state's vote without an absolute majority of the delegation supporting him. In 1801 House voting, the Vermont and Delaware delegations were evenly split between Jefferson and Burr for 35 ballots. On the 36th ballot, the Burr backers in these states cast blank ballots, permitting the Jefferson supporters to cast the only effective ballots in those delegations and resulting in Jefferson's election. If called on to write new rules, of course, the House could break with precedent and require an absolute majority vote of the members of a state delegation, regardless of absences or blank ballots.

7. Whenever a majority of the states vote for a single candidate, the Speaker declares the vote and that person is elected President. The Senate is immediately informed by message, and a committee of three is appointed to inform the President-elect of his election. Such official committees, common in earlier years, are no longer employed to inform new Presidents of their election.

Vice President. If there is also no electoral vote majority for Vice President, the Constitution provides that the Senate will proceed to elect a Vice President, with each Member having one vote and a majority vote required. (Only once in history has the Senate been called on to choose a Vice President—in 1837, when President Martin Van Buren's Vice Presidential running mate, Col. Richard M. Johnson of Kentucky, had only 147 electoral votes—one less than a majority. The Senate proceeded to elect Johnson by a vote of 33 to 16 over Francis Granger of New York, the runner-up in the electoral vote for Vice President.)

Deadlock Contingency. Should the House remain deadlocked on the election of a President until Jan. 20, inauguration day, then, under the terms of the 20th Amendment, "the Vice President-elect shall act as President until a President shall have qualified." Presumably, if there were no majority vote for President in the electoral college, there would also be no majority vote for Vice President. But the Senate, in choosing a Vice President, shall choose only from the two *two* electoral vote recipients for that office. Thus it is most likely that a Vice President would be chosen, even if the deadlock continued in the House. (The Senate is expected to remain in Democratic hands, even if Republicans register some gains in 1968. Thus it would probably elect a new Democratic Vice President.) But the new Vice President, who would then become President, would only be an Acting President. He would be subject to demotion at any time in the succeeding four-year period when the House was able to resolve its deadlock and select a President. (If the Senate had failed to pick a new Vice

Major-Party Agreements

Reps. Charles E. Goodell (R N.Y.) and Morris K. Udall (D N.Y.) announced during the week of July 15 that they were drafting a bipartisan compact under which the major parties would agree in advance of the election not to deal with former Gov. Wallace in the event that neighte major party wins an absolute majority of the 1968 electoral vote. Goodell, a prominent GOP House leader and vice chairman of the 1968 Republican Platform Committee, had originally endorsed the idea in a House speech July 9. Democratic National Chairman John M. Bailey July 9 said there was "some merit" in the suggestion, providing it could obtain "broad-based" agreement."

The proposal for an advance agreement by the parties was advanced by Gary Orfield, an assistant professor of government at the University of Virginia, in an article in the *Washington Post* July 7. Excerpts from Orfield's proposal:

"Both parties should agree before the election that if normal procedures fail, they will provide the necessary votes in the House to elect the candidate with the largest popular vote. This would guarantee the most democratic result and would permit the winning candidate to take office without any taint of a divisive political deal.

"The first step would be clear commitments from the leading candidates and in each party platform promising that there would be no bargaining with Wallace under any circumstances. Not only would such a pledge morally bind the parties and reduce mutual suspicion, but it would lessen the incentive for Wallace votes among those who hope to use his candidacy merely to disrupt national policy.

"The party commitments could be further strengthened by pledges from House GOP and Democratic leaders."

Goodell was quite specific in his July 9 remarks, suggesting that every candidate for the House in the 91st Congress "be asked to sign a pledge of support to vote for that Presidential candidate who receives a plurality of the nationwide vote. The pledge," Goodell suggested, "would not be binding on the members of one party if a majority of the members of the other party failed to agree." Goodell also suggested that both parties' platforms include similar pledges.

Some reservations were expressed about the compact idea by House leaders July 17. House Minority Leader Gerald R. Ford (R Mich.) said, "At the moment, I have reservations about signing a pledge that gives up a Constitutional responsibility." House Majority Leader Carl Albert (D Okla.) said, "I'd have to think that one over."

(Editor's Note: It would also be possible, under a bipartisan agreement, for the necessary number of Presidential electors to switch sides to assure election of the popular vote winner, should an electoral vote stalemate threaten. See p. 1818.)

President, the Speaker of the House would become Acting President under the provisions of the Automatic Succession Act of 1947.)

LIKELY HOUSE VOTING

It is generally assumed that a Member of Congress would vote for the Presidential nominee of his party in House balloting, without regard to the actual Presidential election outcome in the state or district he represents. Should a Member stray off his party's reservation, he could be penalized by loss of his committee seniority (like Albert Watson (S.C.) and John Bell Williams (Miss.), stripped of their seniority by the Democratic caucus after they supported Barry Goldwater for President in 1964). A defecting Member could also face retribution by party members when he sought renomination or re-election two years later. There is always the possibility, of course, that a House Member might be so ideologically oriented to the opposition party's Presidential candidate that he would switch sides, or that a House Member might trade off his vote for a judgeship or some other Presidential favor.

The most likely exception to automatic House voting by party would occur in the delegations from normally Democratic Deep South states in which the people had voted for Wallace. The Democratic Members from these states would certainly be in a quandary: desert the Democratic Presidential candidate and face loss of patronage advantages and committee seniority (including many chairmanships), or shun the third-party candidate who carried their state or district and face revenge in the next primary election back home.

Thus there are two important elements in any speculation on a potential House delegation line-up in January 1969: the over-all party balance in delegation control, and how the Deep South states Wallace won would vote in the House.

The National Line-Up: At the present time (pre-election 1968), Democrats outside the five Deep South states control 24 delegations, Wallace has the strongest chance of winning the Deep South states, and 18 delegations are held by Republicans. Three delegations are evenly split. (See box.)

Just a few shifts of seats in 1968 could swing the balance of power to one party or the other. There are 9 states, now split or under Republican control, where the shift of one seat would give the Democrats delegation control: Alaska, Arizona, Delaware, Illinois, Indiana, Montana, Oregon, Vermont or Wyoming. Conversely, there are 7 states where the shift of one seat would swing control to the Republicans: Illinois, Kentucky, Montana, Nevada, Oregon, Pennsylvania or Tennessee. The loyalist Democrats would have to gain only two seats in two key states to gain an absolute majority of the delegations in the next House, but with at least a moderate Republican trend anticipated in the 1968 House elections, that does not seem especially likely. On the other hand, Republicans would have to gain 8 states for a 26-delegation majority—also quite improbable, unless they were sweeping the Presidential election at the same time.

In some respects, the prospects for a House deadlock recall the situation following the 1948 and 1960 elections,

House Delegation Control

90th Congress

Democratic States (outside the Deep South)	Deep South Democratic	Republican	Split Evenly
Arkansas	Alabama	Alaska	Illinois
California	Georgia	Arizona	Montana
Colorado	Louisiana	Delaware	Oregon
Connecticut	Mississippi	Idaho	
Florida	South Carolina	Indiana	
Hawaii		Iowa	
Kentucky		Kansas	
Maine		Michigan	
Maryland		Minnesota	
Massachusetts		Nebraska	
Missouri		New Hampshire	
Nevada		North Dakota	
New Jersey		Ohio	
New Mexico		South Dakota	
New York		Utah	
North Carolina		Vermont	
Oklahoma		Wisconsin	
Pennsylvania		Wyoming	
Rhode Island			
Tennessee			
Texas			
Virginia			
Washington			
West Virginia			

when a very slight popular vote shift would have thrown the election into the House.

Following the 1948 election, with 48 states in the Union and 25 required for election, Northern Democrats controlled 21 delegations, Dixiecrats (Democrats from states carried by Thurmond) controlled 4 delegations, and the Republicans 20. Three delegations were evenly split between the parties. It would appear that neither Truman nor Dewey could have won under these circumstances without making special deals with the Southerners and/or members of the split delegations.

Following the 1960 election, with 50 states in the Union and 26 required for election, Northern Democrats controlled 23 delegations, 2 were from states where the unpledged elector movement was victorious in the 1960 election (Mississippi and Alabama), 4 were held by other Deep South states whose vote would have been questionable, and 17 delegations were controlled by the Republicans. Four were evenly split. Under those conditions, Kennedy might eventually have won, but only after working out special understandings with the Southern and split delegations.

Maneuvering in the House. Even if the delegations from states carried by Wallace were to hold the balance of power in House voting for the President, there is serious question about Wallace's ability to use them for bargaining purposes. House Minority Leader Gerald R. Ford (R Mich.) has suggested: "It would be sounder for people in the House, who represented a vast majority of the voters, to work out a solution for themselves than it would be to have a solution worked out with an individual (Wallace) who represented a very small percentage of the vote."

puted to bar Wallace's name from the ballot, though a court challenge is planned in Ohio. Wallaceites won a similar court test in Idaho, obliging that state to create an opportunity for a Wallace elector slate to qualify. (*Weekly Report* p. 1766)

The 1948 elections provide some precedents for new parties seeking to organize in the summer of an election year. The States' Rights (Dixiecrat) party, organized following a Southern walkout from the Democratic National Convention July 12-14 in Philadelphia, nominated then-Gov. Strom Thurmond (D S.C.) for the Presidency July 17 in Birmingham, Ala., and eventually qualified on the ballot of all the Southern states and a few Northern states. In Alabama, Louisiana, Mississippi and South Carolina, however, the Dixiecrats ran as the Democratic party nominees.

The 1948 Progressive party, organized to back former Vice President Henry A. Wallace for the Presidency, held its nominating convention July 22-25 in Philadelphia. It eventually was able to qualify for the general election in about 45 states.

If a fourth party waited until the close of the 1968 Democratic National Convention (Aug. 29) to organize, it could potentially qualify its Presidential elector slates for the ballot in 26 states. In some of those states, however, it would be obliged to gather tens of thousands of signatures by the first days of September. (*See list, Weekly Report* p. 1765)

Parties and States of President and VP: Could the failure of a major party ticket to win an absolute majority in the electoral vote result in a President of one party and a Vice President of the other?

Answer: Yes. The House would pick the new President, the Senate the new Vice President, and there would be no requirement that the two men represent the same party.

Question: Could both the President and Vice President be from the same state?

Answer: In effect, yes. The 12th Amendment says: "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...." If a political party nominated a ticket with two candidates from the same state—such as a Humphrey-McCarthy ticket on the Democratic side, or a Nixon-Rockefeller ticket on the Republican side—there would be no constitutional bar to electors from all other 49 states voting for both men.

The problem would arise with the electoral votes of the candidates' own state. But the problem could easily be resolved. If the ticket had won by a comfortable margin, winning an electoral vote majority without counting the home state's electoral votes, the electors from that state might simply vote for their fellow resident for President but cast blank votes for Vice President. If the election were close and the state's electoral votes were needed to elect the Vice President, he could move out of the state between the general election day (Nov. 5) and the day the electors actually vote (Dec. 16). Then he would no longer be an "inhabitant" of the state in question and would be eligible to receive its electoral votes. (If more convenient under these circumstances, the Presidential candidate could move out instead.)

D.C. Vote in House: If an election went to the House of Representatives for decision, would the District of Columbia have a vote?

Answer: No. D.C. residents have no representation in Congress, even though they are permitted to elect Presidential electors under the 23rd Amendment to the Constitution.

Wallace's Name Is on Ballot in 35 States

The Montgomery headquarters of former Gov. George C. Wallace (D Ala. 1963-67) July 17 told CQ that he had fulfilled the legal requirements to have his name placed on the Nov. 5 general election ballot in 35 states with a total of 367 electoral college votes. Of the 15 states and the District of Columbia where Wallace has not completed the legal requirements, only in Ohio has the qualification deadline passed. The states in which Wallace has completed requirements are:

Electoral Votes	Electoral Votes	Electoral Votes	Electoral Votes	Electoral Votes
• Alabama • 10	• Florida 14	Maine 4	Nevada 3	• South Carolina • 8
Alaska 3	• Georgia • 12	Maryland 10	New Jersey 17	South Dakota 4
Arkansas 6	Idaho 4	Michigan 21	New Mexico 4	• Tennessee 11
California 40	Illinois 26	• Mississippi • 7	• North Carolina 13	• Texas 25
Colorado 6	Kansas 7	Minnesota 10	North Dakota 4	Utah 4
Connecticut 8	• Kentucky 9	Missouri 12	Oklahoma 8	• West Virginia 7
Delaware 3	• Louisiana • 10	Nebraska 5	Pennsylvania 29	Wyoming 3

In addition, Wallace is close to completing legal requirements in Massachusetts; the deadline for qualification is July 30. The states in which he is not yet qualified are Arizona, Hawaii, Iowa, Indiana, Montana, New Hampshire, New York, Ohio, Oregon, Rhode Island, Vermont, Virginia, Washington, Wisconsin, Massachusetts and the District of Columbia. (*For a state-by-state roundup of requirements for qualification, see 1967 Weekly Report* p. 2068.)

• Old Confederacy (11)
• Deep South (5)

ELECTORAL COLLEGE

N.Y.	43	Ind.	13	Minn.	10	Ark.	6	N.M.	4
Calif.	40	N.C.	13	Iowa	9	Colo.	6	N.D.	4
Pa.	29	Ga.	12	Ky.	9	Ore.	6	R.I.	4
Ill.	26	Mo.	12	Wash.	9	Ariz.	5	S.D.	4
Ohio	26	Va.	12	Conn.	8	Neb.	5	Utah	4
Tex.	25	Wis.	12	Okla.	8	Hawaii	4	Alas.	3
Mich.	21	Tenn.	11	S.C.	8	Idaho	4	Del.	3
N.J.	17	Ala.	10	Kan.	7	Maine	4	Nev.	3
Fla.	14	La.	10	Miss.	7	Mont.	4	Vt.	3
Mass.	14	Md.	10	W.Va.	7	N.H.	4	Wyo.	3
D.C.	3	TOTAL ELECTORAL VOTES			538	NEEDED TO ELECT			270

Leaders Guide 1968-1969

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HOW TO WATCH - - - the CHOOSING OF A PRESIDENT - 1968-69

The world's largest free election is a peculiar combination of a visible, popular, national campaign and of an almost invisible, U.S. Constitution-based election process in the states. It is not only our one national election, but it is also only in part a national election. For this reason, state by state details of how members of the electoral college are nominated, what appears on the presidential ballot, what exactly happens at the step in the choosing process that occurs in mid-December, what weight the vote of an individual citizen in various states has in the final selection of a President -- all these matters should interest voters.

But such in-depth facts are seldom known and rarely discussed by most citizens. They have varying importance -- some fascinating details about the electoral college have little influence on election results. However, any citizen wishing to be politically sophisticated should be aware of -- and perhaps should think occasionally about -- the less visible ingredients of the choosing process.

The ELECTORAL COLLEGE CAPSULE QUIZZES on the following pages highlight these ingredients. Since the answers to the questions vary from state to state, you may, if you wish, ferret them out and build a complete picture for your state of how a President is actually elected. Then you may want to get these questions and answers into circulation. The whole wide world of the electorate is your oyster -- League members through the bulletin and at meetings, the public through the press, radio and TV, and through other organizations. Distribute this information as you would Voters Service material. Page 49 of the new LWVUS Voters Service Handbook is devoted to distribution techniques. Borrow a copy from the President of your League or get one of your own.

In addition to the ELECTORAL COLLEGE CAPSULE QUIZZES, other "watching tools" are or soon will be available: 1) a FACT SHEET with special emphasis on third party prospects in this election, and a description of how the House of Representatives would go about electing a President; 2) a basic explanation of the structure and function of the electoral college in the Election Issue of the NATIONAL VOTER, which you will receive as soon after the Democratic National Convention as possible.

Before the end of the year there will be 3) a CURRENT REVIEW on proposed electoral college reforms and 4) a FACTS AND ISSUES early in 1969 for League members and the public.

IV JANUARY 6, 1969 -- (Continued)

3. Who announces the names of the new President and Vice President of the United States?
4. Has a nominee ever been elected President when the presidential electors of his party have NOT received a majority of the nation's popular vote?

B. Contingent Election -- "...and if no person have such majority..."

1. If no candidate for President or Vice President receives a majority of the electoral votes, how and when is a President elected? A Vice President?
2. What would happen if the election of a President could not be resolved by January 20? Has this ever occurred?
3. Would members of the departing or the incoming House of Representatives vote to select a President if there were no majority in the electoral college?
4. Do they vote as individuals or as state units?
5. Which candidates for President are voted upon by the House of Representatives? By the Senate for Vice President?
6. What happens if a state delegation in the House of Representatives is split down the middle?
7. For the candidate of which party do you think your state delegation in the House of Representatives might vote if called upon to do so in 1969?

* * * * *

V IF DEATH OCCURS -- What would happen in 1968-69 --

- 1.- if the presidential or vice presidential nominee should die before November 5?
- 2.- if between November 5 and December 16?
- 3.- if a President (or a Vice President)-elect* should die between December 16 and January 6?
- 4.- if a President (or a Vice President)-elect should die between January 6 and 20?

* * * * *

C L U E S:

For state laws concerning presidential electors, see Nomination and Election of the President and Vice President of the United States, January 1968. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (75 cents).

For population statistics and 1964 election results by states, see the World Almanac 1968 or the Statistical Abstract of the U.S. in your library. Also Population Estimates -- Current Population Reports, U.S. Bureau of the Census, Superintendent of Documents (see address above), (10 cents).

For percentage of the population of voting age voting in the last presidential election, by states, see Appendix F, The People's President by Neal Peirce, Simon and Schuster. For a state-by-state breakdown on method of choosing electors, see Chapter 3 and Appendix B.

* * * * *

*Officially a President or Vice President is not elected until January 6.

I BEFORE ELECTION DAY -- "Each state shall appoint..."

1. In your state have presidential electors always been chosen by popular vote? On an at-large basis?
2. How many presidential electors does your state have?
3. How is this number determined?
4. Is your state one of the twelve which together could elect a President in 1968?
5. How are presidential electors nominated in your state
 - a) for major parties?
 - b) for minor parties?
 - c) for new parties?
 - d) for independent candidates?
6. Who can be a presidential elector?
7. Who are the candidates for presidential elector this year in your state -- for each party? Is there a candidate for elector from your community?
8. How can the typical candidate for presidential elector in your state be described this year -- age, sex, political experience?
9. Is there any indication as to how the candidates for presidential elector in your state feel about their task -- as a perfunctory obligation or an opportunity to exert independent judgment?
10. What is a presidential elector paid?
11. Are presidential electors in your state subject to a state corrupt practices act? In what way?
12. Are the candidates for presidential elector in your state pledged to vote for the presidential candidate of their party? By party rules? By state law? By formal oath?

* * * * *

II ON ELECTION DAY -- NOVEMBER 5, 1968 -- "...in such manner as the legislature thereof may direct..."

A. The Ballot

1. Will the presidential candidates or the presidential electors of the various parties, or both, appear on the November 5 ballot in your state?
2. If the candidates for presidential elector appear on your state's ballot, are their names listed individually to enable voters to vote separately for individual electors of one party? -- Of more than one party?
3. If in your state presidential electors can be voted upon individually, how did the vote for each elector on the winning slate in the last presidential election "stack up"? What was the highest number of votes received by an individual elector? What was the lowest? On what basis was "a" specific vote for the slate established?
4. Is a plurality or a majority of popular vote necessary to elect a slate of presidential electors in your state?

II ON ELECTION DAY -- NOVEMBER 5, 1968 (Continued)

B. The Weight of an Individual Citizen's Vote

1. What is the population of your state (1960)? Has it increased significantly since 1960?
2. Considering your state's total number of electoral votes (which is based on the 1960 census), how many persons in your state are represented by one electoral vote?
3. How does your state's ratio of electoral votes to population line up with the ratio in neighboring states? In Alaska? Georgia? California? Connecticut?
4. What does this mean as far as the possible weight of one person's vote in the various states is concerned?
5. What percentage of persons of voting age in your state voted in the last presidential election?
6. What was the actual weight of a vote for presidential elector in your state in the last election? In neighboring states? In Utah? Mississippi?
7. Why does the individual citizen in states with small populations have a proportionately greater influence on the outcome of the electoral vote of his state than have the voters of states with large populations?
8. What was the actual vote for the presidential electors of the various parties on the ballot in your state in the last election?

* * * * *

III DECEMBER 16, 1968 -- "The Electors shall meet in their respective states and..."

1. How is the date determined when the presidential electors vote for a presidential nominee in their respective states? Has it always been the same?
2. Where and at what time of day does the meeting take place in your state? What takes place at the meeting?
3. In 1964 did all the presidential electors of the winning party come to your state capital to vote on December 14?
4. Are the individual electors certified in any official way?
5. What provision exists for substitutes?
6. How is the balloting carried out in your state? In others? Is it secret?
7. Have presidential electors in your state in this century ever voted for someone for President other than the candidate of their party? Why?
8. The votes of how many citizens in your state were for the losing slates of presidential electors, and therefore were completely negated in the voting for a presidential candidate in the last election?

* * * * *

IV JANUARY 6, 1969 -- "The President of the Senate shall, in presence of..."

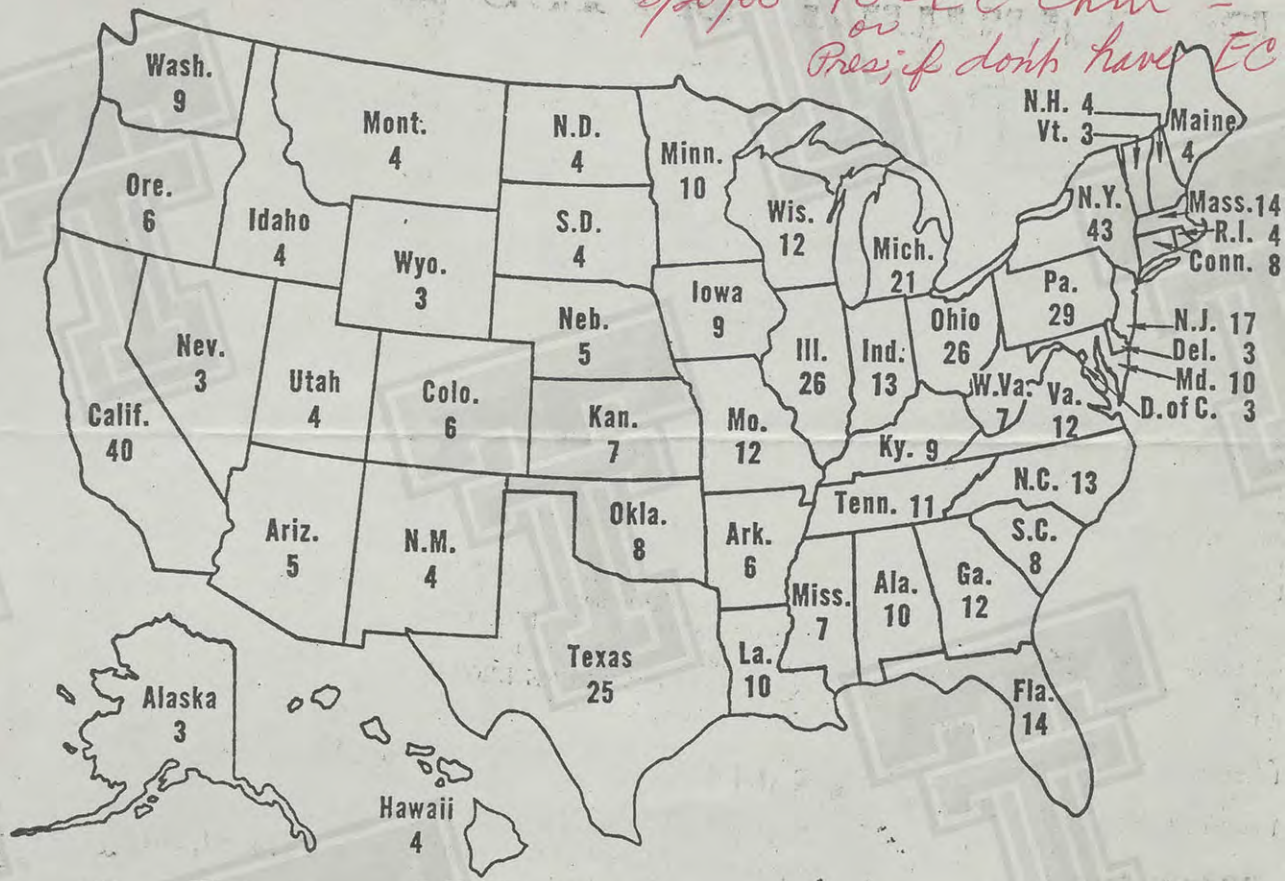
A. The Counting

1. What happens if the electoral vote of a state is disputed?
2. Can Congress refuse to count the votes of a state? Under what circumstances?

AUG 22 RECD 1968

Electoral College System

8/20/68 TO-EC Chm -
or
Pres; if don't have EC Chm's
Name



By BARBARA McDADE
Post Reporter

Many people know of the electoral college system but few really understand what it is and exactly what it does.

In effect the 538 members of the college selected by the political parties of each state have the direct authority to select the President of 200 million Americans. Each state has as many presidential electors as it has senators and representatives in Congress.

Texas has two senators and 23 representatives and therefore has 25 electors. Each major political party in the state holds a convention and selects its electors every four years.

AN ELECTOR MAY BE any member of a particular party but cannot be a state or federal official.

Here is what the electors do:

In the November presidential election the voters decide which political party's electors will elect the President and vice president.

Although the presidential and vice-presidential candidates are listed on the Texas ballot, it is the electors who are actually being voted upon. In some states the names of the electors are listed

on the November ballot. In Texas they are not.

THE ELECTORS of the party represented by the presidential and vice-presidential nominees who get the most Texans' votes will then vote again in December, casting Texas' votes in the electoral college.

A voter must vote for the presidential and vice-presidential candidates of the same party for his vote to be counted. Presidential electors are supposed to vote for the nominees of their party but have done otherwise in rare instances.

If the Democratic candidates get the most votes in Texas in November, then only the electors selected by the Democratic state convention will cast Texas' electoral votes in December. If the Republican or other party nominees receive the most votes in the November election, then only the electors selected at the state convention of the winning party will qualify as presidential electors.

This year 25 electors will meet in Austin on Dec 16 and will each cast two votes, one for President and one for vice president. The votes are cast in secret.

The electors then sign and certify their ballots and the sealed ballots are sent to

the president of the Senate who is the incumbent vice president of the U.S.

THE VICE PRESIDENT will then open and count all the states' electoral votes in the presence of Congress and announce the new President and vice president, meaning the candidates having a majority of the electoral votes, which is 268.

If none of the candidates gets a majority the House of Representatives will choose the President and the Senate will choose the vice president from the three top candidates. Each state has only one vote in this case. Should this occur the nation's two highest officials would each be chosen by 50 men.

IN SUCH A CASE a majority of the states must vote, which means a minimum of 26 states. However, two-thirds of each state's congressional delegation must decide which way the one vote will be cast.

The outcome of the vote in the electoral college is announced in January. If, however, the choice of President falls to the House of Representatives and no President is selected by March 4, the new vice president shall serve as President.

From Houston POST

August 18, 1968

news release

The League of Women Voters of the United States

*For statement on EC
See NB Advance Rpt
Jan. 1970*

For Release after 1:00 p.m.

EC

JAN 27 RECD

January 15, 1970

Washington, D.C. ... The League of Women Voters of the U.S. announced a new national position in favor of the direct popular election of the President and Vice-President and the abolishment of the present Electoral College system.

The action, taken by the League's Board of Directors, marks the beginning of a national effort for a Constitutional Amendment establishing a direct election method. The League position also includes provisions for a run-off election in the event that no candidate receives more than 40 percent of the votes cast.

League President Mrs. Bruce B. Benson, Amherst, Mass., stated: "The decision to work for direct election of the President is based on a clear-cut mandate from local Leagues in all sections of the country and stems from 18 months of study and discussion by League members."

Mrs. Benson reported that of over 1,000 Leagues registering an opinion in the consensus making process, 78 percent were in support of the direct election method. Only four Leagues favored retaining the present system.

The League of Women Voters will immediately press for the passage of a Senate Joint Resolution for a direct election amendment during this session of Congress. (A House Joint Resolution, H.J.Res. 681, received the necessary two-thirds vote on September 18, 1969.) Additionally, state and local Leagues will also begin action programs which will focus on their state legislators and on informing the voting public of the issues involved.

YEAR OF THE
VOTER

OVER

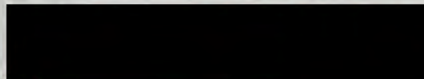
Mrs. Benson stated that: "The League consensus favoring direct election of the President is another reflection of the League's traditional commitment to full and direct citizen participation in our political system. It is, therefore, particularly fitting that it is the first formal act taken in 1970, the League's 50th Anniversary year which we have designated as 'The Year of the Voter.'"

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TIME FOR ACTION



LEAGUE ACTION SERVICE
LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES



25 CENTS A COPY

NO. 91-II-16

August 6, 1970

TO: Local and State League Presidents
FROM: Mrs. Bruce B. Benson, President
RE: Direct Election of the President

TIMING: Senate action on the Constitutional Amendment for direct election of the President (S.J. Res. 1) has been postponed until after Labor Day recess. Senate debate on the military procurement authorizations bill is expected to continue at least until the Senate recess which is scheduled to begin on September 2. Unless there is further slippage in the schedule, Electoral College reform floor debate will begin soon after the Senate returns, September 8.

NATIONAL COALITION: In Washington, the League has been working with an Ad Hoc Committee of representatives of other national organizations supporting the direct election of the President: American Bar Association, AFL-CIO, Chamber of Commerce of the United States, International Ladies Garment Workers and the United Auto Workers Union. The coalition representatives have been meeting with Senators whom we hope to persuade to vote for S.J. Res. 1. So far we have met with Senators Miller, Moss, Murphy, Saxbe, Smith (Ill.), Stevens and Williams (Del.) and Senate staff of Senators Boggs and Prouty.

We have had reports that some state and local Leagues are already working with these organizations. Since all of these organizations do not arrive at consensus in the same way the League does, all local and state affiliates may not support this issue. However, we are urging Leagues now to make a concerted effort to work with these groups in their lobbying endeavors and we have a few suggestions on how you might proceed.

For State Leagues: Contact your state counterpart for these organizations. Urge them to make a statewide announcement in support and to get their members to write their Senators. You might possibly be able to arrange for a joint statement or press conference. See if this group could arrange a meeting in the state with your Senators when they return home. State Leagues should keep the local Leagues informed on statewide efforts especially your work with other state groups. The League state Public Relations Chairman should try for some statewide press and editorials in support of the direct election of the President. Many newspapers have already carried editorials, but should be encouraged to do so again when the Senate begins its debate. Both publicity and letters to Senators should be built up to the time when the Senate begins floor debate on the Constitutional Amendment.

For Local Leagues: Contact your local counterpart for these organizations. In some cases local organizations may support the direct election of the President, even though the statewide organization does not have a position. If you have their support, urge them to get their local members to write letters, to issue announcements of support and try to get a joint press announcement and local coverage on this issue.

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Time for Action is sent on Duplicate Presidents Mailing.

Subscription \$3.00 for the Congressional session.

During the next few weeks try to line up some radio and television time. You might get your local coalition together on the same program. An outpouring of letters to Senators is vital, especially to those Senators still on the fence. Local Leagues should alert their members through Times for Actions, local League bulletins (if timing is right), phone chains, etc.

The lead story in the August issue of the NATIONAL VOTER (members should receive the VOTER toward the end of August) is on electoral reform. Some of your local papers may be willing to carry the entire article in their paper. Additional copies, for distribution in your community are available from the national office at 20¢ each. Quantity orders are filled at the regular discount rate (see page 34 of the June 1970 LWV-US Catalog).

OUTLOOK FOR SENATE RATIFICATION: We have tried to do a "nose count" of Senators on their positions vis-a-vis the direct election of the President. We don't have 2/3rds in the "yes" column, so it is clear that our work is cut out for us in the coming weeks. "Nose counts" are rarely perfect and Senators do fluctuate from time to time in their degree of commitment so don't write off all those in the impossible column or ignore those in the committed column. However, the major efforts should be on those Senators in the undecided column.

Senators who have cosponsored the direct election resolution

Aiken	Church	Inouye	Metcalf	Pell
Baker	Cook	Jackson	Mondale	Proxmire
Bayh	Cranston	Javits	Montoya	Randolph
Bellmon	Goodell	Magnuson	Muskie	Ribicoff
Bible	Gravel	Mansfield	Nelson	Schweiker
Burdick	Harris	Mathias	Packwood	Tydings
Byrd (WV)	Hartke	McGovern	Pastore	Williams (NJ)
Case	Hatfield	McIntyre	Pearson	Yarborough
				Young (OH)

Senators who have announced support for direct election

Brooke	Gore	Hart	Percy	Smith (ME)
Dodd	Griffin	Kennedy	Scott	Stevens
				Symington

Senators undecided, positions unknown or unclear--This is the key list to work on

Allott	Cannon	Fulbright	Long	Prouty
Anderson	Cooper	Hollings	McGee	Saxbe
Boggs	Cotton	Hughes	Miller	Smith (IL)
Byrd (VA)	Eagleton	Jordan (ID)	Moss	Williams (DE)
			Murphy	Young (ND)

Senators whose support is unlikely or impossible to get

Allen	Eastland	Goldwater	Jordan (NC)	Sparkman
Bennett	Ellender	Gurney	McCarthy	Spong
Curtis	Ervin	Hansen	McClellan	Stennis
Dole	Fannin	Holland	Mundt	Talmadge
Dominick	Fong	Hruska	Russell	Thurmond
				Tower

NOTE: If you get any information which would indicate a Senator should be moved from one list to another--please let the national office know.

APR 27 RECD

TIME FOR ACTION



LEAGUE ACTION SERVICE
LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES

25 CENTS A COPY

NO. 91-11-6

April 15, 1970

Posted Apr. 23 '70

TO: Local and State League Presidents
FROM: Mrs. Bruce B. Benson, President
RE: Continuing Action on Electoral College Reform (see February 6, 1970 T/A)

From the reports we are receiving daily in the national office, we know that every member of the Senate Judiciary Committee has heard from some League and that the President has heard from Leagues in at least 21 states in favor of direct popular election of the President and Vice President. We are also receiving clippings on local press coverage and letters to the editors. The next four or five weeks are crucial.

AIMS OF THIS TIME FOR ACTION:

- 1) To urge the Senate Judiciary Committee to vote out a direct election plan with a runoff provision if no candidate receives 40 percent of the popular vote (the committee is expected to vote on or before April 24). League members in the 15 states represented on the Judiciary Committee who have not already written to the Senators on the committee should be urged to do so as soon as possible.
- 2) To build support in the Senate for approval of the Constitutional amendment for direct popular election of the President and Vice President. (It could come up in the Senate early in May.) NOW IS THE TIME to let the entire United States Senate know there is support around the country for changing the Electoral College method to a direct election system. In addition to your letters, Convention delegates will have an excellent opportunity to lobby for the direct election plan during the afternoon on the Hill, Wednesday, May 6.

STATUS: As a vote on Electoral College reform approaches in the Senate Judiciary Committee, the situation regarding direct election prospects has developed into something quite different from that which existed last fall when the House overwhelmingly passed a direct election plan. The battle lines now are different--the troops are different--the issues are different. There is a new realignment of allies.

Before the House of Representatives vote the protagonists for direct election had been "the liberals" and the antagonists "the conservatives." Now, liberals in the Senate are being wooed to vote against direct election with arguments involving large state swing propensities, the vote clout of urban minorities, and the danger of splinter parties and runoffs.

The "small-states-won't-ratify" argument is giving way to "the-big-states-stand-to-lose-in-a-direct-election-system-and-so-do-minority-groups-in-large-cities" argument. Washington columnists, Rowland Evans and Robert Novak, stated in early April that in their opinion the White House is hoping electoral reform will die on the vine despite the President's endorsement of it on two occasions last year.

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Gone for the time being, at least, is any expression of interest in the district plan OR the kind of proportional plan which President Nixon preferred only a year ago, before he endorsed direct election after the House-proposed amendment passed. The automatic plan and a form of proportional plan have staying powers in the current situation, and they bob up in various alternatives to direct election under discussion.

Only two alternatives have so far been introduced into the Senate in 1970--the so-called Eagleton-Dole Plan, SJ RES 181, which is really the plan of a young Washington attorney, Myron Curzan (see attached Comments on this plan) and Senator Sam J. Ervin's new automatic plan SJ RES 191.

In all probability, the Eagleton-Dole plan could not carry the Senate, if for no other reason than that it is far too complex. But combined with other pressure group measures, it might succeed in nibbling away at the convictions of a sufficient number of liberals to prevent Birch Bayh from building up the necessary two-thirds vote he needs on the Senate floor.

Urging the Senate to back a less drastic change in the election of Presidents than the House-passed proposal, Senator Ervin, on April 7, introduced a constitutional amendment which would eliminate the office of elector but would still assign electoral votes to each state on a winner-take-all basis. The contingent election provision is for a vote in a joint session of Congress with each member of the Senate and House getting one vote. Senator Ervin has thus abandoned the proportional plan which he had advocated for years.

In the Senate Judiciary Committee: It seems to be fairly certain that Senator Bayh's direct-election plan can be voted out of the Senate Judiciary Committee in some form, but only if all those favorable to it are present when the vote is taken and if some of the "unsure" Senate Judiciary members such as Joseph Tydings of Maryland, Robert Byrd of West Virginia, and Edward Kennedy of Massachusetts vote for it. SO--League members living in states whose Senators are on the Judiciary Committee (see TIME FOR ACTION, February 6) please redouble your efforts to get your Senators 1) to be present when the vote is taken and 2) to vote FOR a direct election plan with a runoff election if no candidate gets 40 percent of the popular vote.

The full Senate Judiciary Committee has decided to hold hearings for three days this month, April 16, 17 and 18. One congressional staff expert who has been very close to the whole subject dubs these hearings "an ambush." That they are definitely stacked against direct election is evident from the list of witnesses available at this time: Prof. Alexander Bickel of Yale University Law School; author-reporter Theodore White; Nicholas Katzenbach, former deputy U.S. Attorney General and former under-Secretary of State; Richard Goodwin, former White House aide and speechwriter for President Kennedy and President Johnson; Wade O. Martin, Jr., Secretary of State, State of Louisiana; Prof. Charles Black, Jr. of Yale University; Prof. Ernest Brown of Harvard, now visiting Professor at University of Pennsylvania; either Senator Eagleton or Senator Dole; and an unnamed "prominent lawyer from the state of Illinois." Of these witnesses, all are known to espouse either the present system or the automatic plan--a modification of the present system.

The League of Women Voters has been asked to testify and will do so on Friday, April 18. The League is the only witness that we know of at this time who is favorable to direct election. The fact that we were not able to testify in the 1969 hearings is perhaps the rationale for hearing our viewpoint at this time. Mrs. Donald Clusen and Mrs. Griffith L. Resor, Jr., will testify for the League.

House Vote, September 18, 1969

Senate Judiciary Committee

on
Direct Election Plan HJ RES 681

Position Re Direct Election of the President

by
state delegation

<u>State</u>	<u>Senator</u>	<u>Position</u>	<u>For</u>	<u>Against</u>
Mississippi	Eastland (D) Chairman	Against	0	5
Arkansas	McClellan (D)	?	4	0
Connecticut	Dodd (D)	Proportional- but will vote direct in Com- mittee at least	6	0
Hawaii	Fong (R)	Against	2	0
Indiana	Bayh (D)	For	9	2
Kentucky	Cook (R)	For	7	0
Maryland	Tydings (D) Mathias (R)	? For	8	0
Massachusetts	Kennedy (D)	?	10	0
Michigan	Hart (D) Griffin (R)	For For	16 1 not voting	2
Nebraska	Hruska (R)	Against	3	0
North Carolina	Ervin (D)	Proportional Against direct Automatic 4/8/70	10	1
North Dakota	Burdick (D)	For	1	1
Pennsylvania	Scott (R)	For	21 1 not voting	0
South Carolina	Thurmond (R)	Against	1 not voting	5
West Virginia	Byrd (D)	?	5	0

On the Senate Floor: Once any plan reaches the Senate floor, the real battle begins. Prophecies of doom are now replacing the optimistic opinions of last fall and winter. The Kiplinger Washington Letter predicts that the Senate will defeat direct election and that unless the 1972 presidential election is a very close one, reform may be dead for years. Capitol Hill experts who have worked on Electoral College reform consider every day of delay a build-up toward disaster.

Even if a direct-election plan is not reported to the Senate, there will be major efforts on the Senate floor to get Senate approval for the direct-election plan. The Senate will probably take up electoral reform sometime after May 4.

WHAT THE LEAGUE CAN DO: A number of League members have already written to Senators who are not on the Judiciary Committee, giving the League position and asking them to vote for direct election. Many Leagues have also written to the White House asking for more active support of Electoral College reform. NOW is the time for EVERYONE to do this.

It is much more politically effective at this time not to explain the whole League position in detail. Obviously, any part of the position not relating to direct election is a fall-back conditional position only for use IF and WHEN it is deemed necessary by the National Board.

The strategy consists of educating your community to the merits of direct election and getting as much publicity mileage out of this--not for the League per se but for the League's position. (See TIME FOR ACTION, February 6, for specific suggestions.) It also consists of urging the Senate to vote for a direct election plan.

In doing this it is important to stress those points which are being used as counter-arguments by the foes of direct election. Study the "small states," "large states," and "urban minorities" arguments. Answer them at every opportunity. Don't forget the most telling arguments of all--that direct election alone prevents any possibility of a minority President and that it alone embraces the one-man, one-vote principle completely. Examine the claims, think them through, and then refute them. As the League discovered, Electoral College reform is a very complex subject. It is now our obligation to pass on to others what we have learned in this study.

At some point compromise may be necessary, but that time is not now. And the League, of course, could only accept compromise that would fall under its position.

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NOTE: We have just learned that the Chamber of Commerce of the U.S. and the American Bar Association are now scheduled to testify before the Senate Judiciary Committee.

April 15, 1970

ELECTORAL COLLEGE REFORM

New Developments

In this "sitting-it-out" period in the Senate Judiciary Committee, prospects for Electoral College reform are being subjected to new approaches which may be intended to be fatal blows to the passage of a direct election constitutional amendment. Thinly veiled "special interest" pleas are being made under the guise of improving the direct election plan passed by the House of Representatives last September.

As electoral reform continued to be bottled up in the Senate Judiciary Committee, SJ RES 181 for a "Federal System" Plan was introduced into the Senate on March 5 by two freshmen Senators--Thomas Eagleton, Democrat of Missouri, and Robert Dole, Republican of Kansas. Neither is from a large state. Senator Eagleton was a co-sponsor of Senator Birch Bayh's SJ RES 1. The Federal System Plan is the work of Myron Curzan, young Washington attorney, who had worked for Robert Kennedy. (He is now with Arnold Porter, Abe Fortas' old law firm.)

Mr. Curzan's plan is a complicated melange of direct election and the present Electoral College system (with the winner-take-all method of allocating electoral votes) and the proportional system, that seeks to allay the fears of a liberal group who saw in Senator Birch Bayh's direct election plan a threat to the swing power of large cities and large states. "We have attempted better to mesh two of the concepts upon which our governmental structure is based--the concepts of popular sovereignty and federalism," said Senator Eagleton.

It is important to know not only what this plan consists of, but the arguments and the counter-arguments because they will be used over and over again in the Senate floor debate and should become the basis for public discussion throughout the country. League members should also be familiar with the obvious flaws of the Federal System Plan.

The Federal System Plan purports to produce a winner who will necessarily have "broad-based support throughout the country." In addition, it purports to solve problems that, according to the plan's creators, are likely to be caused by a runoff election provision. Senator Eagleton and Senator Dole ascribe to this plan other "salutary effects" which merit questioning.

In brief, the Curzan plan which is now Eagleton-Dole SJ RES 181 would operate as follows:

1. The popular vote winner would be declared elected if--

He has carried states which contain more than
one-half of persons who voted in the election;

or

He has carried more than one-half of the states.

2. If neither of the above is satisfied, the winner would be decided by a majority of the electoral vote.

3. If there is no electoral winner, the electoral votes of minor candidates would be distributed among two front-runners by giving the electoral votes carried by minor candidates to the two front-runners in each particular state in proportion to their vote totals.

For the text of the Resolution and a detailed explanation by Senators Eagleton and Dole, refer to the Congressional Record--Senate of March 5, 1970, pages S 3026-33.

I. STEP ONE -- THE FIFTY PERCENT RULES "TO ENSURE NATIONWIDE SUPPORT"

Argument: "A Chief Executive who hopes to govern effectively in the United States must be able to show that he is not simply the choice of the people, but rather that he is also the choice of the people of a number of states...that he has widespread support throughout the entire country."
-- Senator Eagleton

Answer: The Fifty Percent Rules make it possible for a President to be elected who has not received a plurality of the popular vote. Only the direct election plan guarantees that this possibility cannot occur. The League of Women Voters deems this guarantee a most important one.

In addition, neither of the Fifty Percent Rules would ensure nationwide voting support of a presidential candidate. A candidate could carry 26 states plus the District of Columbia and not get a single vote west of the Mississippi River. Under those circumstances, he would certainly not be acceptable to much of the midwest, all of the Far West or to Alaska and Hawaii.

OR since it is possible that a total of only ten states contain more than one-half of the voters in a presidential election, a candidate might win in just these ten states, might lose in 40 states plus the District of Columbia, and still, in the Eagleton-Dole plan, would win the election.

Furthermore, the most convincing answer to this argument is that the election of a "regional President" has never occurred in this country, and in these days of instant communication and television campaigns it is much less likely to do so than in the past. There is no argument on which to base the likelihood of such an occurrence in the future.

So, the nationwide support argument does not hold water.

II. STEP TWO -- SUBSTITUTES FOR A NATIONAL RUNOFF A DECISION BY A MAJORITY OF THE ELECTORAL VOTE

- A. Argument: The existence of a runoff provision in a direct election system would encourage SPLINTER PARTIES. Senator Eagleton stated:

"They would probably be ideological parties formed around a particular issue or based on a 'personality cult' centered on a particular individual. And if these parties were formed it does not require much imagination to foresee the kind of bargaining for endorsements, withdrawals and votes that could occur both prior to a close election and between an election and a runoff.

"Why should people not 'vote their conscience' in a first election when the system will probably permit them a later opportunity to vote for a so-called compromise choice? Why should blacks, or farmers, or doctors, or conservationists, or feminists bother to compromise within the two-party context when their most direct route to influence would appear to be through running candidates who can toss presidential elections into a runoff situation?

"In my judgment, the well-being of this country would suffer if its presidential elections were marked by a multitude of splinter parties, each appealing for votes on particular questions. Our political system would become factionalized, with numerous groups taking uncompromising stands and rejecting the realistic compromises which are so essential in a democratic society. At a time when the tendencies toward political fragmentation and ideological division are all too evident in this country, we must view with the gravest concern any change in our electoral processes that may aid and accelerate these tendencies."

Answer: Whether the direct election system with a runoff would strengthen or weaken the two-party system has been studied in depth by such bodies as the American Bar Association Electoral Commission and thoroughly aired before congressional committees. The ABA is convinced it would strengthen the two-party system.

In the March issue of the American Bar Association Journal, William T. Gossett, past president of the American Bar Association, in an article on Direct Popular Election of the President, states:

"Somewhat ironically, the runoff provision has been used to oppose the direct election proposal through an argument that runoff provisions encourage multiple candidacies and make runoffs more likely. Studies of nominating primaries in some southern states are cited as proof. These were considered by the (ABA) Commission. Analysis shows that they are not comparable to national Presidential elections for three important reasons:

1. The Southern primaries involved competition within a one-party system, which is hardly equivalent to elections occurring against the backdrop of an established two-party system.
2. The Southern primary campaigns involve multiple candidacies of individuals, not parties. We always have a few individuals who seek personal expression as nominal Presidential candidates, but individuals without party organizations are no threat to the system.
3. Most important, the Southern primary experiences are caused mainly by majority requirements for nomination. The Commission profited from these examples when it chose a plurality, rather than a majority, requirement. True, the plurality must reach a certain level; but it is one likely of attainment, and the tendency of majority requirements to cause third-party efforts is eliminated."

RUNOFFS AND SPLINTER PARTIES (continued)

Argument: When introducing the Resolution, Senator Eagleton said: "The cost of presidential elections would soar once a number of parties had become involved and runoff elections had become part of the system."

Answer: It is very unlikely that "a number of parties" would get involved and a runoff election in all probability might never happen. The basic American system of elections discourages third parties. They do not exist as a general rule in other direct popular elections--for Congress, for governors, state legislators or mayors. In the past quarter century minor parties have not held more than two of the 435 seats in the U.S. House of Representatives. Electoral laws, campaign practices, and social patterns make it extremely difficult for minor parties to attain even secondary nationwide influence.

Mounting a presidential campaign is just too expensive an undertaking for splinter parties. Besides money, it takes an efficiently functioning, nationwide political organization. Even when a third party has managed to do this in the past, the percentage of popular votes it has been able to win has never brought down the winning candidate's percentage to less than 40% except in 1860 when Abraham Lincoln was not on the ballot in ten states and yet his electors won 39.8% of the popular vote.

In half of the presidential elections in this century a third party has participated nationally. On only three occasions have the electors of a third party candidate received more than 3.5% of the popular vote:

1968	George Wallace	13.5%
1924	Robert LaFollette	16.6%
1912	Theodore Roosevelt	27.4%

- B. Step Two -- the choice of a winner by electoral vote majority would also give CONSTITUTIONAL LEGITIMACY TO THE WINNER-TAKE-ALL method of allocating electoral votes.

Counter-Argument: As a result of its study of the Electoral College system, the League of Women Voters determined that the winner-take-all aspect urgently required change. The possibility of a minority President goes hand in hand with the winner-take-all method--and this defect needs top priority attention in any reform of our system. When a person's vote for President can indirectly help to elect a candidate he voted against through the winner-take-all system of allocating electoral votes, an injustice is being done to that voter.

- III. STEP THREE -- carries the injustice of Step Two's winner-take-all aspect even further.

If no candidate passes the Fifty Percent Tests or receives an electoral vote majority, then a REDISTRIBUTION OF ELECTORAL VOTES takes place within each state on a proportional-with-a-twist basis. The Federal System Plan would eliminate all but two leading candidates from consideration and redistribute the electoral votes won by third (and fourth, etc.) party candidates based on the relative number of popular votes obtained within the state by the two leading national candidates.

Counter-Argument: This compounds the sin against the right of a voter to have his vote count for the person for whom it was cast. While under the winner-take-all system a person's vote can indirectly help another candidate be elected, under this proportional-with-a-twist system, a person may now be in the position of having his vote for candidate C or D given directly to candidate A or B.

IV. In addition to ensuring nationwide support (which it does not do) and preventing a proliferation of parties, the Federal System Plan claims a number of other "salutary effects" which are irrelevant and debatable.

A. Argument: The possibility of VOTE RECOUNTS and FRAUD tainting an entire national election.

Answer: This spectre is raised by Senator Eagleton but never laid to rest. The Federal System Plan makes no proposal for its solution. The possibility of recounts and fraud remains the same regardless of type of presidential election but the consequences may be decidedly more serious in an Electoral College system.

B. Argument: THE COST OF A RUNOFF ELECTION would be stupendous.

"What new problems relating to campaign fund suppliers and their influence on substantive decisions will be raised if parties are forced to obtain double or triple the present sums to finance two-tiered presidential races?"

Answer: The League of Women Voters believes that a runoff between the two top pairs of candidates should be held just as soon as possible after the first election to discourage additional campaigning. The only essential cost would be that of actually administering the election, and it has been suggested that the federal government should help to bear this expense in the highly unlikely event that a runoff should be required.

C. LARGE STATES AND URBAN-ORIENTED MINORITIES

1. Argument: "...the objective of each of the major parties would not only be to win the national popular vote but also to win each state."

Answer: This statement does not "prove out" as noted above. The largest states would still be the major target of presidential campaigning because a win in the ten largest could produce a victor. Under any system of presidential election it is inevitable that the largest states are going to be the prime targets of presidential campaigning.

2. Argument: "The significance of swing states would be retained and minority groups within those states would continue to have power to affect the result of a presidential race within the two party framework."

Herein lies the key to the whole proposal. This is what it hopes to accomplish.

Answer: Whether minority groups within swing states really do have the power to affect the result of a presidential race, given their present voting patterns, is very questionable.

3. Argument: "A direct election system would curtail the power--which exists within a two-party Electoral College context--of urban-oriented racial, ethnic and other minority groups, since these groups would have reduced ability to affect the outcome of a Presidential election...The best interests of this country do not lie in removing the power which these urban groups have in Presidential races...The passage of a direct system might well ensure that all of these voting blocs--in an effort to be heard and to obtain influence in the selection of the President--would take the only logical step left open to them, namely, the creation of Presidential parties, which can barter votes for power in a subsequent runoff election."

Answer: This argument is based on the premise that "urban-oriented racial ethnic and other minority groups" have a high voting participation and vote as a bloc. But the fact is that in 1968 they did not turn out as a bloc to defeat Richard Nixon. Their voting participation was not high and/or their clout was not sufficient. But suppose the premises were unquestionable. In 1970 does this country choose to have an antiquated, potentially dangerous Electoral College system of electing the President merely to provide extra clout to urban minority groups and to swing states?

The testimony of Clarence Mitchell, head of the Washington Bureau of the NAACP, before the House Judiciary Committee in February 1969 and the responses of several Congressmen to his statements are relevant. The NAACP position was one of support for direct election "but only if there are adequate safeguards against all forms of discrimination that deny the ballot to our citizens because of race." We favor a direct election of the President, but not at this time, because of the problems of people being denied the right to vote." Mr. Mitchell pointed out that "there are some 188 counties...in the area covered by the 1965 Voting Rights Act, to which no examiners were ever sent for the purpose of taking up the cause of those who had been discriminated against."

"Until the number of unregistered voters diminishes, I think it would be a serious hazard for the whole country if we had a system of direct election...If we can be sure the one man, one vote principle works, and everybody has a fair chance to vote, then obviously the ideal system is a direct election of the President."

Rep. Abner Mikva of Chicago, Illinois, argued with Clarence Mitchell that--

"...if you look at Negroes as a bloc, and consider that every Negro's concern is similar, whether in South Carolina or New York, I could make a case that perhaps the black voters' vote would be counted more, even with the present discrimination, if we have direct election of President and Vice President, than it is right now. I say that because the balance that is now in the northern big states, which Mr. Bickel alleges, (Prof. Alexander M. Bickel of Yale Law School and The New Republic) and I am afraid he is wrong, is controlled by a black minority--is just not so. There are other minority groups that tend to vote as a bloc. To the extent that black people do, they are not controlling. I cite the last election as an example. I am inclined to think that the influence of southern Negroes, even taking into account that still only a proportion of them are voting, would become much more important if they were counted in the electoral process. And they would be if there were a direct popular election of the President."

Rep. Robert McGlory of Illinois summed up the situation in the winter of 1969--

"...We are charged with providing legislation which would be advantageous to the national welfare--all the people. If we yield to the appeals of the bloc votes or the special interests of the small states or the large states, and if we don't take an overall national view of this problem, it seems to me that our efforts are going to be fruitless."

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AFTER THE ELECTORAL COLLEGE

William J. D. Boyd

NATIONAL
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AFTER THE ELECTORAL COLLEGE?

WILLIAM J. D. BOYD

Senior Associate

National Municipal League

NATIONAL MUNICIPAL LEAGUE

Carl H. Pforzheimer Building

September 1968

Foreword

Foreigners are puzzled and bewildered by the manner in which the President of the United States is chosen; and so, to tell the truth, are most Americans.

There is a growing realization on the part of the relatively few who really understand it that the Electoral College was an edifice of compromise designed to grace a campus that ceased to exist long ago, and that, in fact, its continuance may constitute a genuine peril. Widespread understanding of the problem and the proposed solutions is an urgent need.

This pamphlet is intended as a general introduction to the subject. For those who wish to go into the matter more deeply there are other more detailed publications. A recent scholarly book is *The People's President* by Neil R. Peirce.

Opposition to the Electoral College is increasing, with a variety of reforms being suggested. Several of these, with the arguments pro and con, are presented here. Any specific change, however, will require approval by three-fourths of the state legislatures. Therefore, no matter how ominous the peril, the cure will not be achieved speedily.

ALFRED WILLOUGHBY
Executive Director

September 1968

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The Problem

The President of the United States is inaugurated on the 20th of the January following his election. What if, on some January 20th, no one had been elected? Ridiculous? Certainly. Impossible? Not in the least! What if the presidential candidate who won the most votes was displaced by the runner-up? Impossible? It has happened three times!

Every four years, the most powerful nation runs the grave risk of being thrown into a constitutional crisis that, at best, would adversely affect public confidence and, at worst, could lead to civil insurrection or sneak attack from abroad.

The culprit is an almost 200-year-old electoral system that has prompted senators, congressmen, civic leaders and such influential organizations as the American Bar Association to call for reform.

Few issues so preoccupied the delegates to the Constitutional Convention of 1787 as did the office of chief executive of the fledgling nation. Should he be a king? Should there be a single or a plural executive? Should he be able to succeed himself? Should he have veto power? Finally, and probably most difficult, how should he be selected?

Their answers constituted a valuable contribution to the development of free government, but one which already has required much re-thinking and modification. *Five* of the 15 amendments adopted since the Bill of Rights have dealt with the election, inauguration, term of office or line of succession of the President. Thus, the American people revere the handiwork of the founding fathers, *except* when dangers in the system of election and succession to the Presidency become apparent.

The constitution's draftsmen displayed great foresight, but they could not know that the development of organized political parties and the emergence of this country as the world's dominant power would render rather academic their system of "electors" who were to protect us from internal factionalism and external domination. They created an institution suited to a time when there were no railroads, telegraphs or major newspapers, when communication was dependent on horses or coast-wise sailing boats and travel between some of the state capitals took weeks.

Creating the College

The delegates to the Philadelphia convention approved several methods of selecting the President, only to reject each in subsequent votes. On at least four occasions they approved selection by the national legislature. Twice they left it to the state legislatures to choose Electors. Though there was some sentiment for it, they twice rejected direct popular election.

Among the founding fathers were men with extraordinary knowledge of history and political philosophy, a knowledge which lent perception to their debates, and they were fully aware of the many potential pitfalls in the system they were creating.

The only republican form of government that had existed anywhere since the days of the Roman consuls was in the city-states of northern Italy where the intricacies and quarrelsome nature of politics had done little to gain respect for that form of government or provide guides for its development. Nonetheless, the men gathered at Philadelphia in 1787 were determined that the executive should not be a king who might become a tyrant, or the tool of powerful social or economic interests.

Big versus Small States

There were also conflicts among the new states, with concern over big-state dominance and small-state provincialism. If the President were elected directly by the people, it was feared that the inhabitants of the big states would vote only for one of their own, freezing out the smaller states, or that a demagogue might capture the public's favor, as Plato and Aristotle had warned.

Were the chief executive to be chosen by the national legislature, the fear of cabal and corruption haunted the delegates.

After settling the problem of whether the position of chief executive should be a strong one held by a single individual, and determining the length of his term and his eligibility for reelection, the delegates reached a stalemate over the manner of his selection. Actually, all of the issues were so intertwined that, when the final question was resolved, some changes were made in earlier decisions. Finally, they agreed on the appointment of a committee on postponed matters which came to be

known as the Committee of Eleven. The work of this group is one of history's outstanding examples of compromise.

Committee of Eleven

All simple solutions had to be rejected because they automatically alienated one bloc or another. In basic outline, the committee established the system we have today—a complex and cumbersome mechanism. The President would be chosen by Electors who would meet and cast votes in their separate states. These were to be selected in the manner prescribed by the legislatures of the individual states. This solved several dilemmas. The chief executive, who was to be eligible for reelection, would not be beholden to the national legislature for his office. Those who favored eligibility for reelection thought it would be an incentive for a man to perform with excellence. This could be accomplished only if he were independent of his legislators. Otherwise, it was felt, an incumbent President, in order to achieve reelection, would so cater to Congress that he might be virtually powerless during his first term.

Having the Electors meet in their respective states provided two advantages. First, since the Electors would not be brought together as an entire group, they could not conspire among themselves. Second, being dispersed across the country and selected only a few weeks before they performed their duty, they would be sufficiently unknown and remote as to be relatively immune from bribery by foreign powers. The Polish monarchy provided the delegates with an excellent example of such dangers. The kings of Poland, though chosen for life, were not hereditary sovereigns. Their selection was in the hands of the nobility, who being easily identifiable individuals, had fallen prey to handsome temptation from Russian, Saxon, French and Hapsburg interests. Disputes over the Polish throne had led to more than one European war. Fearful that France or Britain might try to dominate the new nation, the delegates saw the potential for bribery as very real. The Committee of Eleven also knew that a system of intermediate Electors was a nearly unanimous second choice. It made compromise easy.

Election by the House

If the Electors gave no candidate a clear majority, the committee suggested that the Senate should select the President. This was one of the

few proposals rejected. The delegates refused to give this power to the Senate because it already had been assigned authority to ratify treaties, approve the President's appointments and act on the impeachment of the President. While everyone assumed George Washington would be the immediate and unanimous choice for the first President, there was doubt that such agreement would be reached on his successors. There was a general belief that nine out of 10 elections would end with no man receiving a majority in the Electoral College. It was feared, therefore, that the Senate, with all its other powers in close relationship to the Presidency, would become an oligarchy. Since the senators were to be selected by the state legislatures, not the people, some delegates already viewed the Senate as a possible repository of wealth and aristocracy.

The small states, fearing that most elections would end with no candidate having a majority in the Electoral College, wanted no part of any system in which the populous states would cast the all-decisive vote. They opposed the idea that each state cast votes in proportion to its population, so the election was placed in the House of Representatives, with each state, regardless of size, casting one vote.

The initial provision also called for the representatives to make their selection from among the five candidates who had received the most votes in the Electoral College. This, too, was a concession to the small states: the more men involved, the more likely that one would be a resident of a small state. Although part of the original constitution, this provision was amended in 1804 to selection from among the three top candidates.

Intricate Creation

Everyone got something. Although, as earlier noted, it was to become the most amended section of the constitution, it was the least criticized of any major provision in the debates on ratification during the winter of 1787 and much of 1788.

The big states received an important voice in the partially population-based apportionment of the electoral votes. The small states were assured of equal strength in the event no man received a majority. All other pitfalls had been circumscribed as much as possible, and both egalitarians and aristocrats could take comfort in the fact that state legislators would determine the manner in which Electors were chosen. John P. Roche, writing in the December 1961 issue of the *American Political Science Review*, called the final compromise "a jerry-rigged improvisation which

has subsequently been endowed with a high theoretical content." He also appraised it as a "Rube Goldberg mechanism."

The Electoral College

Following each decennial census, the Bureau of the Census of the United States Department of Commerce computes the number of congressmen to which each state is entitled, and the official assignment is done through an act of Congress. The computation seeks to assure that the average population per representative has the least possible variation between the states. It is conditioned, however, upon each state receiving at least one congressman. If the number of congressional seats were to be based exclusively on population, each congressman would represent approximately 400,000 people; but, because the states' populations are not conveniently divisible by exact multiples of 400,000, there is unavoidable distortion. Five states elect only one each and four of these—Alaska, Nevada, Vermont and Wyoming—would not be "entitled" to a congressman by their small populations alone. The distortion caused by giving each state one representative is minor, however, and warranted by the demands of the federal system.

In computing the votes in the Electoral College, each state is assigned one electoral vote for every representative to which it is entitled plus two additional votes—one for each of its senators.

Thanks to the 23rd Amendment, the District of Columbia is entitled (since 1961) to share in electing the President. Although the 800,000 inhabitants of the District still do not have any representative in either the House or Senate, they are now entitled to the number of presidential Electors equal to the number of congressmen and senators they would have if it were a state. But in no event may the District have more electoral votes than the smallest state.

The Electoral Process

When a citizen goes to the polls in November, he is not voting for a presidential candidate but for a slate of Electors pledged, but not bound, to vote for one candidate or another in the Electoral College. Interestingly, there is no federal law requiring that names of Electors or candidates of major political parties appear on every ballot. Thus, in 1948 and 1964, a citizen of Alabama could not cast a vote for the Democratic party nominee.

Also, in less than a third of the states does state law compel Electors to vote as they were pledged. As recently as 1960 an Elector chosen on the Republican ticket refused to vote for that party's nominee and, instead, voted for a man who had not been nominated by any organized party. And the Democratic party candidate suffered more such defections from his ranks in the same election.

The candidate who receives a plurality of the popular vote in a state receives all of the state's electoral votes. In the early days of the Electoral College it was not uncommon for a state to divide its vote. In 1824 New York cast 20 votes for Jackson and 16 for Adams. New York and some other large states soon realized, however, that they could maximize their influence by casting their electoral votes in a bloc. Almost immediately, all states followed suit and a "winner-take-all" system came into being. At times it has had strange results.

Lopsided Margins

The winner-take-all system has generally worked to give the winning candidate a lopsided margin in the Electoral College. In 1860 Abraham Lincoln received less than 40 per cent of the popular vote but almost 60 per cent of the Electoral College. In 1960 John F. Kennedy received 303 electoral votes; Richard Nixon, 219; and Harry F. Byrd, 15. The Kennedy-Nixon election was one of the closest in our nation's history, the two men having received, respectively, 49.5 per cent and 49.3 per cent of the total popular vote. Yet, in the Electoral College, Kennedy had 56.4 per cent to Nixon's 40.7 per cent.

The Voting Procedure

Each state's Electors meet in their respective state capitals and vote for President and Vice President on the first Monday after the second

Wednesday in December. Because of events following the election of 1800, the 12th Amendment specified that the Electors cast separate votes for the two officers. They are forbidden to vote for inhabitants of their own state for both positions.

The electoral votes are forwarded to Washington, D.C., where they are opened by the president of the Senate at a joint session of Congress. This takes place in the week following the reconvening of Congress on January 3. If no candidate has received an absolute majority of the electoral votes, the House of Representatives has until January 20 (inauguration date) to select the President from among the three men who have received the highest electoral vote. Each state delegation casts a single vote, but, if the delegation is evenly divided, it loses its vote. To be elected, the candidate must have a majority of all the states.

Controversial Elections

Twice—in 1800 and 1824—the House of Representatives has been called on to elect the President; on one occasion it chose the less popular of the two major candidates.

1800: There were two Democratic-Republican candidates and three Federalists. While it was generally assumed that the Democratic-Republican Electors were voting for Thomas Jefferson for President and Aaron Burr for Vice President, this was in no way specified on their ballots. Until that time, the constitution provided that each Elector should vote for two candidates; the one receiving the highest number of votes was declared elected President, the next highest, Vice President. When the votes were opened by the president of the Senate, it was discovered that the Democratic-Republican Electors had cast 73 votes for Jefferson and 73 for Burr. Many days of intense debate and negotiation ensued. The Democratic-Republican party was itself torn as Burr sought to obtain the high office for himself. Finally, through the intervention of Alexander Hamilton, the impasse was broken and the election thrown to Jefferson. This election led to the immediate enactment of the 12th Amendment, providing that Electors cast separate votes for President and Vice President.

1824: John Quincy Adams and Andrew Jackson were vying for the office. In a four-way race, Jackson received 153,500 popular votes and 99 of the 261 electoral votes. When the election was thrown into the House, Adams, the candidate with the second highest number of votes,

both popular and electoral, was chosen President. Jackson's supporters always blamed Henry Clay, one of the four contestants, who was appointed secretary of state in the new Adams administration. Jacksonians cried foul. Although the event greatly embittered the politics of the era, it contributed to the development of a real two-party system. Jackson's subsequent election in 1828 marked the beginning of the present Democratic party.

Twice—in 1876 and 1888—the candidate with fewer popular votes won a majority in the Electoral College and became President.

1876: The outcome of this election fundamentally altered the course of American history. Samuel J. Tilden, the Democratic candidate, received an absolute majority of the popular vote with a margin of 250,000 over his opponent, Rutherford B. Hayes. The electoral votes from four states were contested. Competing Democratic and Republican slates came from Florida, Louisiana, South Carolina and Washington, plus one disputed Elector from Oregon. Without any of those electoral votes Tilden had 184, one short of a majority. Since both Louisiana and South Carolina were occupied by federal troops that were keeping Reconstruction governments in power, there seems little question that Tilden had won a majority of the vote in both of those states and deserved their electoral votes. Only one vote would make Tilden the victor. Again a political deal was forged. The Republican Electors from those states were recognized, in return for which the new administration would withdraw federal troops from the south and end Reconstruction. Hayes won 185 votes to 184. The national government began its long period of disinterest in the treatment of the Negro minority in the south.

1888: Grover Cleveland, the Democratic candidate, received more popular votes than Benjamin Harrison but Harrison received a majority of the Electoral College. It is interesting to note that, had Cleveland received only 14,000 more votes in the state of New York, he would have won its electoral vote and the Presidency.

Impact of the System

The vagaries of the Electoral College have determined not only which man is elected, but also, to a considerable degree, which men may even be candidates. The state of New York has heavily dominated presidential politics. From 1804 through 1964, the winning candidates in 35 of the 40 elections were those who had New York's support. In four of the other five, New York voted for its current or former governor, who ran second. In the fifth, 1856, the presence of a third-party candidate, Millard Fillmore of the American (Know-Nothing) party, a former President and former candidate for governor of New York, divided the vote so that the state's electoral vote went to the newly established Republican party and its candidate, John Fremont.

New York's dominance has not been accidental. Because the Electoral College does not assign votes exclusively on the basis of population, New York did not have the full strength its population would have warranted, but, even so, from 1804 through 1868, it always cast more than 10 per cent of the total electoral vote. At no time since 1804 has it cast less than 8 per cent of the total.

New York's importance did not stem from size alone. It came also from the fact that the country never enjoyed a true two-party system everywhere, for, even in the early days, most states showed a clear-cut preference for one party or the other. For example, from 1789 until 1928, Virginia consistently cast all of its electoral votes for the Democratic candidate, the only exception being 1872 when the state was controlled by Reconstruction forces. As the nation expanded it became an almost iron-clad rule that the Democratic party would carry every state in the south and all the border states with the occasional exception of Maryland. By the same token, the Republican party (and its predecessor, the Whig party) had a solid grip on the New England states and the states coming into the Union in the far west and the plains. In addition, the important state of Pennsylvania was a virtual Republican fief. From 1860 until the Roosevelt landslide of 1936, Pennsylvania *always* voted for the Republican candidate. Ohio, a frequent home of presidents, and for many years the fourth most populous state, voted for the Republican party in every election from the Civil War to the coming of the New Deal, except in 1912 and 1916. Both the Republican and Democratic candidates for

President in 1920 were from Ohio and the state returned to the Republican fold.

The Swing State

Throughout this era, *only* New York of all the big states tended to be a "swing" state. Just as others showed a preference for Republican candidates from 1860 through 1928, and for Democrats from 1932 through 1964, so New York has followed or perhaps set the national trend. During the long period of Republican rule, from the Civil War to the New Deal, New York voted for the Democratic candidate only in 1868, 1876, 1884, 1892 and 1912. In the elections of 1884, 1892 and 1912 the Democratic party won. As noted, the 1876 election was "stolen" from Samuel J. Tilden, the former governor of New York for whom the state had voted. The one time New York seemed out of step with the rest of the country was in 1868 when it again voted for a former governor, Horatio Seymour, who was soundly beaten in the Electoral College by his Republican opponent, Ulysses S. Grant. In popular vote, however, the election was much closer.

New York's appeal becomes obvious when it is seen that, during the Republican era, the Democratic party could not win a national election without carrying New York, or so both parties seemed to believe.

New Yorkers have been frequent nominees of both parties for the Presidency or the Vice Presidency. Until 1836 many state legislatures chose their state's slate of electors. In the 33 presidential contests since then a New Yorker was one of the two top candidates in 20. In two other campaigns, 1852 and 1856, a New Yorker was an important third-party candidate. In two elections New Yorkers were pitted against New Yorkers—Theodore Roosevelt versus Alton Parker (1908) and Franklin D. Roosevelt versus Thomas Dewey (1944). Ohio has the next "best" record, but it is half of New York's. In 10 out of the 33 elections, Ohioans were among the two top vote-getters. In one other (1912) an Ohioan was the third major candidate, and two Ohioans, Warren Harding and James Cox, ran against each other in 1920.

Almost always, the men named have been candidates "acceptable to New York." Two notable exceptions have occurred in modern times—Alfred Landon in 1936 and Barry Goldwater in 1964—bringing about the two worst electoral defeats the Republican party has ever suffered. There were other times, too, when the unacceptability of a major party candidate in New York has brought electoral defeat: "Rum, Romanism and

Rebellion" cost James G. Blaine the state of New York and the Presidency. William Jennings Bryan's plea for silver and low tariffs so antagonized eastern business and labor interests that, though he ran some relatively close races nationwide, he lost New York plus all the traditionally Republican states by lopsided margins and went down to crushing defeat in the Electoral College.

New York Unique

New York is hardly typical of the rest of the country. Indeed, it might be argued that, almost from colonial times, it has had a unique political, economic and social structure. Yet this very uniqueness was built along lines which the rest of the nation was to follow. The development of the country as a giant industrial and financial center was heavily influenced not only by the location of much of the capital in New York City but also by the political impact New York had on the Presidency. The "Eastern Establishment" had a profound influence on the industrial evolution of the country during the 70-year dominance of the Republican party. New York was also among the first of the states to experience the rise of organized labor and the political power of minority groups. Winning the support of these groups in all the states, but especially in New York, became an indispensable factor in Democratic victories after 1932.

There is no way of knowing what would have happened had New York not played such an important role. Would the same kinds of men have been nominated? Even though the Electoral College has deprived relatively few men of their right to the Presidency, it seems likely that some of them would never even have been in contention if New York, with its great bloc of electoral votes, had not loomed so large.

"National" Politics

Now, however, something remarkable has happened. Only since World War II has politics become truly national. In the last 20 years, for the first time in history, the Democrats have been able to elect a governor, a United States senator, or a congressman from every state. In one presidential election or another during the last 20 years the Democratic party has carried each of the states. The Republicans, during the same period, have carried all but Arkansas and North Carolina. Republicans have won governorships, Senate or congressional seats in all states but Louisiana and Mississippi.

New York, while important, is no longer crucial. California is evolving rapidly as not only the equal but perhaps also the "superior" in influence of New York, becoming a bellwether of social, economic and political development. The worship of the automobile, the surfing craze and the Hippie movement are not isolated California phenomena infecting the nation. That state's wide-open, free-wheeling, big-spending style of politics would appear to be more nearly the wave of the future than the organized machine politics long associated with the Empire State.

But it seems doubtful that California can ever dominate the Electoral College as New York did. Both population and politics are shifting. In 1970 the center of population will be approximately half-way between the points at which the Ohio and Missouri rivers flow into the Mississippi. South and west of that point will live one half of the population. The northeast quadrant of the country, while still the most heavily industrialized and most densely populated, no longer represents a majority of the people. Just as "the frontier" died by the 1920s, so the old "eastern dominance" will be dead by the 1970s. More and more of the large states have shown a close two-party balance and the capacity to switch allegiance. The Electoral College mechanism is being put to a severe test as to whether it can reflect the type of social-political transition currently taking place.

Dangers of the System

The greatest single danger inherent in the Electoral College system is the possibility of a deadlock and a vacancy of uncertain duration in the Presidency. Also, as noted earlier and has occurred, a man who received fewer popular votes than his opponent can get elected. The repercussions of those three elections—Jackson in 1824, Tilden in 1876, Cleveland in 1888—were nowhere nearly as severe as they might be today, for then there was a much more restricted franchise. Property, race and sex qualifications disfranchised the overwhelming majority of the people in 1824 and more than a majority in 1876 and 1888. Also, the United States Senate was not popularly elected. The public simply did

not have the same concept of its "will" being thwarted that it would today.

Since 1948 presidential elections have been more volatile than at any previous time. The elections of 1948 and 1960 were two of the closest, with the winners failing to receive majorities of the popular vote. On the other hand, the elections of 1952, 1956 and 1964 have been of landslide proportions.

The accompanying dangers, unthinkable a few years ago, are distinct possibilities which might continue for many years. Unless the political situation acquires a placid character not now readily discernible, reform of the Electoral College is almost certain to be a top priority.

Disaster Possible

Here is how the disaster could come about. Were there to be a strong third-party movement (such as George Wallace's American Independent party), it might garner a sufficient number of electoral votes to prevent either major party candidate from getting a majority in the Electoral College.

If New York and California were to go for opposing candidates and Pennsylvania and Illinois cast ballots in conflicting directions, and the same thing happen between Ohio and Texas, the major party candidates could easily divide the electoral vote between them so that even an insignificant third party could keep anyone from getting a majority.

This would mean that the election would be thrown into the House of Representatives, as in 1800 and 1824. As deep as the bitterness was then, it was nothing compared with the violent reaction likely today.

In the House, where each state casts one vote, it is possible that those states having an even number of congressmen may have tie votes, be unable to reach agreement and, therefore, cast no vote at all. Presently, 27 states are in that position, including California, Illinois and Ohio, plus many of the medium-sized states. Were it a bitterly contested election, in which neither major party would show any willingness to compromise, a deadlock could develop in which no man could receive the support of the majority of the states. Theoretically, as pointed out by Russell Baker in his political satire, *Our Next President*, this could be resolved by having the United States Senate elect a Vice President to serve as acting President for the remainder of the term. One difficulty with this solution, however, is that there are always an even number of senators. If the Senate split 50-50, we would have no President, no Vice President. Then,

section 3, Article XX of the constitution authorizes Congress to name someone to act as President. Granted, this presupposes a freak combination of circumstances. But, the events of the past few years should have made people extraordinarily wary of any situation that "can't happen."

Election by the House

The chances of an election being thrown into the House are far greater than the other combination of events occurring. It could be, therefore, that an election might take place in the House, with the man selected being the one who receives the smallest popular vote. In 1956, for example, Dwight Eisenhower got one of the biggest electoral votes in history, yet his party did not have control of the House of Representatives. Had he won a relatively impressive popular plurality but failed to get a majority of the electoral votes, he almost surely would *not* have been elected by the members of Congress.

Also, a party could have control of a majority of the state congressional delegations but be a minority of the total House membership. The dominant party could have lopsided majorities in the New York, California, Pennsylvania, Illinois and Ohio delegations, which range from 41 to 24 seats. This, plus moderate strength elsewhere, could give it a majority of the total House membership. Yet, if one party's strength were concentrated in the big states, the minority party, through control of many small states, could still elect the President. The five large states mentioned have 154 members of Congress but have only one vote each for President; the five smallest states also have one vote each for President and could nullify the big-state vote.

If the election were thrown into the House, as few as 59 of the 435 members of Congress from the least populous states could select the President. Thus, representatives of less than 13 per cent of the people could elect the candidate who ran second or third in popular favor.

Prominent political and civic leaders have obviously had visions of this kind of thing. It is the chief reason for the current rising call for reform. The internal dissension and violence that have erupted in the past few years might prove to be only mild rehearsals for the convulsive reaction that could sweep the nation. Any such internal unrest would, of course, multiply the external dangers to our political and economic system.

Alternative Reforms

The Subcommittee on Constitutional Amendments of the United States Senate Committee on the Judiciary has held hearings on proposals on numerous occasions, one of the most extensive being in 1955. Still nothing gets done. One reason is that, while the necessary two-thirds vote in both houses of Congress could probably be assembled for change *per se*, it has been difficult to marshal such support behind any one proposal. The following are some of the alternatives that have been suggested:

Alternative 1: The Electoral College would be retained exactly as it is except that each Elector would be required to cast his vote for the candidate who won a plurality of the popular vote within his state.

Pro: This would eliminate the act of independent judgment, once considered so important, which has now become an irritant. (For example, one Oklahoma Elector, legally pledged to the Republican candidate in 1960, refused to vote for Richard Nixon, and six unpledged Democratic Alabama electors refused to vote for Kennedy.)

Con: This change would simply freeze into the constitution one of the greatest criticisms against the Electoral College, the winner-take-all system. It would do nothing to solve the more fundamental problem of the initial inequity in apportioning the electoral votes and the dangers inherent in possible deadlock when no one receives a majority.

Alternative 2: The office of Elector would be abolished but the electoral vote retained. The winner of the plurality in a state would receive all the state's electoral votes. If no candidate receives a majority of the electoral votes, the President would be selected by a joint session of Congress with each senator and congressman casting one vote.

Pro: The useless office of Elector is eliminated, as well as the present inequity of having the House members vote by states rather than as individuals.

Con: The essential inequity in the apportionment of electoral votes is not corrected. Throwing the election of the President to the entire Congress, while superior to the present system, might lead to even more extensive wheeling and dealing. The very thing the founding fathers feared in congressional election of the President might well take place. Cabinet offices and a variety of other appointments might be bargained off in

return for support to such a degree that the incoming President would have a badly tarnished image. Also, his power to act as an independent chief executive might be compromised.

Alternative 3: The Electoral College would be retained without Electors. Provisions would be made for a run-off election if no one received a majority. The first election would be set for the second week in October. If a run-off were necessary, it would be held on the traditional election day in November. The winner-take-all system would be used in both elections.

Pro: This combines the virtues of the first two alternatives and provides a superior mechanism for choosing the President in the event no one gets a majority on the first vote.

Con: It does nothing to change the inequity in the apportionment of electoral votes to the states. It still leaves it possible for a man with a minority of the popular vote to get a majority of the electoral vote since it retains the winner-take-all system.

Alternative 4: The district system would retain the Electoral College but the post of Elector would be abolished. A candidate would receive one vote for each congressional district he carried plus two for having won a plurality of any statewide vote. If no one received a majority, a joint session of the House and Senate would choose from among the three top candidates.

Pro: One of the chief complaints against the winner-take-all system is that millions of votes are wasted when a candidate fails to achieve a plurality. An example was the 1948 election in California when Thomas E. Dewey's 1,900,000 votes went for naught because Truman received a bare 18,000 more. There would still be some wasted votes but fewer than now. The man who ran a close second in a state would still be apt to pick up some electoral votes. The district system would, therefore, reflect much more accurately the public sentiment within each state. Proponents of the system claim it would deemphasize the importance of the big states. It is argued that having the election of the President tied to congressional districts would be a more rational system and make less likely the situation of a chief executive of one party and a Congress of the other.

Con: Again, this system would do nothing to correct the inequitable apportionment of electoral votes. It would, in fact, increase it to a considerable extent. The smaller states which are grossly overrepresented in the Electoral College are the ones which tend to vote most solidly for

one party. The district system would eliminate the situation wherein the winner of the popular vote emerges with a disproportionately big margin in the Electoral College. It could, however, result in the election of more minority Presidents than under the present system. In 1960, for example, Richard Nixon would have won under the district system with 278 electoral votes to John F. Kennedy's 245, even though Kennedy got a plurality of the popular vote. Contrary to the argument that it would make a party division between the chief executive and Congress less likely, the same election resulted in a Democratically controlled Congress.

Furthermore, the district system increases the likelihood of wildly gerrymandered congressional districts. Because of the Supreme Court's "one man, one vote" rulings, since 1964 the nation has been exposed to the wholesale redrawing of congressional district lines. Although congressional districts are more nearly equal in population than at any other time (a fact which makes the district system even more desirable than when it was first proposed), the redistricting process has provided even more examples of the art of rigging district lines for partisan advantages. In some states the incumbent congressmen of both political parties struck an agreement as to where the lines should be placed. Certain Republicans are not unwilling to have a normally Democratic neighborhood, town or county included in their districts when they have great voter appeal in that area. The same is true, of course, for many Democrats with appeal to Republican voters. If presidential politics is injected into the picture, however, monumental struggles at the state houses following each decennial census seem inevitable. At present there is no law prohibiting the drawing of congressional districts any time a state legislature chooses to do so. So there is some risk that a newly dominant party might redraw all of a state's congressional districts immediately before a presidential election. It is difficult enough for the federal courts to pass on the validity of congressional districting without drawing the judiciary, appointed by the President, into presidential politics.

Alternative 5: The proportional division reform would split the electoral vote of each state to the nearest one thousandth of a per cent according to the popular vote each candidate received. For example, a candidate who receives 50.986 per cent of the total popular vote in New York would receive 21.922 of its 43 electoral votes. If the election were inconclusive, a joint session of Congress would choose between the two top candidates.

Pro: This system would virtually wipe out all vestiges of discrimina-

tion against the candidate who fails to gain a plurality of the popular vote in a state. It decreases the likelihood of a man winning a minority of the popular vote but getting the majority of the electoral vote.

Con: The very fact that the proportional system has been so refined makes it all the more reflective of the initial inequities in apportioning electoral votes to the states. The very "fairness" of the proportional system increases the unfairness of the electoral vote system itself.

If the proportional system had been in effect from 1860 through 1964, and if there were no provision for a run-off, 10 elections would have ended up in the Congress because of minor parties splitting the vote. Perhaps the most notable example is 1924 when Calvin Coolidge won 54 per cent of the popular vote, but, because Robert La Follette's Progressive party was popular in many sparsely populated states that are over-weighted in the Electoral College, no one would have received a majority of the electoral vote.¹

The proportional electoral system might encourage third parties to enter candidates so as to split the vote in order to throw the election into the House. No major plan for a proportional system has included a run-off between the two top candidates, which would appear necessary to prevent a multitude of splinter parties. Even then, the unfair distribution of electoral votes would give any candidate with strong appeal in the less populous states undue advantage.

¹ For further statistics on the district and proportional systems applied to past elections, see Neal R. Peirce, *The People's President* (New York, Simon and Schuster), 1968, p. 358.

One Man, One Vote

Suits were filed in 1966 and 1968 in California, Delaware and Virginia challenging the system by which the candidate receiving a plurality receives all the electoral votes of a state. (The Supreme Court has thus far refused to accept jurisdiction in such cases and has rejected the Delaware complaint.) Plaintiffs in these suits allege that the system is a violation of the doctrine of "one man, one vote," a doubtful point in view of the court's interpretation of the equal protection clause of the 14th Amendment.

Within a state, each citizen has exactly the same opportunity as any other to gain all the state's electoral votes for his candidate. And, in any election under the Anglo-American system, the votes of the loser are "wasted." Those challenging the winner-take-all system complain that, in states like New York or California, millions of people might vote for a losing candidate who comes within very few votes of a plurality. This, they say, is a violation of "one man, one vote." If that is the case, then our entire electoral system violates the doctrine. Any time a voter is on the losing side in any election he has, according to the plaintiff's reasoning, become the victim of a violation of "one man, one vote." It is the intention of the single-member district, plurality voting system to produce only one winner.

A much stronger case might be based on the fact that the Electoral College violates the doctrine of "one man, one vote" in the apportionment of the votes among the respective states. For example, following the 1960 census, Alaska was assigned three electoral votes and New York received 43—a ratio of approximately one to 14. New York actually had more than 75 times the population of Alaska.

Even if a system were established apportioning the present number of electoral votes on the basis of population, but guaranteeing each state at least one vote, the difference between New York and Alaska would be 50 to one. Putting this in terms of popular votes, it can be said that, in the election of 1964, each electoral vote in California was equal to 176,440 popular votes; in New York, 166,656; in Vermont, 54,181; and in Alaska, a scant 22,420. If one is to apply the "one man, one vote" doctrine to the Electoral College, a violation is clearly taking place on a national scale. But *within* each state complete equality is maintained.

Great Weakness

Perhaps the strongest single criticism of both the proposed proportional division and district system reforms is that neither begins to solve the problem of the unequal initial assignment of electoral votes to the states. The only fair way to apply the proportional method would be to reassign them on the basis of population. Even then, were the Electoral College to remain at its present size (538), a minimum guarantee of at least one vote to each state would create distortion. If applied to the 1964 election, for example, a large state with an even number of electoral votes, such as New York which would have 50, could have its vote divided so that one candidate would receive 25.025 electoral votes and another would get 24.975. If the loser in New York carried sparsely populated Alaska by 52.5 per cent of the vote, he would get .525 of an electoral vote, the other candidate, .475. The winner in New York would have come out with a net gain of .050 of an electoral vote, while his opponent, in carrying Alaska, would have achieved exactly the same result.

Either way, the result is patently unfair. The candidate carrying Alaska had to win a full 5 per cent more of the vote in order to equal the .5 of one per cent margin his opponent achieved in New York. Yet, to get that margin in New York, it required 7,167 popular votes; the 5 per cent margin in Alaska required only 2,217.

The only solution to this would be to expand the Electoral College to 2,000 or more votes. If it is to become that large, why not just abolish it and put the presidential election, like every other, on the basis of direct popular vote?

There seems to be no way that the district system could correct the inherent inequities of the present distribution of electoral votes. As noted earlier, under the district system a man would win an electoral vote for each congressional district in which he received a plurality and two votes for winning statewide. One candidate could carry 19 of California's congressional districts and his opponent could carry the other 19. The one receiving a statewide plurality would get a net gain of two electoral votes from California. Whoever carried Alaska, however, automatically would get not only the one electoral vote for the congressional district (there is only one) but also the two statewide votes—a net gain of three. Since there are five states that have only one congressional district, a candidate could gain much if he were to carry all of them and just hold even with his opponent in the five largest states. The five smallest states represent

less than one per cent of the nation's population, the five largest, 36 per cent.

More Problems

There are other problems, of course, in any system which retains the Electoral College. California has enjoyed a spectacular growth. New York, with 43 electoral votes, had fewer people voting in 1964 than did California with 40 electoral votes. Part of this can be ascribed to differences in voter turnout, but probably more important is the fact that California had passed New York in population in the period between the taking of the census and the 1964 election.

The rate at which population is shifting seems to be accelerating. Therefore, the electoral votes assigned to a state in the early part of a decade may be substantially out of line later in that decade. Unless a special census were held and new assignments of electoral votes made before each presidential election, there is no way to reflect the changing tide of population. A shift to direct popular vote would, of course, immediately reflect that change.

Finally, another weakness of both the proportional division and district systems which defies correction is the fact that voters do not go to the polls in the same proportions throughout the country. For example, although Connecticut and South Carolina have almost identical populations and each has eight electoral votes, 1,200,000 people voted in Connecticut and only 500,000 in South Carolina in 1964. Their electoral votes were of equal weight, however, and would continue to be so under either the district or proportional systems.

Direct Election of the President

After exhaustive analysis of the alternatives available, the American Bar Association's Commission on Electoral College Reform proposed "the direct election of the President by the people of the several states." The draft of their proposed constitutional amendment was introduced jointly in 1967 by Senate Republican Leader Everett McKinley Dirksen of Illinois and House Judiciary Committee Chairman Emanuel Celler, Democrat of New York.

Under the ABA plan the President and Vice President would be directly elected by the people. As at present, the legislatures of the various states could prescribe qualifications respecting age and residence of voters. The ABA proposal would grant to Congress, however, the power to establish uniform qualifications in these matters if necessary. The candidate receiving the largest number of votes, if it was at least 40 per cent of the total, would be declared the victor. If no one received 40 per cent there would be a run-off election between the two leading candidates.

A direct vote system has many obvious virtues. It is in harmony with American political tradition since all other elections are similarly based.² Each time the American Institute of Public Opinion (Gallup Poll) asks people whether they would approve abolition of the Electoral College in favor of popular election, upwards of 65 per cent approve and less than a fourth oppose the idea.

It would never be possible for a candidate receiving fewer votes than his opponent to become President. Each voter would be treated equally, not only within his own state but also nationwide, including the District of Columbia.

No one's vote would be wasted anywhere. Under the present system all voters who vote for the candidate losing in their state have, in effect, had their influence cancelled. Under the district system every voter within each congressional district who backs the local loser would lose his vote on the national level. Under the proportional system the resident

² Only two states, Georgia and Maryland, have had any indirect method of nominating major public officials, but their mini-electoral colleges were declared invalid by the Supreme Court in 1963.

of any big state, while not losing his vote, would have it greatly devalued because of the malapportionment of the Electoral College.

The provision for a run-off is not unique. It is the only fair way. Most people have voted in some type of run-off election at one time or another, if not in a state or local election, then in some club or fraternal organization.

Only once in the nation's history has any candidate for President failed to receive 40 per cent or more of the vote, even when there have been powerful third- and fourth-party movements. The one exception was in 1860 when Abraham Lincoln received 39.8 per cent of the popular vote even though there were no Republican Electors on the ballot in 10 of the 33 states. If past history is any guide, a run-off election is extremely unlikely. Even if it were required, however, it would not be an extraordinary concept for people to accept.

Why No Reform?

If this system is the most equitable of all proposed reforms, with overwhelming public support and the backing of many key members of Congress, why has it never been adopted?

The reasons are many and complex. One of the most important is the reverence with which the American people view the constitution. The constitution has been changed only when crisis or the threat of crisis has become fairly discernible. The deadlock of 1800 brought speedy enactment of reform in the way the Electors cast their votes for President and Vice President. The trauma surrounding the assassination of John F. Kennedy in 1963 hastened enactment of a provision concerning the disability of the President, succession to that office and filling a potential vacancy in the Vice Presidency when he becomes President.

Historically, the smaller states have enjoyed their overrepresentation in the Electoral College. Still fearful that the "big states" will dominate, many adherents of states' rights have clung to the present distribution of the electoral votes. Others have thrown their support behind a district or proportional division reform since they retain all the inequities the small states feel are to their advantage and yet destroy the winner-take-all features which enhance the power of populous states.

The larger states have believed it essential that the winner-take-all system be continued. John F. Kennedy, when still a member of the United States Senate, delivered one of the most impassioned and persuasive defenses of it. His reasoning was as follows: At that time, vir-

tually every state legislature was badly malapportioned, favoring the rural areas over the cities and suburbs. At the same time there were gross inequities in the manner in which many states drew their congressional district lines. Again, rural areas were favored over the suburbs and big cities. The United States Senate consists of two men from each state, irrespective of the population differential. Hence, only in the office of the President could the urban-suburban majority make its sentiment felt. A shift to the district or proportional system would have destroyed this one source of influence for the metropolitan area resident. Until some adjustments were made in the other inequities within our system, John Kennedy appealed, out of a sense of fair play, for the retention of another type of "check and balance."

Times Have Changed

Conditions have suddenly changed. An idea seems to have come of age. Residents of the small states, aware that the winner-take-all system is increasingly depriving them of their voice in selecting the President, are endorsing the idea of direct popular vote. It has been receiving the support of senators from small New England states and rural southern constituencies, too. All 50 state legislatures have now been reapportioned on the basis of population and the nation has recently undergone a massive redrawing of congressional districts. The compensating inequities are being eliminated. Hence, the balance of injustices inherent in the Electoral College seems to be tilting toward the big states. Although they are still underrepresented in the Electoral College, it is true that, after 1972, a bare plurality of the 10 largest states could elect a man President even if he failed to get a single vote in all the remaining 40. Such an extreme example is unlikely, but a minority President is a distinct possibility.

Finally, a vision of crisis and disaster has become sufficiently clear to make people willing to approach the much-amended Article II of the constitution with a more critical eye.

Against Direct Election

There are still other less selfish, less provincial, less archaic arguments against going to direct election of the President:

1. It could lead to the development of splinter parties. Opponents note that there might be greater incentive for third parties to enter the picture in the hope of preventing any candidate from receiving 40 per

cent of the popular vote. While they would have no hope of winning the Presidency for their own man, they would be in a powerful bargaining position to throw their support to one candidate or the other in the run-off.

Is this necessarily true? Under the present system any party with a small regional appeal can split the vote of the major parties and have an excellent chance of receiving all the electoral votes of some states, courtesy of the winner-take-all system. Historically, the larger third-party movements in the United States have been provincial in their appeal. Former Governor George Wallace of Alabama made no secret of the fact that his strategy was to capture several southern states for himself and divide the vote in a sufficient number of northern industrial states to split them between the major party contestants and throw the election into the House of Representatives. In the House, if there is a close division between party control of the 50 state delegations, behind-the-scenes bargaining is far more possible than before the electorate at large. The deadlock of 1876 was easily broken when southern representatives struck a bargain with the Republican presidential aspirant in order to achieve certain advantages for their region. Governor Wallace's statements about a "deal" regarding less vigorous federal enforcement of civil rights legislation smacked strongly of exactly the same idea.

The Populist movement and, later, the Progressive party of the 1920s (not to be confused with the party led by Theodore Roosevelt) had their greatest strength in the states of the upper midwest and the plains. Such geographic groupings of states under the present system are all the more potent. We are becoming a more genuinely two-party nation. The industrial states where party competition has become extraordinarily intense could cancel each other out, giving a less-populated geographic bloc the opportunity to throw the election into the House where their representatives could bargain unseen by the public.

Any candidate in a popular run-off who makes a deal with a splinter party exposes himself to immediate loss of some of his supporters. If a candidate of the militant new left or extreme right were suddenly to switch and endorse a candidate who only weeks before he had pilloried, the public would "smell a rat."

Under the district system a third party could gain strength. A small party with a narrow appeal to any one major ethnic group, for instance, could count on carrying some congressional districts scattered throughout the country, picking up whole electoral votes. Congressional elections of

the President might then become as commonplace as the founding fathers first feared.

The proportional system also works to the advantage of a small party that can poll 5 per cent or more of the popular vote within a state. Particularly, since the Electoral College is weighted to favor less populous areas, candidacies on the basis of race or economic interests (perhaps in combination) could have great potential.

In short, the nation has arrived at a point where any electoral system might give rise to a third-party movement. On the basis of past voting records, however, it would seem that such a movement would be more likely under the present system or its district or proportional division alternatives. All governors are elected by direct popular vote, and no third-party candidate has been able to deprive the major parties of that office for many years. Nationwide, a similar pattern is probable.

All the states have much to gain from a shift to direct popular election of the President. The advantage of the winner-take-all system for the big states cannot begin to offset its disadvantages if the trend toward two-party competition continues. The propensity of the big states to nullify each other was clearly demonstrated in the elections of 1948 and 1960. In 1948 New York went to the Republicans; in 1960, to the Democrats. Its favorite was the winner in 1960, but not in 1948. In California the exact opposite was true—in 1948 it went with the Democratic winner; in 1960, the Republican loser. Pennsylvania followed the New York example. Illinois seems to have made a correct "guess" both times, but the state's 1960 election results are still in dispute. Out of 4,750,000 votes cast, less than 9,000 separated the winner and loser. Ohio went for Truman in 1948 and Nixon in 1960, and so it has gone among all the pivotal states.

One of the most consistent complaints of small-state representatives has been that the present electoral system forces the parties to concentrate their efforts in just a few of the largest states. The direct popular vote could do much to correct this. In 1948 the two biggest states carried by President Truman were California and Illinois. His popular vote margin, however, was larger in Oklahoma, Missouri, West Virginia, Kentucky, and six other less populated states than in California and Illinois combined. Montana, New Mexico and Utah each provided a greater margin than California alone.

In 1960, when he received 49.3 per cent of the total popular vote, Richard Nixon carried California by a bare 36,000 votes. Indiana and Iowa gave him margins of more than 200,000 votes each, and some of the

sparsely populated plains states produced margins of 50,000 to 150,000 votes. Although the parties cannot ignore the larger states, they would have great incentive to get out the vote in the small states where they were strongest, or to campaign in all states and not "write-off" some areas as beyond redemption. A direct popular vote system would aid development of a true two-party system and continue the trend toward nationalization of the vote.

2. Vote fraud would increase. Would it really? Twenty-seven electoral votes depended on the closely contested Illinois vote in 1960. Many still claim that those 27 votes and the election were stolen. In conjunction with the equally close election in a couple of other states, it meant the difference between choosing President Kennedy and throwing the election into the House of Representatives. Under the present system, particularly in the states with large electoral votes where the popular margins have tended to be very close, fraud is terribly tempting. In New York the perpetrator of vote fraud might be responsible for delivering to his candidate 16 per cent of all the electoral votes needed to elect him President. It is a much more tempting prospect than acquiring a few thousand votes out of a total in excess of 70 million. Under the district system vote fraud could become extraordinarily prevalent since so many congressional districts are under the total control of a single political machine, be it urban or rural. Under the proportional system the temptations might not be as great as with either the present or district systems, but, since each vote stolen will represent a percentage of an electoral vote, it becomes more enticing than under the direct election system where one vote counts as only one vote.

3. The federal government would take over all election machinery. The specter of voting fraud and the proposed constitutional provision granting Congress power to establish a uniform voting age and residence requirement bothers some people. To begin with, any election for a federal position—congressman, senator or Elector of the College—is subject to investigation by federal authorities at the present time. Stealing votes in these elections is a federal offense. No increased federal intervention need be feared, particularly if, as noted above, vote fraud would become less meaningful.

It is possible that, if some states were to develop radically different age and residence requirements, an unfair advantage might accrue to the states with a short residence and low voting age. Only then would the federal government be apt to enter the picture, and it would be ruling only on a voter's right to cast a ballot in a federal election. If

California were to allow 18-year-olds to vote, swelling its electoral rolls by hundreds of thousands, Congress might take action restricting the age to 21. The result would be that 18-year-olds would continue to have the right to vote for any state or local official but not for members of Congress or the President. Congress could lower the voting age for a national office, but it would still be within the power of the states to place restrictions on state and local elections. The infringement on "states' rights" seen in this provision is more imagined than real.

Conclusion

From its inception the Electoral College has been the object of criticism, sometimes vigorous, sometimes only crossly nagging. But the current heavy barrage against it is different and is unlikely to abate until there is substantial change. Never before have influential national organizations adopted reform of this venerable institution as high policy. Never before have the leaders of both parties been in such solid agreement on the issue.

While the exact form or the precise wording of an amendment instituting change may not be certain, it appears the Electoral College will not prevail much longer, at least in its present form.

Photography by Bill Clough



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e Birdie' To Open Thursday

Tim Jenkins, Barney Hill, Wendy Williamson, Anita Maples, Dick Pearson, David Lehman, Karen King, Gay

Johnson, Bob Allen, Nelson Canode, Barbara Bolton, Melissa Taylor, Danny Hood, Virginia Walters, Janet Cam-

taking both on-stage and behind-the-scenes parts in the development of the theater. In her initial appearance with

Tascosa High School, has directed at ALT for "Dark of the Moon," "Little Mary Sunshine," "Kiss Me Kate,"



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ine Band ere Nov. 4

Abraham Lincoln, Franklin D. Roosevelt and John F. Kennedy.

The band began nationwide tours in 1891 under direction of John Philip Sousa, whose "Semper Fidelis" became the official march of the Marine Corps.

Now directed by Lt. Col. Albert Schoepper, the band will be heard here in traditional marches, music from the folk idiom and the contemporary, show tunes and overtures, music of the military and the concert hall.

Tickets at \$2 for general admission and \$5 for patron or reserved section may be purchased at the Kiwanis offices, room 332, Herring Hotel.

Electoral College Could Throw Nation Into Chaos

10/31/68
A.D. News

WASHINGTON (AP) — Compounded confusion reaching into practically every phase of the nation's affairs could stem from failure to produce clear winners for president and vice president in the Nov. 5 election.

The final outcome in selection of a chief executive cannot be predicted on any basis firmer than probability. Neither can the time it would take or the effect such a situation bordering on constitutional crisis, could have on matters as diverse as the politics of the future, the stock market and even international relations.

The snarl could boost George C. Wallace to the status of president-maker as holder of the balance of power based on his electoral votes, unless the big parties took unprecedented freeze-out measures.

The juggling could all take place in the Electoral College, without reaching the point of an election in the House which is the possibility receiving most public discussion.

And most variations of it could carry over into a House vote if the issue ever got that far. Even that could fail to settle it all.

This is because there is no constitutional requirement that the Electoral College system work the way it has been working for well over a century, with an identifiable plurality winner in each state getting that state's

whole electoral vote and with party lines holding.

There have been only rare individual exceptions to the winner-take-all rule in recent years and they have had no effect on the over-all outcome. This year, assuming there is no clear winner at the ballot box, conditions exist for something entirely different.

It simplifies the matter a little to consider it in two segments, first the possibilities in the Electoral College, then the House election.

The first ingredient of the mix is the fact there is no such thing as a direct vote for president and vice president.

Ballots are counted for persons called electors who, ever since the political party system came into full being, have nearly always run in states pledged to a presidential ticket. That is true even though there are only 14 states that put elector names on the ballot, plus Alabama which lists electors but not the man they back.

In all but universal practice the slate winning a plurality casts the whole vote for that ticket. In earlier days split votes were common.

Each state gets as many electors as it has U.S. representatives and senators, ranging from three in the one-congressman states up to New York's 43. The District of Columbia, without represen-

tation in Congress, gets a special allotment of three.

That makes a total of 538 and a majority — 270 — is required to win.

For practical purposes the electors' function has been purely ceremonial, recording their pre-determined votes and forwarding them to Washington for official counting.

But that was not what the Founding Fathers had in mind. Historians agree they expected an exercise of individual judgment, and did not even foresee the system of slates and popular voting for electors.

State law in most instances now requires voting for an entire unit of electors, but a few states allow selection between listed candidates and write-in entries.

But nothing in the Constitution requires an elector to go along with the popular vote in his state, no matter what he has pledged.

Only 17 states and the District of Columbia, have special instructions for their electors, and few of them are precise and binding. The states are Alaska, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Maryland, Massachusetts, Nebraska, New Mexico, New York, Ohio, Oklahoma, Oregon, Tennessee and Virginia.

Florida, New Mexico and Oklahoma provide penalties for electors who do not follow their voting pledges. But Oklahoma

provides one of the rare recent cases of one who did not follow the state vote. He held out for the late Sen. Harry F. Byrd in 1960 while the rest of the delegation went for Richard M. Nixon.

That elector's vote was counted as cast—the Constitution does not provide for anything else. A Tennessean refused in 1948 to vote for Harry S. Truman, choosing the States Rights candidate instead. His vote also was counted.

The electors as an organization never do get together. They only meet in their respective states to cast their votes. This year the date is set by law for Dec. 16.

That is six weeks after the result is known if the electors stick to their pledges—time for a lot of maneuvering.

Arbitrary assumptions best point up what might happen.

An Associated Press survey last weekend credited Wallace with anything from an advantage to a certainty, as of the time readings were taken earlier in the month, in states with 45 votes. That was on the basis of polls or concessions from opponents. On the same basis Nixon had an indicated long lead but Hubert H. Humphrey forces contended they were gaining fast.

Subtracting the Wallace 45 from the total electoral vote leaves 493 from which a winner would have to get 270. A count of 224 for the runner-up would block such a majority.

If everybody voted as pledged that would put the issue up to the House.

But Wallace has been reported strongly disinclined to give the House or anybody else that much say over his affairs. He said in one interview he was sure he and his backers would always be together. But he did not say just where. And he has predicted that in such a situation the big parties would be "coming to make a deal" with him. He has said, too, that "we might decide to let our votes go to them."

The big parties have been urged not to make a deal with the Alabamian and the candidates have said they wouldn't. There have been such freeze-out proposals as agreement to follow the national popular vote, whichever way it had gone, if it took that to deny Wallace a commanding position.

But in the absence of any such arrangement there appears little doubt Wallace could throw his 45 votes—or the much bigger number he is claiming—to either candidate. He could turn a loser into a winner for his own reasons such as future advantage for his movement, even if he had no deal.

That would settle it unless the electors in general took the unlikely step of picking somebody from outside the list of election winners.

If none of that happened, the House election would come up.

A federal statute fixes Jan. 6 as the date for a joint meeting of House and Senate to make the official canvass of the votes.

The Constitution provides that if there is no majority winner in that count the House shall proceed at once to ballot on a president, choosing among the three top men in terms of electoral votes.

That would give the task to the new House, elected at the same time as the electors.

In theory some authorities hold it would be at least conceivable a special session of Congress could amend the statute, fix an earlier counting date, and vote on the presidency before the present Congress expires Jan. 3. But it would be an enormous chore for the three weeks after the meetings of electors in their states.