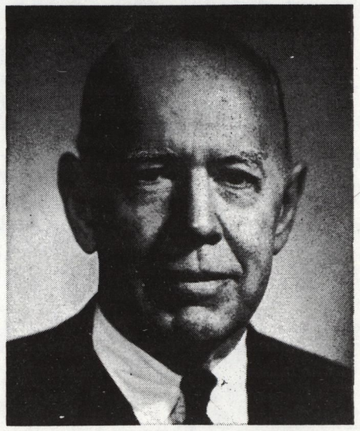
Electing the President and Vice President of the United States by Direct, Nationwide Popular Vote

---

Recommendations of the American Bar Association

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 exhaustive 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 candidates 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:

> [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]

There is the view that the practical objection to direct election is that it would never be proposed by Congress as a constitutional amendment or ratified by the necessary number of state legislatures. In this connection, it is interesting to note that members of Congress from both large and small states have been leading proponents of direct election. Recent supporters include Senators Aiken, Bayh, Bible, Burdick, Byrd, Clark, Douglas, Magnuson, Mansfield, Morse, Muskie, Nelson and Smith. Moreover, thirteen states, both large and small, recently attempted to have the Supreme Court of the United States strike down as unconstitutional the unit vote feature of our system.[5]

Significantly, a recent poll of state legislators was conducted by Senator Quentin N. Burdick of North Dakota to determine their preferences regard-

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.]

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.

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 manner 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.

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

Reprinted from American Bar Journal, March 1967