

PROPOSALS TO REFORM OUR PRESIDENTIAL ELECTORAL SYSTEM:
A SURVEY OF THE HISTORICAL BACKGROUND AND DEVELOPMENT
OF THE ELECTORAL COLLEGE, AND A COMPILATION OF
PROPOSALS TO REFORM IT, WITH PRO AND CON ANALYSES

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ABSTRACT

This report discusses the present method of electing the President by the Electoral College. This report discusses the various state laws relating to the nomination and election of Presidential electors. The various proposals to reform the present system of electing the President are discussed.

EXECUTIVE SUMMARY

This report is essentially concerned with the proposals to reform the present Electoral College system. The first part of the report pertains to the introduction, background, and history of the Electoral College. The problem of the faithless elector is discussed. Also discussed are the procedures for filling any vacancy if a presidential or vice presidential candidate or a president-elect or a vice president-elect were to die.

The second part concerns state laws that regulate the nomination and election of presidential and vice presidential electors. The various methods of appointing electors, whether by state party conventions, or by state party committees, or by state party primaries, are examined. And summaries of the various laws of the States and the District of Columbia are examined.

The third, fourth, and fifth parts of the report discuss in general the movement for the reform of the Electoral College. The various arguments favoring the retention of the present system are analyzed and contrasted with the arguments against the present system.

The sixth part analyzes the four types of proposals to reform the present Electoral College system. The four reformative proposals include: (1) the direct election plan; (2) the district plan; (3) the proportional plan; and (4) the automatic plan. The direct election plan would provide for the direct election of the president and the vice president by the popular vote cast throughout the United States. The district plan would preserve the Electoral College system and provide that electors be chosen by the voters from the districts created within each with each state having in addition two at-large electors. Under the proportional plan, the Electoral College would be abolished, and the electors would be apportioned among the presidential and vice presidential candidates according to the number of popular votes received, thereby eliminating the winner-take-all aspect of the present system. And the automatic plan would abolish the Electoral College and simply award the electoral votes of each state to the presidential and vice presidential candidates who received the greatest number of popular votes in the state. Pro and con arguments for each of these proposals are examined.

The seventh part examines recent congressional proposals for the reform of the Electoral College. Proposals in the 94th, 95th, 96th, 97th, and 98th Congresses are analyzed.

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PROPOSALS TO REFORM THE ELECTORAL COLLEGE

I. Introduction

A. General Election and Election of Electors

The President of the United States is not elected directly by the people as are Senators and Representatives, but indirectly, by the Electoral College, which is composed of Presidential electors who are elected directly by the people.

The Constitution of the United States provides that "Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in Congress" (U.S. Const., art. II, § 1), and the twenty-third amendment provides for electors from the District of Columbia. All States and the District of Columbia provide for "appointment" of electors through direct election by the people. In 1984 there were 50 States with a total of 100 Senators and 435 Representatives, plus three electors from the District of Columbia; thus the total number of Presidential electors in 1984 was 538.

Under the constitution, Congress has the responsibility of setting the date on which electors are chosen and also of setting the date on which such electors shall meet and cast their votes (U.S. Const., art. II, § 1). Congress, accordingly, has set the Tuesday after the first Monday in November in every fourth year as the date for choosing the electors, and the first Monday after the second Wednesday in December next following their election as the date on which such electors shall meet and cast their votes (3 U.S.C. §§ 1, 7).

In practice, in every State except Maine, the political party obtaining a plurality of votes, no matter how small, names the entire slate of electors. This practice, however, is not required by the Constitution, and each State is

free to change it at will. Maine is the only State that has a law that provides that presidential electors of each congressional district shall cast their ballots for candidates of President and Vice President of the political party which received the largest number of votes in each congressional district. That statute provides:

The Presidential Electors at large shall cast their ballots for presidential and vice-presidential candidates who received the largest number of votes in the State. The Presidential Electors of each congressional district shall cast their ballots for presidential and vice-presidential candidates who received the largest number of votes in each congressional district. (Maine Rev. Stat. Ann., tit. 21, sec. 1184 1-A)

B. Contested Elections of Presidential Electors

The next step is the counting of the ballots and the canvassing of the votes for presidential electors in each State.

Congress has enacted two provisions respecting the election of the electors by the States. First, Section 2 of title 3, United States Code, provides that whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.

Second, section 5 of title 3, United States Code, provides that where a State has provided by law for the final determination of any contest or controversy concerning the appointment of its electors and such determination shall have been made at least six days the prior to time fixed for the meeting of the electors, such determination shall be conclusive and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated,

so far as the ascertainment of the electors appointed by such State is concerned. The "hereinafter regulated" refers to congressional rejection of a slate of electors during the counting of the votes by a joint session of Congress (3 U.S.C. § 15).

C. Certification of Electors Sent to Administrator of General Services

Subsequent to the final determination of the popular vote for electors in each State and the District of Columbia (including the resolution of contests), the executive of each State shall send to the Administrator of General Services, under the seal of the State, a certificate of ascertainment of the electors appointed, containing the names of the electors and the votes given or cast for such person elected. Each State executive shall also have delivered to the elected electors of his State, six duplicate originals of the same certificate under the seal of the State. The certificates received by the Administrator of General Services shall be preserved by him for one year and shall be a part of the public records of his office and shall be open to public inspection. The Administrator of General Services, at the first meeting of Congress thereafter, shall transmit to the two Houses of Congress copies in full of each and every certificate so received (3 U.S.C. § 6).

D. Persuading the Elected Electors

In most states presidential electors are bound by a pledge or oath to support a political party's nominees for President and Vice President. It is argued that the constitutional provisions of article II, § 1 and the twelfth amendment that "[T]he electors shall... vote by ballot for President and Vice President..." mean that electors are free and independent in choosing the President and Vice President and that Congress must count the votes as they may be inclined to cast them. Electors are constitutionally free to cast their ballots for any person they may wish and have occasionally done so, and Congress has counted them. The power of either Congress or of the States to enact legislation to bind electors

to vote for the candidate of the party on the ticket on which they run is not quite clear. The Supreme Court has only considered the issue once in Ray v. Blair, 343 U.S. 214, 228-231 (1952) which upheld a rule of the Democratic Party of Alabama, which, was passed pursuant to power delegated by the legislature and required each candidate for office of presidential elector to take a pledge to support the nominees of the party's convention for President and Vice President.

If an informal examination of the voting for presidential electors indicates that no candidate for President received a majority of the electoral votes, it is theoretically possible that before the electors meet in their respective State electoral colleges to vote for President and Vice President, attempts might be made to persuade the electors who plan to vote for candidate A and the electors who plan to vote for candidate B to give all of their votes to one or the other of the two candidates thus presenting that candidate with a majority of electoral votes. In the close election of 1876, between Governor Samuel Tilden, of New York (Democrat), and Governor Rutherford B. Hayes, of Ohio (Republican), it was reported that attempts were made to bribe at least one Republican elector to vote for Mr. Tilden and consequently give him a majority of the electoral votes. (See, Edward Stanwood, "A History of the Presidency", (1898), p. 381; Alexander C. Flick, "Samuel Jones Tilden, a Study in Political Sagacity", (1939), 335, 341, 346, 352.)

E. Meeting of the Electoral College

The Constitution authorizes Congress to set the day when the electors shall meet in their respective electoral colleges and vote for President and Vice President. It requires that the day be the same throughout the nation (U.S. Const. article II, § 1, cl. 3). Congress has set the date as the first Monday after the second Wednesday in December next following the appointment of the electors at such place in each State as the legislature of the State shall direct (3 U.S.C. § 7). In each State the legislature has provided that the electors shall meet at the State capitol either on the appointed day or the day prior thereto.

Congress has provided that each state may, by law, provide for the filling of any vacancies which may occur in its college of electors when such college meets to give its electoral vote (3 U.S.C. § 4). The States have usually provided that any vacancy in their respective colleges of electors shall be filled by the remaining electors.

When the electors meet in their respective colleges they shall vote for President and Vice President, respectively, in the manner directed by the Constitution (3 U.S.C. § 8). The twelfth amendment of the Constitution provides that 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 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 government of the United States, directed to the President of the Senate.

Congress has directed that each of the electors shall make and sign six certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for President and the other of the votes for Vice President and shall annex to each of the certificates one of the lists of the electors which shall have been furnished to them by direction of the executive of the State (3 U.S.C. § 9).

The electors in each State and the District of Columbia shall seal the certificate and certify upon each that the lists of all the votes of such State given for President and of all the votes given for Vice President, are contained therein (3 U.S.C. § 10).

The six copies of the certificates of the votes and the lists are distributed as follows:

(1) One is sent by registered mail to the President of the Senate.

(2) Two are sent to the secretary of state of the State where the electors respectively voted; one to be held subject to the order of the President of the Senate, the other to be preserved by the particular Secretary of State for one year. It shall be a part of the public records of his office and shall be open to public inspection.

(3) On the day thereafter, two copies are sent to the Administrator of General Services, one to be held subject to the order of the President of the Senate, and the other to be preserved by the Administrator for one year to be a part of the public records of his office and to be open to public inspection.

(4) The final copy shall be sent to the judge of the district court in which the electors have assembled (3 U.S.C. § 11).

If the copies of the certificate of votes and list fail to reach the President of the Senate and/or the Administrator of General Services from any State by the fourth Wednesday in December after the meeting of the electors shall have been held, the President of the Senate, or if he is absent from the seat of government, the Administrator of General Services shall request the Secretary of the State to send, by the most expeditious method available, one copy of the certificate and list lodged with him. If the request is made by the Administrator of General Services he shall transmit the copy upon receipt thereof immediately to the President of the Senate (3 U.S.C. § 12). In the same circumstances a request may be made of the United States district court judge to transmit the copy of the certificate and list lodged with him (3 U.S.C. § 13).

F. Counting of Electoral Votes at a Joint Session of Congress

The twelfth amendment provides that the certificates shall be opened by the President of the Senate in the presence of the Senate and the House of Representatives and the electoral votes shall be counted. Section 1 of twentieth amendment provides that the term of a newly elected Congress shall commence at noon

on the third day of January. Congress has provided that it shall meet on the sixth of January succeeding every meeting of the electors to count the votes (3 U.S.C. § 15). Consequently, the votes will be counted by the new Congress consisting of a newly elected House of Representatives and a newly elected one-third of the Senate plus two-thirds of the Senators whose terms have not expired.

Congress has provided by statute that when the two chambers meet jointly there shall be two tellers from each house, previously appointed, who shall count the votes in the hearing of both houses, commencing with the first State alphabetically, as the certificates are opened by the President of the Senate (the Vice President). The result of the count is given to the President of the Senate who announces it to the joint session.

Upon the reading of a certificate from each State the President of the Senate shall call for objections, if any. Every objection must be in writing stating its nature precisely and must be signed by at least one Senator and one Member of the House. Upon an objection having been made, the Senate withdraws, and each house considers the objection separately.

If only one return from the electors in a State has been given, it can be rejected by a concurrent decision of both houses when they agree that such vote or votes have been regularly given by electors whose appointment has been certified. If more than one return or paper purporting to be a return from a State shall have been received, the votes shall be counted that have been regularly given only by the electors who have been shown to have been appointed pursuant to 3 U.S.C. § 5, and the notice of whose appointment shall have been received from the executive of the State. When two or more of such State authorities have determined what electors have been appointed, the two Houses of congress, acting separately shall concurrently decide which of the authorities is the lawful tribunal of the State, and count only the votes of those electors determined by that

authority. In the case of more than one return from a State where there shall have been no determination in the State as to which set of electors is entitled to be recognized as such, then the electoral votes only shall be counted which the two houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted (3 U.S.C. § 15).

When both houses voted on a question or questions involving one State they shall meet jointly again, and the President of the Senate shall announce the decision of the questions submitted. Until all the objections have been finally disposed of in regard to any State, the joint session shall not act upon the votes of any other State (3 U.S.C. § 15).

The two houses meet in the Hall of the House of Representatives, and the statute provides that the joint meeting shall not be dissolved until the count of electoral votes shall be completed and the result declared. No recess shall be taken unless a question shall arise regarding the counting of votes, in which case it shall be competent for either house, acting separately, to direct a recess of such house not beyond the next calendar day, Sunday excepted, at the hour of 10 o'clock in the forenoon. If the declaration of the result of the total counting shall not have been completed before the fifth calendar day next after such first meeting of the two houses, no further or other recess shall be taken by either house (3 U.S.C. § 16).

When the two houses separate to decide upon an objection that may have been made to the counting of any electoral vote or votes from any State, or other question arising in the matter, each Senator and Representative may speak to such objection or question five minutes and only once. After the debate shall have lasted two hours, it shall be the duty of the presiding officer of each house to put the main question without further debate (3 U.S.C. § 17).

When the electoral votes have been counted and a candidate for President is found to have a majority of such votes (270 out of 538), he shall be President. If a candidate for Vice President is found to have a majority of the electoral votes for Vice President he shall be Vice President (twelfth amendment).

When the two houses are in joint session, the President of the Senate shall have power to preserve order; and no debate shall be allowed and no question shall be put by the presiding officer except to either house on a motion to withdraw (3 U.S.C. § 18).

G. Faithless Elector

On at least four occasions, in 1796, 1820, 1968, and 1976 votes were cast by certain electors for Presidential candidates who had not received a plurality of the votes. The votes of these "faithless electors" have been counted even though objections were raised. However, in all of these cases, the counting of the ballots as cast did not affect the outcome.

On January 6, 1969, when both Houses of congress convened to count the electoral votes from the States an objection by concurrent resolution was raised to the counting of the vote of an elector from North Carolina, one Dr. Lloyd W. Bailey, a Republican elector that cast his vote for President for George C. Wallace and for Vice President for Curtis E. LeMay. Dr. Bailey has justified his action as

a "moral obligation" to the people of the 2nd Congressional District of North Carolina, though he was elected on a statewide ballot. The objection, signed by 7 Senators and 38 Representatives provided that:

We object to the votes from the State of North Carolina for George C. Wallace for President and for Curtis E. LeMay for Vice President on the grounds that they were not regularly given in that the plurality of votes of the people of North Carolina were cast for Richard M. Nixon for President and Spiro T. Agnew for Vice President and the State thereby appointed thirteen electors to vote for Richard M. Nixon for President and Spiro T. Agnew for Vice President and appointed no electors to vote for any other persons. Therefore, no electoral vote of North Carolina should be counted for George C. Wallace for President or for Curtis E. LeMay for Vice President.

(S. Con. Res. 1, 91st Cong.)

The objection was based largely on the idea that the vote of Br. Bailey was not "regularly given" as required by Title 3 United States Code section 15. (See generally 115 Cong. Rec. 197-246, Jan. 6, 1969.)

Another attack on the vote came in the form of two Constitutional objections. The first regarded the vote as a violation of the voters of North Carolina fourteenth amendment equal protection guarantee to a right to an effective vote in that the "faithless elector" diluted the effectiveness of their vote. The second argument of such nature was based on Congress' power to count electoral votes being an absolute power not a legislative one and "the only Constitutional power specifically granted to any body or agent to protect the electoral system against arbitrary or unlawful action to thwart the popular will of the people of the States...." (Ibid.)

Additional arguments for not counting the vote were (1) in North Carolina the electors' names do not appear on the ballot, only those of the candidates; therefore, the voters are entitled to assume that they voted for such candidates

and that their will would be carried out; (2) that an agency relationship existed between Dr. Bailey and the voters and that his action was a violation of such relationship and should not be dignified by Congress; (3) that if one elector can so act, so may they all; (4) in the case of North Carolina the action of Dr. Bailey nullified 1/13th of the State's voting power in the Electoral College.

The arguments against supporting the objection to the vote of Dr. Bailey were as follows. (1) the Constitutional provisions of article II and the twelfth amendment both provide the "The electors shall....vote by ballot for President and Vice President." This was interpreted to mean that "the electors are constitutionally free and independent in choosing the President and Vice President," and that therefore Congress must count the votes as given, (2) the votes from North Carolina were lawfully certified and otherwise in order and therefore, regular, (3) no law, either North Carolina or Federal, prohibited Dr. Bailey from voting as he wished; (4) the official position of the North Carolina Board of Elections supported the counting of the vote as given; and (5) the proper method for resolving such a situation was by Constitutional amendment because none other would serve.

The resolution failed by a vote of 33-58 in the Senate and 170-228 in the House.

H. Election Thrown Into House

If no Presidential candidate obtains a majority of the whole number of electoral votes, the election of the President falls into the House of Representatives which shall immediately choose a President, by ballot, from the candidates who received the highest number of votes in the Electoral College, not exceeding three such candidates (twelfth amendment).

The Constitution provides that in choosing the President the votes in the House shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of the representations from two-thirds of the States, and a majority of all the States shall be necessary to a choice. (twelfth amendment).

The election of the President has been determined by the House of Representatives on two occasions for the general elections of 1800 and 1824. On February 17, 1801, Thomas Jefferson was chosen by the votes of ten States to 4 for Aaron Burr, and 2 blank. And in 1825, the House elected John Quincy Adams who received the votes of 13 states to 7 for Andrew Jackson, and 4 for William H. Crawford.

The procedure for voting for President in the House of Representatives is determined by rules adopted by the House, which are binding only during the Congress in which they are adopted. The last set of rules adopted by the House in this respect was in 1825.

In the 1801 election, the House of Representatives appointed a committee to prepare and report rules that were to be observed in choosing the President. (Hinds' Precedents of the House of Representatives, v. III § 1392). The rules agreed to are listed as follows:

1. In the event of its appearing, upon the counting and ascertaining of the votes given for President and Vice-President, according to the mode prescribed by the Constitution, that no person has a constitutional majority, and the same shall have been duly declared and entered on the journals of this House, the Speaker, accompanied by the Members of the House, shall return to their Chamber.
2. Seats shall be provided in this House for the President and members of the Senate, and notification of the same shall be made to the Senate.
3. The House, on their return from the Senate Chamber, it being ascertained that the constitutional number of States are present, shall immediately proceed to choose one of the persons from whom the choice is to be made for President; and in case upon the first ballot there shall not appear to be a majority of the States in favor of one of them, in such case the House shall continue to ballot for a President, without interruption by other business, until it shall appear that a President is duly chosen.
4. After commencing the balloting for President, the House shall not adjourn until a choice be made.
5. The doors of the House shall be closed during the balloting, except against the officers of the House.

6. In balloting, the following mode shall be observed, to wit: The Representatives of the respective States shall be so seated that the delegation of each State shall be together. The Representatives of each State shall, in the first instance, ballot among themselves, in order to ascertain the votes of the State, and it shall be allowed, where deemed necessary by the delegation, to name one or more persons of the representation to be tellers of the ballots. After the vote of each State is ascertained, duplicates thereof shall be made; and in case the vote of the State be for one person, then the name of that person shall be written on each of the duplicates; and in case the ballots of the State be equally divided, then the word "divided" shall be written on each duplicate, and the said duplicates shall be deposited in manner hereafter prescribed, in boxes to be provided. That, for the conveniently taking the ballots of the several Representatives of the respective States, there be sixteen ballot boxes provided; and that there be additionally two boxes provided for the purpose of receiving the votes of the States; that after the delegation of each State shall have ascertained the vote of the State, the Sergeant-at-Arms shall carry to the respective delegations the two ballot boxes, and the delegation of each State, in the presence and subject to the examination of all the members of the delegation, shall deposit a duplicate of the vote of the State in each ballot box; and where there is more than one Representative of a State the duplicates shall not both be deposited by the same person. When the votes of the States are all thus taken in, the Sergeant-at-Arms shall carry one of the general ballot boxes to one table and the other to a second and separate table. Sixteen members shall then be appointed as tellers of the ballots, one of whom shall be taken from each State, and be nominated by the delegation of the State from which he was taken. The said tellers shall be divided into two equal sets, according to such agreement as shall be made among themselves, and one of the said sets of tellers shall proceed to count the votes in one of the said boxes

and the other set the votes in the other box; and in the event of no appointment of teller by any delegation, the Speaker shall in such case appoint. When the votes of the States are counted by the respective sets of tellers, the result shall be reported to the House; and if the reports agree, the same shall be accepted as the true votes of the States; but if the reports disagree, the States shall immediately proceed to a new ballot in manner aforesaid.

7. If either of the persons voted for shall have a majority of the votes of all the States the Speaker shall declare the same, and official notice thereof shall be immediately given to the President of the United States and to the Senate.

8. All questions which shall arise after the balloting commences, and which shall be decided by the House voting per capita, to be incidental to the power of choosing the President, and which shall require the decision of the House, shall be decided by States, and without debate; and in case of an equal division of the votes of States, the question shall be lost.

After the House adopted such rules on February 11, 1801, it proceeded to elect the President according to the manner prescribed in the Constitution. Members were appointed tellers of the respective States to examine the ballots of each State in accordance with the sixth rule that they had adopted. Sixteen States were involved in the balloting, the votes of nine States were necessary to constitute a choice. On February 17, 1801, after the thirty-sixth ballot, Thomas Jefferson of Virginia received the votes of ten States while Aaron Burr of New York received the votes of four States, and the votes of two States had been given blank; thus Thomas Jefferson was elected President of the United States

for four years which commenced on March 4, 1801. (Hinds' Precedents of the House of Representatives, v. III, § 1983). In the 1825 election, the House of Representatives resolved itself into the committee of the whole House and appointed a committee to prepare and report rules to be observed by the House in the election of a President. The House adopted the following rules:

1. In the event of its appearing, on opening all the certificates, and counting the votes given by the electors of the several States for President, that no person has a majority of the votes of the whole number of electors appointed, the same shall be entered on the Journals of this House.

2. The roll of the House shall then be called by States; and, on its appearing that a Member or Members from two-thirds of the States are present, the House shall immediately proceed, by ballot, to choose a President from the persons having the highest numbers, not exceeding three, on the list of those voted for as President; and, in case neither of those persons shall receive the votes of a majority of all the States on the first ballot, the House shall continue to ballot for a President, without interruption by other business, until a President be chosen.

3. The doors of the Hall shall be closed during the balloting, except against the Members of the Senate, stenographers, and the officers of the House.

4. From the commencement of the balloting until an election is made no proposition to adjourn shall be received, unless on the motion of one State, seconded by another State, and the question shall be decided by States. The same rule shall be observed in regard to any motion to change the usual hour for the meeting of the House.

5. In balloting the following mode shall be observed, to wit:

The Representatives of each State shall be arranged and seated together, beginning with the seats at the right hand of the Speaker's chair, with the Members from the State of Maine; thence, proceeding with the Members from the States, in the order the States are usually named for receiving petitions, around the Hall of the House, until all are seated.

A ballot box shall be provided for each State.

The Representatives of each State shall, in the first instance, ballot among themselves, in order to ascertain the vote of their State; and they may, if necessary, appoint tellers of their ballots.

After the vote of each State is ascertained, duplicates thereof shall be made out; and in case any one of the persons from whom the choice is to be made shall receive a majority of the votes given, on any one balloting by the Representatives of a State, the name of that person shall be written on each of the duplicates; and in case the votes so given shall be divided so that neither of said persons shall have a majority of the whole number of votes given by such State, on any one balloting, then the word "divided" shall be written on each duplicate.

After the delegation from each State shall have ascertained the vote of their State, the Clerk shall name the States in the order they are usually named for receiving petitions; and as the name of each is called the Sergeant-at-Arms shall present to the delegation of each two ballot boxes, in each of which shall be deposited, by some Representative of the State, one of the duplicates made as aforesaid of the vote of said State, in the presence and subject to the examination of all the Members from said State then present; and where there is more than one Representative from a State, the duplicates shall not both be deposited by the same person.

When the votes of the States are thus all taken in, the Sergeant-at-Arms shall carry one of said ballot boxes to one table and the other to a separate and distinct table.

One person from each State represented in the balloting shall be appointed by the Representatives to tell off said ballots; but, in case the Representatives fail to appoint a teller, the Speaker shall appoint.

The said tellers shall divide themselves into two sets, as nearly equal in number as can be, and one of the said sets of tellers shall proceed to count the votes in one of said boxes, and the other set the votes in the other box.

When the votes are counted by the different sets of tellers, the result shall be reported to the House; and if the reports agree, the same shall be accepted as the true votes of the States; but if the reports disagree, the States shall proceed, in the same manner as before, to a new ballot.

6. All questions arising after the balloting commences, requiring the decision of the House, which shall be decided by the House, voting per capita, to be incidental to the power of choosing a President, shall be decided by States without debate; and in case of an equal division of the votes of States, the question shall be lost.

7. When either of the persons from whom the choice is to be made shall have received a majority of all the States, the Speaker shall declare the same, and that that person is elected President of the United States.

8. The result shall be immediately communicated to the Senate by message, and a committee of three persons shall be appointed to inform the President of the United States and the President-elect of said election.

On February 9, 1825, John Quincy Adams was elected in accordance with these rules. (Hinds' Precedents of the House of Representatives, v. III, § 1984).

Each State's representation arrives at its one vote by polling its Members. The candidate receiving the majority of votes of that State's Representatives will receive the one full vote of the State. If the State's votes in its poll are evenly divided, or if no candidate receives a majority in the poll, the State will lose its one vote. In that event the State may either submit a blank ballot or decline to vote. The House can keep taking ballot after ballot until one candidate receives the votes of a majority of the States. Thus, in the election of 1800, which fell into the House of Representatives, Jefferson was chosen on February 17, 1801, on the thirty-sixth ballot. (For a description of what happened in the Electoral College and in the House of Representatives during the Election, see American Historical Association Report (1913), Vol. 2, pp. 132-137.)

If no Vice Presidential candidate should receive a majority of votes in the Electoral College, then from the two candidates having the highest number of votes, the Senate shall choose a Vice President. A quorum for that purpose shall consist of two-thirds of the whole number of Senators (67 in 1981), and a majority of the whole number (51 out of 100 in 1981) shall be necessary to a choice (U.S. Const. twelfth amendment).

If the election should fall into the House of Representatives and if the House should fail to elect a President before January 20th, then the Vice President-elect shall act as President until a President shall have qualified, and Congress may by law provide for a situation where neither a President-elect nor Vice President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified (U.S. Const. amend. XX, § 3). Congress has, in effect, provided that in the event that both the President-elect and the Vice President-elect fail to qualify by noon of January 20 of the year following the November election, then the Speaker of the House shall act as President until either the President-elect or Vice President-elect qualifies (3 U.S.C. § 19). The Speaker who would act as President in such circumstances would be the one chosen by the House on January 3.

Until the adoption of the twentieth amendment to the Constitution, the electoral votes were counted by the outgoing or "lame duck" Congress, which conceivably could be under the control of the defeated party. With the ratification of the twentieth amendment by the thirty-sixth State in 1933 and the enactment of the law setting the date for the counting of the electoral votes by Congress as January 6 (3 U.S.C. § 15), it is the newly-elected House of Representatives that would choose the President, since that amendment provided that the term of the newly-elected Members of Congress should commence on January 3 instead of March 4. (See, U.S. Const. amend. XX, §§ 1, 2, 3 and 5. Rep. No. 26, 72d Cong., 1st Sess. (1932), pp. 4-5 asserting that the new House of Representatives would have the power to select the new President.)

I. Absence of a Majority of Electoral Votes for a Vice President

The twelfth amendment provides that the person receiving the greatest number of electoral votes as Vice President, shall be the Vice President, if such number be a majority of the electoral votes. If no person receives a majority of the electoral votes for Vice President, 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 (67), and a majority of the whole number (51) shall be necessary to a choice. The Senate has been called upon to select a Vice President only once. This occurred in 1837 during the 24th Congress, after the election of 1836, when the Senate chose Richard M. Johnson, of Kentucky as Vice President to President Van Buren.

The two houses met jointly on February 8, 1837, to count the electoral vote. At the time there were 26 States and a total of 294 electoral votes. 148 votes comprised a majority. Mr. Johnson received 147, one short of the figure necessary for election. Francis Granger, of New York, had the second highest number of electoral votes for Vice President, 77. There was some controversy over whether the three electoral votes from Michigan should be counted. If they were not, the aggregate number of electoral votes come to 291, of which 146 were a majority. Since Mr. Johnson had been given the electoral votes of Michigan, if the three votes were subtracted from his total of 147, he would be left with 144, still not a majority. The electoral count was made in the alternative, both sets of figures being used. The problem arose because the act admitting Michigan to the Union had not been passed by Congress when the State voted for President, but had been passed before the time for the electoral count (Hinds', Precedents of the House of Representatives, vol. III, § 1941).

After the electoral vote had been announced at the joint session, the Senate retired to its own chamber to vote for the Vice President (Congressional Globe, 24th Congress, 2nd Session, February 8, 1837, pp. 171-172). Senator Grundy, on behalf of the joint committee appointed on the subject of counting the votes for President and Vice President, etc., submitted the following resolution, which was adopted by the Senate:

Whereas, upon counting the electoral votes in the presence of the two Houses of Congress, given at the late election for President and Vice President of the United States, it appears that no person has received for the office of Vice President of the United States a majority of the votes of the whole number of electors appointed; and it also appearing that RICHARD M. JOHNSON, of Kentucky, and FRANCIS GRANGER, of New York, have the highest numbers on the list of those voted for to fill the office of Vice President:

Resolved, That the Senate do now proceed to choose a Vice President from the said RICHARD M. JOHNSON and FRANCIS GRANGER, they having the two highest numbers on the list; and the manner of voting shall be as follows: The Secretary of the Senate shall call the names of Senators in alphabetical order, and each Senator will, when his name is called, name the person for whom he votes; and if a majority of the whole number of Senators shall vote for either the said RICHARD M. JOHNSON or FRANCIS GRANGER, he shall be declared, by the Presiding Officer of the Senate, constitutionally elected Vice President of the United States for four years, commencing on the 4th day of March next.

(Congressional Globe, supra, p. 170).

The names of several Senators were then called, and the vote was as follows:

For Mr. Johnson, 33

For Mr. Granger, 16

Since there were 52 Senators, a majority, necessary for a choice, was 27.

The number of Senators present was 49.

Subsequent to the voting a resolution was adopted that a committee of three members be appointed to wait on Mr. Johnson and inform him that he had been constitutionally elected by the Senate, Vice President of the United States for four

years commencing with the fourth of March next (Congressional Globe, supra, p. 170).

J. Death of a Presidential Candidate or President-Elect

What happens when a Presidential candidate or a President-elect dies? The Constitution does not concern itself at all with the consequences of a death of a presidential candidate and only generally considers the consequences of the death of a President-elect or Vice President-elect under section 3 of the twentieth amendment of the Constitution.

1. Death of a Presidential Candidate

Since, under the constitution, the President and Vice President are not really elected until the Electoral College meets on the first Monday after the second Wednesday in December after the November general election, the death of a candidate prior to the meeting of the Electoral College and after the November general election is not provided for under the Constitution. However, the rules of the major political parties do provide for the filling of the vacancy by the parties' national committees. (Article 3, Charter of the Democratic Party; Rule 28 of the Republican Party Rules).

The political party is permitted to choose a new Presidential candidate if its successful candidate should die between the November general election and the December meeting of the Electoral College. Since the slate of electors chosen in each state generally vote for and are often bound by party pledges, required by many state laws or state party rules, to vote for the candidates chosen by their own political party, the political party whose candidate won the most electors in the November election would in all probability be selecting the next President even though the faithless elector problem still exists.

2. Death of a President-Elect and Vice President-Elect Before Inauguration

Once the Electoral College has met and the votes have been cast and transmitted sealed to the President of the Senate, the President-elect and Vice President-elect if they have received a majority of the electoral votes would be replaced due to any death in accordance with section 3 of the twentieth amendment, which provides:

If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Thus, when a President-elect dies between the meeting of the Electoral College in December and inauguration day on January 20, the Vice President-elect becomes President-elect, and the resulting vacancy in the Vice Presidency is filled following inauguration day on January 20 under procedures established by section 2 of the twenty-fifth amendment, which allows the President to nominate a Vice President who would take office after a confirmation by a majority of both Houses of Congress.

If the Vice President-elect dies between the meeting of the Electoral College in December and inauguration day on January 20 the vacancy would likewise be filled after the inauguration of the President in accordance with section 2 of the twenty-fifth amendment. And if both the President-elect and the Vice President-elect

were to die or fail to qualify, then the Speaker of the House would act as President in accordance with the provisions of the Presidential Succession Act of 1947, 3 U.S.C. § 19. And, if a winning candidate were to die after the Electoral College met and cast the required majority of votes for him and before the meeting of Congress to count the votes, the Congress would have no discretion and would have to declare the actual votes at the time they were cast were valid, and would have to declare that the deceased candidate had received a majority of the votes. (See H. Rept. No. 72-345, p.5 (1937) reporting resolution which become twentieth amendment.)

3. Death of Presidential and Vice-Presidential Candidates Not Receiving a Majority of Electoral College Votes Before the House and Senate Meet to Elect Them

When the candidates for President and Vice President do not receive the required majority of Electoral College votes (270), the House of Representatives is to choose a President from among the three persons having the highest number of electoral college votes, and the Senate is to choose a Vice President from the two persons having the highest numbers of votes. (U.S. Const. twelfth amendment). Thus, if one of the top three Presidential candidates were to die, the House could do no more than make its decision among the survivors. And if one of the two Vice Presidential candidates were to die, the Senate would have to choose the survivor since it must choose from among only two candidates. Section 4 of the twentieth amendment has authorized Congress to change such a situation by law, but it has not yet done so; section 4 provides as follow:

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Congress has never enacted legislation to meet this contingency. House Report 345 (72nd Congress) did state "No attempt has been made to indicate the manner in which Congress should provide, (for the case of the death of one of the three highest where the election is thrown into the House) for your committee did not feel that it should assume the responsibility of selecting one of the many possible policies which might be applicable. Under some circumstances, for example, it might be advisable to provide for a substitution of a name for the name of the deceased candidate and to permit the election by the House to proceed as it otherwise would; under other circumstances it might be advisable to provide for a reconvening of the Electoral College; again it might be necessary to provide that a designated officer shall act temporarily as President until a President can be chosen in the manner prescribed by law; and other methods might be selected by the Congress." The same suggested resolutions to the problem were suggested for the case of the death of one of the two highest candidates where the election is thrown into the Senate.

In case such an eventuality did occur as respects any of the three candidates for President from whom the House would choose, or the two candidates for Vice President from whom the Senate would choose, the respective Houses would have no alternative but to select from the remaining candidates, in the absence of the necessary legislation. (See remarks of Representative Lozier, during the debate on the twentieth amendment, 75 Congressional Record p. 3833 (1932).)

Or, as the House Report on the Amendment (supra) surmised, "If one of the three persons has died, the political party which he represents would be practically disfranchised", since "It seems certain that votes cast for a dead man could not legally be counted." The Report declared that it might be necessary for that party, "through political strategy, to prevent an election by the House, and risk

receiving favorable results in the Senate assuming that the election of the Vice President is thrown into the Senate as could undoubtedly happen."

K. Failure to Elect by Inauguration Day

1. President

Section 3 of the twentieth amendment provides that "if a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice President-elect shall act as President until a President shall have qualified." This provision takes care, primarily, of the situation where the election of the President is thrown into the House and the House has not selected a President by noon of January 20. In such an event, the Vice President-elect, whether he had been elected by the electoral college or by the Senate, would become Acting President until such time as the House made its selection. When the House has elected the President, then the Vice President who is acting President would become Vice President.

2. President and Vice President

If neither the House nor the Senate has respectively elected the President or the Vice President by noon of January 20, then the provision of Section 3 of the twentieth amendment would come into play. Pursuant to 3 U.S.C. § 19, the Speaker of the House would resign as Speaker and as a member of the House and be sworn in as acting President at noon on January 20. He would continue in the office until either the House had elected a President or the Senate a Vice President.

L. President and Vice President Being Residents of the Same State

The twelfth amendment to the United States Constitution provides in part:

"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...."

Also, in article II, sec. 1, cl. 3 of the Constitution, the language "one of whom, at least, shall not be an inhabitant of the same state with themselves," appears and was superseded by the twelfth amendment although none of the changes made by the twelfth amendment affected this clause.

This provision has raised the question whether the Constitution requires that the President and Vice President be residents of different states. Although there have been no judicial decisions interpreting this provision, it is generally construed as not prohibiting the election of a President and Vice President from the same state. The provision merely prohibits the electors of the Electoral College of a particular state from voting for two persons - one to be President, the other Vice President - who are with inhabitants of the same state as electors who are voting. For example, if the Presidential and Vice Presidential candidates were from the same state, the electors of that state can vote for only one of the candidates who is an inhabitant of that state. Assuming that they would cast their votes for the Presidential candidate, they would not be able to cast their votes for the Vice Presidential candidate since that candidate would be of the same state. Therefore, for the second office, the Vice Presidential office in this example the electors of that state must either vote for an inhabitant of any other state who is a candidate for that office or lose their electoral vote as to that office. However, the electors of all of the other forty-nine states may vote for the two candidates from the same state if they chose.

II. State Laws Concerning The Nomination And Election Of Presidential Electors

A. Appointment of Electors

Under Article II, section 1, clause 2 of the United States Constitution, the President is neither elected directly by the voters nor elected by the Congress, but is instead elected by presidential electors; that provision reads as follows: "Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress...." The United States Supreme Court in McPherson v. Blacker, 146 U.S. 1 (1892), noted that the United States Constitution does not provide: (1) that the appointment of electors shall be by popular vote; (2) that the electors shall be voted for upon a general ticket; and (3) that the majority who vote can alone choose the electors. [Id., 27]. People act through their representatives in the legislature, and the method of appointing electors to the Electoral College is left to the state legislature. Thus, the appointment and the mode of appointment of electors to the Electoral College belong exclusively to the States under the United States Constitution. [Ibid.]. For example, the state legislature may provide for the choice of electors by districts or by a state-wide general ticket. [Id., 36].

And in Ray v. Blair, 343 U.S. 214 (1952), the United States Supreme Court held that, when a state authorizes a political party to choose its nominees for presidential electors in a primary election and to fix the qualifications for the candidates, it is not violative of the Constitution for

the party to require the candidates for presidential elector to take a pledge to support the nominees of the party's national convention for president and vice president or for the party to refuse to certify a person as a candidate for presidential elector who refuses to take such a pledge. [Id. 224-225]. A state's or a political party's exclusion of candidates from a party primary because they will not pledge to support the party's nominees is a method of securing party loyalty and is an exercise of the state's right to appoint electors as it may choose subject to constitutional limitations. [Id., 226].

Even though the States and the District of Columbia have discretion in choosing the electors, the Supreme Court has recognized a federal interest in protecting the integrity of the Electoral College process. The Court has upheld the power of Congress to protect voters in exercising their right freely so that the votes by which the President is elected shall be the free votes of the electors. Ex Parte Yarbrough, 110 U.S. 651, 662 (1884). Moreover, in Burroughs And Cannon v. United States, the Supreme Court held that Congress has the power to protect the choice of electors from fraud and corruption. [290 U.S. 534, 546 (1934)].

Under Article II, section 1, the power of the States to pass laws regulating the selection of presidential and vice-presidential electors is extensive, but such power cannot be exercised in such a way as to violate express constitutional provisions that would specifically bar States from passing certain kinds of laws such as those which would effectively limit

access to the ballot to electors of the two major political parties.

Williams v. Rhodes, 393 U.S. 23, 24 (1968). State laws that are enacted to regulate the selection of electors must meet the requirements of the Equal Protection Clause of the Fourteenth Amendment. [Id., 28-29].

Congress pursuant to Article II, section 1, clause 3 sets the date for the election of presidential and vice presidential electors; that provision provides: "The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States." By statute Congress has set the date as the Tuesday next after the first Monday in November in every fourth year succeeding every election of a President and Vice President. [Ch. 644, 62 Stat. 672 (1948); 2 U.S.C. § 1].

The candidates for president and vice president who are nominated at the respective national conventions are generally entitled under the laws of the States to have their names placed on the general election ballot. This is a mere formality since the president and the vice president are actually elected by the electors under the Constitution. The electors are state officers who are nominated and elected according to state law. In Re Green, 134 U.S. 377, 379 (1890). The electors are generally paid some form of compensation by the States; often this is usually only necessary traveling expenses.

The practice of the States may differ as to the printing of names of presidential and vice presidential electors on the general election ballot.

Some States print only the names of the electors on the ballot; other States print the names of both the electors and the presidential and the vice presidential candidates on the ballot; and other States print only the names of the presidential and vice presidential candidates on the ballot. And voters who cast their ballots for president and vice president are actually voting for electors and not for presidential and vice presidential candidates.

The laws of the various States differ as to the method of nominating the electors. The methods of nomination in the various States fall into three categories: (1) state party conventions, (2) state party committees, and (3) state party primaries.

B. State Party Conventions:

The following States nominate the presidential and vice presidential electors by the state conventions of the political parties: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

C. State Party Committees:

The following States nominate the presidential and vice presidential electors by the state committees of the political parties: District of

Columbia, Florida, Louisiana, Missouri, New Jersey, New York, Pennsylvania, South Carolina, and Tennessee. Note that in Florida, the Governor nominates the electors of each political party; however, only the electors recommended by the state executive committee of the respective political parties are nominated. [Florida Statutes Ann., § 103.021(1)]. And note that in Pennsylvania, presidential electors are nominated by the presidential nominee of each political party. [Pennsylvania Statutes Ann., title 25, § 2878].

D. State Party Primaries

In Arizona, electors are nominated at the general state primary which is held on the eighth Tuesday prior to the general election which in 1984 will be held on September 11, 1984. [Arizona Revised Statutes, § 16-201].

In most States and the District of Columbia the slate of electors which wins the highest plurality of votes is elected. And that slate will meet on the first Monday after the second Wednesday in December and vote for president and vice president. This meeting and casting of votes for presidential and vice presidential candidates is known as the Electoral College. [3 U.S.C. § 7]. However, in the State of Maine, the electors cast their ballots for the slate of electors which won the highest plurality of votes by congressional district, and there are two at-large electors who cast their ballots for presidential and vice presidential candidates who received the largest number of votes in Maine. Consequently, unlike other States and the District of Columbia, the electoral votes in Maine may be cast for different candidates. [Maine Revised Statutes, title 21, § 1184 (1) (A)].

E. Summaries Of State Laws Relating To The Nomination And Election Of Presidential And Vice Presidential Electors*

ALABAMA

Presidential Electors: 9

A. NOMINATION

(1) *Major parties*

The nomination of electors is by party organization. There is no explicit statutory provision for a primary election to select electors (Code of Alabama, § 17-19-2). When presidential electors are to be chosen, the Secretary of State certifies to the judges of probate of the several counties the names of all candidates for President and Vice President who are nominated by any national convention (*Ibid.*). The certificate of nomination must be signed by the presiding officer and secretary of the convention and by the chairman of the State executive or central committees making the nomination (*Ibid.*). Each certificate of nomination and nominating petition must be accompanied by a list of names and addresses of persons, who are qualified voters, equal to the number of presidential electors to be chosen (*Ibid.*). Such certificates must be filed in the office of the Secretary of State no later than the last day of August preceding the general election (*Ibid.*).

(2) *Minor and new parties*

Candidates for President and Vice President may be nominated by a national convention or other like assembly of any political party (§ 17-19-2). The nominating petitions must be filed in the office of the Secretary of State no later than the last day of August before the general election (*Ibid.*). The Secretary of State certifies to the judges of probate of the several counties the names of all candidates for President and Vice President who are nominated by an national convention (*Ibid.*). Each certificate of nomination is to be accompanied by a list of names and addresses of persons equal in number to the number of presidential electors to be chosen.

(3) *Independent candidates*

The Secretary of State must certify to the judges of probate of the several counties the names of candidates for President and Vice President who are nominated by written petition signed by at least 5,000 qualified voters of the State (§ 17-19-2). The nominating petition is to be filed in the office of the Secretary of State no later than the last day of August preceding the general election (*Ibid.*).

Pledge

Each person listed on each certificate of nomination and nominating petition shall agree that, if elected, he or she shall cast a ballot as elector for the nominees listed on such certificate (§ 17-19-2).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of all candidates for President and Vice President shall be printed on the official ballots under the

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The summaries are taken from the book entitled Nomination And Election Of The President And Vice President Of The United States, 1984 by Thomas M. Durbin, American Law Division, Congressional Research Service, Library of Congress, U.S. Government Printing Office: 1984. [S. Prt. 98-150]

emblem of their respective political parties (§ 17-19-3). The names of the electors of the candidates for President and Vice President shall not be printed upon the ballots (*Ibid.*).

C. STATUTORY INSTRUCTIONS

The electors of President and Vice President are to assemble at the office of the Secretary of State, at the seat of government at 12:00 o'clock noon on the second Tuesday in December next after their election, or at that hour on such other day as may be fixed by Congress, to elect such President and Vice President, and those of them present at that hour must at once proceed by ballot and plurality of votes to supply the places of those who fail to attend on that day and hour (§ 17-19-7).

ALASKA

Presidential Electors: 3

A. NOMINATION

(1) *Major parties*

The nomination of electors is by State party convention or in any other manner prescribed by the bylaws of the party. The chairman and secretary of the State convention or any other party official designated by the party bylaws shall certify a list of names of candidates for electors to the Lieutenant Governor, on or before September 1 in presidential election years (Alaska Statutes, § 15.30.020)

(2) *Party pledge*

The party shall require from each candidate for election a pledge that as an elector he will vote for the candidates nominated by the party of which he is a candidate (§ 15.30.040)

(3) *Minor parties*

A limited political party may be organized for the purpose of selecting candidates for electors of President and Vice President of the United States by filing a petition with the Lieutenant Governor at least 90 days before a presidential election signed by qualified voters of the State equaling in number at least three percent of Alaska's total vote for President at the last presidential election. The petition shall state that the signers intend to organize a political party, that they intend to select candidates for electors of President and Vice President of the United States at the next succeeding presidential election, and the name of the political party (§ 15.30.025(a)).

A political party so organized may not assume a name which is so similar to an existing political party as to confuse or mislead the voters at an election. If the Lieutenant Governor determines that the name of the political party set out in a petition is confusing or misleading, he may refuse to accept the petition for filing (§ 15.30.025(b)).

A political party organized under this section shall cease to be a political party whenever its presidential candidate fails to receive at least 10 percent of the total Alaskan vote cast for the office of President at a presidential election (§ 15.30.025(c)).

Presidential electors may be nominated by political parties in Alaska (§ 15.30.20).

B. NAMES ON GENERAL ELECTION BALLOTS

Names of candidates are printed on the ballots and a vote marked for the candidates for President and Vice President is considered and counted as a vote for the presidential electors of the party (§§ 15.15.030(7); 15.30.050).

C. STATUTORY INSTRUCTIONS

The electors shall meet at the office of the Lieutenant Governor or other place designated by him at 11:00 o'clock in the morning on the first Monday after the second Wednesday in December following their election. They shall proceed to cast their votes for the candidates for the office of President and Vice President of the party which selected them as candidates for electors and shall perform the duties of electors as required by the Constitution and laws of the United States (§§ 15.30.070; 15.30.090).

ARIZONA

Presidential Electors: 7

A. NOMINATION

(1) Major parties

Electors are nominated at the general State primary held on the eighth Tuesday prior to the general election, i.e., September 11, 1984 (Arizona Revised Statutes, § 16-201, Supp.). A nomination petition must be filed with the Secretary of State signed by a number of electors equal to at least one percent of the vote cast for the party's candidate for Governor in at least three counties in the State at the last gubernatorial election but not less than one percent nor more than 10 percent of the total vote of his party in the State (§ 16-322A, Supp.). Nomination papers of a candidate for the office of presidential elector shall be filed with the Secretary of State not less than 75 nor more than 105 days before the primary election (§ 16-311A, C, Supp.).

(2) Minor and new parties

A new political party may become eligible for recognition and shall be represented by an official party ballot at the next ensuing regular primary election and accorded a column on the official ballot at the succeeding general election upon filing with the Secretary of State a petition signed by a number of qualified electors equal to not less than two percent of the votes cast for governor at the last preceding general election (§ 16-801, Supp.).

(3) Independent candidates

A nominating petition, signed by at least one percent of the qualified electors of the State, county, subdivision or district for which the candidate is nominated, who have voted for Governor at the last general election at which a Governor was elected, shall be filed with the Secretary of State within 10 days after the primary election (§ 16-341, Supp.).

B. NAMES ON GENERAL ELECTION BALLOTS

When presidential electors are to be voted for, the candidates therefor of each party shall be grouped and printed together, arranged in each group in alphabetical order, and the entire group of electors of each party shall be enclosed in a scroll or bracket to the right and opposite the center on which shall be printed in bold-type the surname of the presidential candidate represented. To the right of and on a line with the surname shall be placed a square in which the voter may indicate his choice by the mark X, and one such mark opposite a group presidential electors shall be counted as vote for each elector in such group (§ 16-507, Supp.).

C. STATUTORY INSTRUCTIONS

None.

ARKANSAS

Presidential Electors: 6

A. NOMINATION*(1) Major parties*

In each year in which a President and Vice President of the United States are chosen, each political party or group in the State shall choose by its State convention electors of President and Vice President of the United States and such State convention of such party or group shall also choose electors at large, if any are to be appointed for the State and such State convention of such party or group shall by its chairman and secretary certify the total list of such electors together with electors at large so chosen to the Secretary of State.

The filing of such certificate with said Secretary of State, of such choosing of electors shall be deemed and taken to be the choosing and selection of the electors of this State, if such party or group is successful at the polls as herein provided in choosing their candidates for President and Vice President of the United States (Arkansas Revised Statutes Annotated, § 3-207(a)).

(2) Minor and new parties

Any group of voters desiring to file a petition with the Secretary of State signed by qualified electors equal in number to at least three percent (3%) of the total vote cast for the office of Governor or nominees for presidential electors, at the last preceding election, so as to establish a political party shall file said petition not later than twelve o'clock (12:00) noon on the first Tuesday in May before the preferential primary election. All petitions must be circulated during the period beginning January 1 and ending the first Tuesday in May of any year (§§ 3-101(a), 3-113(d)).

(3) Independent candidates

Any person desiring to have his name placed upon the ballot as an independent candidate without political party affiliation for any State, county, township or district office, shall in any general election in this State file as an independent candidate not later than twelve o'clock (12:00) noon on the Monday immediately preceding the preferential primary

election, and shall furnish at the time he files as an independent candidate [petitions] signed by not less than three percent (3%) of the qualified electors of the State, or 10,000 signatures of qualified electors whichever is the lesser, each of whom shall be a registered voter and such petitions shall be directed to the official with whom such person is required by law to file nomination certificates to qualify as a candidate, requesting that the name of such person be placed on the ballot for election to the office mentioned in the petition. Such petitions shall be circulated not earlier than sixty (60) calendar days prior to the deadline for filing such petitions to qualify as an independent candidate (§ 3-105(c)).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of candidates of political parties or groups for electors of the President and Vice President shall not be printed on the general election ballot. In lieu thereof, the names of the candidates for President and Vice President with the particular party designation of each shall be so printed. A vote for the presidential and vice-presidential candidates shall be deemed to be a vote for the electors thereof (§ 3-207(b)).

If more than one certificate of choice and selection of electors of the same political party or group is filed, the constitutional officers of the State shall determine which set was chosen by the authorized convention of a party or group (§ 3-207(d)).

C. STATUTORY INSTRUCTIONS

The electors shall meet at the office of the Secretary of State in the State capitol at the time appointed by the laws of the United States at 10:00 a.m., and give their votes for President and Vice President of the United States, and perform such duties as are or may be required by law (§ 3-210).

CALIFORNIA

Presidential Electors: 47

A. NOMINATION

(1) *Major parties*

(a) *Democratic Party*

In each year of the general election at which electors of President and Vice President of the United States are to be chosen, each congressional nominee shall designate one presidential elector and shall file his or her name, residence and business address with the Secretary of State by October 1 of the presidential election year. Each United States senatorial nominee, determined by the last two United States senatorial elections, shall designate one presidential elector and shall file his or her name, residence and business address with the Secretary of State by October 1 of the presidential election year. In the event there is no United States senatorial nominee or no congressional nominee in any particular district, the State chairman shall designate one presidential elector for each vacancy and shall file his or her name, residence and business address with the Secretary of

State by October 1 of the presidential election year (Cal. Election Code, § 8510).

(b) *Republican Party*

In each year of the general election at which electors of President and Vice President of the United States are to be chosen, the Republican nominees for Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, and Secretary of State, the Republican nominees for United States Senator at the last two United States senatorial elections, the Assembly Republican leader, the Senate Republican leader, all elected officers of the Republican State Central Committee, the National Committeeman and National Committeewoman, the President of the Republican County Central Committee Chairmen's Association, and the chairman or president of each Republican volunteer organization officially recognized by the Republican State Central Committee shall act as presidential electors, except that Senators, Representatives, and persons holding an office of trust or profit of the United States shall not act as electors. The remaining presidential elector positions, and any vacant positions, shall be filled by appointment of the Chairman of the Republican State Central Committee in accordance with the bylaws of the committee. The name, residence and business address of each such appointee shall be filed with the Secretary of State by October 1st of the presidential election year. The Republican State Central Committee shall adopt bylaws implementing the provisions of this section (Cal. Election Code, § 9010, Supp.).

(2) *Minor and new parties*

A party is qualified to participate in any primary election:

(a) if at the last preceding gubernatorial election there was polled for any one of its candidates for any office voted on throughout the State, at least 2 percent of the entire vote of the State; or

(b) if on or before the 135th day before any primary election, it appears to the Secretary of State, as a result of examining and totaling the statement of voters and their political affiliations transmitted to him by the county clerks, that voters equal in number to at least 1 percent of the entire vote of the State at the last preceding gubernatorial election have declared their intention to affiliate with that party; or

(c) if on or before the 135th day before any primary election, there is filed with the Secretary of State a petition signed by voters, equal in number to at least 10 percent of the entire vote of the State at the last preceding gubernatorial election, declaring that they represent a proposed party, the name of which shall be stated in the petition, which proposed party those voters desire to have participate in that primary election. This petition shall be circulated, signed, verified and the signatures of the voters on it shall be certified to and transmitted to the Secretary of State by the county clerks substantially as provided for initiative petitions. Each page of the petition shall bear a caption in 18-point blackface type, which caption shall be the name of the proposed party followed by the words "Petition to participate in the primary election." No voters or organization of voters shall assume a

party name or designation which is so similar to the name of an existing party as to mislead voters (§ 6430).

Whenever a group of electors desires to qualify a new political party meeting the requirements of section 6430, said group shall form a political body by:

(a) holding a caucus or convention at which temporary officers shall be elected and a party name designated, which name shall not conflict with that of any existing party or political body which has previously filed notice pursuant to subdivision (b); and

(b) filing formal notice with the Secretary of State that the political body has organized, elected temporary officers, and declared an intent to qualify a political party pursuant to § 6430. The notice shall include the names and addresses of the temporary officers of the political body (§ 9951).

Minor and new parties select their candidates for presidential electors at respective State conventions and certify the names of the electors nominated to the Secretary of State.

(3) Independent candidates

Whenever a group of candidates for presidential electors, equal in number to the number of presidential electors to which this State is entitled, files a nomination paper with the Secretary of State pursuant to this chapter, the nomination paper may contain the name of the candidate for President of the United States and the name of the candidate for Vice President of the United States for whom all of those candidates for presidential electors pledge themselves to vote (§ 6803).

When a group of candidates for presidential electors designates the presidential and vice presidential candidates for whom all of the group pledge themselves to vote, the names of the presidential candidate and vice-presidential candidate designated by that group shall be printed on the ballot (§ 6804).

Nomination papers for a statewide office for which the candidate is to be nominated shall be signed by voters of the State equal to not less in number than one percent of the entire number of registered voters of the State at the time of the close of registration prior to the preceding general election (§ 6831).

Nomination papers shall be filed with the county clerk not more than 129 nor less than 64 days before the day of the election, and shall be prepared, circulated, signed, verified and left with the county clerk for examination no earlier than 148 days before the election and no later than 5:00 p.m. 88 days before the election (§ 6833).

B. NAMES ON GENERAL ELECTIONS BALLOTS

The names of the candidates for President and Vice President of the several political parties are printed on the ballot. Names of the candidates for electors shall not be printed on the ballot (§§ 10201, 10210; 10213 Supp.).

C. STATUTORY INSTRUCTIONS

The electors chosen shall assemble at the State Capitol at 2:00 o'clock in the afternoon on the first Monday after the

second Wednesday in December next following their election (§ 25103).

In case of the death or absence of any elector chosen, or if the number of electors is deficient for any other reason, the electors then present shall elect, from the citizens of the State, as many persons as will supply the deficiency (§ 25104.)

The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice President of the United States, who are respectively, the candidates of the political party which they represent, one of whom, at least, is not an inhabitant of this State (§ 25105).

COLORADO

Presidential Electors: 8

A. NOMINATION

(1) Major parties

The nomination of presidential electors may be by State party convention, or a committee authorized by such convention, or by petition for nomination of an independent candidate (Colorado Revised Statutes, §§ 1-14-107, 1-14-201(2)).

(2) Minor and new parties

A "major political party" means one of the two political parties whose candidate for Governor at the last preceding gubernatorial election received the first and second greatest number of votes (§ 1-1-104(13)).

A "minor political party" means a political party other than a major political party (§ 1-1-104(16)).

A certificate of nomination by a convention of a minor party shall be prepared which shall contain the candidates' names and addresses, the names of the candidates for President and Vice-President, and shall designate in not more than 3 words the political or other name which the signers shall select. A candidate nominated by a "minor political party" shall file his written acceptance with the Secretary of State within 7 days after the adjournment of the convention (§§ 1-14-107(5)). Minor parties may nominate candidates for presidential electors in the same manner as major parties.

Groups of electors which do not qualify as a "political party" may nominate their candidates in the same manner as independent candidates (§ 1-14-301).

(3) Independent candidates

Nominations for presidential electors to be elected at the general election and for candidates to fill vacancies to unexpired terms of Representatives in Congress to be elected at a special election may be made by a convention of a political party, or by a committee authorized by such convention, or by petition for nomination of an independent candidate (§ 1-14-201(2)). A certificate of nomination shall be prepared which shall contain the names of any candidates for offices to be filled and their addresses, and shall designate in not more than 3 words the political or other names which the signers shall select. In the case of nominations for electors for President and Vice President, names of the candidates

for President and Vice President shall be added. No name of any political party shall be used for this purpose. The certificate shall be signed by 5,000 registered voters when the nomination is for an office to be filled by the entire State, and shall contain the candidate's acceptance. The certificate may not be circulated earlier than 49 days before the election and must be filed with the Secretary of State not later than 3:00 p.m. on the Tuesday preceding the election (§§ 1-14-201, 1-14-301).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the presidential electors shall not be printed upon the ballot, but the names of the candidates of their respective parties or political groups for President and Vice President shall be printed together in pairs under the title "Presidential Electors." A vote for any such pair of candidates shall be a vote for the electors of the party or political group by which such candidates were named (§ 1-4-207(3)).

C. STATUTORY INSTRUCTIONS

- (1) The electors of President and Vice President of the United States shall convene at the capital of the State, in the office of the Governor at the capitol building, on the first Monday after the second Wednesday in December, next after their election, at the hour of twelve noon, and take the oath required by law for such presidential electors. If there is any vacancy in the office of presidential electors, occasioned by death, refusal to act, neglect to attend, or other cause, the presidential electors present shall immediately proceed to fill such vacancy in the Electoral College. When the vacancies have been filled, they shall proceed to perform the duties required of such presidential electors by the Constitution and laws of the United States, and vote for President and Vice President by open ballot.
- (2) It shall be the duty of the Secretary of State to give notice in writing to each of the presidential electors, at least ten days prior thereto, of the time and place of said meeting.
- (3) The Secretary of State shall provide such presidential electors with the necessary blanks, forms, certificates, or other papers or documents required to enable them to properly perform their duties.
- (4) If desired, such presidential electors may have the advice of the Attorney General of the State respecting their official duties.
- (5) Each presidential elector shall be required to vote for the pair of presidential and vice-presidential candidates who received the highest number of votes at the preceding general election in Colorado (§ 1-17-101).

CONNECTICUT

Presidential Electors: 8

A. NOMINATION

(1) *Major parties*

The electors in the several towns in the State, at the State election in 1964, and quadrennially thereafter, shall elect

electors of President and Vice President of the United States, not exceeding in number the whole number of Senators and Representatives to which the State is then entitled in the Congress of the United States. Voting shall be conducted and the result declared, and the returns thereof made, as is provided in respect to State elections. The Secretary of State shall, on or before the first Monday of October of the year in which such presidential electors are to be elected, transmit blank forms to the several town clerks for the return of the votes; and the lists and returns of the votes shall be made out, certified and directed according to such forms (Connecticut General Statutes, § 9-175, Supp.).

Generally the nomination of electors of President and Vice President is by political conventions of the respective major parties (§ 9-175, Supp.).

(2) Minor and new parties

A minor party is a political party or organization which is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office, under the designation of that political party or organization, at least one per cent of the whole number of votes cast for all candidates for such office at such election (§ 9-372(6), Supp.).

Party rules

At least one copy of the party rules regulating the manner of nominating its candidates must be filed with the Secretary of State at least 60 days before the nomination (§ 9-374, Supp.).

(3) Independent candidates

An individual may also obtain a place on the election ballot label by nominating petition. No name of any candidate shall be printed on any official ballot at any election except the name of a candidate nominated by a major or minor party unless a nominating petition for such candidate is approved by the Secretary of State as provided in sections 9-453a to 9-453p, inclusive (§ 9-379, Supp.).

Application must be accompanied by a signed statement of candidate's consent and the party designation, if any. Signatures of qualified voters are required, equal in number to one percent of all votes cast for the same office at the last preceding election for such office. The petition should be filed with the town clerk of each town in which it was circulated at least 10 weeks before election with a statement of each circulator of the nominating petition (§§ 9-453b to 9-453d; 9-453i, Supp.).

B. NAMES ON GENERAL ELECTION BALLOTS

When an election is to be held for the choice of presidential electors, if any political party has nominated candidates for president and vice president of the United States, and presidential electors to vote for such presidential and vice presidential candidates have been nominated by a political convention of such party in this State, or in such other manner as entitles the names of such electors to be placed upon the official ballots to be used in such election, the Secretary of State and any other official charged with the preparation of

official ballots to be used in such election, in lieu of placing the names of such presidential electors on such official ballots, shall place on such official ballots a space with the words "Presidential electors for (here insert the last name of the candidate for President, the word 'and' and the last name of the candidate for Vice President)"; and a vote cast therefor shall be counted, and shall be in all respects effective, as a vote for each of the presidential electors representing such candidates for President and Vice President (§ 9-175, Supp.).

C. STATUTORY INSTRUCTIONS

The presidential electors shall meet at the office of the Secretary of the State at 12:00 o'clock, noon, on the first Monday after the second Wednesday of the December following their election and, as required by the constitution and laws of the United States, shall cast their ballots for President and Vice President. Each such elector shall cast his ballots for the candidates under whose names he ran on the official election ballot, as provided in section 9-175. If any such elector is absent or if there is a vacancy in the Electoral College for any cause, the electors present shall, before voting for President and Vice President, elect by ballot an elector to fill such vacancy, and the person so chosen shall be a presidential elector, shall perform the duties of such office and shall cast his ballots for the candidates to whom the elector he is replacing was pledged (§ 9-176).

DELAWARE

Presidential Electors: 3

A. NOMINATION

(1) *Major parties*

The nominations of the candidates for electors of President and Vice President of the United States, together with the names of the candidates for President and Vice President, and for United States Senator, Representative in Congress, Governor and all other State offices shall be certified to the State Election Commissioner by the presiding officer and secretary of the State convention or committee of each political party eligible to place candidates upon the ballot. The Commissioner shall forthwith send copies of each certificate of nomination to each county department of elections (Delaware Code Annotated, tit. 15, § 3301(a)).

No candidate for the office of elector of President and Vice President shall be deemed nominated and no certificate of nomination for such candidate shall be made or filed, nor shall the name of any such candidate be placed on the ballot in any general election in this State, unless the candidate: (a) shall have been so nominated by receiving more than 50% of the eligible delegate vote on the final polled vote of a State nominating convention of the political party advancing his candidacy, at a convention held not later than the fourth Saturday in July in the year of such general election and who was not required to run in a primary election; or

(b) shall have received a majority of the votes cast by registered voters of the political party advancing his candidacy at a statewide primary election (tit. 15, § 3301(d)).

(2) *Minor and new parties*

“Party” or “Political Party” in Delaware is defined as any political party, organization or association which elects delegates to a national convention, nominates candidates for electors of President and Vice President, United States Senator, Representative in Congress, Governor and other offices, and elects a State committee and officers of a State committee by a State convention composed of elected members from each representative district, provided a registered party member is available in each representative district (tit. 15, § 101(13)).

Such parties shall nominate presidential electors by conventions or committees (tit. 15, § 3301). Certificates of nomination shall contain a party title and ballot symbol (tit. 15, § 3302). The other provisions noted in (1) above applying to major parties shall also be applicable to minor and new parties.

B. NAMES ON GENERAL ELECTION BALLOTS

Nominees of any party for President and Vice President are placed on the ballot. A vote for the candidates for President and Vice President shall be a vote for the electors of such party, the names of whom are on file with the Secretary of State (tit. 15, § 5704; § 4502).

C. STATUTORY INSTRUCTIONS

The Governor in October next preceding every election of presidential electors shall by proclamation make known the number of presidential electors to be chosen and the day of the election (tit. 15, § 4302). The electors chosen or appointed for the election of a President and Vice President shall meet and give their votes at Dover on the day determined by Congress for that purpose (tit. 15, § 4303).

DISTRICT OF COLUMBIA

Presidential Electors: 3

A. NOMINATION

(1) *Major parties*

Each political party who has had its candidate elected as President of the United States after January 1, 1950, shall be entitled to nominate candidates for presidential electors. The executive committee of the organization recognized by the national committee of each such party as the official organization of that party in the District of Columbia shall nominate by appropriate means the presidential electors for that party. Nominations shall be made by message to the Board of Elections and Ethics on or before September 1 next preceding a presidential election. (District of Columbia Code, § 1-1312(d))

No person may be elected as a presidential elector in the District unless (a) he is a registered voter in the District, and

(b) he has been a bona fide resident of the District for a period of 3 years immediately preceding the date of the presidential election (§ 1-1312(g)).

(2) *Minor and new parties*

A minor party is a party which has not had its candidate elected as President of the United States after January 1, 1950. (§ 1-1312(d)). A minor or a new party may have the names of its candidates for President and Vice President of the United States printed on the general election ballot provided a petition nominating the appropriate number of candidates for presidential electors signed by at least one percent of registered qualified electors of the District of Columbia, as of July 1 of the year in which the election is to be held is presented to the Board on or before the third Tuesday in August preceding the date of the presidential election (§ 1-1312(f)).

(3) *Independent candidates*

No provision.

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the candidates of each political party for President and Vice President shall be placed on the ballot under the party title and device. The names of persons nominated as candidates for electors of President and Vice President shall not appear on the ballot (§ 1-1312(e)). Each vote cast for the candidate for President or Vice President whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors of the party supporting such presidential and vice presidential candidate (§ 1-1314(a)(2)).

C. STATUTORY INSTRUCTIONS

Each person elected as elector of President and Vice President shall, in the presence of the Board of Elections, take an oath or solemnly affirm that he will vote for the candidates of the party he has been nominated to represent, and it shall be his duty to vote in such manner in the Electoral College (§ 1-1312(g)).

FLORIDA

Presidential Electors: 21

A. NOMINATION

(1) *Major parties*

The Governor shall nominate the presidential electors of each political party. He shall nominate only the electors recommended by the State executive committee of the respective political party. Each such elector shall be a qualified elector of the party he represents who has taken an oath that he will vote for the candidates of the party that he is nominated to represent. The Governor shall certify to the Department of State on or before September 1, in each presidential election year, the names of a number of electors for each political party equal to the number of Senators and Representatives which this State has in Congress (Florida Statutes Annotated, § 103.021(1)).

(2) Minor and new parties

A minority political party is any such group, as defined above, which on January 1 preceding a primary election does not have registered as members five percent of the total registered electors of the State (§ 97.021(14)). A minor political party may have the names of its candidates for President and Vice President printed, and independent candidates for President and Vice President may have their names printed, on the general election ballots if a petition is signed by one percent of the registered electors of Florida, as shown by the compilation by the Department of State for the last preceding general election. A separate petition shall be submitted from each county for which signatures are solicited. Said petition shall be submitted to the supervisor of elections of the respective county no later than August 15 of each presidential election year (§ 103.021(3)).

Any minor political party which has met the petitioning requirements and will have the names of a candidate or candidates for any office or offices to be filled by a statewide election printed on the general election ballot, and which minor party is affiliated with a national party holding a national convention to nominate candidates for President and Vice President of the United States, may have the names of its candidates for President and Vice President of the United States printed on the general election ballot by filing with the Department of State a certificate naming the candidates for President and Vice President and listing the required number of persons to serve as electors. Notification to the Department of State under this subsection shall be made by September 1 of the year in which the election is held. When the Department of State has been so notified, it shall order the names of the candidates for whom the petition was circulated to be included on the ballot and shall permit the required number of persons to be certified as electors in the same manner as other party candidates (§ 103.021(4)).

B. NAMES ON GENERAL ELECTION BALLOTS

On the ballot shall be printed the heading "Electors for President and Vice President" and thereunder the names of the candidates for President and Vice President nominated by the political party which received the highest vote for Governor in the last general election of the Governor in the State, above which shall appear the name of the said party, then shall appear the names of other candidates for President and Vice President who have been properly nominated (§ 101.151(3)).

The names of the presidential electors shall not be printed on the general election ballot, but the names of the actual candidates for President and Vice President for whom the presidential electors will vote if elected shall be printed on the ballot in the order in which the party of which the candidate is a nominee polled the highest number of votes for Governor in the last general election (§ 103.021(3)).

C. STATUTORY INSTRUCTIONS

Each presidential elector shall, before noon on the day preceding the day fixed by Congress to elect a President and

Vice President, give notice to the Governor that he is in Tallahassee and ready to perform the duties of presidential elector. The Governor shall forthwith deliver to the presidential electors present a certificate of names of the electors; and if, on examination thereof, it should be found that one or more electors are absent, and such absent electors fail to appear before 10:00 a.m. on the day of election of President and Vice President, the electors present shall elect by ballot, in the presence of the Governor, a person or persons to fill such vacancy or vacancies as may have occurred through the nonattendance of one or more of the electors (§ 103.061).

GEORGIA

Presidential Electors: 12

A. NOMINATIONS

(1) *Major parties*

Each candidate for the office of presidential elector must file a notice of candidacy, giving his name, residence address and the office he is seeking in the office of the Secretary of State no later than 12:00 noon on the second Wednesday in June preceding the general elections (Code of Georgia Annotated, § 34-1002(c), Supp.).

Each candidate must accompany this notice with an affidavit stating, among other things, that he is a qualified voter in the county of his residence and that he will not knowingly violate any provisions of the Election Code or of rules and regulations adopted thereunder. (§ 34-1002(e), Supp.). All electors are elected from the State at large. (§ 34-1601, Supp.).

(2) *Minor and new parties*

Political parties polling less than 20 percent of the vote cast at the preceding general election are known as "political organizations."

"Political party" is defined as a political organization whose candidate at the preceding gubernatorial election polled at least 20 percent of the total vote cast in the State for Governor or who nominated a candidate for President at the preceding presidential election and whose candidates for presidential electors polled at least 20 percent of the total vote cast in the nation for that office (§ 34-103 (20), (21), Supp.). The chief executive officer of each political party or body shall within 60 days of its organization file a registration statement with the Secretary of State accompanied by copies of charter, bylaws, rules and regulations and other relevant information (§ 34-901, Supp.).

Any candidate required to accompany his notice of candidacy with the nomination petition must file his notice of candidacy and an affidavit no later than 12:00 noon on the second Wednesday in June prior to the general election (§ 34-1002(b), Supp.).

All candidates are required to accompany their notice of candidacy with a nomination petition unless the candidate is either a nominee of a political party for the office of presidential elector when such party has held a national convention and nominated candidates for President and vice Presi-

dent of the United States, or the nominee of a political party nominated in a primary held by such party (§ 34-1002(d), Supp.). The nominating petitions must be signed by not less than 5 percent of the voters eligible to vote in the next election for the filing of the office the candidate is seeking. (§ 34-1010(b), Supp.). The persons signing must declare that they are so qualified (§ 34-1010(c), Supp.).

Such nominating petition offered by a political body seeking to have the names of their candidates for presidential electors placed on the ballot shall be compiled so that the entire slate of candidates shall be listed together on the same petition (§ 34-1010(c), Supp.).

(3) *Independent candidates*

A person can become a candidate for Federal or State office by filing a notice of candidacy with the Secretary of State no later than 12:00 noon on the second Wednesday in June preceding the general election (§ 34-1002(c), Supp.). A nominating petition shall not be required if such candidate is a nominee of a political party for the office of presidential elector when such party has held a national convention and therein nominated candidates for President and Vice President of the United States.

(4) *Affidavit*

A candidate must file with the notice of candidacy an affidavit stating among other things that he is an elector of the county of his residence eligible to vote in the election in which he is a candidate and that he is eligible to hold such office (§ 34-1002, Supp.).

B. NAMES ON GENERAL ELECTION BALLOTS

When presidential electors are to be elected, the names of the nominees of each political party or body for such offices shall not appear on the ballot, but, in lieu thereof, the names of the candidates of such party or body for President and Vice President, together with the name of such party or body shall appear (§ 34-1208(e), Supp.).

At any general election at which presidential electors are to be chosen, each elector shall be permitted to vote by one operation for all the presidential electors of a political party or body. For each party or body nominating presidential electors, a ballot label shall be provided containing only the words "Presidential Electors," preceded by the name of the party or body and followed by the names of the candidates thereof for the office of President and Vice President, and the corresponding counter or registering device shall register votes cast for such presidential electors when thus voted for collectively. If an elector desires to vote a ticket for presidential electors made up of the names of persons nominated by different parties or bodies, or partially of names of persons so in nomination and partially of names of persons not in nomination by any party or body, or wholly of names of persons not in nomination by any party or body, he may write or deposit a paper ballot prepared by himself in the receptacle provided in or on the machine for the purpose. The machine shall be so constructed that it will not be possible for any one elector to vote a straight party or body ticket for

presidential electors and at the same time to deposit a ballot for presidential electors in a receptacle as hereinabove provided. When the votes for presidential electors are counted, the votes appearing upon the counter or registering device corresponding to the ballot label containing the names of the candidates for President and Vice President of any party or body shall be counted as votes for each of the candidates for presidential elector of such party or body, and thereupon all candidates for presidential elector shall be credited, in addition, with the votes cast for them upon the ballots deposited in the machine (§ 34-1330(e), Supp.).

C. STATUTORY INSTRUCTIONS

The presidential electors shall assemble at the seat of government of the State at 12:00 o'clock noon of the day which is, or may be, directed by the Congress of the United States, and shall then and there perform the duties enjoined upon them by the Constitution and laws of the United States (§ 34-1602, Supp.).

HAWAII

Presidential Electors: 4

A. NOMINATION

(1) *Major parties*

In each year when electors of president and vice president of the United States are to be chosen, each of the political parties or parties or groups qualified under section 11-113 of the Hawaii Revised Statutes, shall hold a state party or group convention pursuant to the constitution, bylaws, and rules of the party or group; and nominate as candidates for its party or group as many electors, and a first and second alternate for each elector, or president and vice president of the United States as the State is then entitled. The electors and alternates shall be registered voters of the State. The names and addresses of the nominees shall be certified by the chairman and secretary of the convention of the respective parties or groups and submitted to the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the general election of the same year. The chief election officer upon receipt thereof, shall immediately notify each of the nominees for elector and alternate elector of the nomination (Hawaii Revised Statutes, § 14-21, Supp.).

If more than one certificate of choice and selection of presidential electors and alternate electors of the same political party or group is filed with the chief election officer, as chairman of the contested presidential electors' committee hereby constituted, the chief election officer shall notify the state comptroller and attorney general, who are the remaining members of the committee, of the date, time, and place of the hearing to be held for the purposes of making a determination of which set of electors and alternate electors were lawfully chosen and selected by the political party or group. Notice of the hearing shall be given to the chairman of the state central committee of each political party and the chairman of each party or group qualified under section 11-113 of

the Hawaii Revised Statutes, contestants for the positions of electors and alternate electors by written notice, and to all other interested parties by publication at least once in a newspaper of general circulation. A determination shall be made by the committee by majority vote not later than 4:30 p.m. on October 30 of the same year and the determination shall be final. Notice or the results shall be given to the nominees duly determined to have been chosen (§ 14-22, Supp.).

(2) *Minor and new parties*

No differentiation is made in laws between major and minor political parties. Political parties as defined by section 11-61 shall mean any party which was on the ballot at the last general election which has not been disqualified by this section and any political group which shall hereafter undertake to form a political party in the manner provided below. A political party shall be an association of voters united for the purpose of promoting a common political end or carrying out a particular line of political policy and which maintains a general organization throughout the State, including a regularly constituted central committee and county committees in each county other than Kalawao.

Any party which does not meet the following requirements shall be subject to disqualification:

- (1) a party must have had candidates running for election at the last general election for any of the offices listed in paragraphs (2) to (6) whose terms had expired. This does not include those offices which were vacant because the incumbent had died or resigned before the end of his term;
- (2) the party received at least ten percent of all votes cast for any of the offices voted upon by all the voters in the State; or,
- (3) the party received at least ten percent of all the votes cast in at least fifty percent of the congressional districts; or,
- (4) the party received at least ten percent of all the votes cast in at least fifty percent of the senatorial districts for the office of State senator; or,
- (5) the party received at least ten percent of all the votes cast in at least fifty percent of the representative districts for the office of State representative; or,
- (6) the party received at least ten percent of all the votes cast in at least fifty percent of the school board districts for the office of board of education (§ 11-61).

Any group of persons hereafter desiring to form a new political party in the State shall file with the chief election officer a petition as hereinafter provided. The petition for the formation of a new political party shall:

- (a) be filed no less than 150 days prior to the next primary;
- (b) declare as concisely as may be the intention of signers thereof to form such a new political party in the State; and
- (c) contain the signatures of not less than one percent of the total registered voters of each county of the State at the time of filing.

The petition shall be subject to hearing, if any objections are raised by the chief election officer or any political party. All

objections shall be made within 10 days after the petition has been filed. If no objections are raised within 10 days, the petition shall be deemed approved. If an objection is raised, a decision shall be rendered not later than 30 days after filing of the petition or 100 days prior to the primary, whichever shall first occur.

The chief election officer may check the names of any persons on the petition to see that they are registered voters and he may check the validity of their signatures. The petition shall be public information upon filing (§ 11-62).

All existing and new parties must file their rules with the chief election officer no less than 150 days prior to the next primary. All amendments shall be filed with the chief election officer within 30 days after their adoption. The rules and amendments shall be duly certified to by an authorized officer of the party and upon filing, the rules and amendments thereto shall be a public record (§ 11-63).

All parties shall submit to the chief election officer and the respective county clerks no less than 120 days prior to the next primary, a list of names and addresses of officers of the central committee and of the respective county committees (§ 11-64).

All nominations must be made by primary elections (§ 12-1), except presidential electors who are nominated by State party conventions. Names of such latter nominees shall be submitted to the chief election officer no later than 4:30 p.m. on the sixtieth day prior to the general election (§ 14-21, Supp.).

(3) *Independent candidates*

In the case of candidates of parties or groups not qualified to place candidates on the primary or general election ballots, the person desiring to place such names on the general election ballot shall file with the chief election officer not later than 4:30 p.m. on the sixtieth day prior to the general election:

- (a) a sworn application including such information as names, addresses and qualifications to hold such office; and
- (b) a petition which shall be upon the form prescribed and provided by the chief election officer containing the signatures of currently registered voters which constitute not less than one percent of the votes cast in the State at the last general election. The petition shall contain the names of the candidates, a statement that the persons signing intend to support such candidates, the address of each signatory, the date of his signature and other information as determined by the chief election officer (§ 11-113(b) Supp.).

B. NAMES ON GENERAL ELECTION BALLOTS

In presidential elections, the names of the candidates for President and Vice President shall be used on the ballot in lieu of the names of the presidential electors, and the votes cast for President and Vice President of each political party shall be counted for the presidential electors and alternates nominated by each political party.

A "national party" as used in this section shall mean a party established and admitted to the ballot in at least one State

other than Hawaii or one which is determined by the chief election officer to be making a bona fide effort to become a national party. If there is no national party or the national and State parties or factions in either the national or State party do not agree on the presidential and vice presidential candidates, the chief election officer may determine which candidates names shall be placed on the ballot or may leave the candidates names off the ballot completely (§ 11-113(a) Supp.)

C. STATUTORY INSTRUCTIONS

The electors chosen shall assemble at the State capitol on the first Monday after the second Wednesday in December next following their election, at 2:00 o'clock in the afternoon. In case of the death or absence of any elector chosen, or if the number of electors is deficient for any other reason, the vacancy or vacancies shall be filled by the alternates in the order of their numerical designation for their respective electors causing the vacancy or vacancies, and in the event that vacancy or vacancies still exist, then the electors present shall select from the members of the same political party or group as many persons as will supply the deficiency. Certificates for the alternates or substitutes as presidential electors shall be issued by the Governor. The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice President of the United States, who are, respectively, the candidates of the political party which they represent, one of whom, at least, is not an inhabitant of this State (§§ 14-26—14-28).

IDAHO

Presidential Electors: 4

A. NOMINATION

(1) *Major parties*

Major political parties include those parties that had three or more candidates for State office listed under the party name at the last general election or that had a candidate for State or national office who received at least 3 percent of the aggregate vote cast for the office of Governor at the last gubernatorial election (Idaho Code Annotated, § 34-501). Presidential electors of such parties are selected at the party State convention in each election year at a time and place determined by the State central committee. The State central committee chairman shall preside and cause notice to be given to each legislative district central committee and each county central committee at the earliest possible date (§ 34-707).

The State chairman of each political party shall by September 1 certify the names of the presidential electors to the Secretary of State (§ 34-711).

(2) *Minor parties*

Political parties that did not have three or more candidates for State office listed under the party name at the last general election and that had no candidate for State or national office who received at least 3 percent of the aggregate vote

cast for the office of Governor at the last gubernatorial election may be deemed created and qualified to participate in elections by presenting and filing with the Secretary of State on or before May 30 of even numbered years a petition which shall:

- (a) state the name of the proposed party in not more than six words;
- (b) state that the subscribers thereto have affiliated, one with another, for the purpose of forming such party;
- (c) state that the subscribers thereto are entitled to participate in the proposed party's convention to elect officers and nominate candidates;
- (d) have attached thereto a sheet or sheets containing the signatures of at least a number of qualified electors equal to three percent (3%) of the aggregate vote cast for presidential electors in the State at the previous general election at which presidential electors were chosen, provided that no more than twenty percent (20%) of those so signing shall reside in any one (1) county (§ 34-501(1)).

Upon certification by the Secretary of State that the petition has met the requirements of this act such party shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election.

The newly certified party shall proceed to hold a State convention in the manner provided by law; provided, that at the initial convention of any political party, all members of the party shall be entitled to attend the convention and participate in the election of officers and the nominations of candidates. Thereafter the conduct of any subsequent convention shall be as provided by law (§ 34-501(2)).

(3) Independent candidates

Persons who desire to be independent candidates for the office of President and Vice President, must file, prior to June 25 of the election year, declarations of candidacy as independent candidates. Such declarations must state that such persons are offering themselves as independent candidates and must declare that they have no political party affiliation. The declarations shall have attached thereto a petition signed by a number of qualified electors not less than three percent (3%) of the number of votes cast in this State for presidential electors at the previous general election at which a President of the United States was elected.

The candidates for President and Vice President shall be considered as candidates for one office, and only one (1) such petition need be filed for both offices (§ 34-708A).

B. NAMES ON GENERAL ELECTION BALLOTS

The State chairman of each political party shall certify the names of the presidential and vice-presidential candidates and presidential electors to the Secretary of State on or before September 1, in order for them to appear on the general election ballot. The Secretary of State shall certify such candidates to the county clerks at the same time as certification of political party candidates nominated for State and Federal offices by the voters in the primary election (§ 34-

711). Independent candidates who have qualified for ballot status shall certify the names of presidential electors to the Secretary of State on or before September 1, in order for them to appear on the general election ballot. The Secretary of State shall certify the independent presidential electors, and the independent candidates for President and Vice President, to the county clerks on or before September 25 (§ 34-711A).

C. STATUTORY INSTRUCTIONS

The electors chosen to elect a President and Vice President of the United States shall, at 12:00 noon on the day which is or may be directed by the Congress of the United States, meet at the seat of government of the State, and then and there perform the duties enjoined upon them by the Constitution and laws of the United States (§ 34-1503). Each elector of President and Vice President of the United States shall, before the hour of twelve (12) o'clock on the day next preceding the day fixed by the law of Congress to elect a President and Vice President, give notice to the Governor shall forthwith deliver to the electors present a certificate of all the names of the electors; and if any elector named therein fails to appear before nine (9) o'clock on the morning of the day of election of President and Vice President as aforesaid, the electors then present shall immediately proceed to elect, by ballot, in the presence of the Governor, persons to fill such vacancies (§ 34-1504).

ILLINOIS

Presidential Electors: 24

A. NOMINATIONS

(1) *Major parties*

The State convention of each political party shall have power to make nominations of candidates of its political party for the electors of President and Vice President (Smith-Hurd Illinois Annotated Statutes, ch. 46, § 7-9(b)). State conventions shall be held on the first Friday after the second Monday next succeeding the primary at which committeemen are elected (§ 7-9(b), Supp.).

In each year in which a President and Vice President of the United States are chosen, each political party or group in this State shall choose by its State convention electors of President and Vice President of the United States and such State convention of such party or group shall also choose electors at large, if any are to be appointed for this State and such State convention of such party or group shall by its chairman and secretary certify the total list of such electors together with electors at large so chosen to the State board of elections. The filing of such certificate with the board, of such choosing of electors shall be deemed and taken to be the choosing and selection of the electors of this State, if such party or group is successful at the polls as herein provided in choosing their candidates for President and Vice President of the United States (§ 21-1 Supp.).

(2) *Minor parties*

A minor political party is defined as a political party or group which has not polled more than 5 percent of the entire vote cast in the State at the last preceding general election for Governor (§ 10-2 Supp.). It shall nominate its candidates in the same manner as does a new party.

(3) *New party*

Any group of persons desiring to form a new political party throughout the State, shall file with the State Board of Election a petition (a) declaring the intention of the signers to form such a new political party, (b) stating in not more than 5 words the name of such party, (c) containing a complete list of candidates of such party for all offices to be filled in the State at the next election, and (d) signed by one percent (1%) of the number of voters who voted in the preceding Statewide general election or 25,000 qualified voters whichever is less (§ 10-2 (Supp.)). Such petition shall be accompanied by a candidate's statement of candidacy, except candidates for electors for President and Vice President (§ 10-5 sup.), and all certificates of nomination or nomination papers for candidates to be voted for by all the voters of the State shall be presented to the State electoral board at least 92 days, but not more than 99 days, before the general election, for endorsement by the board and for subsequent deposit with the State Board of Election (§ 10-6 Supp.).

(4) *Independent candidates*

Nomination papers, including a statement of candidacy executed by candidates, except candidates for electors for President and Vice President, signed in the aggregate for each candidate by 1 percent (1%) of the number of voters who voted at the preceding Statewide general election or 25,000 qualified voters whichever is less (§ 10-3 (Supp.)), and filed with the State Board of Election between 99 and 92 days prior to the date of the primary (§§ 7-12, 10-3 (Supp.)).

B. NAMES ON GENERAL ELECTION BALLOTS

The chairman and secretary of each State convention shall, within 2 days thereafter, transmit to the State board of elections of this State a certificate setting forth the names and addresses of all persons nominated by such State convention for electors of President and vice President of the United States, and the names of such candidates so chosen by such State convention for electors of President and Vice President of the United States shall be caused by the State board of elections to be printed upon the official ballot at the general election (§ 7-9(c) (Supp.)). The names of the candidates of the several political parties or groups for electors of President and Vice President shall not be printed on the official ballot to be voted in the election to be held on the day in this act above named. In lieu of the names of the candidates for such electors of President and Vice President, immediately under the appellation of party name of a party or group in the column of its candidates on the official ballot there shall be printed within a bracket the name of the candidate for President and the name of the candidate for Vice President of such party or group with a square to the left of such bracket (§ 21-1(b) Supp.).

C. STATUTORY INSTRUCTIONS

The electors, elected as aforesaid, shall meet at the office of the Secretary of State in a room to be designated by him in the capitol at Springfield in this State, at the time appointed by the laws of the United States at the hour of 10:00 o'clock in the forenoon of such day, and give their votes for President and for Vice President of the United States, in the manner herein provided, and perform such duties as are or may be required by law (§ 21-4).

INDIANA

Presidential Electors: 12

A. NOMINATION**(1) Major parties**

Electors are nominated by each party convention, provided that a party may by appropriate rules permit the delegates from the several congressional districts to select their own candidates for elector from such district. Alternate electors are nominated in the same manner as electors (Burns Indiana Statutes Annotated, § 3-1-10-3).

(2) Minor and new parties

Any party that cast one-half of one percent of the total vote of the State at the last preceding general election may nominate candidates for all offices to be filled at the general election (including presidential electors) by convention or by petitions. Names of candidates must be certified to the State election board or county election board by the presiding officer and secretary of the convention or by the chairman and secretary of the political party unit holding the convention (§ 3-1-11-1) not later than September 1 (§ 3-1-11-5).

(3) New party and independent candidate

A person may become a candidate of a new party, or of a minor party, or an independent candidate, by filing with the Governor (if office is to be voted for by the whole State) a petition signed by qualified voters equal in number to one half of one percent of the total vote of all parties cast for Secretary of State at the last preceding general election. Filing should be not later than September 1 before election (§§ 3-1-11-1, 3-1-11-5). Petitioner may designate a brief name or title of the party or principle which said candidates represent, together with any simple figure or device by which they shall be designated on the ballot (§§ 3-1-11-1, 3-1-12-5). Petitions which nominate presidential electors may certify the names of the candidates for President and Vice President supported by the electors (§ 3-1-12-5).

(4) Independent candidates

See "New party and independent candidate," *supra*.

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the candidates for electors shall not be placed on the ballot. The names of the candidates for President and Vice President of the respective parties nominating a group of candidates for electors shall be printed on the ballot below the words, "For presidential electors." A vote cast for the candidates for President and Vice President of a political

party shall be construed to be a vote for all the candidates for the presidential electors of such party (§§ 3-1-12-2 through 3-1-12-5).

C. STATUTORY INSTRUCTIONS

The presidential electors shall assemble in the chamber of the house of representatives, on the first Monday after the second Wednesday in December, or such other day as may be fixed by Congress, to elect such President and Vice President, at the hour of 10:00 o'clock a.m., and the Governor shall then and there deliver to the electors present a certificate of the names of all the electors; and if any elector fails to appear before 11:00 o'clock in the morning of said day, the electors present shall, by ballot, by a majority of all present, fill such vacancy; which election shall be forthwith certified by a majority of the electors to the Governor, who shall immediately notify such person of his election (§ 3-1-12-6).

Such electors, when so assembled and such vacancies are so filled, shall then and there proceed to vote, by ballot, for President and Vice President of the United States, and perform the duties imposed upon them as such electors by the Constitution and laws of the United States and of the State of Indiana (§ 3-1-12-7).

IOWA

Presidential Electors: 8

A. NOMINATION

(1) *Major parties*

Electors are nominated by regular State party conventions (Iowa Code Annotated, § 43.109(4)), which shall be held either preceding or following the primary election at a time and place designated by the party State central committee, either preceding or following the primary election (§ 43.107, Supp.). The names of candidates for President and Vice President of a political party as defined in the law shall be certified to the State Commissioner by the party State chairperson and secretary of the State central committee at least 67 days prior to the general election (§ 54.5, Supp.).

(2) *Minor and new parties*

A political organization which did not cast at least 2 percent of the total vote cast for President of the United States or for Governor at the last general election (§ 43.2, Supp.) may nominate one candidate for each office to be filled at the next general election. Such nomination shall be by convention or caucus (§ 44.1, Supp.), provided that to qualify for making a nomination for statewide office, such political organization must have at its convention or caucus a minimum of 250 qualified electors with at least one elector from each of 25 counties (§ 44.1, Supp.). The nomination certificate, signed by the chairman and secretary of such convention or caucus, shall be filed with the State Commissioner not more than 85 nor less than 67 days before the general election (§ 44.2, §§ 44.3, 44.4, Supp.).

Certificates of nomination by such conventions for presidential electors in addition to the names and addresses of presi-

dential electors are to contain the names of the candidates for President and Vice President (§ 44.3, Supp.).

(3) *Independent candidates*

Nominations for candidates for president and vice president and for state offices may be made by nomination papers signed by not less than one thousand eligible electors of the state; for candidates for offices filled by the voters of a county, district or other division by papers signed by eligible electors residing in the county, district or division equal in number to at least two percent of the total vote received by all candidates for president of the United States or governor, as the case may be, at the last preceding general election in the county, district or division; and for township, city or ward, by papers signed by not less than twenty-five eligible electors, residents of the township, city or ward. In the case of candidates of president and vice president, the names and addresses of the candidates for presidential electors shall be printed on the face of or attached to each page of the nomination petition (§ 45.1, supp.).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of candidates for President and Vice President and not the names of the candidates for electors shall be placed on the ballots under the respective party names. A vote for the candidates of any political party or group of petitioners for President and Vice President shall be deemed conclusively to be a vote for each candidate nominated in each district and in the State at large by the party for electors (§§ 49.32, 54.2)

C. STATUTORY INSTRUCTIONS

The presidential electors shall meet in the capitol, at the seat of government, on the first Monday after the second Wednesday in December next following their election. If, at the time of such meeting, any elector for any cause is absent, those present shall at once proceed to elect, from the citizens of the State, a substitute elector or electors, and certify the choice so made to the Governor, and he shall immediately cause the person or persons so selected to be notified thereof. When so met, the said electors shall proceed, in the manner pointed out by law, with the election, and the Governor shall duly certify the result thereof, under the seal of the State, to the United States Secretary of State, and as required by act of Congress relating to such elections (§§ 54.7; 54.8, but see 3 U.S.C § 11, which names the Administrator of General Services as the recipient.)

KANSAS

Presidential Electors: 7

A. NOMINATION

(1) *Major parties*

Kansas in 1961 changed the procedure for nominating presidential electors of the major political parties from the use of primaries to nomination at delegate or mass conventions or caucuses (Kansas Statutes Annotated, § 25-301). A conven-

tion or caucus shall be called by the State chairman of the party, or if there be no State chairman, by the party's candidate for Governor at the preceding general election (§ 25-302).

Party nominations for presidential elections can only be made by a delegate or mass convention or caucus of qualified voters belonging to a political party having a national or State organization. Certificates of nomination must be filed by noon on June 20 prior to the general election (§§ 25-301, 25-305).

(2) *Minor and new parties*

Candidates for elective office who are members of any political party whose candidate for Secretary of State did not poll at least 5 percent of the total vote cast for all candidates for Secretary of State in the preceding general election shall not be entitled to nomination by primary but shall be nominated by a delegate or mass convention (§ 25-202). A convention shall be called as in (1) above. Presidential electors of such parties shall be nominated at State conventions (§ 25-301). Certificates of nomination shall be signed by the presiding officer and a secretary of the convention and filed with the Secretary of State by noon on June 20 prior to the general election (§§ 25-302, 25-305).

A new party organized in Kansas and any national political party seeking to organize in the State shall be allowed to make party nominations by mass conventions or caucus only after filing with the Secretary of State at least 60 days before June 20 in an election year petitions signed by qualified electors equal in number to at least 3 percent of the total vote cast for all candidates for Governor in the last preceding general election. Such petitions shall declare the intention of said electors of organizing a political party, set forth its name, and its intention to participate in the next succeeding election (§ 25-302a). Candidates of such parties shall be nominated and their names certified in the same manner as by minor parties.

(3) *Independent candidates*

Candidates may be nominated by independent nomination papers signed by not less than 2,500 voters (§ 25-303, Supp.). Independent nomination petitions are to be filed with the Secretary of State by noon on June 20 prior to the general election (§ 25-305).

B. NAMES ON GENERAL ELECTION BALLOTS

The names in each group of presidential electors shall be arranged in the alphabetical order of their surnames. The surnames of the candidates of each political party for the offices of President and Vice President, with the political designation thereof placed at the right of the surnames, shall be in one line above the group of candidates of such party for presidential electors. No write-in candidates are permitted (§ 25-615).

C. STATUTORY INSTRUCTIONS

The electors of President and Vice President of the United States shall convene at the capitol of the State on the first

Monday after the second Wednesday in December after their election, at the hour of 12:00 o'clock noon of that day; and if there shall be any vacancy in the office of electors, occasioned by death, refusal to act, neglect to attend, or other cause, the electors present shall immediately proceed to fill, by ballot and by a plurality of votes, such vacancy in the Electoral College, and when the electors shall appear, or the vacancies shall have been filled as above provided, they shall proceed to perform the duties required of such electors by the Constitution and laws of the United States (§ 25-802).

KENTUCKY

Presidential Electors: 9

A. NOMINATION

(1) *Major parties*

Presidential electors may be nominated by major political parties by a convention or primary election held by the party in accordance with its constitution and bylaws (Kentucky Revised Statutes, § 118.325(1)). Such nominations shall be certified in writing by the presiding officer and secretary of the convention. The certificates shall state the names of the candidates of the party for President and Vice President (§ 118.325(2)). Such certificates shall be filed with the Secretary of State not less than 55 days prior to the general election (§ 118.365(4), Supp.).

The statutory provisions covering regular primary elections are not applicable to primaries for presidential electors (§ 118.105(4)).

(2) *Minor and new parties*

A political organization which cast at least 2 percent but less than 20 percent of the total vote of the State at the last presidential election may nominate candidates by convention or by a primary election held by the party in accordance with its constitution and bylaws. The certificates of nomination for statewide offices by such a convention or primary election, signed by the presiding officer and secretary of the convention or by the proper committee chairman and secretary, shall be filed with the Secretary of State not less than 55 days before the primary election (§§ 118.015(1), 118.325(1), (2), 118.365(4), Supp.). In case of presidential electors, the proceedings shall be as for major parties in (1) above, and the certificate shall state the names of the party candidates for President and Vice President (§ 118.325). Minor political parties who have failed to nominate candidates by convention, or new parties who have failed to secure 2 percent of the vote at the last general election, may nominate by petition as in the case of an independent candidate (§§ 118.325, 118.015(1), 118.315; see *Asher v. Johnson*, 192 Ky. 575, 234 S.W. 18 (1921); 1960 Opinion of the Attorney General, 289).

(3) *Independent candidates*

A candidate may become an independent candidate when a nominating petition is filed in his behalf signed by 5,000 qualified voters if office is voted for by entire State (§ 118.315, Supp.). Petitions should be filed with Secretary of

State (§ 118.356), not more than 55 days prior to the date fixed by law for the election of electors (§ 118.365(4), Supp.). Presidential electors are State officers, *Todd v. Johnson*, 99 Ky. 548, 36 S.W. 987 (1896).

B. NAMES ON GENERAL ELECTION BALLOTS

Candidates for President and Vice President shall be entitled to have their names placed on the ballot for the regular election if they are candidates of those political parties and organizations which have nominated presidential electors as provided in Kentucky Revised Statutes, § 118.325, where the certificate of nomination of such electors has been filed with the Secretary of State within the appropriate time (§ 118.305, Supp.). In the case of elections for electors of President and Vice President of the United States, the State board of elections shall issue a certificate of election to each elector of the political party or organization whose candidates for President and Vice President received the highest number of votes and the determination by the board that the candidates of any political party or organization for President and Vice President have received the highest number of votes shall constitute a determination that the electors nominated by that party have been elected (§ 118.425(5)).

C. STATUTORY INSTRUCTIONS

The electors or President and Vice President of the United States shall convene at the State capitol, at 10:00 a.m. on the first Monday after the second Wednesday in December next after their election, give their votes at or after 12:00 noon, and make return thereof according to law. If any elector fails to attend by 12:00 noon on the day of the meeting, those in attendance shall fill his place by the election on another person, who shall have the same powers as if originally elected by the people (§ 118.445).

LOUISIANA

Presidential Electors: 10

A. NOMINATION

(1) *Political Parties*

Nominations for candidates for Presidential electors made by each recognized political party shall be made in such manner as shall be determined by a resolution adopted by the State central committee of the respective recognized political party. Each recognized political party shall nominate a full slate of candidates for elector, one from each congressional district and two from the State at large (Louisiana Revised Statutes Annotated, title 18, § 1253(A)). The names of candidates nominated by each recognized political party shall be filed with the Secretary of State by sworn statement, which shall be known as a certificate of nomination. The certificate of nomination shall be sworn to, signed, and filed by the chairman and secretary of the State central committee, except when the State central committee orders the nomination of presidential electors by a convention, in which case the chairman and secretary of the convention shall

swear to, sign, and file the certificate of nomination (18, § 1253(B)).

Each certificate of nomination shall contain:

- (a) the name and place of residence of each candidate for presidential elector;
- (b) the particular office of presidential elector for which each is nominated;
- (c) the name of the recognized political party making the nomination;
- (d) the names of the candidates for President and Vice President supported by the party. In addition, a certificate of nomination filed by the chairman and secretary of a State central committee shall certify the adoption by the State central committee of the resolution of the committee which authorized the method of nomination, the method of nomination used, and the time and place where the nomination took place. A certificate of a nominating convention also shall certify the adoption by the State central committee of the resolution which authorized the convention, the time, and place where the convention was held, and the election of the chairman and secretary. Each certificate of nomination filed with the Secretary of State shall be accompanied by the notarized affidavit of each candidate for elector signifying that the certificate constitutes his acceptance of the nomination (18, § 1253(C)). The certificate of nomination shall constitute full proof of the nominations it recites and shall entitle the candidates for electors to each receive the number of votes received in the election by the party's candidate for President (18, § 1253(D)). If the nominees for the offices of President and Vice President nominated by a national convention of a recognized political party, together with a slate of candidates for the offices of presidential electors to support such nominees, are not properly certified to the Secretary of State by the state central committee of that party prior to five o'clock p.m. on the first Tuesday in September in a presidential election year, the national chairman of the political party, after notifying the chairman of the state central committee of that political party, shall certify a slate of electors to certify the nominees to support such nominees within forty-eight hours thereafter (18, § 1253(E), Supp.). A political party is recognized if one of its candidates for presidential elector received at least 5 percent of the votes cast in the State for presidential electors in the last presidential election or if at least 5 percent of the registered voters in the State are registered as being affiliated with the political party (§ 441).

(2) Independent candidates

Slates of independent candidates for presidential elector may be nominated by nominating petitions or may qualify by the payment of a qualifying fee of \$500. An independent candidate for presidential elector may be registered to vote with or without a declaration of party affiliation (§ 1254(A)).

A nominating petition for a slate of candidates for the offices of presidential elector shall be signed, filed, and certified as provided for State candidates voted on throughout the State (§ 1254(B)).

Nominating petitions for the office of presidential elector shall be in the form prescribed by Louisiana Revised Statutes, 18, § 465(D), except that in lieu of including the recognized political party with which the candidates are affiliated, the petition shall contain in not more than three words the political principle which the candidates represent. In lieu of the date of the primary election for which the candidates seek to qualify, the petition shall include the date of the general election. The petition shall also include the names of the candidate for President and the candidate for Vice President whom the candidates for elector support; however, neither the candidate for President nor the candidate for Vice President supported by the slate of candidates for electors shall be a candidate for that office supported by a recognized political party or by a slate of candidates for elector who have previously filed a nominating petition for that election. Each petition shall contain a full slate of candidates for elector, one from each congressional district and two from the State at large. Each nominating petition shall be accompanied by the notarized affidavit of each candidate for elector signifying that the certificate constitutes his acceptance of the nomination (§ 1254(C)). Certificates of nomination of presidential electors and all nominating petitions shall be filed with the Secretary of State during the period beginning on the first Tuesday in August and ending at 5:00 p.m. on the first Tuesday in September of each year in which a presidential election is to be held (§ 1255).

B. NAMES ON GENERAL ELECTION BALLOTS

In any year in which presidential electors are to be elected, the Secretary of State shall arrange the voting machine ballot on the vertical type voting machine so that the names of candidates for President and Vice President shall appear on the ballot in the first column. On the horizontal type voting machine the Secretary of State shall arrange the voting machine ballot so that the names of candidates for President and Vice President shall appear on the ballot in the first two columns. Directly to the left of the names of the presidential and vice presidential candidates on the vertical type voting machine and directly above the names of the presidential and vice presidential candidates on the horizontal type voting machine shall appear:

(a) if nominated by a recognized political party, the name of the party and the national party emblem, if any, or State party device, if any, as the state central committee of the party shall direct; and

(b) if nominated by a nominating petition, the political principal which the candidates support, as stated on the nominating petition, if any, and the words "Nominating Petition" or the abbreviation "Nom. Petition." Immediately below the name of the party, "Nominating Petition," or "Nom. Petition" shall appear the word "Electors," and below this shall appear the names of the presidential electors nominated in support of the nominees for President and Vice President of that party or political principal. In preparing the ballots, the Secretary of State shall arrange the names of the candidates

of recognized political parties alphabetically, according to the names of the parties, followed by the names of the candidates nominated by nominating petitions, listed alphabetically by designation of political principal. No candidate nominated other than by a recognized political party shall use the name of any recognized political party in the political or party designation of the candidate (§ 1259).

C. STATUTORY INSTRUCTIONS

The electors shall meet in the State capitol in Baton Rouge on the day appointed for their meeting by Federal law and shall execute the duties and services enjoined upon them by the Constitution and laws of the United States. Notice of the time and place of the meeting shall be transmitted to each elector by the Secretary of State no later than seven days preceding the day of the meeting (§ 1263).

MAINE

Presidential Electors: 4

A. NOMINATION

(1) *Major parties*

Presidential electors are nominated at biennial State conventions of the respective parties held in presidential election years between March 1 and August 1 (Maine Revised Statutes, title 21, § 401). A "major party" is one which at the last gubernatorial election polled the greatest or next greatest number of votes cast in the State for Governor (§ 1.15).

(2) *Minor and new parties*

A "minor party" means one other than a major party (§ 1.17).

"Party" refers to a political organization which has qualified to participate in a primary or general election pursuant to chapter 10 (§ 1.21).

Candidates of minor parties must be selected by a primary election held on the second Tuesday in June every general election year (§§ 1.21, 441, 448), except presidential electors, who are nominated at party conventions (§§ 401.2(C), 441).

(3) *Independent candidates*

A person may file as a candidate for any Federal, State, or county office either by primary election or nomination petition, but not by both (§ 491). A person who seeks nomination by petition shall file a signed declaration of candidacy with the Secretary of State by or before 5:00 p.m. on April 1 of the election year in which that person will be a candidate (§ 493). Nomination petitions for a slate of candidates for the office of presidential elector must be signed by at least 4,000 and not more than 6,000 voters (§ 494.5(A)). A nomination petition may not be signed before January 1 of the election year in which it is to be used (§ 494.6). A nomination petition may contain the candidate's consent and the candidate's political designation, which shall not exceed three words in length, shall not include the candidate's name, and shall not include the name or designation of a party qualified to nominate candidates by primary election (§ 494.1). The petition shall be submitted to the registrar of each municipality for certifica-

tion by or before 5:00 p.m. on the fifth day before the date of the primary election (§ 494.8). The petition shall be filed in the office of the Secretary of State by or before 5:00 p.m. on the date of the primary election in the election year in which it is to be used (§ 494.9). Names of presidential electors must be placed on the petition as a slate. Names of candidates for President and Vice President shall be placed on a petition for the nomination of presidential electors (§ 494.1(A)).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the electors must not be printed on the ballot. A vote for a presidential and vice presidential candidate is considered a vote for the electors representing that party (§§ 701(1)(A), 1181).

C. STATUTORY INSTRUCTIONS

Electors shall vote by separate ballot for one person for President and one person for Vice President (§ 1184(1) Ch. 360, § 8, 1983 Session Laws.). A presidential elector is elected from each congressional district and two at large (§ 1181(A)). They shall convene in the Senate chamber in Augusta on the first Monday after the second Wednesday of December at 2:00 p.m. following their election (§ 1183). The presidential electors at large shall cast their ballots for presidential and vice presidential candidates who received the largest number of votes in the State. The presidential electors of each congressional district shall cast their ballots for the presidential and vice presidential candidates who received the largest number of votes in each congressional district (§ 1184(1)(A); (Ch. 360, § 9, 1983 Session Laws).

If any electors are not present, the electors present shall fill the vacancy by majority vote (§ 1183).

MARYLAND

Presidential Electors: 10

A. NOMINATION

(1) *Major parties*

A major party is any party with which ten percent or more of the registered voters of the State are affiliated, as shown by the most recent statement of registration of the State Administrative Board of Election Laws (Annotated Code of Maryland, Art. 33, § 5-1, Supp.).

The State convention of any party shall nominate or provide for the nomination of candidates for presidential electors of the party in such manner as the convention determines. The State convention shall nominate or provide for the nomination of as many candidates for presidential electors of the party as this State is entitled to appoint. The names of persons nominated by the State convention as candidates for presidential electors shall be certified by the presiding officers of the State convention to the State Administrative Board of Election Laws (§ 12-3).

(2) *Minor and new parties*

If, in any general election for President of the United States or Governor of the State, any political party polls less than three percent of the entire vote cast in the State for the offices of President and United States Senator (if a Senator for the State was elected at such election), such party shall cease to be a political party, and in subsequent elections must qualify as a new party to participate in elections (§ 4C-1).

Any group of voters wishing to form a new political party shall do so by filing with the State Administrative Board of Election Laws a petition for formation of a political party which shall declare their intention of organizing a State political party, the name of which shall be stated in the petition together with the name and address of the State chairman thereof and the names and addresses of at least twenty-five persons who shall be designated as constituting the governing body of the party. Appended to the petition shall be papers bearing the signatures of at least ten thousand qualified voters of the State (§ 4B-1(a)).

If the petition for the formation of a political party is properly drawn and filed, then, within ninety days after the filing of the petition and appended papers, the persons designated in the petition as constituting the governing body of the party shall hold an organizational meeting and shall adopt for the conduct of the affairs of the party an interim constitution and bylaws, which shall be filed with the State Administrative Board of Election Laws within thirty days after adoption. Any amendments to the interim constitution and bylaws shall likewise be filed with the State Administrative Board of Election Laws within thirty days after adoption. The said organizational meeting shall be convened by the person designated in the petition as the State chairman of the party, who shall preside as president pro tem of the meeting until such time as party officers are elected (§ 4B-1(f)).

The interim constitution and bylaws shall provide for such meetings as in the opinion of the governing body of the new political party shall be necessary for the proper conduct of party affairs and shall specifically provide for the selection of a State central committee for the party, the selection of party central committees for the several counties and Baltimore City, and for the selection of chairmen for the State and local party central committees (§ 4B-1(g)).

The interim constitution and bylaws shall also provide for the manner of calling all meetings and for advance notification thereof; for rules governing the conduct of all meetings, including the attendance required for a quorum; for a procedure for selecting party nominees for public office, subject to the provisions of this article; and for the manner and method of amending the interim constitution and bylaws of the political party. The interim constitution and bylaws shall also provide that no meeting of the political party or the governing body of the political party shall be called unless ten days written notice thereof shall be given, by regular mail, to each person entitled under the interim constitution and bylaws to attend, addressed to the residence of such person

as disclosed by the records of the board of the county or Baltimore City in which such person is a voter. In the event that it is necessary to call a meeting to fill a vacancy in a party nomination for public or party office, it shall be sufficient if five days notice shall be given in a manner to be provided by the interim constitution and bylaws (*Ibid.*).

The nominees for public office of the party shall be selected in the manner provided in the interim constitution and bylaws of the party, but no such nominee shall appear upon the ballot at any general election unless the nominee has complied with all the requirements of the provisions of the subtitle "Nomination by Petition," including the filing of petitions with the election board or the several boards of the State, which shall bear in addition to the name of the nominee, the name of the party, signed by not less than three percent of the registered voters who are eligible to vote for the office for which election at the general election is sought. The political party shall not nominate more than one candidate for each public or party office to be filled at the succeeding general election, except to fill a vacancy in a prior nomination (§ 4B-1(h)).

(3) *Independent candidates*

A candidate for any public office who is registered as an independent or who is a member of or affiliated with a partisan organization which is not a political party may be nominated by petition (§ 7-1(a), Supp.).

A candidate for public office seeking nomination by petition shall file a certificate of candidacy with a sworn statement attached that he has on file with the election board or the several boards of the State petitions signed by not less than three percent of the registered voters who are eligible to vote for the office for which such nomination by petition is sought (§ 7-1(b), Supp.).

The petition with the required number of signatures is to be filed with the appropriate board by not later than 5 p.m. on the first Monday in August (§ 7-1(c), Supp.).

B. NAMES ON GENERAL ELECTION BALLOTS

Each citizen of the State entitled to vote for those persons seeking Federal office shall have the right to vote for the whole number of electors. The presidential electors of the candidates for President and Vice President who receive the highest number of votes shall be declared to be elected as said electors, and shall be deemed so appointed (§ 20-1). The names of the candidates for presidential electors shall not be printed on the ballot, but in lieu thereof the names of the candidates of each party for the office of President and Vice President shall be printed thereon. A vote for said candidates for President and Vice President shall be deemed and counted as a vote for each of the presidential electors of said party (§ 20-2).

C. STATUTORY PROVISIONS

The presidential electors elected at the November election shall meet in the State House in Annapolis. After taking the oath prescribed by the Constitution, they shall give their

votes for President and Vice President, on the day fixed by law of the United States, for meeting of electors of President and Vice President, and shall cast their votes for the candidates who received a plurality of the votes cast in the State (§ 20-4).

MASSACHUSETTS

Presidential Electors: 13

A. NOMINATION

(1) *Major parties*

The State committees of the respective political parties at a meeting called for the purpose shall nominate the presidential electors. The surnames of the candidates for President and Vice President of the United States shall be added to the party or political designation of the candidates for presidential electors. Such surnames and a list of the persons nominated for presidential electors shall be filed by the State chairmen of the respective political parties not later than the second Tuesday of September (Massachusetts General Laws Annotated, ch. 53, § 8, Supp.). Nomination papers for presidential elector are to be filed on or before the first Tuesday in June in which a presidential election is to be held. June 5, 1984 (§ 10, Supp.).

(2) *Minor and new parties*

At any primary, caucus or convention, each party having the right to participate in or hold the same may nominate as many candidates for each office for which it has the right to make nominations therein as there are persons to be elected to that office, and no more. A party which makes one or more nominations shall be entitled to have the name of each of its candidates printed on the ballot to be used at the ensuing election; but, unless the nomination is made by direct plurality vote in a primary or in several caucuses held in more than one ward or in more than one precinct or group of precincts, a certificate of nomination must be filed with the Secretary of State (§§ 1, 5, 10, Supp.).

Such State convention shall be held not earlier than 4 days after the caucuses at which delegates to such convention were elected, and not later than 48 hours prior to the hour for filing certificate of nomination (§ 4).

The certificate of nomination with the candidates' written acceptance, except for presidential electors, should be filed by the secretary of the convention with the Secretary of State within 72 hours succeeding 5:00 p.m. of the day on which the caucus was held or the session of the convention terminated (§§ 5; 9, Supp.).

Nomination papers should include the party, if any, which a candidate represents (§ 8, Supp.). Names of candidates for President and Vice President shall be added to the party or political designation of candidates for presidential electors (§ 8, Supp.). Provisions of this paragraph also apply to nomination papers for independent and new party candidates.

(3) *Independent candidates*

Nomination papers are required for candidates to be voted on by the State at large, signed by voters equal in number to

2 percent of the entire State vote for Governor at the last biennial election (§ 6, Supp.). Candidate's written acceptance must accompany nomination papers (§ 9, Supp.). Nomination papers should be submitted to registrars of signer's city or town of voting residence for certification on or before 5:00 p.m. of the 7th day before last date for filing (§ 7, Supp.), and should be filed with the Secretary of State (§ 9, Supp.).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the candidates for presidential electors shall not be printed on the ballot, but in lieu thereof, the surnames of the candidates of each party for President and Vice President in one line under the designation "Electors of President and Vice President." A square in which the voter may designate his choice for electors is at the right of each political designation. The candidates for electors are nominated to vote for the party's candidates for President and Vice President. The vote for such latter candidates on the State ballot, however, shall be deemed as a vote for the candidates for electors (ch. 54, §§ 43, 43A, 78).

C. STATUTORY INSTRUCTIONS

Candidates for President and Vice President and State chairmen when filing the list of nominees for presidential elector must also file an acceptance in writing signed by each candidate for presidential elector on a form to be provided by the Secretary of State. The acceptance form shall include a pledge by the presidential elector to vote for the candidate named in the filing (ch. 53, § 8).

In order to vote for presidential electors, the voter shall make a cross in the square at the right of the party or political designation appearing on the ballot at the right of the surnames of the candidates for President and Vice President. Persons chosen as presidential electors shall meet at the statehouse on the date fixed by Federal law and organize. A journal of their proceedings shall be kept and shall be deposited in the office of the Secretary of State (ch. 54, §§ 78, 148).

MICHIGAN

Presidential Electors: 20

A. NOMINATION

(1) *Major parties*

Presidential electors are nominated by major parties at their respective regular fall State conventions (Michigan Compiled Laws, § 168.42). Such conventions shall be held not less than 66 days before the November general election at a time and place designated by the party State central committee. The calls for such conventions shall be issued at least 60 days prior to the August primaries (§ 168.591, Supp.).

The primary is held on the Tuesday succeeding the first Monday in August (§ 168.534, Supp.). August 7, 1984.

Each respective State central committee in its call for the State convention shall forward a notice to the chairman of each county committee of the party showing the number of delegates to which each county shall be entitled in the State

convention of the party, and the State central committee shall apportion such delegates to the several counties in proportion to the number of votes cast for the candidate of the party for Secretary of State in each of said counties, at the last preceding November election. In addition to the proportionate number of delegates allocated to each county, the State central committees shall allocate an additional number of delegates equal to the number of incumbent legislators nominated by their party and residing in such county (§ 168.598, Supp.).

County conventions meet to choose delegates to the State conventions which shall be held not less than 8 nor more than 19 days after the August primaries (§ 168.592, Supp.).

The names of all the candidates for electors as well as the candidates of the party for the offices of President and Vice President shall be certified by the State central committee of each party to the Secretary of State and the various county boards of election commissioners within 24 hours after the conclusion of the conventions (§ 168.686).

(2) *Minor and new parties*

Any political party which failed to have at least one candidate who received at least 5 percent of the total vote cast for all candidates for the office of Secretary of State in the last preceding State election, either in the State or in any political subdivision affected, shall not make its nominations by the direct primary method. The nomination of candidates of such parties shall be made by means of caucuses and conventions (§§ 168.532, 168.686a, Supp.). A convention for the selection of presidential electors shall be held at least 66 days prior to the November general election (§§ 168.42, 168.591, Supp.). Such nominations shall be certified by the chairman and secretary of the convention or caucus, under oath, and there shall accompany such certifications a written acceptance of nomination by each candidate and affidavit of identity (§§ 168.686a, Supp., 168.558).

Nomination certificates shall also contain the designation of the party (§ 168.687). In each presidential election year, names of a party's candidates for President and Vice President shall be filed at the same time (§ 168.686). The name of no candidate of a new political party shall be printed upon the official ballots of any election unless the chairman and secretary of the State central committee of the party shall have filed with the Secretary of State, at least 3 months before the primary election, a certificate signed by them bearing the name of the party, and unless accompanying the certificate there shall have been filed petitions bearing the signatures of registered and qualified electors equal to not less than one percent nor more than four percent of the number of votes the successful candidate for Secretary of State received at the last election in which a Secretary of State was elected. The petitions shall be signed by at least 100 residents in each of at least 9 congressional districts of the State and not more than 35 percent of the minimum required number of the signatures may be resident electors of any one congressional district (§ 168.685, Supp.). No political party, the principal candidate of which shall have received a

vote equal to less than one percent of the total number of votes cast for the successful candidate for the office of Secretary of State at the last preceding election in which a Secretary of State was elected shall have the name of any candidate printed on the ballots at the next ensuing election, nor shall a column be provided on the ballots for such party (*Ibid.*).

New parties shall nominate presidential electors in the same manner as other parties (§ 168.42).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the candidates for President and Vice President are printed on the general State ballot in lieu of the names of the electors. The office title, however, reads "Electors of President and Vice President of the United States" (§ 168.706). A vote for the presidential and vice presidential candidates shall be deemed a vote for their entire list of presidential electors (§ 168.45).

C. STATUTORY INSTRUCTIONS

The electors shall convene in the senate chamber at the State capitol at 2:00 p.m. on the first Monday after the second Wednesday in December after their election (§ 168.47, Supp.). Those candidates for electors of President and Vice President shall be deemed elected whose names have been certified to the Secretary of State by that political party receiving the greatest number of votes for the office at the ensuing November election (§ 168.42).

MINNESOTA

Presidential Electors: 10

A. NOMINATION

(1) *Major parties*

Presidential electors are nominated by delegate conventions called and held under the supervision of the respective State central committees of the major parties of the State. The names of the persons nominated as presidential electors shall be certified to the Secretary of State by the chairman of such convention for the office of presidential elector on or before any primary election day (September 11, 1984) (Minnesota Statutes Annotated, § 208.03, Supp.).

"Major political party" means a political party that maintains a party organization in the state, political division or precinct in the question and:

(a) Which has presented at least one candidate for election to a partisan office at the last preceding state general election, which candidate received votes in each county in that election and received votes from not less than five percent of the total number of individuals who voted in that election; or

(b) Whose members present to the county auditor a petition for a place on the state partisan primary ballot, which petition contains signatures of a number of the party members equal to at least five percent of the total number of individuals who voted in the preceding state general election in the

county where the application is submitted (§ 200.02, Subd. 7, Supp.).

(2) *Minor and new parties*

Candidates for any partisan office who do not seek the nomination of a major Political Party shall be nominated by nominating petition and shall file an affidavit of candidacy (§ 204B.03, Supp.). On petitions nominating presidential electors, the names of the candidates for President and Vice President shall be added to the political party or political principle stated on the petition. One petition may be filed to nominate a slate of presidential electors equal in number to the number of electors to which the State is entitled (§ 204B.07, Subd. 2, Supp.).

Nominating petitions shall be signed during the period when petitions may be filed as provided in section 204B.09. A nominating petition may be signed only by individuals who are eligible to vote for the candidate who is nominated. No individual may sign more than one nominating petition for candidates for the same office unless more than one candidate is to be elected to that office. If more than one candidate is to be elected to the office, an individual may sign as many petitions as there are candidates to be elected.

The number of signatures required on a nominating petition for a state office voted on statewide shall be one percent of the total number of individuals voting in the state at the last preceding state general election, or 2,000, whichever is less (§ 204B.08, Subds. 1-3, Supp.).

Candidates for Presidential electors may file affidavits and petitions on or before the state primary day (September 11, 1984) (§ 204B.09, Subd. 1, Supp.).

(3) *Independent candidates* (See *Minor and new parties supra.*).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the party candidates for President and Vice President rather than the names of the persons nominated for presidential elector are printed on the ballot, and a vote for the candidate shall be counted as a vote for each of the party's electors (§ 208.04, Supp.).

C. STATUTORY INSTRUCTIONS

The presidential electors, elected at the November election, shall meet in the executive chamber at the State capitol on the day fixed by Congress for voting for President and Vice President, and then and there perform all and singular duties imposed upon them as such electors by the Constitution and laws of the United States and the State (§§ 208.06-208.08, Supp.).

MISSISSIPPI

Presidential Electors: 7

A. NOMINATION

(1) *Major parties*

Mississippi statutes provide that at a State convention of a party, upon motion supported by 10 percent of the member-

ship of said State convention, a slate of electors pledged to support the candidates for President and Vice President of the national political party with which the party in the State is affiliated shall be designated (Mississippi Code Annotated, § 23-1-17.)

Also upon motion supported by 10 percent of the membership of the State convention, a slate of unpledged electors shall be designated (*Ibid.*).

A primary election shall be held the first Tuesday in September in the year of the general election for President and Vice President, and the group of electors receiving the most votes at the election shall be placed upon the ballot in the general election as the electors of the political party. No other group of electors shall be placed upon the ballot as the electors of the political party (§ 23-1-19, Supp.).

The electors pledged to support the national candidates of the party must so certify to the Secretary of State in writing at least 60 days before the primary. Otherwise they shall be placed on the primary ballot as unpledged (*ibid.*).

A three judge Federal court sustained the authority of the State to provide statutorily for unpledged electors of a national party on the ballot (*Gray v. Mississippi*, 233 F. Supp. 139 (D. Miss. 1964)).

(2) *Minor and new parties*

Under the primary or general election laws of the State, no distinction is made between major and minor or new parties. Any political party, in order to participate in primaries shall register with the Secretary of State within 30 days after its organization (§ 23-1-5).

At a State convention, upon motion supported by ten percent of the membership of said State convention, a slate of electors shall be designated and selected for a place on the ballot.

The application for registration of the party named to be presented to the Secretary of State shall be accompanied by an affidavit of the chairman or secretary of the party seeking registration, listing the names of the members of the State executive committee, showing the chairman and secretary, together with the names of the national committeeman and committeewoman, and all the officers of said party, and setting forth that said executive committee and other officers of such party have been elected in accordance with the provisions of § 23-1-3, and the Secretary of State is authorized to require proof as to the compliance with said section, when, in his opinion, such party has not complied with same (§ 23-1-7).

It shall be unlawful for any person or group to set up any political party in the State except in the manner provided by law (§ 23-1-11).

Political parties nominate candidates at a primary and hold the primary as required between slates of candidates for nomination as presidential electors (§§ 23-1-15, 23-1-17).

(3) *Independent candidates*

Any candidate who has not been nominated by a political party may have his name printed on the ballot in any general or special election if he requested to be a candidate by a

petition filed not less than 60 days before the election. If running for an office elected by the State at large, the candidate should obtain signatures from not less than 1,000 qualified electors (Laws of 1978, H. B. 44, Chapter 429, Approved March 27, 1978).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the electors are printed on the general election ballot, and there may be indication of those candidates for President and Vice President whom they are pledged to support (§ 23-1-21).

The group of electors receiving the most votes at the primary election shall be placed upon the ballot in the general election as the electors of the political party, and no other group of electors shall be placed upon the general election ballot as the electors of the political party (§ 23-1-19, Supp.). Nothing in the Mississippi statutes shall be construed to place mandatory or inhibitory restrictions upon the office of elector for President and Vice President contrary to the provisions of the United States Constitution (§ 23-1-23).

When presidential electors are to be chosen, the Secretary of State of Mississippi shall certify to the circuit clerks of the several counties the names of all candidates for president and vice president who are nominated by any national convention or other like assembly of any political party or by written petition signed by at least one thousand (1,000) qualified voters of this State.

(2) The certificate of nomination by a political party convention must be signed by the presiding officer and secretary of the convention and by the chairman of the state executive committee of the political party making the nomination. Any nominating petition, to be valid, must contain the signatures as well as the addresses of the petitioners. Such certificates and petitions must be filed with the state board of election commissioners by filing the same in the office of the secretary of state not less than sixty (60) days previous to the day of the election.

(3) Each certificate of nomination and nominating petition must be accompanied by a list of the names and addresses of persons, who shall be qualified voters of this state, equal in number to the number of presidential electors to be chosen. Each person so listed shall execute the following statement which shall be attached by the certificate or petition when the same is filed with the state board of election commissioners: "I do hereby consent and do hereby agree to serve as elector for President and Vice President of the United States, if elected to that position, and do hereby agree that, if so elected, I shall cast my ballot as such for _____ for President and _____ for Vice President of the United States" (inserting in said blank spaces the respective names of the persons named as nominees for said respective offices in the certificate to which this statement is attached).

(4) The State board of election commissioners and any other official charged with the preparation of official ballots shall place on such official ballots the words "Presidential electors for (here insert the name of the candidate for President, the

word 'and' and the name of the candidate for Vice President)" in lieu of placing the names of such presidential electors on such official ballots and a vote cast therefor shall be counted and shall be in all respects effective as a vote for each of the presidential electors representing such candidates for president and vice president of the United States. In the case of unpledged electors, the state board of election commissioners and any other official charged with the preparation of official ballots shall place on such official ballots the words, "Unpledged electors of (here insert the name of the political party)" or "Unpledged elector (here insert the name of an individual unpledged elector if placed upon the ballot based upon a petition granted in the manner provided by law stating the individual name of the elector rather than a slate of electors)" (§ 23-5-210, Supp.).

C. STATUTORY INSTRUCTIONS

The electors chosen shall meet at the seat of government of the State on the first Monday after the second Wednesday in December next following their election, and shall there give their votes for President and Vice President of the United States, and shall make return thereof agreeably to the laws of the United States; and should any elector so chosen fail to attend and give his vote, the other electors attending shall appoint some person or persons to fill the vacancy or vacancies, who shall attend and vote as electors; and such appointment shall be reported to the Secretary of State (§ 23-5-213).

MISSOURI

Presidential Electors: 11

A. NOMINATION

(1) *Major parties*

The State committee of any established political party may call a convention of delegates to be apportioned, chosen, or elected in such manner as it may prescribe for the purpose of nominating presidential electors (Vernon's Annotated Missouri Statutes, § 115.625). The term "established political party" for the State means a political party which at either of the last two general elections polled for its candidate for any statewide office more than two percent of the entire vote cast for the office (§ 115.013(10), Supp.).

Not later than the third Tuesday prior to each presidential election, the State committee of each established political party shall certify in writing to the Secretary of State the names of its nominees for presidential elector. At least one qualified resident of each congressional district shall be named as a nominee for presidential elector by each State committee, and the number of nominees for presidential elector named by each State committee shall equal the number to which the State is entitled (§ 115.399(2)).

(2) *New parties*

Any group of persons desiring to form a new political party throughout the State shall file a petition with the Secretary of State. The petition shall declare the intention to form a new political party, state the names of the proposed party,

give the names and addresses of candidates to be nominated for office, and state the office for which each candidate is to be nominated. If presidential electors are to be nominated by petition, at least one qualified resident of each congressional district shall be named as a nominee for presidential elector. The number of candidates to be nominated shall equal the number of electors to which the State is entitled, and the names of their candidates for President and Vice President shall be printed on each page or a sheet attached to each page of the petition. The names of the candidates for President and Vice President may be added to the party name, but the names of the candidates for President and Vice President shall not be printed on the official ballot without their written consent. Their written consent shall accompany and be deemed part of the petition. If the new party is to be formed for the entire State, the petition shall be signed by the number of registered voters in each of the several congressional districts which is equal to at least one percent of the total number of votes cast in the district for Governor in the last gubernatorial election or by the number of registered voters in each of one half of the several congressional districts which is equal to at least two percent of the total number of votes cast in the district for Governor at the last gubernatorial election (§ 115.315).

The filing of a valid petition shall constitute the political group a new party for the purpose of placing its name and the names of the candidates which appeared on the petition on the ballot at the next general election or the special election if the petition nominates a candidate to fill a vacancy which is to be filled at a special election. If presidential electors are nominated by the petition, the names of the candidates for elector shall not be placed on the official ballot, but the names of their candidates for President and Vice President shall be placed on the official ballot at the next presidential election (§ 115.317).

The Secretary of State shall not accept for filing any petition for the formation of a new party which is submitted before 8 a.m. on the day immediately following the general election next preceding the general election for which the petition is submitted or which is submitted after 5 p.m. on the first Monday in August immediately preceding the general election for which the petition is submitted (§ 115.329).

(3) Independent candidates

Any person desiring to be an independent candidate for any office to be filled by voters throughout the State shall file a petition with the Secretary of State. The petition shall declare the intention to nominate an independent candidate, state the name and address of the independent candidate, and the office for which the candidate is to be nominated. If independent candidates for presidential elector are to be nominated, a number of independent candidates for presidential elector equal to the number of electors to which the State is entitled shall be nominated by one petition, and the names of their candidates for President and Vice President shall be printed on each page or a sheet attached to each page of the petition. At least one qualified resident of each

congressional district shall be named as a nominee for presidential elector, and the name and address of each candidate shall be printed on each page or a sheet attached to each page of the petition. The names of the candidates for President and Vice President shall not be printed on the official ballot without their written consent. Their written consent shall accompany and be deemed part of the petition (§ 115.321).

If an independent candidate is to be nominated for a statewide office, the petition shall be signed by the number of registered voters in each of the congressional districts which is equal to at least one percent of the total number of votes cast in the district for Governor at the last gubernatorial election or by the number of registered voters in each of one half of the congressional districts which is equal to at least two percent of the total number of votes cast in the district for Governor at the last gubernatorial election. The name of each person who files a valid petition for nomination as an independent candidate shall be placed on the official ballot as an independent candidate for the office at the next general election or the special election if the petition nominates a candidate to fill a vacancy which is to be filled at a special election. If presidential electors are nominated by the petition, the names of the candidates for elector shall not be placed on the official ballot, but the names of their candidates for President and Vice President shall be placed on the official ballot at the next presidential election (§ 115.321).

The Secretary of State shall not accept for filing any petition for the nomination of an independent candidate which is submitted before 8 a.m. on the day immediately following the general election next preceding the general election for which the petition is submitted or which is submitted after 5 p.m. on the first Monday in August immediately preceding the general election for which the petition is submitted (§ 115.329).

B. NAMES ON GENERAL ELECTION BALLOTS

In place of the names of candidates for electors of President and Vice President of any political party or group of petitioners there shall be printed the names of candidates of each political party for President and Vice President. A vote for any of such candidates for President and Vice President shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the Secretary of State (Information received from office of Missouri Secretary of State; *see also* §§ 115.317 and 115.321).

C. STATUTORY INSTRUCTIONS

Not later than the third Tuesday before each presidential election, the State committee of each established political party shall certify in writing to the Secretary of State the names of its nominees for presidential elector (§ 115.399). The electors of President and Vice President shall meet and give their votes on the first Monday after the second

Wednesday in December following their appointment (3 U.S.C. § 7). The electors are notified of their election, and they assemble at the seat of government by 2:00 p.m. of the day specified by 3 U.S.C. § 7 to perform the duties enjoined upon them by Federal law. If there is a failure to elect, the electors attending at the time and place shall appoint a suitable person or persons to fill the vacancy or vacancies (§ 128.130).

MONTANA

Presidential Electors: 4

A. NOMINATION

(1) *Major parties*

Every political party that had a candidate for a statewide office who received a total vote that was 5 percent or more of the total votes cast for the successful candidate for Governor at the last general election shall nominate presidential electors and file certificates of nomination for these candidates with the Secretary of State no later than 45 days before the general election and in the manner and number provided by law (Montana Code Annotated, §§ 13-10-601 and 13-25-101). The Secretary of State shall certify to the election administrator the names of the candidates for President and Vice President of the several political parties, which shall be printed on the ballot. The names of candidates for electors of President and Vice President may not be printed upon the ballot (Montana Code Annotated, § 13-25-101).

(2) *Independent or minor party candidates*

An individual who desires to run for President or Vice President as an independent candidate or as a candidate of a party which did not receive in an election for a statewide office a total vote that was 5 percent or more of the total votes cast for the successful candidate for Governor at the last general election must file a petition for nomination with the Secretary of State 90 days prior to the date of the general election. The petition must first be submitted, at least one week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification. The petition must have the signatures of electors equal to 5 percent or more of the total votes cast for the successful candidate for Governor at the last general election. The names of the candidates for the required number of presidential electors allowable to Montana shall be certified to the Secretary of State when the petition for nomination is filed (Montana Code Annotated, § 13-10-504).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of candidates for electors or President and Vice President may not be printed on the ballots; only the names of the candidates for President and Vice President should appear on the ballots (Montana Code Annotated, § 13-25-101).

C. STATUTORY INSTRUCTIONS

The electors shall meet in Helena at 2:00 p.m. on the first Monday after the second Wednesday in December following their election. They shall vote by separate ballots for one person for President and one for Vice President. They shall make lists of the persons voted for, indicate the number of votes for each, certify, seal, and transmit the lists as prescribed by United States laws (Montana Code Annotated, §§ 13-25-104 and 13-25-105; information received from office of Montana Secretary of State).

NEBRASKA

Presidential Electors: 5

A. NOMINATION

(1) *Major parties*

The parties nominate electors for President and Vice President, at the postprimary State conventions of their respective parties, which conventions shall be held on a date fixed by the State central committee of the party, but not later than October 1. The names of the candidates for presidential electors shall be certified to the Governor by the officers of such convention (Revised Statutes of Nebraska, § 32-556). Partisan candidates for the offices of President and Vice President shall be certified to the Governor and the Secretary of State by the national nominating convention as provided by law (§ 32-504).

A party's State central committee shall fix the representation in the State convention for the various counties in the State on the basis of the vote cast for the party's candidate for President at the last preceding presidential election, and shall make appropriate announcement of such action at least 30 days prior to holding county conventions (§ 32-554).

Each county central committee shall fix the representation in the county conventions for the various precincts of the county on the basis of the vote cast for the party's candidate for President at the last preceding presidential election. Each precinct shall be entitled to at least two delegates to the county convention. Each county convention shall select delegates to the State convention (§ 32-551).

(2) *Minor and new parties*

A party which failed to poll at least 5 percent of the entire vote in the State must use the methods prescribed for a newly formed party in order to get its candidates' names upon the primary ballot (§ 32-521). *See also State v. Marsh*, 123 Nebraska 423; 243 N.W. 277 (1932).

In order to form a new political party there shall be presented to the Secretary of State petitions containing signatures totaling not less than one percent of the total votes cast for the office of Governor at the most recent general election for such office. The signatures of registered electors on such petitions must be so distributed as to include qualified registered electors totaling at least one percent of the votes cast for Governor in the most recent gubernatorial election in each of at least one-fifth of the counties in the State. The petitions must be filed with the Secretary of State at least

ninety days before any State primary election held under the laws of this State if the new political party desires to have ballot position in the primary election of that year. If the new political party desires to be established and have ballot position for the general election and not in the primary of that year, such petitions must be filed with the Secretary of State on or before August 1 of that year. Prior to the circulation of such petitions to form a new political party, a sample copy of such petitions must be filed with the Secretary of State by the individual, group or association seeking to establish the new party. In addition, the sample petition shall be accompanied by a verified list of the names and addresses of the individual or the members of the group or association sponsoring the petition to form a new political party (§ 32-526(1), Supp.).

Every circulator of a petition shall be not less than the constitutionally prescribed age of an elector, a resident, and a registered voter of the State of Nebraska and of the county wherein the petitioners reside (§ 32-526 (3), Supp.).

Clerical and technical errors in a petition shall be disregarded if the forms prescribed are substantially followed (§ 32-526 (4), Supp.).

Within ten days after all petitions containing signatures are filed with the Secretary of State, he shall determine the validity and sufficiency of such petitions and signatures. If the petitions to form the new political party are determined to be sufficient and valid, the Secretary of State shall issue a certification establishing the new political party. Copies of such certification shall be issued to the person, group or association forming the new political party. Within twenty days after the certification of establishment of the new political party by the Secretary of State, the person, group or association forming the party or its new officers shall file with the Secretary of State the constitution and by-laws of such party along with a certified list of the names and addresses of the officers of the new political party (§ 32-526 (5), Supp.). The petitions to form a new political party shall state the name of the party to be formed, but the name of any then existing political party or any word forming any part of the name of any party then existing shall not be adopted (§ 32-526 (6), Supp.).

A new political party established prior to the primary election of that year shall be entitled to have a separate party ballot at the next primary election held thereafter. Such party and its candidates shall be subject to and governed by the statutes governing existing political parties. Candidates for political office may register as members of the new political party and file for office as candidates under the party label of the new political party in accordance with the filing deadlines as established by law (§ 32-526 (7), Supp.).

Any person signing any name other than his own to any petition or knowingly signing his name more than once, or who is not, at the time of signing or circulating the same, a legal voter and qualified to sign or circulate the same, or any person who shall falsely swear to any signature upon any such petition, or any officer or person willfully violating any

provision of this section, shall be guilty of a class V misdemeanor (§ 32-526 (8), Supp.).

Candidates for the offices of President and Vice President of newly established political parties or of an independent status may obtain general election ballot position by filing with the Secretary of State an application with the following information:

- (a) the name or names to be printed on the ballot;
- (b) the status of the candidacy, whether independent or partisan;
- (c) the written consent of the designated vice presidential candidate to have his or her name printed on the ballot;
- (d) a list of names and addresses of the persons to represent the applicant as presidential elector candidates and the written consent of these persons to become candidates; and
- (e) a petition signed by qualified voters numbering not less than 2,500. The petitions shall not be circulated until after the date of the primary election in that election year (§ 32-504 (2), (c), Supp.).

(3) *Independent candidates*

Candidates for the offices of President and Vice President of an independent status may obtain general election ballot position by filing with the Secretary of State an application containing the following information:

- (a) the name or names to be printed on the ballot;
- (b) the status of the candidacy, whether independent or partisan;
- (c) the written consent of the designated vice presidential candidate to have his or her name printed on the ballot;
- (d) a list of names and addresses of the persons to represent the applicant as presidential elector candidates and their written consent to become candidates; and
- (e) a petition signed by qualified voters numbering not less than 2,500. These petitions shall not be circulated until after the date of the primary election in that election year. Voters who voted in the primary of any political party that held a presidential preference primary that year are ineligible to sign the petitions of an independent candidate for President (§ 32-504 (2), (c), Supp.).

B. NAMES ON GENERAL ELECTION BALLOT

At least sixty days prior to any general election at which candidates for President and Vice President are to be voted upon by the electors of the State, the appropriate officers of the various national political conventions shall certify the names and addresses of such candidates selected by convention to the Secretary of State. The Secretary of State then takes appropriate steps to place the names of the presidential and vice-presidential candidates on the ballot in accordance with provisions of law (§ 32.561).

The candidates of political parties nominated at conventions for presidential elector do not appear on the ballot. In their places appear the names of candidates for President and Vice President grouped together in the space entitled "Presidential Ticket." There is no write-in voting for President (presidential electors) (§ 32-428). The canvass of the votes for

candidates for President and Vice President and the return thereof is a canvass and return of the votes cast for presidential electors of the same party or group of petitioners respectively and certificates of election are issued to the electors (§§ 32-4, 101; 32-4, 104).

C. STATUTORY INSTRUCTIONS

The electors are issued a certificate of appointment by the Governor directing them to be at the State capitol at noon on the first Monday after the second Wednesday in December and report to the Governor as being in attendance. The electors convene at 2 p.m. on such Monday at the executive office in the capitol and proceed to fill any vacancy in the office of elector. The college of electors proceeds with the election of a President and Vice President and certifies their votes in conformity with the Constitution and laws of the United States (§§ 32-546 to 32-549).

NEVADA

Presidential Electors: 4

A. NOMINATION

(1) *Major parties*

Candidates for presidential electors are nominated at the same party State convention at which delegates to the national convention are selected (Nevada Revised Statutes, §293.163). Each political party in this State, qualified by law to place upon the general election ballot candidates for the office of President and Vice President of the United States in the year when they are to be elected, shall, at the State convention of the political party held in that year, choose from the qualified electors, who are legally registered members of such political party, the number of presidential electors required by law and no more, who shall be nominated by the delegates at the State convention. Upon the nomination thereof, the chairman and the secretary of the convention shall certify the names and addresses of such nominees to the Secretary of State, who shall record the names in his office as the presidential elector nominees of that political party (§ 298.020).

(2) *Minor and new parties*

Any organization of registered voters which, at the last general election, polled for its candidates an equivalent of 5 percent of the total vote cast for Representative in Congress, may nominate its candidates in the primary election. To qualify as a political party any organization shall, under a common name or designation, file a petition with the Secretary of State not less than 60 days before any primary election signed by a number of registered voters equal to or more than 5 percent of the entire number of votes cast at the last preceding general election for Representative in Congress, declaring that they represent a political party or principle the name of which is stated in the petition, and that they desire to participate and nominate candidates in the primary election. The names of the voters need not all be on one petition, but each petition must be certified by at

least one of its signers to the effect that the signers are registered voters of the State according to his best information and belief (§ 293.128).

(3) *Independent candidates*

A certificate of nomination shall be signed by registered voters within the State, equal in number to at least 5 percent of the total number of ballots cast at the last preceding general election. It may state the principle, if any, which the candidate represents. The certificate shall be filed with the proper filing officer not earlier than the 2nd Monday in June and not later than 5 p.m. on the last Friday in June. A person may not file as an independent candidate if he, in fact, is proposing to run as the candidate of a political party whose name includes the word "independent" (§ 293.200). The statute does not specifically include or exclude the nomination of independent presidential elector candidates.

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the candidates for elector are not printed on the ballot. In the general election only the names of the candidates of the respective parties for President and Vice President are printed on the ballot, but the presidential elector nominees of the political party whose candidates for President and Vice President receive the highest number of votes shall be deemed the elected presidential electors and there after they shall perform the duties of presidential electors required by law and the Constitution of the United States (§ 298.020).

C. STATUTORY INSTRUCTIONS

The presidential electors so chosen shall convene at the seat of government on the 1st Monday after the second Wednesday in December next after their election, at 2:00 p.m., or on such other date the Congress of the United States may by law hereafter provide (§ 298.030). The presidential electors, when convened, shall vote by ballot for one person for President and one person for Vice President, one of whom, at least, shall not be an inhabitant of the State. The presidential electors shall vote only for the nominees for President and Vice President of the party that prevailed in the State in the preceding general election (§ 298.050).

NEW HAMPSHIRE

Presidential Electors: 4

A. NOMINATION

(1) *Major parties*

Not earlier than the third Tuesday of September following any primary and not later than the first Tuesday of October, upon the call of the chairman of the State committee of the party, the nominees of each party for the offices of Governor, councilors, State senators, county officers, representatives, and State delegates elected shall meet in State convention for the purpose of nominating presidential electors nominated by the convention shall be certified to the Secretary of State by the chairman and the clerk of the convention. Upon

receipt of the foregoing certifications, the Secretary of State shall publish in some paper of general circulation the names of the persons found by him to have been chosen as candidates for presidential electors by the several parties (New Hampshire Revised Statutes Annotated, § 667:21).

(2) *Minor and new parties*

As an alternative to nomination by party primary, a candidate may have his name placed on the ballot by submitting the requisite number of nomination papers. This alternative would appear to apply to political organizations which at the preceding State general election received less than 3 percent of the total number of votes cast for the office of Governor (§§ 652:11 and 655:40). For candidates for President and Vice President 3,000 names of legal voters are required, and 1,500 signatures from each congressional district are required in obtaining the requisite 3,000 (§ 655:42). The nomination papers are to be filed with the Secretary of State no later than 5:00 p.m. on the day of the primary (§ 655:43 I) (Sept. 11, 1984).

Independent candidates have to submit nomination papers as an alternative to nomination by party primary. The nomination papers must contain 3,000 names, of which 1,500 must be from each congressional district. The nomination papers are to be filed with the Secretary of State no later than 5:00 p.m. of the primary (§ 655:40-§ 655:43) (Sept. 11, 1984).

B. NAMES ON GENERAL ELECTION BALLOTS

The names and addresses of the presidential electors shall not be printed on the ballot; but, in lieu thereof, the names of a party's candidates for President and Vice President shall be printed under the designation "Electors of President and Vice President of the United States." If a nomination has been made by nomination papers, the words "Nom. Papers" shall be added to the name of the political party (§ 656:4). In the case of electors of President and Vice President, one square shall be placed on the ballot opposite the designation "Electors of President and Vice President of the United States" (§ 656:8).

C. STATUTORY INSTRUCTIONS

The electors of the President and Vice President shall meet in the State House in Concord on the day fixed by law and by 12:00 o'clock at midday shall give notice to the Governor and council of the number of electors present who accept the office (§ 660:27). The electors shall give their votes for President and Vice President on said day and shall proceed according to law (§ 660:29).

NEW JERSEY

Presidential Electors: 16

A. NOMINATION

(1) *Major parties*

In presidential years the State committee of a political party shall meet at the call of its chairman, within 1 week following the closing of the party's national convention, for the

purpose of nominating candidates for electors of President and Vice President. The State committee shall certify such nomination in a written or printed certificate of nomination (New Jersey Statutes Annotated, § 19:13-15).

(2) *Minor and new parties*

A political party which fails to poll at any primary election at least 10 percent of the votes cast in the State for members of the general assembly at the next preceding general election shall not be entitled to have a party column on the official ballot at the ensuing election for which the primary election was held. In such a case the names of the candidates so nominated at the primary election shall be printed in the column designated "nomination by petition", followed by the designation of the political party of which the candidates are members (§ 19:5-1).

Nomination petitions shall be signed by qualified voters of the State, equal in number to 2 percent of the entire vote cast for members of the general assembly at the last preceding general election, except that no more than 800 signatures are required for officers to be elected by the State at large (§ 19:13-5).

Petitions nominating electors of President and Vice President may contain the names of candidates for President and Vice President for whom such electors are to vote (§ 19:13-4).

(3) *Acceptance*

A candidate nominated by petition shall sign a written acceptance thereof under oath, which shall be attached to the nomination petition (§ 19:13-8).

(4) *Oath of allegiance*

Attached to the nomination papers shall also be the oath of allegiance, stating that the candidate does not believe in the use of force or other unlawful or unconstitutional means to overthrow or make any change in the government established in the United States or in the State (§ 19:13-8). Nominating petitions with attachments should be filed with the Secretary of State at least 40 days before the primary (§ 19:13-9).

B. NAMES ON GENERAL ELECTION BALLOTS

When presidential electors are to be elected, their names shall not be printed upon the ballot, either paper or voting machine, but in lieu thereof, the names of the candidates of their respective parties or political bodies for President and Vice President of the United States shall be printed together in pairs under the title "Presidential Electors for." All ballots marked for the candidates for President and Vice President of a party or political body shall be counted as votes for each candidate for presidential elector of such party or political body (§ 19:14-8.1).

C. STATUTORY INSTRUCTIONS

The electors shall convene at the Statehouse at Trenton on the day appointed by Congress for that purpose and proceed, after choosing their officers, to perform the duties required of them by the Constitution and laws of the United States (§§ 19:36-1 to 36-3).

NEW MEXICO

Presidential Electors: 5

A. NOMINATION**(1) Major parties**

On or before June 1 of each year in which the President and Vice President of the United States are to be elected, the Secretary of State shall send written notice to the State chairman of each qualified political party in New Mexico setting forth the method and requirements for nominating and electing presidential electors at the general election (New Mexico Statutes Annotated, § 1-15-1). Presidential electors shall not be nominated at the primary election (§ 1-15-2). Any qualified political party in New Mexico desiring to have candidates for President and Vice President on the general election ballot in a presidential election year shall, at a State party convention held in the year of the election, choose from the voters of the party the number of presidential electors required by law and no more. The presidential electors shall be nominated by the State convention according to the rules of that party on file with the Secretary of State. Upon the nomination of presidential electors, the chairman and secretary of the convention shall certify the names and addresses of the nominees not less than fifty-six days before the election to the Secretary of State (§ 1-15-3).

(2) Minor parties and new parties

To qualify as a political party in New Mexico, each political party through its governing body shall adopt rules and regulations providing for the organization and government of that party and shall file the rules and regulations with the Secretary of State. Such rules and regulations shall be adopted uniformly throughout the State by the county organizations of that party and shall be filed with the county clerks. Each county political party organization may adopt such supplementary rules and regulations insofar as they do not conflict with the uniform State rules and regulations or do not abridge the lawful political rights of any person. Such supplementary rules shall be filed with the county clerk and the Secretary of State in the same manner as other rules are filed.

Beginning with the general election in 1976, if two successive general elections are held without at least one candidate from the qualified political party on the ballot, the party will no longer be considered "qualified" for purposes of the election code. After giving notice by registered mail to the State chairman of the party at his last known address, the Secretary of State shall remove all material dealing with the political party from his file of parties qualified in New Mexico. The Secretary of State shall then notify all county clerks of the removal and nonqualification of the political party. The county clerk is then authorized to remove such rules and regulations from the county files. The county clerk shall immediately notify by mail all voters registered as members of such party of the removal and nonqualification of the party. To requalify, the party must again comply with the provi-

sions of the election code dealing with filing requirements for political parties (§ 1-7-2).

The Secretary of State and the county clerk shall not accept the rules and regulations of any political party for filing unless such rules and regulations provide:

- (a) a method for nominating candidates for the general election;
- (b) a method for calling and conducting conventions;
- (c) a method for selection of delegates to conventions;
- (d) a method for selection of State central committee members;
- (e) a State chairman and other party officers, and all other members of governing bodies of the party;
- (f) a method for filling vacancies in party offices, committees and other governing bodies;
- (g) the powers and duties of party officers, committees and other governing bodies;
- (h) for the structure of the State and county party organizations;
- (i) that meetings to elect any party officers, including delegates, shall be held at a public place during the week specified by the State party chairman;
- (j) that notice of such meetings shall be published by the officers of the county party organization in a newspaper of general circulation at least 14 days prior to the meeting and the notice shall specify the time, date and place for holding the meeting; and
- (k) a method for amending the party rules and regulations (§ 1-7-3).

Each political party shall file its rules and regulations within thirty days after its organization and at least seventy-one days before any election in which it is authorized to participate (§ 1-7-4).

Upon the nomination of presidential electors, the chairman and secretary of the convention shall certify the names and addresses of the nominees not less than fifty-six days before the election to the Secretary of State. The Secretary of State shall record the nominees' names in his office as the presidential elector nominees of that party (§ 1-15-3).

(3) *Independent candidates*

Nomination as an independent candidate shall be made by filing a declaration of independent candidacy and a nominating petition signed by a number of voters equal to at least 3 percent of the total number of votes cast in each of at least fifteen counties in the State and not less than 5 percent of the total number of votes cast in the State. The Secretary of State shall prescribe and furnish the form for the declaration of independent candidacy for the offices of President and Vice President (§§ 1-8-48 and 1-8-51(B)).

Persons filing declarations of independent candidacy for President shall also file the names and addresses of the required number of presidential electors who intend to vote for the independent candidate in the Electoral College (§ 1-8-49).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the presidential elector nominees chosen at a State convention shall not be placed upon the general election ballot. The Secretary of State shall certify to the various county clerks for inclusion upon the general election ballot the names of the persons nominated by each political party for the offices of President and Vice President. The names of nominees for President and Vice President for each political party shall be printed together in pairs upon the general election ballot. A vote for any such pair of nominees shall be a vote for the electors of the political party by which such nominees were named. "The presidential elector nominees of the party whose nominees for President and Vice President of the United States receive the highest number of votes at the general election shall be deemed the elected presidential electors . . ." (§ 1-15-4).

C. STATUTORY INSTRUCTIONS

Presidential electors for the State shall perform the duties of the presidential electors required by law and the Constitution of the United States.

Presidential electors of the State shall meet at 11:00 a.m. in the office of the Secretary of State on the day fixed by the laws of the United States for presidential electors to cast their ballots for President and Vice President of the United States. At such meeting the presidential electors shall organize by choosing a presiding officer and a secretary. If the full number of electors required by law are not present at such meeting for any reason, those presidential electors present shall, from a list of names nominated by the State chairman of that party, forthwith choose electors from the voters of the State party.

The presidential electors of the State shall meet at noon in the office of the Secretary of State on the day fixed by the laws of the United States for presidential electors to cast their ballots for President and Vice President and shall proceed to vote by ballot for President and Vice President of the United States and to certify the results of such election in accordance with Constitution and laws of the United States. The presidential elector chosen as secretary shall keep a journal of the proceedings and deposit the journal in the office of Secretary of State, where it shall be kept on file. All presidential electors shall cast their ballots in the electoral college for the candidates of the political party which nominated them as presidential electors.

Any presidential elector who casts his ballot in violation of the provisions is guilty of a fourth degree felony (§§ 1-15-5 to 1-15-9).

NEW YORK

Presidential Electors: 36

A. NOMINATION**(1) Major parties**

Nominations of candidates for the office of elector of President and Vice President of the United States, one for each

congressional district and two at large, shall be made by the State committee (New York Election Law (McKinney's), § 6-102).

(2) *Minor and new parties*

A political group which at the last preceding gubernatorial election did not poll at least 50,000 votes must make its nominations as an "independent body" (§ 1-104(3), (12)).

When an "independent body" becomes a political party by polling at least 50,000 votes for Governor, nominations shall, prior to and including the first general election thereafter, be made as provided by the rules of the party. A certificate of the nominations containing information on its candidates and the party, plus a copy of its rules, shall be signed by the presiding officer and the secretary and filed not later than seven weeks preceding the general election in the office of the State board of elections if for an office to be voted for in a district greater than one county (§§ 6-128, 6-144).

(3) *Independent candidates*

A person may become a candidate of an independent body by filing a petition in the office of the State board of elections (§§ 6-138, 6-144).

An independent nominating petition for candidates to be voted for by all the voters of the State must be signed by at least 20,000 voters, of whom at least 100 shall reside in each of one half of the congressional districts of the State (§ 6-142).

A person designated as a candidate for nomination or for party position, or nominated for an office, otherwise than at a primary election, may, in a certificate signed and acknowledged by him, decline the designation or nomination. However, if designated or nominated for a public office other than a judicial office by a party of which he is not a duly enrolled member or if designated or nominated for a public office other than a judicial office by more than one party or independent body or by an independent body alone, the person shall in a certificate signed and acknowledged by him accept the designation or nomination as a candidate of each party or independent body other than that of the party of which he is an enrolled member; otherwise, the designation or nomination shall be null and void (§ 6-146).

B. NAMES ON GENERAL ELECTION BALLOTS

In voting for presidential electors, a voter may vote a write in ballot made up of the names of persons in nomination by different parties, or partially of names of persons in nomination by one or more parties and partially of names of persons not in nomination, or wholly of names of persons not in nomination by any party (§ 8-308). The county board of elections shall publish at least six days before an election a list containing the name and residence of every candidate for public office, except those for the office of presidential electors and city officers, to be voted for within its jurisdiction. The candidates for the office of presidential electors shall only be described as a specific number of electors, nominated to support the party candidates, naming them, for the office of President and Vice President (§ 4-122). In the case of bal-

lots for presidential electors, clerks or inspectors shall enter on their tally sheet in the appropriate places the number of void and the number of wholly blank ballots and shall tally the votes upon the split ballots. When all the votes for presidential electors shall have been canvassed, the tally shall be verified by clerks or inspectors (§ 9-118). The board of elections shall transmit by mail or cause to be delivered personally to the State board of elections and attorney general each a certified copy of the statement of the canvassing board relating to the offices of electors of President and Vice President (§ 9-214).

C. STATUTORY INSTRUCTIONS

The electors shall convene at the State capitol on the first Monday after the second Wednesday in December next following their election. They shall organize and then name in separate ballots the persons voted for as President and Vice President (§§ 12-104, 12-106).

NORTH CAROLINA

Presidential Electors: 13

A. NOMINATIONS

(1) *Major parties*

Presidential electors shall be nominated by major parties at a State convention of each party unless otherwise provided by the plan of organization of the political party. One presidential elector shall be nominated from each congressional district and two from the State at large (General Statutes of North Carolina, § 163-1(c)).

(2) *Minor and new parties*

A minor party, or one which had failed to poll for its candidate for Governor or for presidential electors, at least 10 percent of the entire vote cast for such officers at the last preceding general election, would have to reorganize in the same manner as is required to create a new party (§ 163-96). Any group may form a new party by filing a petition setting forth its intention to organize a new statewide party with the State board of elections on or before June 1 preceding the general election, signed by 5,000 voters. Nominees of this group for State, congressional and national offices only for the first general election after its organization must be furnished to the board by July 1 prior to the general election §§163-96; 163-98). Such nominations shall be made at a nominating convention (§ 163-98). Presidential electors are not to be nominated by primary election but are to be nominated by a State Convention unless otherwise provided by the plan of organization of the political party (§ 163-1(c)).

(3) *Independent candidates*

A nominating petition, accompanied by the affidavit of the candidate that he seeks the independent nomination and is not affiliated with any political party, should be filed with the State board of elections on or before the last Saturday in May. Such petition should be signed by qualified voters equal in number to at least 10 percent of those who voted for Governor in the last gubernatorial election in the same polit-

ical division (§ 163-122). Candidates for presidential electors cannot be nominated by this method.

B. NAMES ON GENERAL ELECTION BALLOTS

The names of candidates for electors of President and Vice President of any political party shall not be placed on the ballot but shall be filed with the Secretary of State. The names of the candidates for President and Vice President are placed on the ballot. A vote for such candidates, however, shall be counted as a vote for the electors of the party by which such candidates were named (§§ 163-140; 163-209).

C. STATUTORY INSTRUCTIONS

The electors shall meet at the capitol in Raleigh at noon on the first Monday after the second Wednesday in December next after their election and give their votes on behalf of the State for President and Vice President (§ 163-210).

On or before the date fixed for the meeting of the electors, the Governor shall send by registered mail to the Administrator of General Services, a certificate under the great seal of the State setting forth the names of the persons chosen as presidential electors for this State and the number of votes cast for each. At the same time he shall deliver to the electors six duplicate-originals of the same certificate, each bearing the great seal of the State. At any time prior to receipt of the certificate of the Governor or within forty-eight hours thereafter, any person elected to the office of elector may resign by submitting his resignation, written and duly verified, to the Governor. Failure to so resign shall signify consent to serve and to cast his vote for the candidate of the political party which nominated such elector.

In case of the absence, ineligibility or resignation of any elector chosen, or if the proper number of electors shall for any cause be deficient, those present at the required meeting shall forthwith elect from the citizens of the State a sufficient number of persons to fill the deficiency, and the persons chosen shall be deemed qualified electors to vote for President and Vice President of the United States (§ 163-210).

Any presidential elector having previously signified his consent to serve as such, who fails to attend and vote for the candidate of the political party which nominated such elector for President and Vice President of the United States at the time and place indicated above (except in case of sickness or other unavoidable accident) shall forfeit and pay to the State \$500, to be recovered by the Attorney General in the Superior Court of Wake County. In addition to such forfeiture, refusal or failure to vote for the candidates of the political party which nominated such elector shall constitute a resignation from the office of elector, his vote shall not be recorded, and the remaining electors shall forthwith fill such vacancy as hereinbefore provided (§ 163-212).

NORTH DAKOTA

Presidential Electors: 3

A. NOMINATION**(1) Major parties**

State party conventions are to nominate the legal number of candidates for their parties for the offices of presidential electors (North Dakota Century Code, § 16.1-03-14). The names of the candidates nominated for presidential electors shall be certified by the chairman and secretary of the convention to the Secretary of State to be placed upon the general election ballot (*Ibid.*).

All nominations made by a convention are to be certified. And the certificate is to be delivered by the secretary or the president of the convention by registered or certified mail to the Secretary of State (§ 16.1-13-17).

(2) Minor and new parties

A party which cast 5 percent of the total votes cast for Governor at the last general election may participate in the primary (§ 16.1-11-30(3)).

Other parties must file with the Secretary of State a petition signed by 7,000 or more electors of the State, on or before the fifty-fifth day prior to a primary election asking that a ballot be provided for such party, naming it and stating the platform principles thereof. Candidates of such party shall be entitled to the same rights and privileges as those of other parties (§ 16.1-11-30 (4)).

Such parties shall hold conventions at a time and place designated by the party State committee and nominate presidential electors

(3) Independent candidates

In order to have his name appear in the "independent nominations" column on the general election ballot, the candidate must file a certificate of nomination by petition with the Secretary of State. The certificate of nomination for an office to be filled by electors of the entire State must contain 1,000 signatures (§ 16.1-12-02). The certificate of nomination for presidential electors may contain the names of more than one nominee (§ 16.1-12-03). The certificate of nomination is to be filed with the Secretary of State by 4 p.m. on the fifty-fifth day before the general election (§ 16.1-12-041).

B. NAMES ON GENERAL ELECTION BALLOTS

In presidential election years the ballot provided for in section 16.1-06-05 shall include the designation of the office of president and vice president as the first listing of the continuous listing of the designation of each office to be voted for. The names of presidential electors, presented in one certificate of nomination, shall be arranged in a group enclosed in brackets under the designation of the office of president and vice president. To the right and opposite the center of each group of electors' names shall be printed in bold type the surname of the presidential candidate represented and in line with such surname shall be placed a single square. A mark within such square shall be designated as a vote for all the electors. The appropriate party designation shall appear, in smaller type, under the surname of the presidential candidate represented (§ 16.1-06-07.1).

C. STATUTORY INSTRUCTIONS

The electors shall meet at one o'clock p.m. in the Office of the Governor in the State Capitol on the first Monday after the second Wednesday in December next following their election for the purpose of casting their ballots. The Secretary of State shall notify the electors of said meeting. They must fill any vacancy in the office of elector by ballot by a plurality of votes (§§ 16.1-14-04, 16.1-14-05).

OHIO

Presidential Electors: 23

A. NOMINATION**(1) Major parties and minor parties**

Candidates for presidential elector are nominated by State conventions at a time and place determined by the State committees of the respective political parties (Ohio Revised Code, title 25, § 3513.11).

Names of a party's candidates for presidential electors shall be certified by the chairman and secretary of the convention to the Secretary of State within 5 days after the holding of the convention.

A political party is defined as any group of voters which, at the last preceding regular State election, polled for its candidate for Governor in the State or nominees for presidential electors at least 5 percent of the entire vote cast for such office or which filed with the Secretary of State, subsequent to any election in which it received less than 5 percent of such vote, a petition signed by qualified electors equal in number to at least 1 percent of the total vote for Governor or nominees for presidential electors at the last preceding election, declaring their intention of organizing a political party, the name of which shall be stated in the declaration, and of participating in the next succeeding primary election, held in even-numbered years, that occurs more than one hundred twenty days after the date of filing. No such group of electors shall assume a name or designation which is similar, in the opinion of the Secretary of State, to that of an existing political party as to confuse or mislead the voters at an election. When any political party fails to cast 5 percent of the total vote cast at an election for the office of Governor or President it shall cease to be a political party (§ 3517.01). When such petition is filed with the Secretary of State, the new party comes into legal existence on the date of filing (§ 3517.012). New parties are entitled to hold a primary election, held in even-numbered years that would occur more than 120 days after the date of the filing of the petition (*Id.*).

(2) Independent candidates

The nominating petition of an independent candidate for the offices of President and Vice President of the United States shall be signed by at least five thousand qualified electors, provided that no petition shall be accepted for filing if it purports to contain more than fifteen thousand signatures, and must be accompanied by a slate of presidential electors (§ 3513.257). The nominating petition must be filed with the

Secretary of State no later than 4:00 p.m. of the seventy-fifth day before the day of the primary election (*Id.*).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of candidates for electors of President and Vice President shall not be placed on the ballot. In place of their names there shall be printed on the ballot the names of the candidates for President and Vice President, respectively. A vote for any of such candidates shall be a vote for the electors or the party or petition by which such candidates were named and whose names have been filed with the Secretary of State (§ 3505.10).

C. STATUTORY INSTRUCTIONS

The electors shall meet at the State capitol, organize, and discharge all the duties enjoined upon electors by the Constitution and laws of the United States (§ 3505.39).

A presidential elector elected at a general election shall, when discharging the duties enjoined upon him by the Constitution or laws of the United States, cast his electoral vote for the nominees for President and Vice President of the political party which certified him to the Secretary of State as a presidential elector pursuant to law (§ 3505.40).

OKLAHOMA

Presidential Electors: 8

A. NOMINATION

(1) *Major parties*

The nominees for presidential elector "of any recognized political party shall be selected at a statewide convention of said party in a manner to be determined by said party" and must be certified by the state chairman to the secretary of the State election board no fewer than 90 days nor more than 180 days prior to the election (Oklahoma Statutes Annotated, title 26, § 10-101).

A "recognized political party" is defined to include those parties with candidates on the 1974 general election ballot, and "those parties which shall be formed according to law" (26 § 1-107).

A party ceases to be a "recognized party" when its nominee for Governor or nominees for electors for President and Vice President fail to receive at least ten percent (10%) of the vote cast for said offices (26, § 1-109).

(2) *Minor and new parties*

No distinction is made between major and minor parties. New parties may be formed and secure ballot positions except between July 1 and November 15 of even numbered years. To secure recognition a notice of intent to form a political party must be filed with the secretary of the State election board and within 90 days thereafter petitions filed containing signatures of registered voters equal to 5 percent of the vote cast in last general election, either for governor or for electors for President and Vice President (26, § 1-108).

(3) *Independent candidates*

Slates of uncommitted electors and electors pledged to independent candidates can qualify for a position on the ballot by filing a petition with the secretary of the State election board by July 15. These petitions must be signed by a number of registered voters equal to 3 percent of the vote cast in the last presidential election. If the State election board determines that the petitions are sufficient, the candidate must certify the names of his running mate and the electors pledged to his candidacy (26, §§ 10-101; 10-101.1).

B. NAMES ON GENERAL ELECTION BALLOT

The names of the electors are bracketed adjacent to the names of the candidates for President and Vice President to whom they are pledged (26, § 10-105).

C. STATUTORY INSTRUCTIONS

Electors committed to a candidate or the candidate of a party must take an oath to cast their ballots for the candidates on whose slate they run (26, §§ 10-101.1; 10-102). Violation of the oath is a misdemeanor punishable by a fine of not more than one thousand dollars (26, § 10-109). Electors are to meet at 10:00 a.m. of the day appointed by Congress in the office of the Governor to perform such duties as required by law, including filling any vacancy in the office of electors (26, §§ 10-107; 10-108).

OREGON

Presidential Electors: 7

A. NOMINATION

(1) *Major parties*

Major party is defined as a political party which "polled for its candidates for presidential electors at the last general election, at least 20 percent of the entire vote cast for that office" (Oregon Revised Statutes, § 48.006). Each major political party shall select [manner not specified] a number of candidates for elector of President and Vice President equal to the total number of Senators and Representatives to which this State is entitled in Congress (Oregon Revised Statutes, § 248.355).

The party shall certify the names of the candidates for elector to the Secretary of State at least 70 days prior to the presidential election (§ 248.355).

(2) *Minor and new parties*

A minor party is defined as a party which received for one of its candidates in the last statewide election a number of votes equal to 5 percent of the total vote cast in the electoral district for which the nomination is made for all candidates for Representative in Congress at the last general election (§ 248.008). Such parties may nominate candidates for presidential electors by filing a certificate of nomination with the Secretary of State signed by the presiding officer and secretary of a nominating convention of the party containing the names, addresses, and offices for which nominated, the name of the party, and in the case of presidential electors the names of the candidates they represent may be added

(§ 249.720). Certificates should be filed no later than 70 days prior to the election (§ 249.702).

(3) *Independent candidates*

Independent candidates may be nominated by an assembly of electors or by petition. An assembly of electors is an organized body of not less than 1,000 electors of the state for a statewide nomination (§ 249.735-(1)). Notice must be given at least 10 days prior to the assembly in three newspapers of general circulation and must include the names of at least 25 sponsors. Signatures must be certified by the appropriate county clerks (§ 249.735(2)-(5)). A certificate of nomination must be filed with the Secretary of State no later than the 70th day prior to the general election (§ 249.722). The county clerk is to certify the minutes of the assembly, and such certificate of the county clerk is to be filed along with the certificate of nomination (§ 249.735 (5)).

A certificate of nomination by petition must be in essentially the same form and accompanied by a petition signed by a number of registered voters, signatures certified by the county clerks, equal in number to 3 percent of the vote cast in the last presidential election (§ 249.740). Certificates of nomination by assembly or petition must be filed not later than the 70th day prior to the election (§ 249.722).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of candidates for President and Vice President of the United States are printed in groups together, under their political party designations. Each vote for candidates for President and Vice President shall be counted as one vote for the group of presidential electors supporting the candidates for President and Vice President designated by the voter as his choice (§ 250.110).

C. STATUTORY INSTRUCTIONS

Each elector shall at the time of his selection sign a pledge that, if elected, he will vote in the Electoral College for the candidates of his party for President and Vice President (§ 248.355). Such pledges are to be filed with the Secretary of State at least 70 days before the presidential election (*Ibid.*).

The duties of electors as defined by statute are:

The electors of President and Vice President shall convene at noon at the State capitol on the first Monday after the second Wednesday in December following their election. If there is any vacancy in the office of an elector caused by death, refusal to act, neglect to attend or otherwise, the electors present immediately shall fill it by plurality of voice votes. When all the electors have appeared or the vacancies have been filled, the electors shall perform the duties required of them by the Constitution and laws of the United States (§ 248.370).

PENNSYLVANIA

Presidential Electors: 25

A. NOMINATION

(1) *Major parties*

The names of each political party for the office of President shall within 30 days after his nomination by the national convention, nominate as many persons to be the candidates of his party for the office of presidential elector as the State is entitled to. Names of such persons shall be certified immediately by the nominee to the Secretary of the Commonwealth. If the candidate for the office of President fails to so nominate, then the party's nominee for Vice President shall make the nominations (Pennsylvania Statutes Annotated, title 25, § 2878).

(2) *Minor party or new party or independent candidate*

This method of nominating candidates is termed "Nomination of candidates by political bodies which do not qualify as political parties." A "political party" is defined as a party or political body, one of whose candidates at the general election next preceding the primary polled in each of at least 10 counties of the State not less than 2 percent of the largest entire vote cast in each of said counties for any elected candidate, and polled a total vote in the State equal to at least 2 percent of the largest entire vote cast in the State for any elected candidate (25, § 2831(a)).

(3) *Nomination papers*

Candidates of political bodies which do not qualify as political parties should file nomination papers with the Secretary of the Commonwealth (25, §§ 2911(a); 2913(a)). More than one candidate may be nominated by one nomination paper. Signatures are required of electors equal in number to 2 percent of the largest entire vote cast for any elected candidate in the State in the last preceding general election (25, § 291(b)(c)). A filing fee of \$50 shall be paid to the Secretary of the Commonwealth (25, § 2875). Nomination papers for "political bodies" may contain nominations for presidential electors and the names of candidates for President and Vice President of such "political bodies" (25, § 2912).

Affidavit of each candidate for presidential elector should be attached to nomination papers, stating *inter alia* he is eligible for office for which he consents to be a candidate, that he will not violate the law concerning corrupt election practices, and that his name has not been presented as a candidate to run in the primary (25, § 2911(e)).

B. NAMES OF GENERAL ELECTION BALLOTS

The names of electors shall not be printed on the ballot, but in lieu thereof, the names of candidates of their respective parties for President and Vice President (25, § 2963(c)). Write-ins for electors are permitted (25, § 2963(a)). Votes are counted for electors either as a group or as individuals and certificates of election are issued by the Secretary of the Commonwealth (25, §§ 3056, 3063, 3166).

C. STATUTORY INSTRUCTIONS

The electors shall assemble at the seat of government of the Commonwealth at noon on the day which is or may be directed by the Congress of the United States and perform the duties enjoined upon them by the Constitution and laws of

the United States (25, § 3192). Vacancies are filled by voice vote of those electors present (25, § 3193).

RHODE ISLAND

Presidential Electors: 4

A. NOMINATION

(1) *Major parties*

Electors are nominated at a State convention of delegates representing a political party (General Laws of Rhode Island, § 17-12-13).

There shall be held not later than October 14 of every even year a State convention for each political party. The nominees of a party for Senator and for Representatives in Congress, for the five general offices, and for membership in the general assembly shall be delegates to the State convention of said party. In presidential election years, such conventions shall select the party nominees for presidential electors and their names shall be placed on the ballot labels for the forthcoming election. Such State convention shall also be for the purpose of adopting a platform for its party and for the transaction of such other business as may properly come before said convention (§ 17-12-13).

(2) *Minor and new parties*

A minor party is one which at the preceding general election failed to nominate a candidate for Governor or which did nominate such candidates but whose candidates failed to poll at least 5 percent of the entire vote cast in the State for Governor in said election (§ 17-1-2(f)). Candidates of minor parties shall be nominated by the same procedure as for independent candidates.

(3) *Independent candidates*

Independent and minor party candidates are required by statute to file a declaration of candidacy with the Secretary of State during the first 10 days in June (§ 17-16-1). Candidates for presidential elector are furnished nomination papers by the Secretary of State (§§ 17-16-3, 17-16-4). Nomination papers must be signed by 1,000 voters, each county of the State being represented by at least 25 signatures with separate signature sheets for each city and town (§§ 17-16-8, 17-16-9). Nomination papers must be filed with the Secretary of State no later than 10 days before the primary, which is held on the second Tuesday after the first Monday in September, i.e., September 9, 1980 (§§ 17-15-1, 17-16-12). Nomination papers must be submitted to local election boards for certification of signatures at least 5 days before the filing deadline (§17-16-11). The filing deadlines are of dubious constitutionality insofar as they apply to independent presidential candidates and minor party presidential candidates. In *McCarthy v. Noel*, 420 F. Supp. 799 (D. R.I. 1976), a United States district Court held that section 17-16-11, which then required nominating papers to be filed 30 days before the primary, was an unconstitutional burden on the right of independent candidates and their supporters to access to the ballot.

B. NAMES ON THE GENERAL ELECTION BALLOT

The names of the candidates for President and Vice President appear on the voting machine with a single lever for voting for the slate of electors, but the statute requires that some means be provided for voting for presidential electors individually (§ 17-19-3(d)). Absentee ballots list only the presidential and vice presidential candidates (§ 17-20-17).

C. STATUTORY INSTRUCTIONS

The electors shall meet in the statehouse in Providence on the first Monday after the second Wednesday in December and proceed to perform the duties required of such electors by the Constitution and the laws of the United States (§ 17-4-11). Vacancies are filled by plurality vote of those present (*Id.*).

SOUTH CAROLINA

Presidential Electors: 8

A. NOMINATION

(1) *Major parties*

Presidential electors are nominated by the respective party State committees, composed of one member from each county, elected by the party county conventions, plus the State chairman and State vice chairman who are elected by a party's State convention (Code of Laws of South Carolina, § 7-9-90).

(2) *Minor or new parties*

Any party may obtain certification as a political party for the purpose of nominating candidates to be voted for in the general election by filing with the State Election Commission a petition or petitions for such certification signed by 10,000 or more registered electors residing in this State, giving the name of the party, which shall be substantially different from the name of any party previously certified (§ 7-9-10). Once a party is certified as set out above, it remains certified and its candidates may be nominated either at party primary elections or party conventions (§§ 7-9-10; 7-11-10). However, nominations of candidates for presidential electors are made by a party State committee (§ 7-9-90).

(3) *Independent candidates*

Independent candidates qualify by filing a nominating petition with the State election commission not later than 12:00 noon on September 18th, or if that date falls on Sunday, not later than 12:00 noon on the following Monday (§ 7-13-350). A nominating petition shall contain the signatures of 5 percent of the duly qualified electors from the geographical area involved but no candidate shall be required to furnish the signatures of more than 10,000 qualified electors (§ 7-11-70).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the candidates for President and Vice President are printed on the ballot. A vote for the names of a political party; candidates for President and Vice President is a vote for the electors of that party, the names of whom are on

file with the Secretary of State (§§ 17-13-320(c), 17-19-70, Supp.).

C. STATUTORY INSTRUCTIONS

Those persons, to the number required to be chosen, having the highest number of votes shall be declared and deemed duly appointed electors (§ 7-19-70). The presidential electors shall meet at 11:00 a.m. on the first Monday after the second Wednesday in December in the office of the Secretary of State, effect a permanent organization, fill any vacancies by a plurality, cast their ballots for President and Vice President, and make distinct lists for all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes received for each (§ 7-19-90). Each candidate for elector shall declare which candidate for President and Vice President he intends to vote for if elected. Any registered elector has the right to institute an action to enforce the requirement of the statute that the elector shall vote as declared and there are criminal sanctions. A State party executive committee may release electors pledged to support the candidate of their party when, in the judgment of the committee, it would not be in the best interest of the State for the elector to cast his ballot for such a candidate (§ 7-19-80).

SOUTH DAKOTA

Presidential Electors: 3

A. NOMINATION

(1) *Major parties*

Presidential electors are nominated at State conventions of the respective parties (South Dakota Compiled Laws, § 12-5-21). The time for holding such conventions shall be determined by the State central committee of each party (§ 12-5-17). Nominations shall be certified to the Secretary of State by officers of the convention, immediately at the close of the convention (§ 12-5-22). Certificates must be filed or mailed by registered mail by the second Tuesday in August at 5:00 p.m. (§ 12-8-6).

Delegates to party State conventions may be elected, appointed, or both elected and appointed pursuant to party rules. If elected, they are chosen at the primary election held on the first Tuesday in June, i.e., June 5, 1984. Delegates are apportioned in accordance with party rules. (§§ 12-2-1; 12-5-2). Candidates for election as delegates to the State convention from each county must file a nominating petition with the county auditor, signed by 50 registered voters or a number equal to 1 percent of the vote received by the party's candidate for Governor at the last election, whichever is less. The petition should be filed between January 20 and the first Tuesday of April (§§ 12-6-4; 12-6-7.1).

(3) *Minor and new parties*

A new political party may be organized and may participate in the primary election by filing with the Secretary of State at least 120 days before the date of the primary election a written notice, signed by at least 10 percent of the electors of

the State as shown by the total vote cast for Governor at the last preceding election. Such notice shall contain:

- (a) the name of the proposed party,
- (b) a statement that the subscribers thereto have affiliated one with another for the purpose of forming such party, and
- (c) that the subscribers to such notice intend to nominate candidates for State offices (§ 12-5-1).

Thereupon such party shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election (§ 12-5-1).

A party whose candidate for Governor at the last preceding general election failed to receive the required 10 percent of the total votes cast in the State for Governor loses its status as a political party and must file a written notice with the Secretary of State signed by at least 10 percent of the electors in the State in the same manner as a new party (§§ 12-1-3(3); 12-5-1).

All political parties organized to participate in primary elections under 12-5-1 nominate candidates for presidential elector at their State convention (§§ 12-5-2; 12-5-21). Candidates affiliated with a party that does not participate in the primary may qualify for the ballot in the same manner as an independent candidate (§ 12-7-1).

(3) *Independent candidates*

A person may become an independent candidate by filing a certificate of nomination with the Secretary of State signed by a number of voters equal to 1 percent of the total vote cast in the last gubernatorial election. The certificate must be filed not earlier than May 1 at 8:00 a.m. and not later than 5:00 p.m. on the first Tuesday in August (§ 12-7-1). An independent candidate for President shall file a declaration of candidacy and certification of his selection for vice president with Secretary of State prior to circulation of any nomination petitions (*Id.*).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the electors are listed below the surnames of the candidates for President and Vice President for whom they are pledged. A box precedes the names of the presidential and vice presidential candidates. (§ 12-16-6).

C. STATUTORY INSTRUCTIONS

Electors shall meet at the seat of government on the day preceding the day fixed by Congress to elect a President and Vice President, and then and there discharge the duties enjoined upon them as such by the Constitution and laws of the United States and this State (§§ 12-24-1; 12-24-3).

TENNESSEE

Presidential Electors: 11

A. NOMINATION

(1) *Major parties*

For each congressional district there shall be elected one elector who is a resident of the district and two electors are

elected at large (§ 2-15-102). Electors are chosen according to the rules of the political parties. Only statewide political parties appear on the ballot in elections for an office to be voted on by voters of more than one county (§ 2-13-101). A "statewide political party" is defined as a party at least one of whose candidates for an office to be elected by the voters of the entire State in the past four calendar years received a number of votes equal to five percent of the vote cast in the last gubernatorial election (§ 2-1-105(28)(A)). New political parties formed by petition in the manner described below qualify as "statewide political parties" for one year (§ 2-1-105(28)(B)).

(2) New parties

New parties may qualify by filing a petition signed by registered voters, acknowledging membership, in numbers equal to two and one half percent of the vote cast in the last gubernatorial election. The petition is to be filed with the State coordinator of elections, and the signatures must be certified by the county election commissions (§ 2-1-105(28)(B)).

The first State executive committee of a new political party shall be elected at a State convention after it becomes a "statewide political party." Their names must be certified to the coordinator of elections at least 90 days prior to the August election (§ 2-13-107).

(3) Independent candidates

Candidates who are not to be placed on the ballot as nominees of a qualified political party are listed as "independent candidates." Such candidates qualify by filing nominating petitions with the State coordinator of elections no later than twelve noon on the first Thursday in the second calendar month prior to the general election, i.e., September 6, 1984 (§ 2-5-101). Such petition must be signed by the candidate and twenty five (25) electors qualified to vote for the office (§ 2-5-101(b)).

B. NAMES ON GENERAL ELECTION BALLOT

Names of presidential electors are grouped according to parties "and preceded by the words, 'Electors for (giving the name) candidate for President and for (giving the name) candidate for Vice President' so that the voter can vote for the entire group of electors chosen by any political party by making a cross mark (X) or operating a single lever on a voting machine" (§ 2-5-208).

C. STATUTORY INSTRUCTIONS

The electors are to meet at the seat of government of the State at the time prescribed by the laws of the United States. If any elector fails to appear before 9:00 a.m. on the appointed day, those electors present fill the vacancy. If the candidates of the party which nominated the electors are alive, they shall cast their ballots for them. If either the presidential candidate or both the presidential and vice presidential candidates are dead, they may vote as they see fit. If the presidential candidate is alive and the vice presidential candidate is dead, the electors shall vote for the presidential candidate of their party but may cast their

ballot for Vice President as they see fit (§§ 2-15-101 to 2-15-105).

TEXAS

Presidential Electors: 29

A. NOMINATION

(1) *Major parties*

Candidates for the office of presidential elector may be nominated by such method as the parties, in their discretion, may prescribe (Vernon's Civil Statutes of Texas, Annotated Election Code, Art. 13.43b). In the past electors have been nominated at State conventions. Such conventions should be held some time between the second and fourth Tuesdays after the second primary election date. The exact date is to be specified by the State executive committee of each party (Art. 13.58). The names of the candidates of a party for President and Vice President and for presidential electors shall be certified by the chairman and secretary of the State committee no later than the 40th day prior to the general election (Art. 11.04).

(2) *Minor parties*

A political party which received more than 2 percent of the vote but less than two hundred thousand votes in the last gubernatorial election may choose to select candidates in a primary or by convention. If the former is utilized for selecting party nominees, the rules governing major party selection of presidential electors would apply. If a convention is used for the nomination of candidates, the State convention would be held on the second Saturday in June, i.e., June 9, 1984 (Art. 13.45 and note following; Art. 13.47).

(3) *Other minor parties and new parties*

Parties whose nominee for Governor received less than 2 percent of the total votes cast for Governor in the last preceding general election, or any new party, or any previously existing party which did not have a nominee for Governor in the last preceding general election may nominate candidates by conventions. They must file with the Secretary of State, within 20 days after the date for holding the party's State convention, the lists of participants in precinct conventions held by such parties, signed and certified by the temporary chairman of each respective precinct convention, which lists shall contain numbers of qualified voters attending such precinct conventions in an aggregate number of at least one percent of the total votes cast for Governor at the last preceding general election; or, if the number of qualified voters attending the precinct conventions is less than that number, there must be filed along with the precinct lists a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least one percent of the total votes cast for Governor at the last general election. The precinct lists and petitions shall be forwarded to the Secretary of the State by the chairman of the State executive committee of each party. The names, addresses and registration certificate numbers of those attend-

ing conventions and signing petitions must be included on the precinct lists and petitions (Art. 13.45).

Nominations of candidates for the office of presidential elector shall be made at a State convention of such parties, held on the second Saturday in June of a presidential election year, and which shall be composed of delegates selected in the various counties at county conventions held on the second Saturday in May. The county conventions shall be composed of delegates from the general election precincts of such counties elected therein at precinct conventions held in such precincts on the first Saturday in May. The State executive committee of each such party shall determine the formula by which the number of delegates to the county, district, and State conventions of that party shall be governed (Arts. 11.01a; 13.47).

(4) *Independent candidates*

An independent candidate can be placed on the ballot after a written application signed by qualified voters is addressed and delivered to the Secretary of State within 30 days after the second primary as follows: if for a State office to be voted for throughout the State, one percent of the entire vote of the State cast for Governor at the last preceding general election (Art. 13.50). The provision is not explicit as to whether candidates for the office of presidential elector can be nominated by this method. The second primary is held the first Saturday in June (Art. 13.03).

B. NAMES ON GENERAL ELECTIONS BALLOTS

The tickets of all political parties are printed on a single ballot, with each party having a column. Columns are arranged side by side and separated by a parallel rule. The names of the electors are not printed on the ballot. The names of the candidates for President and Vice President as certified by the chairman and secretary of the political party's State committee are printed on the ballot. The presidential and vice presidential candidates appear at the head of their respective party's ticket, being printed as one race. A vote for the presidential and vice presidential candidates is counted and recorded as a vote for the party's electors nominated at the State convention (Supp., Arts. 6.05; 11.02-11.04).

C. STATUTORY INSTRUCTIONS

The electors shall convene in the capitol at Austin on the first Monday after the second Wednesday in December next after their election and vote for President and Vice President. A majority of the electors present may appoint some other person to act as elector in place of an absent or disqualified elector (Art. 11.05).

UTAH

Presidential Electors: 5

A. NOMINATION

(1) *Major parties*

Candidates for presidential electors are nominated by each party at State primary conventions held during the month of June of even-numbered years (Utah Code Annotated, § 20-4-3).

(2) *Minor and new parties*

Any organization of registered voters whose organization did not participate in the last preceding November election or whose organization polled for any of its candidates in the preceding November election a total vote equivalent to less than two percent of the total vote cast for all representatives in Congress, which under a common name or designation, shall file with the Lieutenant Governor a petition signed by five hundred registered voters. The petition shall declare that signers are or desire to become members of the party or group, the name of which shall be stated, and that they desire to participate in a county organizing convention. The names of the registered voters so petitioning need not all be on one petition, but may be in one or more petitions. The petition shall be filed with the Lieutenant Governor on or before March 15th of the year in which an election is to be held. The Lieutenant Governor shall determine whether or not the required number of registered voters appears on the petition and shall certify his findings to the filing officer of the group within 30 days of the filing of the petition (§ 20-3-2).

County organizing conventions shall be held in participating counties on or before April 1st of the year in which an election is to be held. Due notice of the time and place of the convention shall be given to each petitioner residing in the county, and the petitioners shall be delegates to the convention. Delegates shall elect a county central committee, a chairman and vice chairman of opposite sex, and a secretary. Delegates to the State convention shall also be elected. One delegate shall be elected for a definite number of petitioners in each county, the number of petitioners per delegate to be determined by the group initiating the creation of the new party, but each county shall be entitled to at least one delegate (§ 20-3-2). A State organizing convention shall be held on or before April 15th of the year in which an election is to be held. Delegates to this convention, which shall consist of those delegates elected at county conventions together with the officers of the group initiating the new party, shall elect a State central committee, a chairman and vice chairman of opposite sex, and a secretary. The number of members of the central committee to which a county shall be entitled shall be in proportion to the number of petitioners residing in such county, but there shall be at least two members, a man and a woman, from each county in the State (§ 20-3-2).

On or before April 15th of the year in which an election is to be held, the State committee of the new party shall file with the Lieutenant Governor the names of the State and county chairman, vice chairmen and secretaries, together with a certificate stating that the provisions of this section have been complied with. For purposes of the next ensuing election, the party shall then be considered a political party and shall comply with all the other provisions of the laws of

Utah regarding political parties. If no national party convention is held, the names of the candidates for the office of President and Vice President of the United States shall be those designated by the State central committee of the new party (§ 20-3-2).

(3) *Independent candidates*

Presidential electors cannot be nominated by petition (*Markham v. Bennion*, 122 U. 562, 252 P. 2d 539 (1953)).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the candidates for President and Vice President shall be used on the ballot in lieu of the names of the presidential electors and a vote for President and Vice President of any political party shall be construed as vote for the presidential electors selected by such political party at its party convention (§ 20-7-5).

C. STATUTORY INSTRUCTIONS

The electors are required to meet in the office of the Secretary of State at the State capitol at 12:00 o'clock noon of the first business day next preceeding the day upon which they are required by law to meet and vote for President and Vice President. At this first meeting the electors fill any vacancy in their number. The electors meet again the next day at the office of the Secretary of State. This latter date is fixed by Congress (62 Stat. 672, 3 U.S.C. § 7) as the first Monday after the second Wednesday in December next following their appointment. Utah law requires electors to meet at noon on the day fixed by Congress. Such electors at this meeting shall proceed to the performance of their duties in conformity with the Constitution and laws of the United States (§§ 20-9-2, 20-9-3).

VERMONT

Presidential Electors: 3

A. NOMINATION

(1) *Major parties*

In presidential election years, presidential electors for major political parties shall be nominated at the party platform convention (Vermont Statutes Annotated, title 17, § 2721). Electors for all other presidential candidates shall be nominated in the manner independent candidates are nominated (*Ibid.*).

After adjournment of the platform convention of a major political party, the chairman and secretary of the convention shall promptly execute a sworn statement certifying the names, towns of residence, and correct mailing addresses of the persons nominated by the convention to serve as electors, and shall promptly file the statement with the Secretary of State, along with the written consent of each person to be a nominee for elector (title 17, § 2722).

(2) *Minor parties and new parties*

Presidential electors for candidates of minor parties and new political parties shall be nominated in the manner independent candidates are nominated (title 17, § 2721).

(3) Independent candidates

Candidates for presidential electors may be nominated by filing a consent form and a certificate of nomination with the Secretary of State not later than 5 p.m. on the forty-seventh day before the day of the general election (title 17, §§ 2386, 2401). The certificate of nomination shall contain: (1) name, (2) residence, and (3) address of each nominee for the office of elector (title 17, § 2402). The certificate of nomination shall contain 1,000 signatures of qualified voters (title 17, § 2402). For presidential and vice presidential candidates, the certificate of nomination shall contain the names of more than one candidate who may be nominated by means of the same certificate of nominations (title 17, § 2403).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the candidates for President and Vice President appear on the ballot. The names of the electors do not. A vote for the candidates for President and Vice President are votes for the electors. Should a write-in candidate for President receive the greatest number of votes, that candidate may name the electors after being notified by the Secretary of State. Candidates are arranged on the ballot alphabetically according to the surnames of the presidential candidate (title 17, § 2473).

C. STATUTORY INSTRUCTIONS

The electors shall meet at the state house on the first Monday after the second Wednesday in December next following their election, to vote for President and Vice-President of the United States, agreeably to the laws of the United States. If there is a vacancy in the Electoral College on that day, occasioned by death, refusal to act, neglect to attend, failure of a person elected to qualify, or for other cause, the other electors present shall at once fill such vacancy viva voce and by a plurality of votes. When all the electors appear or a vacancy therein is filled, the electors shall perform the duties required of them by the constitution and laws of the United States. If a vacancy occurs and is filled as aforesaid, the electors shall attach to the certificate of their votes a statement showing how such a vacancy occurred and their action thereon. The electors must vote for the candidates for president and vice-president who received the greatest number of votes at the general election (title 17, § 2732).

VIRGINIA

Presidential Electors: 12

A. NOMINATION*(1) Major parties*

Political party is defined as an organization or affiliation of citizens of the Commonwealth which, at the last preceding statewide general election, polled at least ten percent of the total vote cast for the office filled in that election by the voters of the Commonwealth at large. Such organization or affiliation of citizens shall also have a State central commit-

tee and a duly elected chairman which have continually been in existence and holding office for the six months preceding the filing of a nominee (Code of Virginia, § 24.1-1). In elections for President and Vice President of the United States, the names of electors selected by the different political parties at their respective conventions held for that purpose, together with the name of the political party and the names of the candidates for President and Vice President for whom they are expected to vote in the Electoral College, shall be furnished to the State board of elections at least by noon of the sixtieth day before any election for the electors of President and Vice President by the chairman or secretary of said party (§ 24.1-158).

(2) *Minor and new parties*

Any group of qualified voters of not less than the number equal to one-half of one percent of the qualified voters in the Commonwealth as of the first day of January of that year and including at least 200 qualified voters from each congressional district, not constituting a political party may have the names of electors selected by them, including one elector residing in each congressional district and two from the Commonwealth at large, printed upon the official ballot to be used in the election of electors for President and Vice President by filing a petition so requesting with the State board of elections not later than noon of the sixtieth day before said election. Said petition, which shall be signed by said voters, contain their residence addresses, the signatures to which shall be witnessed by a qualified voter whose affidavit to that effect is attached to said petition, shall set forth the names of the electors selected by such voters, the party name under which they desire the electors so selected to be listed on the ballot, and the names of the candidates for President and Vice President for whom such electors are expected to vote in the Electoral College. In order to utilize a selected party name on the ballot, such group shall have had a State central committee and a duly designated chairman in existence and holding office for at least six months prior to filing the petition. Such party name shall not be identical with or substantially similar to the name of any political party presently qualified and then in existence.

In the event that a group of qualified voters meets the requirements set forth herein except that they cannot utilize a party name, the electors selected and the candidates for President and Vice President shall be identified as "Independent" (§ 24.1-159).

(3) *Independent candidates*

Independent candidates nominate electors in the same manner as minor and new parties. (See generally section 24.1-159 of the Code of Virginia.)

B. NAMES ON GENERAL ELECTION BALLOTS

The names of the candidates for presidential electors from the political parties and from groups of petitioners are printed on the general election ballot along with the names of the party or petitioners' candidates for President and Vice President (§ 24.1-160). Voters shall mark the square on the ballot

preceding the name of the political party or party name of his choice and the ballots so marked shall be counted as if squares preceding the names of the individual electors nominated or selected by such political parties or the groups or petitioners had been so marked (§ 24.1-161).

C. STATUTORY INSTRUCTIONS

The electors selected by the State conventions by any political party shall be expected to vote in the Electoral College for the nominees of any national convention to which the said convention elects delegates.

The electors named in any petition of qualified voters shall be expected to vote in the electoral college for President and for Vice President for such reasons as may be named in the said petition (§ 24.1-162).

WASHINGTON

Presidential Electors: 10

A. NOMINATION

(1) *Major parties*

Each political party shall have the power to provide for the method of nomination of presidential electors (Washington Revised Code Annotated, § 29.42.010), except by primary (§ 29.18.010). Such candidates are nominated at the State conventions of the respective parties.

(2) *Minor party, new party, and independent candidates*

A minor political party is defined as a political organization, not one of whose candidates for statewide office received at least 5 percent of the total vote cast in the last statewide general election (§§ 29.01.100; 29.01.090). Candidates of a minor party, new party or independent may secure a place on the ballot by being nominated at a convention of supporters (§§ 29.24.010; 29.24.020). Such conventions are to be held on the last Saturday immediately preceding the first day for filing declarations of candidacy (§§ 29.18.030; 29.24.020). To be valid, a convention must have been called by a notice published in a newspaper of general circulation published in the county where the convention is to be held at least 10 days before the date of the convention stating the date, hour, and place of the meeting, and it must be attended by a number of registered voters equal to one for each 10,000 votes cast in the last presidential election (§ 29.24.030). A certificate of nomination must be filed with the Secretary of State not later than, the last day for filing declarations of candidacy. The certificate must be in writing; contain the name, address, and office sought by each nominee; a sworn statement of consent to the nomination; be verified under oath by the presiding officer and secretary; be signed by a number of members of the convention at least equal to the number required to validate a convention and give their addresses; and contain proof of the notice of the convention call (§ 29.24.040).

B. NAMES ON GENERAL ELECTION BALLOTS

Names of the candidates for President and Vice President of the political parties and not the names of the electors are printed on the ballot. The votes cast for candidates for President and Vice President of each political party shall be counted for the candidates for presidential electors of such political party (§ 29.71.020).

C. STATUTORY INSTRUCTIONS

Electors are to meet at noon on the day fixed by Federal statute at the seat of government and fill any vacancy by plurality of voice votes and perform the duties required of them by the Constitution and laws of the United States (§ 29.71.040). Each political party is to require a pledge from those nominated for presidential elector that they will vote for the nominees of the party. Failure to vote for the nominees of the party subjects an elector to a \$1,000 fine (§§ 29.71.020; 29.71.040).

WEST VIRGINIA

Presidential Electors: 6

A. NOMINATION**(1) Major parties**

Candidates for presidential electors are nominated at State conventions of the respective political parties which are to be held during the month of August next preceding the general election at which presidential electors are to be elected (West Virginia Code, § 3-5-21). Nominations so made shall be certified to the Secretary of State by the chairman and secretary of the convention within 15 days after the close of the convention (§ 3-5-21).

The date and place of such conventions shall be designated by the State executive committee of the respective parties. Such committees shall also prescribe the number of delegates thereto, and shall apportion the delegates among the several counties of the State in proportion to the vote cast in the State for the party's candidate for Governor at the last preceding general election at which a Governor was elected (§ 3-5-21).

At least 60 days prior to the date fixed for a party's State convention, the chairman of the party's State executive committee shall send to the party's county executive committee in each county a copy of the resolutions fixing the time and place of holding the State convention and prescribing the number of delegates from each county to the convention (§ 3-5-21).

Within 10 days after receipt of the copy of such resolutions, the party executive committee of each county shall meet and, by resolution, shall apportion the delegates to the State convention among the several magisterial districts of the county, on a basis of the vote received in the county by the candidate for Governor at the last preceding general election at which a Governor was elected, but in such apportionment of county delegates, each magisterial district shall be entitled to at least one delegate to such State convention. The

party's county executive committee shall call a meeting of the members of the political party in mass convention in the several magisterial districts of the county, which district meetings shall be held at least 30 days prior to the date fixed for the State convention, and at which meeting the members of the political party in each magisterial district shall elect the number of delegates to which such district is entitled in the State convention (§ 3-5-21). The delegates chosen and certified by and from the several magisterial districts in the State shall make up the State convention (§ 3-5-21).

(2) *Minor parties*

A party which has polled less than 10 percent of the total vote cast for Governor at the general election immediately preceding, may nominate candidates for the office of presidential elector by convention. A certificate of nomination, naming the candidates nominated at the convention, should be filed with the Secretary of State not later than one day preceding the primary (§§ 3-5-22; 3-5-24). Primary date in 1984 is June 5 (§ 3-5-1). Such minor parties may also nominate their candidates for presidential electors by certificate in the same manner as new parties and independents (§§ 3-5-22; 3-5-23).

(3) *New parties and independent candidates*

Groups of citizens having no party organization may nominate candidates for presidential electors by petition. The candidate shall file with the Secretary of State a declaration containing the name of the political party which he proposes to represent its platform and principles, at least 30 days before the primary. A certificate of nomination, bearing signatures equal to not less than one percent of the entire vote cast at the last preceding general election in the State for the office sought, but in no event shall the number be less than 25, must be filed with the Secretary of State not later than one day before the primary (§§ 3-5-23; 3-5-24).

B. NAMES ON GENERAL ELECTION BALLOTS

The names of candidates for offices of presidential electors are omitted from the ballot. Names of candidates for offices of President and Vice President are printed on the ballots (§ 3-6-2).

In elections for presidential electors, the names of candidates for electors of any political party or group of petitioners, shall not be placed on the ballot, but shall, after nomination, be filed with the Secretary of State. In place of their names, there shall be printed first on the ballots the names of the candidates for President and Vice President, respectively, of each such party or group of petitioners, and they shall be arranged under the title of the office. Before the names of such candidates for President and Vice President of each party, or group, a single square shall be printed in front of a brace, in which the voter shall place the cross mark for the candidate of his choice for such offices. A vote for any of such candidates shall be a vote for the electors of the party by which such candidates were named, and whose names have been filed with Secretary of State (§ 3-6-2).

C. STATUTORY INSTRUCTIONS

The electors shall meet in the office of the Governor at the capitol on the day appointed by the Congress of the United States and vote for the President and Vice President in the manner prescribed by the Constitution and laws of the United States (§ 3-1-14).

WISCONSIN

Presidential Electors: 11

A. NOMINATION**(1) Major parties**

Candidates for presidential electors are nominated at State conventions of the respective political parties held on the first Tuesday in October, i.e., October 2, 1984. One presidential elector shall be nominated by a party from each congressional district and two electors shall be nominated from the State at large. The names of the nominees shall be certified immediately by the chairman of the State committee of each party to the chairman of the elections board (Wisconsin Statutes Annotated, § 8.18).

The party convention is composed of the party candidates for the State senate and assembly, nominated in the September primary, the holdover State senators and State officers of each party (§ 8.18).

Every political organization listed as independent and every recognized political party listed on the official ballot at the last election that received at least one percent of the total votes cast for any statewide office for which they had a candidate shall have a separate primary ballot and a column on the general election ballot. The chairman and secretary of the organization which was "independent" at the last election shall certify to the election board their party name, which shall not duplicate the name of an existing party (§ 5.62(1)(b)).

(2) Independent and write-in candidates

Nominations for presidential electors may be made by filing nomination papers with the election board not later than 5 p.m. on the second Tuesday in July (§ 8.20). Such papers shall list one presidential elector from each congressional district and 2 electors from the State at large, and the candidates for President and Vice President for whom they intend to vote if elected. They shall contain signatures of not less than 2,000 nor more than 4,000 qualified voters, plus the party or principle the candidates represent, if any, in 5 words or less. Papers shall not be circulated earlier than June 1 (§ 8.20).

Each candidate shall file with his nomination papers a declaration that he will qualify for the office, if elected (§ 8.20).

(Candidates for the offices of President or Vice President of the United States as write-in candidates shall file a list of presidential electors and a declaration that they will qualify for the office, if elected, with the election board no later than 4:30 p.m. on the second Tuesday preceding the day of the general election to choose the President and Vice President of the United States. The list shall contain one presidential

elector from each congressional district and two electors from the State at large and the names of the candidates for President and Vice President for whom they intend to vote, if elected. Each person who is listed as an elector shall file a declaration of acceptance of his or her nomination as an elector stating that he will qualify for the office, if elected. Such declaration shall be filed with the election board no later than 4:30 p.m. on the 2nd Tuesday preceding the day of the general election to choose the President and Vice President of the United States. Compliance with this subsection may be waived by the election board but only if the results of the general election indicate that the write-in candidate for the office of President is eligible to receive the electoral votes of this State except for noncompliance with this subsection.

In such event, the write-in candidate and that person's named presidential electors shall have until 4:30 p.m. on the Friday following the general election to comply with the filing requirements of this subsection (§ 8.185).

If more than one list of presidential electors is filed with the Secretary of State by any write-in candidates for the offices of President and Vice President of the United States, the first list filed shall be considered the valid list, provided that this list meets the additional requirements of this section (§ 8.185).

B. NAMES ON GENERAL ELECTION BALLOTS

Names of the candidates for the office of President and Vice President and not the names of the electors are placed on the ballot. The vote counts as a vote for the electors (§§ 5.10, 5.64, 8.25).

C. STATUTORY INSTRUCTIONS

The electors for President and Vice President shall meet at the state capitol following the presidential election at 12:00 noon the first Monday after the 2nd Wednesday in December. If there is a vacancy in the office of an elector due to death, refusal to act, failure to attend or other cause, the electors present shall immediately proceed to fill by ballot, by a plurality of votes, the electoral college vacancy. When all electors are present, or the vacancies filled, they shall perform their required duties under the constitution and laws of the United States. The presidential electors, when convened, shall vote by ballot for that person for president and that person for vice president who are, respectively, the candidates of the political party which nominated them, the candidates whose names appeared on the nomination papers, or the candidate or candidates who filed their names, except that at least one of the persons for whom the electors vote may not be an inhabitant of this State. A presidential elector is not required to vote for a candidate who is deceased at the time of the meeting (§ 7.75).

WYOMING

Presidential Electors: 3

A. NOMINATION

(1) *Major parties*

Electors are nominated by the State convention of a political party nominating candidates for President and Vice President of the United States. Certificates of nomination should be filed within 30 days after the termination of the convention (Wyoming Statutes Annotated, §§ 22-19-102, 22-4-118). Party conventions are to be held on the second Saturday in May (May 12, 1984) in even numbered years (§ 22-4-115).

(2) *Minor parties*

A party which fails to receive at least 10 percent of the vote for Representative in Congress is not considered a political party (§ 22-1-102(g)). Political groups can nominate candidates by petition in the same manner as independents but may not use the words "democratic" or "republican" or any derivation thereof as part of their name (§ 22-5-303).

(3) *Independent candidates*

Independent candidates may be nominated by petition (§ 22-5-301). Such petitions should be signed by a number of electors equal to 5 percent of the vote cast in the last general election for Representative in Congress (§ 22-5-304). The petitions should be filed with the Secretary of State not more than 90 nor less than 45 days prior to the general election (§ 22-5-307).

B. NAMES ON GENERAL ELECTION BALLOT

The names of the electors need not appear on the ballot. The names of candidates for President and Vice President are paired with a single voting block for each pair (§ 22-6-120).

C. STATUTORY INSTRUCTIONS

Electors are to meet at 12:00 noon on the Monday following the second Wednesday in December of presidential election years, and all electors shall vote for the candidates for the office (of President and Vice President of the United States) receiving the highest number of votes in the Wyoming general election (§§ 22-19-106; 22-19-108).

CANAL ZONE, GUAM, PUERTO RICO, VIRGIN ISLANDS

Presidential Electors: 0

The Commonwealth of Puerto Rico, Guam, the Canal Zone, and the Virgin Islands do not participate in the actual election of the President and Vice President. Only the fifty States and the District of Columbia are entitled by the United States Constitution to choose the presidential electors who in turn cast votes for President and Vice President.

III. Development Of The Electoral College System And Movement For Reform

In creating the electoral college system, the authors of the Constitution intended that each State should choose its most distinguished citizens as electors. Once the electors had been selected, by whatever means the State legislature desired, it was expected that they would deliberate and vote as individuals in choosing the President.

With the emergence of strong political parties, it early developed that electors were chosen to represent the parties. Designation as a candidate for elector by the party leadership was given as an honor to those who had served the party well. From 1800, independent voting by electors almost disappeared. In the few cases where electors have not voted for their party's nominee, they have normally given advance warning to the voters -- as did the Bull Moose Republicans in South Dakota in 1912 and the States' Rights Democrats in certain Southern States in 1948.

In response to pressure in favor of popular control, the practice quickly developed in the several States of choosing electors by popular vote. Until 1800, most State legislatures retained the function for themselves, but by 1804 the majority had provided for direct popular election. By 1832, direct election was the rule in all States except South Carolina, which made the change at the time of the Civil War. (In the newly admitted State of Colorado in 1868

and the reconstructed State of Florida in 1876, electors were appointed by the legislature). Subject to certain Constitutional limits, the States retain the right to say who is authorized to vote in these direct elections.

The practice of giving all the electors to the party which wins the most votes in the States -- i.e., the "general ticket" system -- is also a product of the early 1800's. At first, most "popular election" States provided that electors should be chosen in districts similar to Congressional districts. Under this system, different districts were able to return electors representing different parties. Dominant parties in State legislatures soon realized, however, that they could furnish more electoral votes for their candidate -- and prevent minority parties from getting any votes -- if the party with the most votes in the State won all the electors.

By 1804, 7 out of 10 "popular election" States were using the general ticket; by 1824, 13 out of 18. Since 1836, there have been few exceptions to the general ticket rule. See appointment by legislatures, above. In 1892, the Michigan electors were selected under the district system.

The Movement for Reform

From the start, the method of electing the President has been a subject of debate and discussion. At the Constitutional Convention, a few key members, including Madison, Franklin and Gouverneur

Morris, favored direct popular election. Others would have preferred to see the President elected by Congress or by State Governors. One of the main arguments for the electoral college system was that through the provisions for at least three electors regardless of population, it gave the small States some protection against domination by large States. It was felt that if we were to preserve our Federal system of Government, this was an important consideration and this argument may have gone far in swaying the Convention. Another important argument was that it placed the choice of the President in the hands of persons presumably able, as the mass of the people at that time were not, to become acquainted personally with the various Presidential candidates.

Since January 6, 1797, when Rep. William L. Smith of South Carolina offered in Congress the first Constitutional Amendment proposing reform of our procedure for electing a President, hardly a session of Congress has passed without the introduction of one or more resolutions of this character. In the 57-year period between 1889 and 1946, 109 Amendments were proposed; in the period from 1947 to 1966, 179 Amendments were introduced, and in the period 1967-1969, 195 Amendments were introduced. It is claimed that more Amendments have been proposed concerning the Presidential election than concerning any other single provision of the Constitution. (See Part VI infra for such amendments in recent Congresses.).

"Minority" Presidents

The term "minority" President has been loosely used, sometimes creating an erroneous impression.

Actually, we have had only three minority Presidents; that is, a candidate who was elected President having received a smaller number of popular votes than his closest opponent.

In 1824, although Andrew Jackson received more electoral votes and more popular votes than did John Quincy Adams, the election fell into the House of Representatives, which gave a majority of its votes to Adams, and Adams was elected President.

In 1876, although Samuel J. Tilden received a majority of more than 250,000 popular votes over Rutherford B. Hayes, the returns from Florida, Louisiana, Oregon, and South Carolina were contested. An electoral commission created by Congress to settle the dispute decided the contested returns in favor of Hayes, and Hayes won the election by one electoral vote.

In 1888, although Grover Cleveland received a popular plurality of about 100,000 votes over Benjamin Harrison, he obtained only 168 electoral votes, and Harrison with 233 electoral votes, was elected President.

We elected eleven other Presidents who failed to obtain a majority of the popular vote; but all these men did receive a plurality. Following is a table showing the percentage of the popular vote which each received:

	<u>Elected</u>		<u>Opponents</u>			
1844	<u>Polk</u> 49.56	:	<u>Clay</u> 48.13	<u>Birney</u> 2.3		
1848	<u>Taylor</u> 47.13	:	<u>Cass</u> 42.47	<u>Van Buren</u> 10.13	<u>Smith</u> .09	
1856	<u>Buchanan</u> 45.63	:	<u>Fremont</u> 33.27	<u>Fillmore</u> 21.08	<u>Smith</u> .01	
1860	<u>Lincoln</u> 39.79	:	<u>Douglas</u> 29.40	<u>Breckenridge</u> 19.2	<u>Bell</u> 12.6	
1880	<u>Garfield</u> 48.32	:	<u>Hancok</u> 48.21	<u>Weaver</u> 3.35	<u>Dow</u> .11	<u>Phelps</u> .01
1884	<u>Cleveland</u> 48.5	:	<u>Blaine</u> 48.26	<u>Butler</u> 1.74	<u>St. John</u> 1.5	
1892	<u>Cleveland</u> 46.04	:	<u>Harrison</u> 43.01	<u>Weaver</u> 8.53	<u>Bidwell</u> 2.25	<u>Wing</u> .18
1912	<u>Wilson</u> 41.85	:	<u>T. Roosevelt</u> 27.42	<u>Taft</u> 23.15	<u>Debbs</u> 5.99	<u>Chafin</u> 1.39 <u>Reimer</u> .19
1916	<u>Wilson</u> 49.26	:	<u>Hughes</u> 46.12	<u>Benson</u> 3.16	<u>Hanly</u> 1.19	<u>T. Roosevelt</u> .19 <u>Reimer</u> .08
1948	<u>Truman</u> 49.51	:	<u>Dewey</u> 45.13	<u>Thurmond</u> 2.4	<u>Wallace</u> 2.38	<u>Thomas</u> .29 <u>Others</u> .29
1960*	<u>Kennedy</u> 49.71	:	<u>Nixon</u> 49.55	<u>Unpledged</u> .92	<u>Others</u> .27	
1968	<u>Nixon</u> 43.42	:	<u>Humphrey</u> 42.72	<u>Wallace</u> 13.53	<u>Others</u>	

* 1960 and 1968 figures from Congress and the Nation, vol. II, 1965-68, p. 425. 1960 percentages total more than 100 because of double-counted Alabama votes (both under Kennedy and Unpledged columns).

IV. Arguments In Favor Of Retaining The Present System

1. The existing system which became effective in March of 1789 (see Owings v. Speed, 5 Wheat. 420, 422-423 (1820)), has, with minor amendments, successfully withstood the test of almost two centuries.

2. The electoral college method has produced only three "minority" Presidents, that is, candidates who were elected as President even though they received less popular votes than their principal opponents (Adams in 1824, Hayes in 1876, and Harrison in 1888). In only one of these cases (1876) did the winner's chief competitor receive an absolute majority of the popular vote. In the other two cases, they argue, since the winner's principal opponent received only a plurality rather than a majority of the popular vote, it cannot be stated categorically that he had more popular support than the winner; for, if a run-off election had been held between the two, all other candidates excluded, the distribution of the third or other minority party votes in the run-off election might have defeated the candidates who had received the plurality of popular votes.

3. By weighting the composition of the electoral college to give adequate representation to the small and sparsely settled States, the authors of the Constitution helped to reconcile these States to the idea of federation. It cannot be doubted, proponents of the present system claim, that at various times during the history of our nation, this concession has substantially contributed to the stability of our Government; and, even if this provision is not now considered as essential to the survival of our federal union,

it must still be a contributing factor to the feeling of equality which smaller states have with regard to the large industrial states in our Union. Moreover, the fact that under the present system these smaller states have this direct representation and vote in the electoral college results in their obtaining a significant voice in selecting the parties' candidates for President because the political parties recognize that in a close election their electoral vote may be crucial.

4. On only two occasions since 1789 has the election of the President fallen into the House of Representatives (in 1800 and again in 1824), and it was only in one of these instances that the election by the House resulted in the selection of a "minority" President. That was in 1825 when John Quincy Adams was elected although he received fewer popular votes than Andrew Jackson.

5. The existing system reconciles the concept of the separation of powers, particularly in respect to independent and different electoral bases for the President and the Congress, the "counterbalance" theory.

6. Our country has not been troubled by the problem of "splinter" parties, a situation which has plagued many European countries and which might plague us if the electoral college system were altered. The existing system with its requirement of an absolute majority of electoral votes and the general state-unit system

which tends to produce the necessary electoral vote majority for one or other of the major parties, operates to freeze out serious third parties.

7. The existing system's exaggeration of the winner's electoral vote helps assure stability, it is argued, in giving the appearance of nationwide backing in a particularly close and hard-fought campaign. It may help the newly elected President to win general acceptance.

8. A time-proven system for choosing the President should not be lightly discarded, particularly when there is so much uncertainty as to what is a better method, as is demonstrated by the sharp differences of opinion as to what method to change to, among those who desire a change, and when there are doubts as to what the effects of a change would be on the campaigns for the nominations and election under any of the methods proposed. ^{1/}

^{1/} See, "Presidential Election Methods and Urban-Ethnic Interests," Allan P. Sindler, 27 Law and Contemporary Problems 213, Spring 1962; "Electoral College Reform," Report of Law Reform Committee, New York Chamber of Commerce, Nov. 25, 1963; "Rooting For The Electoral College," A.J. Rosenthal, New Leader, Oct. 21, 1968, pp. 14-18, "Direct Elections: An Invitation To National Chaos," Theodore H. White, Life, Jan. 30, 1970, "Is Electoral Reform The Answer," Alexander M. Bickel, Commentary, Dec. 1968; "A Bad Idea Whose Time Has Come," Irving Kristol and Paul Weaver, New York Times Magazine, Nov. 23, 1969, p. 43.

V. Arguments Against The Present System

Numerous criticisms have been directed at the existing system. Custom and tradition have greatly altered the operation of the system as it was originally created. Some of the criticisms are directed at the original system, others at aspects of its development. Many of the specific criticisms will be discussed in the form of arguments which have been advanced in favor of some other method of electing a President and will be found under the discussion of these proposals.

(1) [The office of presidential elector including its "independent" nature and the authority of the States at any time to change the method of "appointing" or selecting the electors (i.e., to manipulate the system from election to election).] ^{2/}

^{2/} The question of the "independence" of electors and the power of the States to bind them has been before the courts on several occasions. In Nebraska it was determined that Republican electors ipso facto vacated their position when they refused to support the Republican nominee (State v. Wait, 92 Neb. 313, 138 N.W. 159 (1912)). Persons running for elector who were not pledged to support a political party's nominee were refused inclusion on a Utah primary ballot (Markham v. Bennion, 122 Utah 562, 252 P. 2d 539 (1953)). A lower New York court indicated, in dictum, that an elector could be compelled by mandamus to vote in accordance with his pledge (Thomas v. Cohen, 146 Misc. 836, 262 N.Y. Supp. 320 (1933)). Courts in Alabama and Ohio have indicated to the contrary (Opinion of the Justices, No. 87, 250 Ala. 399, 34 So. 2d 598 (1948); State v. Hummel, 150 Ohio State 127, 80 N.E. 2d 899 (1948)). The United States Supreme Court, in Ray v. Blair, 343 U.S. 213 (1951), indicated that Alabama could require a pledge of a candidate for elector at a primary but left unanswered the question whether such pledges would be enforceable if violated.

A three-judge federal district court in Mississippi has sustained that State's authority to provide statutorily for unpledged electors on the ballot (Gray v. Mississippi, (D.C. Miss.) 233 F. Supp. 139 (1964)). See also, "State Power to Bind Presidential Electors," 65 Columbia Law Review 696 (April 1965).

(2) [The so-called unit-rule or general-ticket method which credits a State's entire electoral vote to the candidate receiving the most popular votes.] This is somewhat the obverse of the first major criticism. Objections of this nature are premised on the argument that under the unit-rule great numbers of voters are disfranchised whose votes, are in fact, cast in favor of the opposing candidate. It is possible for a State's entire electoral vote to be cast for a candidate who receives a plurality of only one vote in that State.

Contention is also made that the present system places exaggerated importance on the large and pivotal States, with the great blocs of unit-rule votes, to the extent that the major parties not only concentrate their campaigning in such States but also usually select their presidential candidates from these few most populous areas. It inflates the bargaining power of minorities and pressure groups in the large States where the popular vote may be closely divided, and at the same time discourages heavy voter participation in "safe" or "one-party" States. A correlative argument is that the unit-rule system invites fraud in the large, crucial States where the vote is expected to be close and where the effects of fraud are consequently magnified.

(3) [The method of selecting a President when no candidate receives a majority of electoral votes.] Under the existing

system the election is placed in the House of Representatives where a choice must be made among the three candidates with the greatest number of electoral votes, such choice to be decided by a majority of the States (26) in the House. Criticism in this regard is directed at the possibility that a candidate not preferred by a vast number of Americans could be elected President. A correlative criticism is that such a system invites political manipulation.^{3/} And despite the fact that the twenty-third amendment to the Constitution grants to the District of Columbia three electoral votes, the District would be disfranchised if the election is decided by the House of Representatives. (U.S. Const. twelfth amendment).

^{3/} On the defects of the present system see: Corwin, Edward S., The President: Office and Powers. History and analysis of practice and opinion. 4th ed., revised, New York, New York University Press, 1957, p. 39f; Lea, Clarence F., Modernize our Presidential Election. Ten statements inserted in the Record by Rep. Lea, June 30-July 25, 1947. Congressional Record, July 8, 1947; A3412-3; U.S. Congress, House of Representatives, Committee on the Judiciary, H. Rept. 1011, 81st Cong., 1st Sess.; Congress, Senate, Committee on the Judiciary, S. Rept. 602, 81st Cong., 1st Sess.; Lucey, Charles, Electoral College System Thwarts Will of American Voters, Congressional Record [daily] V. 102, Feb. 1, 1956; A1012-1014; Wilmerding, Lucius, The Electoral College, New Brunswick, N.J., Rutgers University Press, 1958, especially pp. 71-94, and see Senate Subcommittee on Constitutional Amendments, Hearings, 87th Cong., 1st Sess., "Nomination and Election of President and Vice-President and Qualifications for Voting"; 88th Cong., 1st Sess., "Nomination and Election of President and Vice President", Committee Print, Senate Subcommittee on Constitutional Amendments, 87th Cong., 1st Sess., "The Electoral College", October 10, 1961; Kefauver, Estes, "The Electoral College: Old Reforms Take on a New Look", 27 Law and Contemporary Problems, 188 (Spring 1962); "Electoral College Reform", Chamber of Commerce of the United States, Sept. 1963; Peirce, Neal, "The People's President", 1968, pp. 114-134; American Enterprise Institute, March, 1966, "Legislative Analysis: Proposals for Revision of the Electoral College System."

(4) [The disproportion of votes that is caused by the Electoral College system.] The Electoral College system results in a disproportion of votes since all votes do not count equally. One cause of such disproportion is the allocation to each state the minimum of three electoral votes regardless of size. Each state has an electoral vote for each of its Representatives in the House and for each of its two Senators, and under Article I, § 2, cl. 3 each state is entitled to at least one Representative. Such distribution of electoral votes has a distorting effect since it is not based on one-person one-vote standards but rather on the congressional representation from a state. Both the small states and the large states have advantages under such a system. The two senatorial electoral votes give the small states an advantage over the larger states in that each of the voters can influence a larger number of electoral votes. For example, the congressional House seat in Alaska represents the entire State which has a population after the 1980 census of 401, 851; whereas, in California which has a population of 23, 667, 902 after the 1980 census, forty-five congressional seats represent an average of 525, 000 inhabitants. When the two senatorial seats which Alaska and California both have are considered, Alaska has one electoral vote for 133, 950 inhabitants, and California has one electoral vote for every 503, 572 inhabitants.^{4/}

^{4/} William R. Keech, Winner Take All, (New York: Holmes & Meier Publishers, Inc., 1978), p. 28.

While the small states have a more favorable ratio of voters to electors, the winner-take-all aspect of the Electoral College system, which allocates all of a state's electoral votes, gives the large states an advantage. Generally all of a state's electoral votes are awarded to the presidential and vice presidential candidates who receive a plurality of votes in the state.^{5/} Under such a system, all of the votes for the losing presidential and vice presidential candidates are for naught, and the votes for the winning presidential and vice presidential candidates are given extra weight. The real advantage in a large state is the possibility of being able to influence a large bloc of electoral votes. For example, in California a voter can help swing forty-seven electoral votes to certain presidential and vice presidential candidates while a voter in Alaska can help swing at most three electoral votes.^{6/}

(5) [The decennial census problem.] Under the Electoral College system, the assignment of electors to the individual states on the basis of population does not reflect significant population changes which occur between decennial censuses. Often the assignment of electoral votes to the states on the basis of a decennial census occurs a number of years after significant population shifts have occurred. The number of Representatives to which a state is entitled often is not effective until two years after the census. And when a presidential election occurs

^{5/} An exception is the way electoral votes are cast in the State of Maine. Electors in Maine cast their votes in the following manner: the two electors of each congressional district cast their votes for the winning presidential and vice presidential candidates in the districts, and the two at-large electors for the candidates who won statewide. [Maine Rev. Stat., title 21, § 1184 (1) (A)].

^{6/} William R. Keech, Winner Take All, at p. 28.

in the year in which a decennial census is taken, the election is governed by the apportionment of electoral votes based on a census that was taken a decade before. ^{7/}

(6) [The faithless elector.] The electors are free agents and constitutionally remain free to cast their ballots for any presidential and vice presidential candidates for whom they wish to vote. Some political parties in certain states require candidates for the office of presidential elector to take a pledge to support the nominees of the parties' national conventions. And the Supreme Court in Ray v. Blair ^{8/} upheld the right of political parties to require pledges from candidates for the office of elector. Moreover, the Court held that the Twelfth Amendment does not bar a political party from requiring pledges of candidates for presidential elector, and such a requirement does not violate equal protection or due process under the Fourteenth Amendment. ^{9/} In one instance in 1968, a Republican elector in North Carolina chose to cast his vote for presidential candidate George Wallace who lost in that State rather than for the plurality winner who was Richard Nixon. When Congress met to count the votes, objections were made against counting the vote for George Wallace rather than for Richard Nixon, but both the House and the Senate decided to count the vote as cast. ^{10/}

^{7/} Id., 27.

^{8/} 343 U.S. 214 (1952).

^{9/} Id., 225-227.

^{10/} 115 Cong. Rec. 9-11, 145-171, 197-246 (1969).

(7) [Death of presidential candidate after the November general election and before the meeting of the Electoral College.] The constitutional provisions establishing the Electoral College failed to provide procedures for filling a presidential vacancy due to death or resignation after the November general election and before the meeting of the electors in December. Such a vacancy would be filled by the national committee of a political party. Since the slate of electors chosen in each state and the District of Columbia generally vote for and are often required by party pledges to vote for candidates chosen by their own political party, the political party whose candidate won the most electors in the November general election would in all probability be selecting the next president and vice president. ^{11/}

^{11/} See generally Rule 28 of the Republican Party and Article 3 of the Charter of the Democratic Party.

VI. Proposals To Reform The Present System

The proposed Amendments to the Constitution of the United States which would provide new methods for the election of the President fall into four general classes: (1) direct election plans, (2) district plans, (3) proportional plans, and (4) the automatic electoral vote or "non-electors" plans.

Involved also are proposals to change the existing system of voting by States in the House of Representatives should the Presidential election be thrown into that body.

The direct election plan would abolish the electoral vote altogether and would provide for the election of the President and the Vice President by a majority of the total popular vote in the United States. In the event no candidate receives a majority a run-off election would be held between the two persons who received the greatest number of popular votes for the Presidency, or in some

* See American Enterprise Association, Inc. Analysis of proposals for revision of the electoral college system. Washington, 1966; Electoral Reform. Congressional Quarterly Almanac, 1956, pp. 448-451; Congress and the Nation, 1945-1964, Congressional Quarterly, 1965, pp. 1519-1524; Senate Judiciary Committee, 87th Congress, 1961, Committee Print, op. cit.; Congressional Digest, November, 1967, "Proposals to Change the Method of Electing the President, Pro and Con"; The Association of the Bar of the City of New York, Report of the Committee on Federal Legislation, December 15, 1961, "A Report on the Method of Electing the President and Vice President."

proposals a contingent election would be held by a joint session of the Senate and the House of Representatives and voting would be per capita. The proposal would eliminate electors, the electoral college vote and the unit-rule, and as one alternative, the throwing of the election into Congress. Some versions would provide for a nationwide primary for Presidential and Vice Presidential candidates.

The district plan, formerly known as the Mundt-Coudert Plan, would preserve the Electoral College but would eliminate the present procedure of giving a State's entire electoral vote to one candidate. Electors would be chosen by the voters, one for each district in every State, and in addition, two for each State at large. The State districts would be compact and contiguous and would generally contain the same number of persons as equi-populated congressional districts within the State. Before being elected the electors would be required to pledge to support their party's candidates, which pledge would be binding. These electors would vote and the candidate who received the highest number of such electoral votes would be President providing he had a majority. Failing a majority, the Senate and the House, meeting jointly, would elect a President from the top three candidates.

The proportional plan, formerly referred to as the Lodge-Gossett Plan, would abolish the Electoral College, but would retain the electoral vote. The electoral vote in each State would be

apportioned among the Presidential candidates in accordance with the number of popular votes they receive, so that the candidate who receives a plurality of the popular votes will not receive the State's entire electoral vote as he would under the present system. In case of a tie between two candidates, various proposals contain different solutions (see discussion, infra). Generally, receipt of 40 percent of the electoral votes would be required for election to the Presidency. Failing receipt by a candidate of 40 percent, the Senate and House, meeting jointly, would elect a President from the top two candidates.

The "automatic" electoral vote plan, would abolish the office of elector but retain the electoral votes of each State. Under the plan the electoral vote of each State would be automatically awarded to the candidate receiving the greatest number of votes for President in that State. The candidate receiving a majority of electoral votes, country-wide, would be elected President. If no candidate received a majority, the Senate and the House, meeting jointly, would elect a President from the three top candidates.

A. Direct Election Plan

Arguments in Favor of Direct Election Plan - Those who favor the direct election plan argue as follows:

1. The result of a direct election would give a more accurate picture of relative party strength than do "electoral vote" results. When the party with the most popular votes in a State wins all the electoral votes for that State, the strength of the winner (in terms of electoral votes) tends to be exaggerated. The system creates "landslides." Thus in 1952 Eisenhower, with about

55 percent of the total popular vote, won over 83 percent of the Nation's electoral votes. In 1936 Roosevelt, with 60 percent of the popular vote, received 98 percent of the electoral votes.

As already noted, in eleven instances since 1824, including the 1948 and 1960 elections, the system has given a majority of the electoral votes to a candidate with only a plurality of the popular vote. In 1912 Woodrow Wilson, with only 42 percent of the popular vote, received 84 percent of the electoral votes.

Direct election would give a more accurate picture than "proportionate distribution" of electoral votes or a "district" elector scheme. Because they would preserve the "weighting" in favor of small states (three electoral votes regardless of population) and would continue to base the remaining electoral votes upon total population, not upon numbers of voters, both of the latter two systems would permit some distortion of results.

2. Direct election would make it impossible for the candidate with the largest number of popular votes to lose to a candidate with fewer popular votes.^{1/} This can happen under the present system.

^{1/} Corwin, op. cit.; Lea, op. cit.; July 8, 1967: A3412-3: U. S. Congress. Senate. Committee on the Judiciary. Op. cit.: Wechsler, Herbert. Presidential election and the Constitution: A comment on proposed amendment American Bar Association Journal (Chicago), March 1949, V. 35: 181-4, 270-4. On the advantages of direct election, see Humphrey, Hubert H. Direct popular election of President and Vice President. Congressional Record [daily ed.] (Washington), March 9, 1953: 1793-5.

If the winning party carries many States by bare pluralities or narrow majorities, while its leading opponent acquires most of its electoral votes by wide margins, the candidate with a minority of popular votes may win a majority of electoral votes. A candidate receiving a minority of popular votes may also be elected when no candidate has a majority of electoral votes and the choice is made by the House of Representatives.

As previously mentioned, the United States has had three minority Presidents. A "proportionate distribution" or "district" plan would reduce the possibility of a "minority" candidate. Still the candidate with the most popular votes might lose if his opponent won most of his electoral votes in small States and areas where voting was light or restricted.

Direct election would do away with the "unit-rule" and prevent candidates with less than a majority of popular votes from being elected President.

3. Direct election would be simpler for the voter to understand than the present system.^{2/} Some voters are confused by the presence of "electors" in the election process. In most States, it is true, the ballots indicate the Presidential candidates for whom each party's list of electors will vote. Most of the States and the District of Columbia do not name each individual electoral college nominee.

^{2/} On the defects of the present system, see Kallenbach, Joseph E., Presidential Election Reform. Paper inserted in the Record by Sen. Henry Cabot Lodge, Jr. Congressional Record, April 13, 1949; Vol. 95, pp. 4448-52; U. S. Congress. Senate. Committee on the Judiciary, op. cit. On the advantages of direct election, see Humphrey, op. cit. "Electoral College Reform," Chamber of Commerce of the United States, Sept., 1963.

As the following account indicates, such confusion may have serious effects on election results:

... at a recent election [1948] in Ohio approximately 160,000 more votes were cast in the gubernatorial contest than in the Presidential contest. In that State, because of litigation that delayed final certification of the Progressive Party's slate of electors on the ballot, the electors of that party had to be listed in full on the ballot unaccompanied by the names of the Progressive Party's candidates for President and Vice-President. The names comprising the Republican and Democratic electoral slates were omitted under the normal Presidential short ballot plan. Only the names of their Presidential and Vice-Presidential candidates appeared. Because of this peculiar arrangement a large number of voters cast invalid ballots in the Presidential contest by voting for Truman or for Dewey (i.e., for their undisclosed electoral slates) and also for some of the Progressive electors as well. Such invalidated choice accounted in large measure for the discrepancy in the Presidential and gubernatorial vote totals. The invalidated ballots may well have affected disposition of the State's electoral votes, for there was a difference of only about 7,000 votes in the Dewey and Truman totals out of a total of almost 3,000,000 votes cast. ^{3/}

^{3/} Kallenbach, Ibid. 95 Cong. Rec. 4449 (1949).

Any system such as the direct election system eliminating electors as individuals would simplify the election process for the voter. Both the Lodge-Gossett "proportionate distribution" plan and the Norris plan in 1934 would have retained electoral votes only as a counting device. A "district" plan in which individual electors were preserved would leave the way open for confusion (although the latest version would require the district electors to be bound to support their party's nominees).

4. Direct election would undoubtedly invigorate the two-party system in sections of the country where one party is so firmly entrenched that no other parties have any incentive to try to win. ^{4/} Instead of Republican votes in certain Democratic States being relatively useless to the national party, they would be added to the national total. The same would be true for Democratic votes in heavily Republican States.

5. With direct election, party campaigns might be more evenly distributed throughout all parts of the country. ^{5/} Under

^{4/} On the defects of the present system, see Kallenbach, op. cit. (1949); U. S. Congress. Senate. Committee on the Judiciary, op. cit.; Wechsler, op. cit.; Kallenbach, Joseph E. Our electoral college gerrymander. Midwest Journal of Political Science, V. 4, May 1960: 162-191.

^{5/} On the defects of the present system, see: Ogg and Ray, Introduction to American Government. Tenth ed. New York, Appleton Century-Crofts, 1951, pp. 230-2, 246-55. U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit. Wechsler, op. cit.; "Electoral College Reform," Chamber of Commerce of the United States, Sept., 1963.

the present system, campaigns tend to be concentrated in the large "doubtful," so-called "pivotal," States. This is not surprising in view of the fact that a few popular votes in these States may control enough electoral votes to swing the election. Thus a shift of 0.5 percent of the popular votes in Ohio, Illinois and California in 1916 would have defeated Wilson, and a shift of only 1,200 votes in New York would have defeated Cleveland in 1884. In 1948, a shift of 17,000 votes in Illinois, 3,500 votes in Ohio, and 9,000 votes in California would have transferred 78 electoral votes from Mr. Truman to Mr. Dewey and the latter would have been elected despite the fact that his opponent had polled two million more popular votes. While the pivotal States, with their cities and other highly populated areas, would still be a rich source of votes in a direct election system, they would not be as overwhelmingly important as they are now.

6. Direct election would give every vote, regardless of where it was cast, equal weight (i.e., one voter-one vote). ^{6/}

Now a vote counts for more in a "close" State than in a "sure" State. A few voters in the pivotal States may possess the power to elect or defeat their candidate. In a State where the result is more or

^{6/} On the advantages of direct election, see: Humphrey, op. cit. On the defects of the present system, see: Lea, op. cit., July 8, 1947: A3412-3; July 16, 1947: A3545-7; U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit.; American Bar Association, Report of the Commission on Electoral College Reform, January, 1967, "Electing the President"; Banzhaf, John F., III, "Reflections on the Electoral College," 13 Villanova Law Review, p. 304, Winter, 1968.

less foreordained, the possibility of a similar group of voters swinging an election is almost non-existent. A vote may also have greater significance in a small State than in a large State. Small States have more electors relative to population. Fewer voters may control the electoral vote. The philosophy of this approach was recently strengthened by the United States Supreme Court in Hadley v. Junior College District. 397 U.S. 50 , Docket No. 37, Feb. 25, 1970, which held that "the guarantee of equal voting strength for each voter applies in all elections of governmental officials...."

7. Direct election would reduce the premium now placed on choosing Presidential candidates from large "key" States. ^{7/}

Under the present system, Presidential aspirants from the "pivotal" States have a disproportionate chance of receiving the nomination. By choosing a candidate from one of those States, a party may attract the few votes it needs to carry the State. Between 1900 and 1949, 16 out of 26 major party candidates (17 if Theodore Roosevelt is counted as a major party candidate in 1912) came from New York or Ohio.

^{7/} On the defects of the present system, see: Kallenbach, op. cit., (1949); Ogg and Ray, op. cit., U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; Wechsler, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit.

Even with direct election, it is true, parties might still find it politically advantageous (i.e., win more votes) to choose candidates from the old "pivotal" States. Also, the Governors of those States would continue to offer the type of political and administrative experience especially fitting for a Presidential candidate. Votes in all States being assigned equal value, however, the possibility that nominees might be drawn from smaller States would probably be increased.

8. Direct election would give the voters a legal voice in the choice of the President, not merely an expression of preference.^{8/}

It has long been customary for the Presidential electors in each State to vote for the candidate nominated by their party. If those electors were to decide to transfer their votes to some other candidate, however, it is doubtful whether existing law can stop them from doing so. Although a number of State laws purport to control the functioning of Presidential electors, they would probably be held unconstitutional. It has been stated that an elector "cannot be compelled either by State law or by national law to register his choice for the candidate regularly nominated by his party at its

^{8/} On the advantages of direct election, see: Humphrey, op. cit., On the defects of the present system, see: Kallenbach, op. cit. (1949); Ogg and Ray, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit. On the advantages of direct election, see: Humphrey, op. cit.

national convention." ^{9/} Attempts to enforce against the Alabama electors a State law requiring Presidential electors to vote for the candidate named at their national party convention were unsuccessful, both in the Alabama Supreme Court and in the Federal courts. ^{10/}

9. Because each vote would count equally, direct election would almost certainly encourage more people to vote. ^{11/} It has been observed that voter participation has tended to be higher in "close" or "doubtful" States, where campaigning is concentrated and the power of votes is known to be high, than in other States.

A "proportionate distribution" plan which divided electoral votes according to popular strength might similarly provide an incentive to vote. The more popular votes a party received, the greater would be its share of the electoral vote. As long as each State's electoral vote was fixed by the size of its Congressional delegation, however, an absolute limit would remain on the electoral strength which a State could attain. Although increased competition between parties might result in more people voting, no electoral advantage would accrue from a generally high voting turnout.

^{9/} Kallenbach, Ibid., p. 4449 (1949).

^{10/} Folsom, et al. v. Albritton, et al. (335 U.S. 882, Dec. 6, 1948); Adcock, et al. v. Albritton, et al. (335 U.S. 887, Dec. 6, 1948); also advisory opinion of the Alabama Supreme Court. In re Opinion of the Justices (250 Ala. 399, 34, 50 (2nd) 598 (1948)). Cited in Kallenbach, Ibid. (1949).

^{11/} On the defects of the present system, see: Kallenbach, op. cit. (1949). On the advantages of direct election, see Humphrey, op. cit.

10. With direct election, it would be unnecessary to preserve the system of referring a close election to the House of Representatives. ^{12/} The House of Representatives has been called upon twice to elect a President, first in 1800 and then in 1824. In 1800 the House elected the candidate, Jefferson, who had received the most electoral votes, but the political reaction produced the 12th Amendment to prevent a recurrence of the circumstances which made it impossible for the electoral college to decide that election. In 1824, as has already been mentioned, it chose John Quincy Adams over Andrew Jackson, despite Jackson's plurality of electoral votes.

Under the existing system it would be possible for a House of Representatives, because of inability to give a majority to one candidate, to fail to elect a President by January 20th, leaving the Vice President-elect to serve in the interim. If Dewey had received "a very few thousand more votes" in Ohio and California, it has been suggested, this might have happened in 1948. With the election referred to the House, the make-up of the State delegations in the House at that time was such that the election might well have been deadlocked--21 for Truman, 20 for Dewey, 4 for Thurmond and 3 States ineffective because their delegations were evenly divided between the Republicans and the Democrats.

^{12/} On the defects of the present system, see: Corwin, op. cit.; Kallenbach, op. cit. (1949); Lea, op. cit., July 24, 1947; A3874-5; Ogg and Ray, op. cit.; U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; U. S. Congress, Senate. Committee on the Judiciary, op. cit.; Wechsler, op. cit.

As noted, a "proportionate distribution" plan of electoral vote would abolish the system of giving each State, large or small, one vote in elections placed in the hands of the House of Representatives. It would allow each individual Representative and Senator to cast one vote. This could well reduce the chances of a "minority" President being elected, but it might not eliminate the possibility.

11. The results of a direct election would be little affected by accidents and frauds--fraudulent voting or fraudulent counting. ^{13/} Under the present method of election, close States may be won or lost by such extraneous circumstances as rainy days or blizzards. This system is also highly sensitive to frauds. It is unlikely, however, that the results of any nationwide direct election would be so close that minor accidents or small-scale frauds would have a significant effect on the outcome.

12. With direct election there would be no risk of complications arising between the time the people cast their votes and the day the President was legally elected. ^{14/} When the choice of the President is not final until a meeting of the electors some weeks after

^{13/} On the defects of the present system, see: U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit.; Wechsler, op. cit.

^{14/} On the defects of the present system, see: Corwin, op. cit.; Kallenbach, op. cit., p. 4450 (1949); Lea, op. cit., July 24, 1947: A3874-5; Ogg and Ray, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit.; Wechsler, op. cit.

the "Presidential election," confusion or uncertainty may arise because of the ineligibility (e.g., because of holding some Federal office) of an elector. If an ineligible elector were discovered too late in a close election to be replaced, the invalidation of his vote might affect the result of the election. (Many States, though, provide for the filling of vacancies in the State's group of electors by the electors themselves).

Further confusion may be caused if electors fail to function in the proper place on the proper day, which happened with the Wisconsin electors, owing to a blizzard in 1857.

As was observed during President Eisenhower's post-election trip to Korea late in 1952, the situation would be even more complicated if a "President-elect" were to die or be killed between election day and the day the electors meet. If this were to happen, the choice of a President would apparently fall to the individual electors, acting on their own initiative, although both major parties provide for the making of nominations in such circumstances.

13. Direct election would permit the establishment of nationwide standards for voting in Presidential elections. For election of the national Chief Executive, it is difficult to justify different voting standards in different States. The privilege of voting for the President should be enjoyed equally by all citizens. It would not be necessary to extend national voting laws to cover State and local elections, which could remain under the control of the States.

Current proposals would provide for election of the President and Vice President by qualified voters in each State who shall have the same qualifications requisite for electors of the most numerous branch of the State legislature, but Congress would be authorized to alter State regulations on the manner of holding such an election.

14. Direct election would relieve the major parties of having to make excessive concessions to minority groups.^{15/} Minority groups would not be able to derive undue bargaining strength from their balance-of-power position, from their ability to swing all the electoral votes of key States to one or the other major candidate.

15. Direct election would not necessarily lead to an undue multiplication of parties.^{16/} The two-party system has generally been preserved in the election of Senators, Members of the House of Representatives, and State Governors, among others. All these officials are chosen directly by the people, with a plurality of the votes cast required for election. All systems in which victorious

^{15/} For arguments that the present system gives undue weight to minorities, see: Kallenbach, op. cit. (1949); U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; Wechsler, op. cit.; U. S. Congress, Senate. Committee on the Judiciary, op. cit. On the advantages of direct election, see Humphrey, op. cit.

^{16/} On the relationship between the present electoral system and the two-party system, see: Kallenbach, op. cit. (1949); U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.; U. S. Congress. Senate. Committee on the Judiciary, op. cit.; Wechsler, op. cit.; American Bar Association, Report of the Commission on Electoral College Reform, January, 1967. "Electing the President."

candidates must receive more votes than any other candidate would appear to discourage the development of more than two, or at most three, parties. Voters seem to be reluctant to "waste" their votes on candidates who have no chance of being elected. The latest versions of the direct election plan require receipt of at least 40 percent of the votes and this should help to stifle the rise of serious third parties.

Arguments Against Direct Election Plan - Those who oppose the direct election plan, argue to the contrary as follows:

1. Direct election would permit the growth of minor parties which would be likely to have a divisive effect on national politics.^{17/} It would no longer be necessary for a winning candidate to win a majority of votes in the Electoral College or the House of Representatives although under the latest version of the direct election plan it would be necessary to win 40 percent of the popular vote. The probability would be great, however, that runoffs would be frequent since the proposal would permit any party that had registered as members more than 10 percent of the total registered voters in the United States to run candidates in every State.

The fact that parties have not multiplied in Congressional or State Governor elections gives no assurance that the two-party system would not break down with direct election of the President.

^{17/} On the possibility of party fragmentation, see: Ogg and Ray, op. cit.; Wechsler, op. cit.

Even under the restrictive electoral college system now in operation, minor parties are not unknown. In 1948 there were eleven Presidential candidates, three of whom (Truman, Dewey and Thurmond) won electoral votes.

2. Direct election might impair the "unifying" function of the two major parties.^{18/} It can be argued that the essential feature of our party system is that each major party recognizes and protects the legitimate interest of all substantial economic, social, sectional, religious, racial or other groups in the Nation. The unifying function might be impaired by reducing the pressure upon the major parties to heed the interests of minority, factional or sectional groups.

It would be difficult to prove that minority groups in pivotal States now exert disproportionate influence on major party programs. It is a matter of justice that the legitimate interests of minority groups should be fairly represented. Evidence indicates that "some of those who ... want the major parties freed from the necessity to give undue recognition to minority groups ... wish the major parties to give such groups no recognition whatever."^{19/}

^{18/} On the advantages of the present system, see: Becker, Carl. The will of the people. Yale review (New Haven), March 1945, v. 34, 385-404; U. S. Congress. House of Representatives. Committee on the Judiciary. op. cit., Minority views by Clifford P. Case.

^{19/} U. S. Congress. House of Representatives. Committee on the Judiciary. op. cit., Minority views by Clifford P. Case., pp. 30-31.

In addition, it can be argued, so long as both major parties have regard for the interests of the minority groups, few members of such groups feel compelled to form special interest blocs or parties for their own protection. Also, their more extreme demands are moderated.

3. Direct election would deprive small and sparsely populated States of a slight advantage enjoyed through the distribution of electoral votes according to the size of Congressional delegation.^{20/}

No State, they claim, would have any more weight than it would be entitled to by its popular votes. At the present time the majority of the voting population is found in some nine States. For the sparsely-populated States, direct election would impose a positive disadvantage. It is easier to "get out" votes in highly-populated urban areas.

By weighting the composition of the electoral college in favor of small States, the authors of the Constitution helped to reconcile those States to the idea of federation. It cannot be doubted that at various times during the history of the Nation this

^{20/} For a defense of the weighting in favor of small States, see: U. S. Congress. House of Representatives. Committee on the Judiciary. op. cit.; Lea, op. cit. July 18, 1947: A3622-3, July 22, 1947: A3729-31. But for the argument that the voting power of residents of the more populous States is greater in Presidential elections under the existing system, see: Banzhaf, John F., III, "Reflections on the Electoral College," 13 Villanova Law Review, p. 304, Winter, 1968.

concession has substantially contributed to the stability of the Government. Although the provision has probably ceased to be essential to the survival of federal union in the United States, and has never been the only protection for small States, it may even now help to cement the loyalty of those States, to prevent them from feeling "trodden upon."

4. Direct election would almost inevitably bring irresistible pressure for national laws governing qualifications for voting.^{21/} If control over such matters as minimum voting age, educational qualifications or payment of a poll tax were left with the States--as it supposedly would have been under the Lemke and Langer plans for direct election--they argue that State legislatures would be under pressure to reduce their voting standards to the "lowest" existing level.

The major differentiating factor now in the size of the States' electoral votes is population. Under direct election this would be replaced by voter turnout and such participation would determine the extent of each State's influence over the outcome. Not only would irresistible pressure to lower voting qualifications arise, but there could also be consequent changes in the relative influence of States and areas.

Establishment of a national voting law for the Presidential election would be likely to threaten State control

^{21/} On the problems likely to arise with State control of voting, see: U. S. Congress. House of Representatives. Committee on the Judiciary. op. cit.

over voting for Representatives, Senators, and possibly State and local officials. Lack of uniformity in State laws would be specially difficult to defend in elections for other Federal officials, i.e., Representatives and Senators. Among other things, it would be awkward to have different sets of people voting for different officials on the same election day.

Although uniform voting laws might be more equitable to the voter, it is claimed that they would represent a blow to the State power. If it is intended that the States should continue to possess some independent authority in our federal system, it is fitting that they should retain at least part of their control over voting. Thus, while uniform rules for voting in Presidential elections might not be incompatible with generally accepted principles of federalism, such Federal laws might eventually infringe improperly upon State authority in State elections.

5. Direct election of the President could well result in enlarged regulatory authority over political parties by the federal government and replace the existing system of parties mainly regulated by State law.

Under the latest direct election proposal parties meeting federal requirements would automatically have their presidential candidates placed on the ballot in every State, without any clear directive as to State control over the establishment, registration, etc., of such parties.

6. It is possible to exaggerate the risks inherent in the present system of electing the President.^{22/} As has been stated above, it has been necessary in just two instances to refer an election to the House of Representatives. Both cases occurred early in the 19th Century. In only one case (1824) did election by the House result in the selection of a "minority President" (John Quincy Adams). In 1800, as has been observed earlier, the House elected the person (Jefferson) who had received a plurality of electoral votes.

In no case has a "questionable" electoral result failed to be accepted peacefully, however reluctantly, by the people.

7. With direct election, the States would cease to be "electoral entities" in the choice of the President.^{23/} Although appeals to State pride would no doubt continue to be effective vote-getters, State lines would almost certainly be less important in the conduct of campaigns than they are now. Returns would no longer be counted by States. The general effect would probably be to emphasize the importance of the central government relative to the State governments. While opinions differ, it can be argued that in a federal system we should rather reinforce and enhance State authority and prestige in an attempt to avoid over-centralization.

Federalism, one of the fundamental premises of the American system, could be endangered by direct election of the President.

8. Direct election would tend to increase campaign expenditures. Already the costs of electoral campaigning are enormous.

^{22/} Becker, op. cit.

^{23/} U. S. Congress. House of Representatives. Committee on the Judiciary, op. cit.

To the extent that such campaigning were seriously undertaken in all parts of the country, they would be even greater. It may be that election issues should be put before the greatest possible number of voters, but the major parties could not undertake much more campaigning than they do now without the costs being prohibitive. Because highly populated "key" States and large cities would continue to be such good sources of votes, the parties might be tempted to limit their campaigning to those areas only, in order to limit expenses. The principal candidates might have difficulty in reaching all parts of the country. (While television has reduced this last difficulty, the high costs of such programming have reintroduced it in a different form.)

9. Exaggeration of election results under the electoral college system may not always be undesirable. It has been argued that "illusory" electoral strength is a feeble basis for the exercise of power and may lead to the abuse of authority. However, the appearance of strength may give a President useful, perhaps even necessary, prestige and moral force in leading the country. Such additional prestige may be especially useful during transition periods accompanying changes of administration.

10. Direct election might unduly upset the existing balance of power between the major political parties. The probable effects of the different method of election can only be guessed. Changes in issues and personalities, not to mention number of parties, make it almost impossible to predict these effects with any degree of accuracy. Other things being equal, both the Republican and the Democratic parties would probably poll more popular votes in areas

currently dominated by the opposite party. However, the results might be startling and the political repercussions extensive. The net effect might not be beneficial to the national interest.

11. Direct election is the most drastic remedy for the shortcomings of the present system. ^{24/} A more moderate solution might remove some of the obvious defects of that method.

"Proportionate distribution" of electoral votes, for example, while leaving control over elections and the distribution of electoral votes undisturbed, would lessen the possibility of "minority" Presidents and would probably invigorate the two-party system in sections of the country where one party is now virtually unchallenged. By changing the method of voting in elections referred to the House of Representatives, the risks inherent in the "one State, one vote" rule might be eliminated. Or, by a simple amendment abolishing electors (as individuals) and requiring popular determination of electoral votes (automatic plan), it would be possible to guarantee the people the voice in elections which is now based simply on custom, tradition, and usage.

12. The presumption is against Constitutional amendment unless the general welfare will be clearly benefited. Both the fact that the fundamental law should not be lightly changed and the fact that the effort required to make a change might better be directed

^{24/} Lea, op. cit., July 18, 1947: A3622-3; Wechsler, op. cit.

elsewhere, make this method of handling the problem impractical-- possibly undesirable. The risks which direct election would introduce into the Presidential election process have been listed above. It is not plain that the advantages of direct election would outweigh the possible undesirable effects of the change.

It would perhaps be particularly unfortunate to set an unessential precedent for altering Constitutional provisions dealing with the Presidential election process. Experience in France and Italy has shown how electoral reform might come to be "manipulated" with the various parties competing for the system under which they were most likely to win.

13. Because small States are more homogenous they tend to give a large majority to one party or the other. The larger States, on the other hand, tend to be more evenly divided which gives organized "swing groups" an extraordinary influence on presidential elections which they would not have otherwise.

14. Ideological minorities, presently of little note, would under the direct election method, have the same weight as sectional minorities, thereby reducing the opportunities for sections of the country to unite to help solve mutual problems by putting pressure on presidential candidates.

15. The runoff provision embodied in most direct election proposals gives extremists from both sides a hope presently denied them by the Electoral College system of winner take all, that by bargaining prior to the runoff to be able to exert some leverage in the final choice of President.^{25/}

B. District Plan

As has been pointed out above, the District Plan would preserve the Electoral College, but would eliminate the present procedure of giving a State's entire electoral vote to one candidate. Electors, equivalent to the number of Representatives in Congress of each State would be chosen by the voters, one for each Congressional or other district, and in addition, two (equivalent to the State's two Senators) for each State at large. Each candidate for elector would be required to declare the persons for whom he would vote for President and Vice President and the declaration would be binding, thus, in effect, eliminating the independent elector. These electors in each State would meet and vote and the tallies for all persons voted for sent to the President of the Senate. The candidate receiving the highest number of the total votes from all States and the District

^{25/} Kallenbach, op. cit. (1949); Lea, op. cit., July 18, 1947; A3622-3; Ogg and Ray, op. cit.; U. S. Congress. House of Representatives. Committee on the Judiciary. op. cit.; Wechsler, op. cit. Wilmerding, Lucius, Jr. Reform of the electoral system. Political Science Quarterly (New York), V. 64, March 1949: 1-23.

of Columbia would be elected providing he had a majority. Failing a majority the Senate and the House, meeting jointly, would elect a President from the top 3 candidates.

The proposal would thus eliminate the unit-rule system, the independent elector, and the method of voting by States in the House of Representatives should no candidate for President receive a majority of the electoral college vote.

Casting of electoral votes by district would not be new in the United States. When State legislatures began in the late 1700's and early 1800's to provide for popular choice of Presidential electors, it was normal for electors to be chosen in districts similar to Congressional districts. James Madison has been quoted as saying that the district system was the one "mostly, if not exclusively, in view when the Constitution was formed and adopted." As has been noted earlier in this report, the district method was generally abandoned when dominant parties in State legislatures saw that they could win more votes for their candidates by choosing electors on general, State-wide tickets.

The district system was favored in some form by such statesmen as James Madison, Thomas Jefferson, John Quincy Adams, Thomas Hart Benton, Andrew Jackson, Martin Van Buren and Daniel Webster. Four times between 1813 and 1824 constitutional amendments containing varieties of the district system were passed by the Senate. The House voted on district plans, the last occasion being 1826, but none received the necessary two-thirds vote.

Arguments In Favor Of The District Plan 26

1. Under the district system, popular vote results would tend to be reflected more accurately in electoral vote results than they are under the present system. Generally speaking, any group of voters capable of electing a Representative to Congress would be able to win electoral votes. Electoral vote results would not be distorted--and the majority of the winner exaggerated--by the practice of awarding all the electoral votes of a State to the party winning a plurality of popular votes. The proposal would eliminate the

26/ Krock, Arthur. Electoral system reform is long overdue. *New York Times* (New York), Dec. 18, 1952: 28; --Good uses imputed to the landslide delusion? *New York Times* (New York), Dec. 26, 1952: 14; --A substitute for the Lodge-Gossett plan. *New York Times* (New York), Feb. 9, 1950: 28; Lippman, *op. cit.*; Williams, J. Harvie. Electoral college reform. In U. S. Congress. Senate. Committee on the Judiciary. Nomination and election of president and vice-president. Hearings on S. J. Res. 8 and related bills, June 11, July 13, 15, and Aug. 1, 1953. 83rd Cong., 1st session. Washington, U. S. Govt. Print. Off., 1953. pp. 209-225; --Electoral reform; the Coudert amendment. Article inserted in the Record by Frederic R. Coudert, Jr., *Congressional Record*, Jan. 9, 1953: A75-77; Wilmerding, *op. cit.* *Congressional Digest* April 1956: 122-128 for pro-con. See also 1961 Hearings, Senate, *op. cit.*; 1963 Hearings, Senate, *op. cit.*; 1961 Committee Print, Senate, *op. cit.*; Electoral College Reform, Chamber of Commerce of the United States, Sept. 1963; Remarks by Senator Mundt, *Congressional Record*, Vol. 110, pp. 15318-15320, June 29, 1964, *Daily Congressional Record*, February 28, 1966, pp. 4082-4085; Senators Mundt and Stennis, *Daily Congressional Record*, Jan. 7, 1965, pp. 396-397; Felix Morley, Action as Needed to Preserve Election Stability, *Nation's Business*, Dec. 1963, p. 29; --Time for Election Reform is Now, *Nation's Business*, Dec. 1964, p. 25; American Good Government Society, *Congressional Digest*, November, 1967, pp. 279, 283.

unit-rule or "winner take all" system in each State. In at least twelve of the thirteen Presidential elections between 1916 and 1964 (see table above), the district system would have reduced the electoral majority of the winning candidate and increased the electoral votes of his opponent. In one instance (1960) it would have changed the result of the election.

Under most circumstances the district system would prevent the election of "minority Presidents." To the extent that popular strength was reflected in electoral votes, the possibility of a wide disparity between popular and electoral votes would be reduced. A large popular majority in a State would not be "wasted." The winner of a bare plurality would not "take all."

In addition, the requirement that districts be "composed of compact and contiguous territory, containing as nearly as practicable the number of persons which entitled the State to one Representative in Congress" would virtually eliminate malapportionment among districts and reflect more accurately popular will. Equal weight, based on population, would be given to urban and rural districts.

Furthermore, under the district system each voter would vote for only three electors rather than for all of the electors in his State as under the unit-rule. There would be less difference in the value of each voter's vote among States.

The district system would limit the possible electoral effects of local frauds, bad weather, intense local issues, and other accidental circumstances.

Similarly to proposals for proportionate distribution, the district plan would preserve the present provision for relating electoral votes to population; the total electoral strength of a State would not vary with the relative size of the popular vote. The plan would provide an even more effective limitation of the effects of local frauds, etc., than would proportionate distribution of electoral votes. Under the district system, unusual circumstances in one local area could only determine the disposition of the electoral votes for the district and the State at-large. With proportionate distribution, it would be possible for such circumstances to affect the total vote of the State.

By eliminating the unit-rule, the proposal would consequently save large blocs of voters in a State from being disfranchised for having amassed a total statewide vote for a candidate less than that of the winner.

2. The district system would be more favorable than the present method of election to the establishment and maintenance of the two-party system. In any areas of a so-called "one-party" State which are now sometimes represented in Congress by members of another party, that other party would be encouraged by the district amendment to seek electoral votes for its Presidential candidate. The district plan would not be likely to encourage any undue growth of third or splinter parties. In order to win any electoral votes, the supporters of a third party would have to carry separate Congressional districts. A third party would have little hope of diverting more than a few

electoral votes from major party candidates. The district plan would not, as proportionate distribution would, give electoral votes to a minority group thinly scattered through a State.

3. The district system would provide greater protection for the political power of small and sparsely populated States and areas. It would reduce the power of large, "doubtful" States to exert excessive political influences. With the possibility of dividing the electoral votes, it would be less important than it is now for a Presidential candidate to come from one of these "key" States. It would be less likely that the "pivotal" States would carry undue weight in the development of national party programs, or that they would claim disproportionate attention during the campaign.

The district system would place a check on the political power of large cities, and especially of certain pressure groups within those cities. The voters in the cities would not be able to control all the electoral votes in a State. At most they could determine their own electoral vote and the few electoral votes cast by the State as a whole (for Senators and Representatives-at-large).

Alleged undue influence of minorities in urban areas in large States would be reduced.

Small or sparsely populated States would not be deprived of the advantage they now possess in the distribution of electoral votes. Each State would continue to receive two of its electoral votes regardless of the size of its population.

The district system would diminish the excessive political

importance of larger, doubtful states, and would encourage major parties to select candidates and seek electoral votes elsewhere throughout the country.

4. The district system would tend to equate the political pressures on the President with those felt by Congress. Votes would be cast for President and Vice-President and for Members of Congress by the same voters in the same district at the same time. The main difference would be that electoral votes would be cast in a body and one-third of the Senate would be chosen at that time. Responsibility to virtually identical constituencies might foster harmony between the President and Congress.

5. By preserving the electors, the district system would not involve any unpopular threat to the role of States in the Presidential election or to State control over voting qualifications. The present power of the States to set standards for voting would not be disturbed. The only change authorized would be a positive one, the incorporation into the Federal Constitution of a provision permitting States, at their discretion, to reduce residence requirements for voting, by new residents, in the Presidential elections.

6. The district amendment would not create any unwanted precedent for proportional representation in Congress. It is unlikely that any party unable to elect representatives to Congress would be capable of winning electoral votes. Electoral votes would be mathematically proportionate to popular votes only if popular votes happened by chance to be distributed among districts in such a way as to produce that result.

7. The requirement of compact, contiguous districts of nearly equal population need not, under the developing state of the law, necessarily result in the creation of electoral districts different from congressional districts. With the Supreme Court decision in Wesberry v. Sanders, 376 U.S. 1 (1964), congressional districts within a State are now required to be substantially equal in population. In 1965, the House of Representatives passed H. R. 5505, a bill requiring congressional districts to be compact, contiguous and to vary not more than 15 percent in population from the average district in the State. The bill was not enacted by Congress. In any event, if such an act is passed, S. J. Res. 12 could be amended back to its original form so that electoral districts would be the same as congressional districts. The advancing state of the law is eliminating malapportionment (and possibly gerrymandering) of congressional districts.

8. By, in effect, binding the electors, the proposal would eliminate criticism directed at the current system. Bound electors, unable to be independent, would accurately reflect the popular will. Only if the candidate dies before the electors meet would an elector be free to vote for someone else.

9. By establishing a uniform system the proposal would eliminate State control over the method of choosing electors and prevent possible manipulation from election to election.

10. The district system might well provide an incentive for greater voting participation in States now dominated by a single party. Any invigoration of the two-party system in those States would help, as would the fact that minority votes would not necessarily be wasted.

Arguments against District Plan. ^{27/} Those who oppose the district plan claim that:

1. Election of the President by the district system would not invariably reflect popular vote results more accurately than the present system. The relationship between popular votes and electoral votes would depend partly on the geographic distribution of party strength. A minority without concentrated power in certain districts might not win any electoral votes in a State. In a national sense, as long as the electoral college system remains and each State has at least three electoral votes regardless of population, distortion will be built into the system. In addition, although each voter in

^{27/} Statements on H. J. Res. 11 and H. J. Res. 19 (82nd Congress, 1st session). In U. S. Congress. Senate. Committee on the Judiciary. Hearings on S. J. Res. 8 and related bills, op. cit., pp. 230-254; Senate Judiciary Committee, Committee Print, 1961, op. cit.; Electoral College Reform, Chamber of Commerce of the United States, Sept. 1963; Report on the Method of Electing the President and Vice President, by Committee on Federal Legislation, Assn. of the Bar, City of New York, Dec. 1961; Sen. Estes Kefauver, The Electoral College: Old Reforms Take On a New Look, 27 Law and Contemporary Problems, 188, Spring, 1962; Allan P. Sindler, Presidential Election Methods and Urban-Ethnic Interests, 27 Law and Contemporary Problems, 213, Spring 1962.

each district throughout the country would only vote for three electors, population disparities among States would reduce the value of a vote for statewide electors in large States as compared to States with lesser populations.

The district system would not abolish the inequalities produced by the present weighting of electoral votes in favor of small States. The weight of popular votes in small States would continue to exceed the weight of such votes in large States.

The district plan would continue to permit the election of some "minority" Presidents. This would be possible if the winning candidate won most of his electoral votes by bare majorities or pluralities, while his main opponent received large numbers of his votes by huge margins. As with proportionate distribution, it might happen also if the winner drew disproportionate support from low-population States where there were fewer voters for each electoral vote. Where one Presidential candidate won the bulk of his votes in low-population (rural or small town) districts, the chances of a minority winner might be greater than they are now. Thus in 1948 the Democrats carried Ohio and California, but the district plan would probably have given the Republicans more electoral votes in those States.

Several factors other than the unit-rule can contribute to the election of a minority President. These are: (a) the federal principle providing a minimum of three electoral votes for each State, and (b) the allocation of additional electors on the basis of population. The first factor causes many States to have greater weight in the presidential election than they would have had if electoral votes were awarded solely on population. Under the second factor the total popular vote in a State has no relevancy to its electoral votes. A small voter turnout will carry electoral votes based on population just as surely as a large voter turnout. And, under the district system a candidate could secure a majority of a State's electoral votes with a minority of its popular votes.

The district amendment would not diminish present inequities in State laws relating to voting qualifications (except for the permissive clause relating to voting by new residents). Like proportionate distribution, it would continue to permit States to restrict their suffrage without any loss of electoral power. The State would cast the same number of electoral votes regardless of the size of the popular vote.

2. The district system might tend to overweight the political power of rural and small-town areas. As a rule, less highly populated areas tend to be overrepresented in the apportionment of Congressional districts, while cities have less than their share of

seats (although this is being altered). It is possible that the district plan would permit a presidential candidate to win an election without the support of any of the major metropolitan areas. The district plan would reduce the influence of the big city vote in presidential elections, as well as reduce the influence of the vote of minority groups in the large States.

3. The district system might impair rather than strengthen the two-party system. It would not be likely to invigorate second parties in "one-party" States where the minority party has little chance of winning the votes of any Congressional districts. In the South, the Democratic party has been so generally dominant that few Republican Congressmen have been elected from those States. In the absence of a major realignment of parties in the South, it is doubtful that a change to the district system would materially alter the prospects of a second-party presidential candidate in that area.

In all probability, the district system would concentrate presidential campaigning to marginal districts.

The district plan would give greater recognition to possible undesirable third parties than the present system. Almost any small party would find it easier to win Congressional districts than to carry whole States. Once such parties won a few electoral votes, they might be encouraged to try for more in order to throw the election into Congress where greater bargaining opportunity might exist.

4. The system does not automatically convert the election of an individual elector into an electoral college vote. Votes by electors for persons other than those to whom they are pledged are not counted under S. J. Res. 12, but they would be lost to the pledged candidate. An elector, by voting for others, can reduce the total electoral votes of the candidate to whom he is pledged.

5. Adoption of the proposal might not necessarily abrogate the existence of two sets of separate districts in a State, electoral and congressional. Since the courts have not as yet considered the question of political gerrymandering of congressional districts as being prohibited by the Constitution, the possible consequence of a failure by Congress to enact a districting statute requiring congressional districts to be compact, would be to leave with the States a constitutional requirement of districts of equal population but which are not necessarily compact. The proposed constitutional amendment for election of electors from districts requires such districts to be compact. The result might be that while electoral districts in a State would be of equal population and compact, congressional districts could be of equal population but gerrymandered thus producing a situation of separate electoral and congressional districts within a State.

C. Proportional Plan

There have been many proposals in past Congresses to incorporate some form of proportional plan in reforming the Electoral College. The idea was first introduced by Representative Lawrence of New York in 1848. As has already been stated, the Proportional Plan would abolish the Electoral College, but would retain the electoral vote. In each State, the electoral vote would be apportioned among the presidential candidates in accordance with the number of popular votes they receive, rather than in accordance with the "winner take all" system which we have at present. The candidate with the most electoral votes throughout the Nation would be elected President if he received a certain percentage (usually 40) of the total electoral vote. In case no person received at least 40 percent of the total electoral votes, the Senate and House sitting jointly would choose the President from the persons having the two highest numbers of electoral votes.

Arguments in Favor of Proportional Plan^{28/}

Those who favor the proportional plan, argue as follows:

1. Proportionate distribution of electoral votes would tend to reflect more accurately the popular strength of the various

^{28/} Burns, James McG. The Electoral College meets, but why? *New York Times Magazine* (New York) December 12, 1948, p. 14, 74-8; Corwin, Edward S. *The President: office and powers. History and analysis of practice and opinion.* 3rd ed., revised. New York, New York University Press, 1948. p. 49-72; Kallenbach, Joseph E., *Presidential Election Reform.* Paper inserted in the Record by Sen. Henry Cabot Lodge, Jr. *Congressional Record*, April 13, 1949, 448-52; Lea, Clarence E. *Modernize our Presidential election.* Ten statements inserted in the Record by Rep. Lea, June 30-July 25, 1947. *Congressional Record*, July 8, 1947: A3412-13, July 16; 1947: A3545-7; Lippman, Walter, *Electing a President.* Series of 3 articles. *Washington Post*, March 6, 7, 9, 1950; Lodge, Henry Cabot, Jr. *Should the United States abolish the Electoral College? Yes.* *The Rotarian* (Chicago), v. 75, July 1949, 24-5, 52-3; U. S. Congress. House Committee on the Judiciary. *Proposing an amendment to the Constitution of the United States providing for the election of President and Vice President.* Washington, U. S. Govt. Print. Off., 1949 (81st Cong., 1st sess. House Report No. 1011);

candidates. It eliminates the "unit-rule" or "winner take all" system. As is argued by those who favor direct election of the President when the party with a plurality of popular votes in a State wins all the electoral votes for that State, as is now the case, the final results usually exaggerate the strength of the winner. In 1912 Woodrow Wilson, with only 42 percent of the popular vote, received 84 percent of the electoral vote. In 1936 Franklin D. Roosevelt received 98 percent of the electoral vote on the basis of 60 percent of the popular vote. "Illusory" electoral strength provides a feeble basis for the exercise of power and may lead to abuse of authority. Distribution of electoral votes in accordance with popular vote would eliminate the distortion which results from allotment of State votes without regard for the relative popular strength of the parties contending.

Of all the proposals, the proportionate system comes closest to electing a President by popular vote of the people while at the same time preserving each State's relative electoral strength in the election of the President.

---Senate, Committee on the Judiciary. Proposing an amendment to the Constitution of the United States providing for the election of President and Vice President. Washington, U. S. Govt. Print. Off., 1949 (81st Cong., 1st sess. Senate Report, No. 602); Wechsler, Herbert, The Lodge-Gossett plan. Fortune (Denver), June 1949, v. 39, 134-46; ---Presidential elections and the Constitution: a comment on proposed amendment. American Bar Association Journal (Chicago), March 1949, v. 35: 181-4, 270-4; Wilmerding, Lucius, Jr. Reform of the electoral system. Political Science Quarterly (New York), v. 64, March 1949, 1-23; et al. Congressional Digest, Apr. 1956, 106-121, for pro-con discussion. Senate Hearings, 1961, 1963, op. cit.; Senate Committee Print, 1961, op. cit.; Electoral College Reform, Chamber of Commerce of the United States, Sept., 1963; The Electoral College: Old Reforms Take on a New Look, Sen. Estes Kefauver, 27 Law and Contemporary Problems, 188, Spring, 1962; Why the Minority Voice in the Election of the President? Judge Joe Eaton, Florida, reprinted in Daily Congressional Record, May 21, 1964, pp. A2688-A2690; "The Direct Vote and the Electoral College," Saturday Review, February 12, 1967, p. 24.

2. Under most circumstances, proportionate distribution would prevent the election of a candidate receiving a minority of the popular votes. As has been seen, the present system permits nominees with the greatest popular support to be defeated. With proportionate distribution of electoral votes, a candidate with a majority of popular votes could not lose the election because he won most of his electoral votes by large majorities while his opponent received most of his electoral votes by bare majorities or pluralities. Had there been proportionate distribution in 1876 and 1888, Hayes would have been defeated by Tilden, and Harrison by Cleveland.

3. As far as the present unequal weighting of States permits, proportionate distribution would give equal weight to individual popular votes cast in pivotal States and in States where one party is almost certain to win by a wide margin. Under the present system a single voter in a "sure" State is not likely to affect the outcome of an election, while a few citizens in a doubtful State may hold the power to elect or defeat a candidate. This affects voting participation, which has tended to be higher in doubtful States. Proportionate distribution of electoral votes would give even a hopeless minority of voters in a State a chance of crediting their candidate with some electoral votes. It would reduce, although not eliminate, inequality of voting power.

Under the plan there is less possibility of the "disfranchisement" of voters since minority votes would be reflected in a proportional division of a State's electoral vote to the nearest one-thousandth.

4. Accidental circumstances and fraudulent voting or vote-counting would be less likely to defeat the choice of the people. As long as the shift of a few popular votes may determine which party wins the whole electoral vote of a State, accidents or frauds, it is said, constitute a disproportionate threat. Close States may be won or lost on account of a rainy day or blizzard. With division of electoral votes according to voting strength, a small number of popular votes could affect no more than a few electoral votes. Swings due to accident, fraud or other similar causes would be reduced. Unless the electoral vote were exceedingly close, it is unlikely that any such extraneous circumstances would influence the outcome.

5. Through eliminating the position of Presidential elector, proportionate distribution would give the voters a more direct voice than they now have in the choice of the President. At present, no Federal law prevents an elector from violating the long-established custom that he should vote for the candidate nominated by his party. State laws requiring electors to follow instructions have been held unenforceable (e.g., Adcock, et al. v. Albritton, et al. [1948] and Folson, et al. v. Albritton, et al. [1948]). State legislatures may decide at any time that electors should be chosen, not by popular vote, but by some other means. Incapacity or disqualification may prevent electors chosen by the voters from functioning at the proper place on the proper day. The necessity for voting on individual electors instead of the actual Presidential candidates may confuse enough voters to affect the outcome of an election, especially in the States indicating only the electors' names on the ballot.

Abolition of the position of Presidential elector would give the people a direct role in the allocation of electoral votes. No complication could arise from the inability of electors to meet and vote as expected. Confusion created by long lists of electoral college candidates on Presidential ballots would be eliminated.

6. Proportionate distribution might strengthen the two-party system. First, it might invigorate the second party in States where the dominant party now is so strong that no other parties have any hope of victory. Under the present system, a party has little incentive to devote precious time, money and energy to local campaigning in States where the returns will almost surely be negative. With proportionate distribution, it is said, Republican party activity would probably be encouraged in the South, and Democratic activity in parts of New England and the Middle West.

Secondly, it would free the major parties from having to make any excessive concessions to minorities in key States, and allow them to concentrate on developing separate and distinct programs. The present system, it is argued, allows small minorities to hold the balance of power in pivotal States. Proportionate distribution would prevent pressure groups from bringing undue pressure on the major parties. Powerful minority groups would be deprived of any power they now possess to "throw" all the electoral votes of a pivotal State to whichever major party offers them the best terms.

It is not necessarily true that proportionate distribution would encourage the growth of numerous small parties and undermine the two-party system. By requiring the winning candidate to obtain an absolute majority of the electoral vote or majority of State delegations in the House of Representatives, the present system does militate against the rise of third or more parties. Voters generally prefer to cast their ballots for the party which has a chance of carrying the election. Under proportionate distribution, small parties could collect electoral votes without winning pluralities or majorities in the States, and a President could be elected by less than half of the electoral vote. However, as long as the winning candidate had to have more electoral votes than any other candidate, parties would not be likely to multiply rapidly. It is interesting that parties have not so multiplied in State, Congressional and other elections decided on the plurality system in the United States. The provision in the proposed amendment requiring election by at least 40 percent of the total electoral vote would help to check any tendency towards breakdown of the two-party system and would reduce the possibilities of the election being thrown into the Congress through the efforts of minor parties since it would require such a party to secure at least 20 percent of the electoral vote to do so. In addition, if an election were to be thrown into Congress, the choice would be limited to the two top candidates, not three, and would prevent a third party candidate from being considered.

7. Proportionate distribution might help to establish a more equitable balance of power among the States in Presidential elections. On the one hand, proportionate distribution of electoral votes would reduce the excessive importance of large, doubtful States in Presidential campaigns. Because of the stakes involved, parties now concentrate their pre-election activities in the so-called "pivotal" States. Under the proposed amendment the electoral votes of the present "key" States would not be "swung" one way or another by a small shift of popular votes. The parties would be encouraged to extend the scope of their campaigns in other parts of the country.

Proportionate distribution would also lessen the presently disproportionate value placed on Presidential (and Vice Presidential) candidates coming from the large, doubtful States. In the years 1900 to 1949, well over half the major party Presidential candidates were drawn from New York or Ohio.

Such distribution would eliminate the political injustice to large States of the present equal vote for all States in the House of Representatives. Under the present system, the House can elect a President supported by a minority of the people. In 1824, as already noted, the House chose John Quincy Adams over Andrew Jackson, despite Jackson's plurality of electoral votes.

Small and sparsely populated States would continue to enjoy the slight advantage now enjoyed through the distribution of electoral votes according to size of Congressional delegation. This preferential treatment probably has ceased to play an essential role in the preservation of Federal union. However, it is likely that the small States would object to losing their privilege and would block any amendment which would have that effect.

8. Division of electoral votes in proportion to regular votes would not threaten the power of the States to regulate suffrage requirements. Whatever the virtues or disadvantages of leaving the control of voting qualifications to the States, there is reason to believe that no amendment opening the door to national control would be acceptable to the necessary two-thirds of the Congress and three-fourths of the State legislatures. Proposals for proportionate distribution of electoral votes would not alter existing State authority to determine who may vote.

Arguments Against Proportional Plan ^{29/}

Those who oppose the proportional plan claim that:

1. Proportionate distribution might not strengthen the structure and powers of the nation's parties, and even could have an undesirable effect on them. It is generally agreed that the two-party system has helped to unify the United States and has enabled Presidents to provide necessary leadership in spite of a high degree of dependence on Congress. By allowing minority groups to win electoral votes, proportionate distribution would give minor parties

^{29/} Becker, Carl. The will of the People. Yale review (New Haven) March 1945, v. 34: 385-404; Burns, op. cit.; Ferguson, Homer. Congressional Record, Feb. 1, 1950: 1062-9; Hermens, Ferdinand A.

more incentive to build up strength than they have under the present system. The provision requiring the winning candidate to receive at least 40 percent of the electoral vote would provide only a partial deterrent to the rise of new political groups. The splintering of political parties would be encouraged. The fact that the two-party system has generally survived in Congressional, gubernatorial, and other State and local elections does not prove that it would endure indefinitely in national elections. New parties would not have to win the Presidency in order to exercise political power; they could exert great influence by holding the balance of power.

Proportionate distribution might result in less activity by the major parties to unify diverse political groups. The existing electoral system gives the major parties an incentive to seek the votes of minority groups in key States. It helps to assure that the legitimate interests of these groups will be represented. As long as both major parties give recognition to the interests of minority groups, the members of such groups have little incentive to

Flaws in new electoral plan. *Washington Post*, Jan. 20, 1950; Krock, Arthur, *The proposed change in counting electors*. *The New York Times* (New York), Feb. 3, 1950: 22; Lippmann, *op. cit.*; Patman, Wright. *Should the States abolish the Electoral College?* No. *The Rotarian* (Chicago), v. 75, July 1949: 24-5, 54-5; Silva, Ruth, *Reform of the electoral system*. *Review of politics* (Notre Dame), July 1952, v. 14: 394-407; Taft, Robert A. *Congressional Record*, Feb. 1, 1950: 1298-1299; *U. S. Congress. House. op. cit.*; *Minority views by Clifford P. Case; Wechsler, The Lodge-Gossett plan, op. cit.*; *--Presidential elections and the Constitution, op. cit.*; Wilmerding, *op. cit.* (1949); *Electoral College Reform*, Chamber of Commerce of the United States, Sept. 1963; *A Report on the Method of Electing the President and Vice President*. Committee on Federal Legislation, Assoc. of the Bar of the City of New York, Jan. 1962; *Presidential Election Methods and Urban Ethnic Interests*, Allan P. Sindler, 27 *Law and Contemporary Problems* 213, Spring, 1962; Senate Committee Print, 1961, *op. cit.*

rally behind extremists and form special interest blocs or parties. The proportional plan, by reducing the political importance of minority groups in large, doubtful States, would make it possible for the major parties to give less attention to the interests of minor groups--whether economic, sectional, national, religious, or racial. While some of these minorities may now seem to command more than their share of notice, it would be undesirable for national unity if any of these groups were to be systematically underrepresented.

2. Proportionate distribution would provide no assurance that the popular will would prevail in every Presidential election.

The system of dividing electoral votes in proportion to popular vote, it is argued, would not equalize the value of popular votes in large and small States. The electoral vote, including the two votes for each Senator, would continue to be weighted in favor of the small States. A single vote in a small State, where the number of electoral votes relative to population was high, would have more influence than a single vote in a large State.

Under some circumstances, the chances of a Presidential candidate's winning an election in spite of having a minority of the popular votes would be greater than they are under the present system. This might happen if one candidate received most of his electoral votes from States where the number of voters relative to electoral votes was low. Or it might happen where the vote in large States might be almost equally divided but one party had a greater number of small "safe" States than the other. In at least two elections since 1860, proportionate distribution would have given the Presidency to a minority candidate who was defeated under the present system. In 1880 Winfield S. Hancock had over 7,000 fewer votes than James A.

Garfield, but he would have won by a margin of 6 to 8 electoral votes if proportionate distribution had been in effect. In 1896, William Jennings Bryan won less than 47 percent of the popular vote to William McKinley's nearly 51 percent, but proportionate distribution would have given him an electoral vote margin of 6. Although Bryan carried only 17 States, 11 of them were in the South. McKinley carried 28 States in other sections of the country, but under the proportional system he would have lost many more electoral votes outside the South because of Democratic minority votes than he would have gained from Republican minority votes in the solidly Democratic South, and he would have lost the election.

It is argued also that reference of close elections to both Houses of Congress instead of the House of Representatives would not guarantee more accurate expression of the people's wishes. Under the present system, where a majority of State delegations in the House of Representatives is required for election, there can be deadlocks, and it has been suggested that one was only narrowly averted in the 1948 election. By specifying that a majority of the total membership of the House and Senate would be necessary for election, some legislative proposals still allow a third party or a faction of one major party to dictate the results of the election, if not to obstruct the decision altogether.

Proportionate distribution would not, as would a system of direct election involving some Federal control of the suffrage,

reduce the present inequality in voting qualifications in different States. In the counting of electoral votes, no penalty would be attached to low voting participation. The amendment might lead to increased variations and restrictions. State legislatures in "sure" States might seek to restrict voting by the minority in order to safeguard the power of the dominant party.

3. Some problems might be created by the abolition of Presidential electors. In the past electors have at times introduced a useful element of flexibility into the election process. In 1912, Theodore Roosevelt's electors could declare before the election that if Roosevelt could not win they would vote for Taft against Wilson. If electoral votes were retained purely for counting purposes, it would not be possible to make such commitments.

Abolition of electors, which some proposals call for, could possibly result in the election of President and Vice-President from separate parties. Now one set of electors is elected to choose both President and Vice-President. It is a practical impossibility for the two to belong to different parties. Under the proposed amendment, the States would be permitted to have separate ballots for President and Vice-President. The electoral votes for the chief executive and vice-president would be counted separately. To eliminate the chance of having winning candidates from different parties, it would be necessary for Congress or the Constitution to require joint balloting for the two officials.

4. Proportionate distribution might give undue political importance to areas having the least population relative to electoral votes. If the present system tends to overvalue the importance of the larger, doubtful States, it at least gives extra attention to the sections of this country where the size of the voting population relative to electoral votes is greatest. In reducing the importance of the large-electorate States, proportionate distribution might turn the emphasis excessively to small States where considerable numbers of electoral votes could be won by relatively few popular votes. The plan could well magnify the effect of unequal voter participation and place a premium on keeping the voter turnout low in one-party States. It would provide little incentive for those with low voting participation to broaden suffrage or relax restrictions on voting.

Adoption of the plan could well change the existing political balance in the electoral vote between the large populous States and others. Under the existing system the unit-rule advantage of the large States is balanced by the "three vote minimum" requirement which gives small States three electoral votes regardless of population, and by the "population basis" factor which awards electoral votes above the minimum of three on the basis of population without regard to the number of popular votes cast in the State. The proportional plan would upset this balance by eliminating the unit-rule advantage of the populous States while having no effect on the two

built-in factors which are advantageous to the least populous and low vote States, some of which are substantially one-party.

5. Under proportionate distribution, the States generally would have less importance as units in the election process. Now a State is "carried" by one party or another, and State political organizations may win power and prestige on the strength of having "delivered" a State to their Presidential candidate. It can be argued that this helps to maintain a desirable dispersion and decentralization of political power in the United States. With the electoral votes of the States divided percentage-wise between the various candidates, competing groups in the States would probably tend to be merged in national groups. State party organizations would be unable to claim credit for any more electoral votes than they could win by their share of the popular vote.

Proportionate distribution might cause campaigns to be organized too exclusively on a national basis. The present system encourages campaigning on a State-by-State basis. This has been only partly qualified by the increase in nation-wide discussion of issues on radio and television. Presidential campaigns are closely tied in with gubernatorial, Senate and other State campaigns. It can be argued that campaigns oriented around States may sometimes take issues to the people more effectively than campaigns directed toward the whole country.

6. The exaggeration of the winner's majority under the present system may not be an unmitigated evil. After a bitterly-fought election campaign, an appearance of nation-wide backing, counted by States, may help to win general acceptance for the victorious candidate. Under proportionate distribution the winner would almost never have more than a bare majority of electoral votes. In a substantial number of cases (and under the 40 percent requirement) he would probably have only a plurality.

7. An amendment providing for proportionate distribution might lead to the introduction of the direct election of the President or to Federal control over voting standards. It is not impossible that the amendment would prove an "opening wedge" for more drastic changes. Various supporters of the proportional plan have admitted that they would have favored direct election instead of proportionate distribution if they had believed that such an amendment would be acceptable to the necessary number of Congressmen and State legislatures. While either direct election or Federal control over voting qualifications might have certain advantages, there are important objections to both of them.

8. Proportionate distribution of electoral votes might conceivably lead to pressure for proportional representation in Congress. Now almost all Members of the House of Representatives are chosen in single-member districts, with a plurality of popular votes

required for election. This system discourages the growth of small parties, gives the major parties an incentive to absorb dissident groups, and makes the elected Representatives directly responsible to a geographically-delimited group of constituents. If the proposed amendment gave electoral votes to a small party which could not elect a Member to Congress, the small party might be encouraged to demand that State Congressional delegations be divided according to the number of popular votes received by various parties in the State. Proportional representation would permit the growth of small and perhaps immoderate parties. It would involve a shift from single to multiple member districts and a less direct relationship between member and constituent.

9. The Constitution, as the fundamental law of the United States government, should probably not be amended unless it is certain that the general welfare will benefit as a result.

The present method of electing the President has been reasonably satisfactory. While proportionate distribution would eliminate some of the risks inherent in the existing system, it would introduce new dangers. In a close election where votes might be challenged and recounted, computations of proportions would be complicated and the result might hang in doubt for weeks. Any system which leaves the vote uncertain for the ordinary voter for any appreciable length of time could undermine public confidence in the

outcome. If the present method must be amended it would be best to devise a clearly desirable alternative.

Automatic System

The fourth approach would provide for the automatic operation of the existing electoral college system by amending the Constitution to retain the college but abolish the office of elector. This would abolish independent voting by Presidential electors and erase the problem of attempting to create binding systems. A candidate winning the highest number of popular votes in a State would automatically be credited with all the electoral votes from that State. A majority of the whole number of electoral college votes would, as now, be necessary for election to the Presidency and Vice-Presidency.

Voters in each State would cast a single ballot for President and Vice-President.

The proposal provides that in the absence of a receipt of a majority of electoral votes by a candidate for President, the selection shall be made by the Senate and the House meeting jointly with each member having one vote, from the three candidates with the highest electoral votes. The candidate of the three who receives the greatest number of votes in the Senate and House in joint session would be elected President.

This is known as the "minimal" proposal since it would effect the least change in the present system of electors and the

electoral college. It does, however, meet two of the major criticisms leveled at the present system. It eliminates the "independent" elector (and the possibility of individual States changing the method of appointing their electors), and it alters the method of selecting the President if an election is thrown into the Congress, the so-called "contingent election." Like the other proposals it eliminates election by the House of Representatives with each State having one vote.

It does preserve the unit-rule, however, and actually "freezes" it into the Constitution, changing it from a matter of custom to a constitutional mandate.

A proposal of this sort was first introduced by Representative Haynes of Georgia in 1826.

In recent Congresses various versions have been introduced differing primarily in provisions respecting the percentage of electoral votes necessary for election and in the method of selection of a President in the absence of an electoral vote majority.

Arguments in Favor of the Automatic Plan ^{30/}

1. The Automatic Plan requires the least change in the present constitutional system. The present system undoubtedly

^{30/} For comments see: House Doc. 64, 89th Cong., p. 4. The Message of President Johnson on the proposal; Senate Judiciary Committee hearings, op. cit., 87th Congress, 1961, Part 2, pp. 364, et seq., statement by the then Ass't Attorney General Katzenbach; Senate Judiciary Committee, Committee Print, op. cit., 87th Congress, 1961; A Report on the Method of Electing the President and Vice President, by the Committee on Federal Legislation, Association of the Bar of the City of New York, 1962 (endorsing the proposal); Electoral College Reform, Chamber of Commerce of the United States, Sept., 1963; The Electoral College: Old Reforms Take on a New Look, Sen. Estes Kefauver, 27 Law and Contemporary Problems, 188, at pp. 207-212; Wilmerding, op. cit.,

has its flaws but the presence of some flaws is no reason for replacing an entire system which by and large has served the nation well through many changes from a small agrarian nation to an industrial giant. It would be somewhat presumptuous to alter such a system with an entirely new and wholly untried system which could cause untold damage in the highly complex and really little understood political system we have today.

2. The Automatic Plan embodies changes which alleviate the flaws most readily apparent in the present system while preserving that portion of the system which has served so well for so long. Admitting that the system needs some change, the automatic system has the advantage of abolishing the office of elector but at the same time preserving the electoral vote system of electing the President which over the many changing conditions that this nation has survived has really fallen short only one time in the Hayes-Tilden controversy.

pp. 169-212; Remarks by Sen. Kennedy (Mass.), 102 Cong. Rec. 5159, 5235, March 21, 1956, Sen. Payne, 102 Cong. Rec. 5654-5656, March 27, 1956, Sen. Allott, 102 Cong. Rec. 5660-5662, March 27, 1956; Remarks by Rep. Bandstra, Daily Cong. Rec., Feb. 17, 1965, pp. 2857-2859; J. Hampden Dougherty, The Electoral System of the United States, 1906, Chap. XI; Association of Bar of the City of New York, Report of Committee on Federal Legislation. Proposed Constitutional Amendment Abolishing Electoral College and Making Other Changes in Election of President and Vice President, Vol. 4, Bull. 3, July, 1965, p. 121; Leave the College Alone. Gerald W. Johnson. The New Republic, Vol. 144, Jan. 9, 1961: 22; The Virginia Commission on Constitutional Government, "Reform the Electoral College, No," May, 1966; Bickel, Alexander M., "The Case for the Electoral College," New Republic, January 28, 1967, pp. 15-16; Bickel, Alexander M., "Is Electoral Reform the Answer?," Commentary, December 1968, pp. 41-51, Vol. 46, No. 6; Kristol, Irving and Weaver, Paul, "A Bad Idea whose Time has Come," New York Times Magazine, November 23, 1969, pp. 43, 146-157.

3. By giving each Member of Congress a vote in the event of the election going over into Congress the automatic system provides for a quick democratic method of resolving close election disputes.

The runoff system of selecting a President in close elections is fraught with peril in the forms of fraud, third party maneuvering, lack of certainty and wear and tear on candidates, but with the election going to a joint session of Congress immediately after it has been determined that no candidate received a majority of electoral votes cast the election is decided with the utmost dispatch. When an election is this close it is probably more important to decide the issue quickly than anything else.

4. The Automatic Plan would eliminate the possibility of the "faithless elector" while preserving the electoral vote system of electing the President.

One of the primary complaints against the present system is the possibility of the elector that refuses to vote the same as his state did. The debate surrounding the counting of the vote of an elector from North Carolina for George Wallace when that State gave a plurality of its vote to Richard Nixon illustrates the necessity for resolving the problem of the independently minded elector. Adoption of the Automatic Plan would solve this dilemma by automatically giving the State's electoral vote to the candidate that carried it, thereby bypassing the now archaic office of elector.

5. In preserving the present electoral vote system of electing the President, the Automatic Plan would, in effect, be preserving our federal system of government. Our federal system of government has served us long and well through many eras of various vicissitudes. To discard it in the area of presidential elections for an untried and untested system would be taking the most foolish sort of risk, a risk that need not be taken. The cry of "one man, one vote" should not be allowed to rush us into making basic changes in our form of government. Simple majoritarianism has never reigned supreme in this the most democratic of nations. Often it takes two-thirds or even three-fourths to accomplish the will of the majority in our form of government. Are these to be overcome also? The federal system is a clear recognition of the multitude of factors that must be taken into consideration when one considers how to govern one of the world's largest nations. Each State has received special consideration by virtue of simply being a State (i.e., two senators and at least three votes in the electoral college). This fact has helped preserve the integrity of the State governments and the viability of our country.

6. The Automatic Plan by providing for election by the Members of the House and the Senate with each Member having one vote when no candidate receives the required number of electoral votes, allows greater freedom in voting than the present system of limiting each State to either one vote or none in the event of disagreement. Another admitted flaw in the present system is that of limiting each State to one vote in the event that the election

is thrown into the House. Adoption of the automatic plan with provision for election by the Senate and the House with each member having one vote in the event no candidate receives the required number of electoral votes makes such an election much more democratic, while at the same time, it preserves the federal aspect of such election. This would obviate the need for a runoff election that would be required by most direct election plans with all of its inherent flaws and weaknesses.

7. Enactment of the Automatic Plan would preserve the two party system which has lent so much stability to our nation.

Our present two party system is a direct outgrowth of the present system of electing the President. It is a result of adaptation to that system, a very democratic result, a compromise. Early in our history our leaders discovered that under the system that they had developed two parties were all that could manage to survive and still maintain any sort of effectiveness. Thus compromise became the modus operandi of our government and it has served us well to this day. Any severe or radical change in our method of selecting our President must, of necessity, change the political arena in which such selection takes place. Probably the first institution to suffer then will be the two party system, a system which though highly workable enjoys no constitutional sanctions but rather is a result of the Constitution and the manner in which it operates in practice.

8. Adoption of the Automatic Plan would not necessarily necessitate wholesale changes in State election laws or a massive intervention in such area by the federal government as would some other proposed changes. The automatic system would preserve another aspect of the federal system, that of State control of the electoral process within limits established by the Constitution. Though at times much maligned, State control over the election process is not without its virtues. As Justice Brandeis said in his dissent in New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1939), "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country." Federal control over all aspects of elections can lead to a monolithic stagnant process of conducting elections. A process that recognizes no standard other than its own and consequently is unamenable to change.

9. The Automatic Plan would preserve the present composition of the President's constituency. The present combination of circumstances and electoral vote result in the President representing a different constituency than does either the House or the Senate. This different constituency is composed largely of bloc voters and interest groups in the so-called "swing" States where a large number of electoral votes is available and there is generally a fairly close vote. Such constituency, heretofore underrepresented, has an increasingly strong voice in governmental affairs due to the

reapportionment of States and their various elected officials, but still they rely heavily on the President to bring their case before the nation.

10. Adoption of the Automatic Plan would, even in close elections, continue to give the appearance of a mandate to the elected candidate. Adoption of the Automatic Plan would place in the Constitution the present general practice of States voting by unit rule, a practice in which when a candidate receives a plurality of a State's popular vote he receives all of the electoral vote. Two of the last three presidential elections have been extremely close in popular vote. Yet when the electoral votes were counted the winning candidate had at least the appearance of a popular mandate. Though it may be a mandate in appearance only, it does lend some semblance of popularity to the incoming administration, at least more than a 100,000 vote plurality would.

Arguments Against the Automatic Plan

1. The Automatic Plan does not achieve reform in depth and adoption of it as a constitutional amendment would forever stifle any further attempts to achieve reform in this area. The reforms proposed by the Automatic Plan are both too little and too late. Preservation of the outmoded electoral vote system though coupled with abolition of the office of elector is not nearly sufficient to cure the many injustices inherent in the use of the electoral vote system. Now when there is sufficient impetus to achieve lasting and meaningful reform is not the time to settle only for lasting reform.

2. The Automatic Plan freezes into the Constitution the unit rule which is used presently to eliminate effectively all votes cast for a losing candidate in a State. The unit rule is one of the more archaic injustices in our election law. By giving to the winner of a plurality in a State all of the electoral votes of a State the votes of all those who did not support the winner in the State are cancelled out and have no force and effect in the election in the nation as a whole.

3. Preservation of the electoral vote system continues the possibility of electing a minority President. Inherent in the present system of electing the President and the proposed Automatic Plan is the distinct possibility of electing a President who has received fewer votes than his opponent. The "winner-take-all" aspect of the unit rule of the Automatic Plan has given us minority Presidents in the past and may very well do so again in the future.

4. The Automatic Plan distorts the electorate in that it tips the scales in favor of the large urban areas. The unit rule has traditionally encouraged concentration on the States with large populations as a source of party candidates because of the large electoral vote of these States. It further gives a disproportionate amount of influence to homogeneous groups within these largely heterogenous large States.

5. The Automatic Plan works against political activity in those States considered "safe" by the political parties. Because many voters consider their votes lost when they vote for a party that is known to consistently tally less than a majority or plurality in a State these voters do not bother to go to the polls at all and the democratic process suffers because of this loss. Additionally, those who are members of the majority party also suffer from this ennui brought about by a stagnant political situation.

6. The Automatic Plan would give a false impression as to the actual vote return by use of the unit rule. The unit rule deceives the public as to the actual results of an election. By giving the impression of a false mandate the public is deceived and it would be far better to have the public aware of the very narrow margins by which some presidential elections are won.

7. Participation in presidential elections by citizens of the smaller States is discouraged by the Automatic Plan because they are aware that their votes will only influence a small number of electoral votes. Citizens of small States cannot help but be aware that no matter how strenuous their efforts may be on the part of a candidate that they can only influence a relatively small number of electoral votes and this same feeling of disenchantment must of necessity be reflected in the potential voters' participation in the actual election.

8. The Automatic Plan would retain the present outmoded and inequitable system distribution of electoral votes by giving each State a minimum number of such votes. One of the more undemocratic aspects of our present system of electing a President is that of giving each State at least three (3) electoral votes no matter how small its population is a definite relic of times past and today serves only to disfranchise other citizens.

VII. Proposals In The 94th, 95th, 96th, 97th, And 98th Congresses To Reform The Present Method Of Electing The President And Vice President

A. Senate And House Joint Resolutions Introduced During The 94th Congress Dealing With The Election Of The President And Vice President (1975-1976)

PROPOSED METHODS OF ELECTION

Most proposals now before Congress call for a constitutional amendment which would effect a basic reform in the method by which the President and Vice President are elected. These proposals fall into four categories set forth below. In each case, the bill number of the proposal will be given, along with the name of the sponsor and the date of introduction.

DISTRICT PLAN

Under the district plan, the electoral college would be preserved, with each State choosing a number of electors equal to the number of Senators and Representatives to which the State is entitled in Congress. However, the electors would be chosen by the voters from districts created within each State, and in addition two at-large electors would be chosen for each State. The winner-take-all aspects of the present system would thus be eliminated because a candidate would be credited with only those district votes that he actually won. Further, in contrast to the present method, the candidates for the office of Presidential elector would be required to declare for whom they will cast their votes for President and Vice President and such declaration will be binding.

Two proposals - H. J. Res. 206 (Derwinski, 2/10/75) and H. J. Res. 875 (Conable, 3/18/76) call for the creation of such a system for the election of the President, and would make the following additional changes:

1. Percentage of electoral vote required to win: Majority
2. Tie vote in electoral college: Person with the greatest number of electoral district votes, rather than at-large electoral votes would win.
3. Required percentage not attained: Senate and House of Representatives chooses President and Vice President from persons with three highest number of votes.
4. Voter Qualifications: Same qualifications requisite for the electors of the most numerous branch of the State Legislature.
5. Manner of holding elections in States: Congress will determine.

PROPORTIONAL PLAN

Under the proportional plan, the electoral college would be abolished, but the electoral vote would be retained. The electoral vote in each State would be apportioned among Presidential candidates according to the number of popular votes received, thereby eliminating the present winner-take-all system. H.J. Res. 601 (Ginn, 7/30/76) proposes such a system, while S.J. Res. 108 (Brock, 7/16/75) proposes a modified proportional plan. S.J. Res. 108 would abolish the electoral college, but one elector would be elected from each congressional district, with two being elected at large from each State. H.J. Res. 601 proposes a plan which would operate as follows:

1. Percentage of vote required to win: 40%
2. Required percentage not attained: Congress chooses President.
3. Voter Qualifications: Same qualifications requisite for the electors of the most numerous branch of the State Legislature.
4. Place, time, manner of holding election in States: Congress will determine the day of the election, which must be uniform throughout the United States, but State legislatures determine the time, place, and manner.

AUTOMATIC ELECTORAL VOTE PLAN

Under this plan, the office of Presidential elector and the Electoral College would be abolished but the electoral votes of each State would be retained. According to this method, the electoral vote of each State would automatically be awarded to the candidate receiving the greatest number of popular votes for President in that State. Thus, as in the present system, the winner of the greatest portion of the popular vote would be credited with all of the electoral votes of the State. It appears that no bills proposing this plan have been introduced during the 94th Congress.

DIRECT ELECTION PLAN

Under the direct election plan, the Electoral College and the electoral vote system would be abolished. Instead, the President and Vice President would be elected by direct popular vote cast throughout the United States. Several proposals now pending in Congress would create a system whereby the President and the Vice President would be elected directly. These proposals are:

S. J. Res. 1*	Bayh	1/15/74
H. J. Res. 3	Bennett	1/14/75
H. J. Res. 22	Ullman	1/14/75
H. J. Res. 35	Carney	1/14/75
H. J. Res. 38	Conte	1/14/75
H. J. Res. 43	Downing	1/14/75
H. J. Res. 50	Fish	1/14/75
H. J. Res. 62	Kastenmeier	1/14/75
H. J. Res. 66	Meeds	1/14/75
H. J. Res. 151	Quie	1/28/75
H. J. Res. 204	Karth	2/6/75
H. J. Res. 288	Broomfield	3/6/75
H. J. Res. 325	VanderJagt	3/14/75
H. J. Res. 336	Macdonald	3/19/75

* Proposal recommended to the full Committee by the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee

H. J. Res. 345	Whalen	3/20/75
H. J. Res. 443 **	Won Pat	5/6/75
H. J. Res. 521	Fithian	6/19/75
H. J. Res. 750	Mitchell (N. Y.)	12/16/75
H. J. Res. 786	Burlison (Mo.)	1/29/76
H. J. Res. 820	Patten	2/19/76
H. J. Res. 1100	Blown	9/17/76

These proposals calling for direct election of the President and Vice President vary in their approaches to the following matters:

1. Method of casting vote:

- a. Cast joint vote for team consisting of candidate for President and candidate for Vice President, both consenting to the join-der of their names -
S. J. Res. 1; H. J. Res. 3, 38, 43, 50, 62, 66, 204, 288, 325, 336, 345, 443, 521, 786, 820, 1100
- b. Cast vote for two persons chosen as Congress prescribes -
H. J. Res. 151
- c. No specification as to whether vote must be cast for team -
H. J. Res. 22, 35, 750

2. Percentage of vote required to win:

- a. Plurality -
H. J. Res. 35, 750
- b. 40% -
S. J. Res. 1; H. J. Res. 3, 38, 43, 50, 62, 66, 204, 288, 325, 336, 345, 443, 521, 786, 820
- c. Majority -
H. J. Res. 151
- d. Not Specified -
H. J. Res. 22, 1100

3. Required percentage not attained:

- a. Runoff election must be held -
H. J. Res. 38, 43, 50, 62, 66, 204, 288, 325, 336, 345, 443, 786

** Proposal would also allow participation by Guam and Virgin Islands

H. J. Res. 345	Whalen	3/20/75
H. J. Res. 443 **	Won Pat	5/6/75
H. J. Res. 521	Fithian	6/19/75
H. J. Res. 750	Mitchell (N. Y.)	12/16/75
H. J. Res. 786	Burlison (Mo.)	1/29/76
H. J. Res. 820	Patten	2/19/76
H. J. Res. 1100	Blown	9/17/76

These proposals calling for direct election of the President and Vice President vary in their approaches to the following matters:

1. Method of casting vote:

- a. Cast joint vote for team consisting of candidate for President and candidate for Vice President, both consenting to the join-der of their names -
S. J. Res. 1; H. J. Res. 3, 38, 43, 50, 62, 66, 204, 288, 325, 336, 345, 443, 521, 786, 820, 1100
- b. Cast vote for two persons chosen as Congress prescribes -
H. J. Res. 151
- c. No specification as to whether vote must be cast for team -
H. J. Res. 22, 35, 750

2. Percentage of vote required to win:

- a. Plurality -
H. J. Res. 35, 750
- b. 40% -
S. J. Res. 1; H. J. Res. 3, 38, 43, 50, 62, 66, 204, 288, 325, 336, 345, 443, 521, 786, 820
- c. Majority -
H. J. Res. 151
- d. Not Specified -
H. J. Res. 22, 1100

3. Required percentage not attained:

- a. Runoff election must be held -
H. J. Res. 38, 43, 50, 62, 66, 204, 288, 325, 336, 345, 443, 786

** Proposal would also allow participation by Guam and Virgin Islands

6. Provisions regarding death, resignation, inability or withdrawal of a candidate:

- a. Congress will establish -
S. J. Res. 1; H. J. Res. 3, 38, 43, 50, 62, 66, 204, 336, 345, 443, 521, 786, 1100
- b. If prior to election, the national committee of the political party whose official candidate is involved will designate another candidate; but if after the election, and both Members on the ticket die, Congress must provide for a new election -
H. J. Res. 151

Note: H. J. Res. 18 (Smith, Iowa, 1/14/75), 37 (Conte, 1/14/76) and 785 (Burlison, Mo., 1/29/76) propose constitutional amendments relating to the nomination of the President and Vice President.

B. Senate And House Joint Resolutions Introduced In The 95th Congress Dealing With The Election Of The President And Vice President (1977-1978)

DISTRICT PLAN

Under the district plan, the electoral college would be preserved, with each State choosing a number of electors equal to the number of Senators and Representatives to which the State is entitled in Congress. However, in all States, the electors would be chosen by the voters from districts created within the State, and in addition two at-large electors would be chosen on a Statewide basis. The winner-take-all aspects of the present system would thus be eliminated because a candidate would be credited with only those district electoral votes that he actually won. Further, in contrast to the present method, the candidates for the office of Presidential elector would be required to declare for whom they will cast their votes for President and Vice President and such declaration will be binding.

Three identical proposals - H.J. Res. 125 (Conable, 1/11/77), H.J. Res. 195 and H.J. Res. 267 (Derwinsky, 1/26/77, 2/22/77) - in the 95th Congress call for the creation of such a system for the election of the President, and would make the following additional changes:

1. Percentage of electoral vote required to win: Majority
2. Tie vote in electoral college: Person with the greatest number of electoral district votes, rather than at-large electoral votes would win.
3. Required percentage not attained: Senate and House of Representatives chooses President and Vice President from persons with three highest number of votes.
4. Voter Qualifications: Same qualifications requisite for the electors of the most numerous branch of the State Legislature.
5. Manner of holding elections in States: Congress will determine.

NOTE: H.J. Res. 328 (Fuqua, 3/15/77) proposes a system similar to the district plan, except that the electoral college would be abolished and the electoral votes would be won by district.

PROPORTIONAL PLAN

Under the proportional plan, the electoral college would be abolished, but the electoral vote would be retained. The electoral vote in each State would be apportioned among Presidential candidates according to the number of popular votes received, thereby eliminating the present winner-take-all system. S.J. Res. 8* (Cannon, 1/14/77), S.J. Res. 18* (Thurmond, 1/26/77), H.J. Res. 190 (Vander Jagt, 1/20/77), and H.J. Res. 226 (Whitehurst, 2/1/77) in the 95th Congress propose such a system with the electoral vote apportioned on a Statewide and/or nationwide basis. H.J. Res. 328 (Fuqua, 3/15/77), H.J. Res. 455 (Ashbrook, 5/11/77) and H.J. Res. 523 (Brown, Mich., 6/16/77) also propose a proportional plan. Under H.J. Res. 523, the electoral vote would be awarded on a districtwide, Statewide and nationwide basis and under H.J. Res. 328 and 455, the electoral vote would be awarded on a districtwide and Statewide basis.

1. Percentage of vote required to win: a. 40% - S.J. Res. 8, 18; H.J. Res. 226; b. Majority - H.J. Res. 328, 523; c. Plurality - H.J. Res. 190, 455
 2. Required percentage not attained: a. Senate and House of Representatives choose President - S.J. Res. 8, 18; H.J. Res. 226, 328; b. Retabulation formula specified - H.J. Res. 523
 3. Voter Qualifications: Same qualifications requisite for the electors of the most numerous branch of the State Legislature - all resolutions
 4. Place, time, manner of holding election in States: Congress will determine the day of the election, which must be uniform throughout the United States, but State legislatures determine the place and manner - all resolutions
- * Hearings held on January 27, February 1, 2, 7 and 10, 1977 by the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee

AUTOMATIC ELECTORAL VOTE PLAN

Under this plan, the Electoral College would be abolished but the electoral votes of each State would be retained. According to this method, the electoral vote of each State would automatically be awarded to the candidate receiving the greatest number of popular votes for President in that State. Thus, as in the present system, the winner of the greatest portion of the popular vote would be credited with all of the electoral votes of the State. H.J. Res. 312 (Weaver, 3/9/77) proposes such a plan. S.J. Res. 123 (Bayh, 3/17/78) also proposes an automatic electoral vote plan but with an additional national pool of electoral votes equivalent to the number of senators plus an additional two for the District of Columbia, to be automatically allocated to the candidate receiving the most popular votes across the nation.

DIRECT ELECTION PLAN

Under the direct election plan, the Electoral College and the electoral vote system would be abolished. Instead, the President and Vice President would be elected by direct popular vote cast throughout the United States. Several proposals now pending in Congress would create a system whereby the President and the Vice President would be elected directly. These proposals are:

S.J. Res. 1*	Bayh	1/10/77
H.R. 2063	Gaydos	1/19/77
H.J. Res. 33	Bennett	1/4/77
H.J. Res. 39	Burlison	1/4/77
H.J. Res. 40	Carney	1/4/77
H.J. Res. 45	Conte	1/4/77
H.J. Res. 70	Kastenmeier	1/4/77
H.J. Res. 114	Hughes	1/6/77

H.J. Res. 118	McClory	1/6/77
H.J. Res. 127	Eilberg	1/11/77
H.J. Res. 138	Edwards	1/13/77
H.J. Res. 144	Rodino	1/13/77
H.J. Res. 149	Danielson	1/17/77
H.J. Res. 168	McClory	1/19/77
H.J. Res. 170	Moss	1/19/77
H.J. Res. 197	McClory	1/26/77
H.J. Res. 207	Hamilton	1/27/77
H.J. Res. 217	Won Pat	1/31/77
H.J. Res. 228	Burlison	2/2/77
H.J. Res. 229	Burlison	2/2/77
H.J. Res. 230	Conte	2/2/77
H.J. Res. 231	Conte	2/2/77
H.J. Res. 238	Whalen	2/3/77
H.J. Res. 253	Frenzel	2/9/77
H.J. Res. 281	Burlison	2/24/77
H.J. Res. 300	Rangel	3/2/77
H.J. Res. 350	Fithian	3/23/77
H.J. Res. 352	Bingham	3/24/77
H.J. Res. 384	Burlison	4/6/77
H.J. Res. 397	Burlison	4/20/77
H.J. Res. 434	Quie	5/3/77
H.J. Res. 676	Blouin	12/5/77

* Hearings held on January 27, February 1, 2, 7 and 10, 1977 by the Subcommittee on Constitutional Amendments of the Senate Judiciary Committee

These proposals calling for direct election of the President and Vice President vary in their approaches to the following matters:

1. Method of casting vote:

- a. Cast joint vote for team consisting of candidate for President and candidate for Vice President, both consenting to the joinder of their names -
All proposals except for H.J. Res. 40
- b. No specification as to whether vote must be cast for team -
H.J. Res. 40

2. Percentage of vote required to win:

- a. Plurality -
H.J. Res. 40
- b. 35% -
H.J. Res. 118, 168, 197, 217

- c. 40% -
S.J. Res. 1*; H.J. Res. 33, 39, 45, 70, 114, 127, 138, 144, 149, 170, 207, 228, 229, 230, 231, 238, 253, 281, 300, 350, 352, 384, 397
- d. 45% -
H.R. 2063
- e. Majority -
H.J. Res. 434, 676

3. Required percentage not attained:

- a. Runoff election must be held -
S.J. Res. 1*; H.J. Res. 39, 45, 70, 118, 127, 138, 144, 149, 168, 170, 197, 207, 217, 228, 229, 230, 231, 238, 253, 281, 300, 352, 384, 397; H.R. 2063
- b. Congress decides at a special session -
H.J. Res. 33, 114, 350
- c. Electoral vote system (district) used, but if no candidate receives majority, runoff held -
H.J. Res. 434, 676

4. Place, time, and manner of holding elections and entitlement to inclusion on ballot:

- a. Prescribed by the State Legislatures, but Congress may alter the State laws or the State laws become inapplicable if in conflict with an Act of Congress; however, Congress sets the day for holding elections, which day must be uniform throughout the United States and Congress governs the method for ascertaining election results -
S.J. Res. 1*; H.J. Res. 39, 70, 114, 118, 127, 138, 144, 149, 168, 170, 197, 207, 217, 228, 229, 253, 281, 300, 350, 352, 384, 397, 434
- b. Prescribed by Congress -
H.J. Res. 33, 40, 45, 230, 231, 238
- c. Prescribed in amendment -
H.R. 2063

5. Voter Qualifications:

- a. Same as for most numerous branch of State Legislature except that State may prescribe less restrictive qualifications and Congress may prescribe uniform residence qualifications -
S.J. Res. 1*; H.J. Res. 39, 70, 114, 118, 127, 138, 144, 149, 168, 170, 197, 207, 217, 228, 229, 253, 281, 300, 350, 352, 384, 397

- b. Same as for Senators; but State may prescribe less restrictive residence qualifications, and Congress may adopt uniform age and residency requirements -
H.J. Res. 33
 - c. Congress may prescribe -
H.J. Res. 40
 - d. State may prescribe -
H.R. 2063
 - e. Same as for Members of Congress, but State may prescribe less restrictive residence qualifications and Congress may adopt uniform age and residency requirements -
H.J. Res. 45, 230, 231, 238, 434, 676
6. Congress may provide for case of death, resignation, inability or withdrawal of a candidate:
- S.J. Res. 1*; H.J. Res. 33, 39, 45, 70, 114, 118, 127, 138, 144, 149, 168, 170, 207, 217, 228, 229, 230, 231, 238, 253, 281, 300, 350, 352, 384, 397, 676 (except H.J. Res. 434 - national committee of political party chooses)

NOTE: H.R. 2063 also proposes a constitutional amendment regarding the nomination of the President or Vice President

C. Senate And House Joint Resolutions Introduced In The 96th Congress
Dealing With The Election Of The President And Vice President

(1979-1980)

DIRECT ELECTION PLAN

Under the direct election plan, the Electoral College and the electoral vote system would be abolished. Instead, the President and Vice President would be elected by direct popular vote cast throughout the United States. Several proposals now pending in Congress would create a system whereby the President and the Vice President would be elected directly. These proposals are:

S.J. Res. 1	Bayh et al.	1/15/79
S.J. Res. 28	Bayh	1/25/79
H.J. Res. 7	Danielson	1/15/79
H.J. Res. 24	Bennett	1/15/79
H.J. Res. 57	Kastenmeier	1/15/79
H.J. Res. 93	Won Pat	1/15/79
H.J. Res. 150	Conte	1/24/79
H.J. Res. 181	Erdahl	2/1/79
H.J. Res. 189	Edwards	2/5/79
H.J. Res. 208	Fithian	2/15/79
H.J. Res. 240	McClory	3/6/79
H.J. Res. 252	Boner	3/13/79
H.J. Res. 254	Burlison	3/13/79
H.J. Res. 261	Burlison et al.	3/20/79
H.J. Res. 288	Burlison et al.	4/3/79
H.J. Res. 299	Burlison et al.	4/10/79
H.J. Res. 308	Burlison et al.	4/30/79
H.J. Res. 332	Burlison et al.	5/16/79

These proposals calling for direct election of the President and Vice President vary in their approaches to the following matters:

1. Method of casting vote:

Cast joint vote for team consisting of candidate for President and candidate for Vice President, both consenting to the joinder of their names -
 All proposals

2. Percentage of vote required to win:

a. Plurality -

H.J. Res. 181

b. 35% -

H.J. Res. 93, 240

c. 40% -

S.J. Res. 1, 28

H.J. Res. 7, 24, 57, 150, 189, 208, 252, 254, 261, 288, 299, 308, 332

3. Required percentage not attained:

a. Runoff election must be held -

S.J. Res. 1, 28

H.J. Res. 7, 57, 93, 150, 189, 208, 240, 252, 254, 261, 288, 299

H.J. Res. 308, 332

- b. Congress decides in special election -
H.J. Res. 24
- 4. Place, time, and manner of holding elections and entitlement to inclusion on ballot:
 - a. Prescribed by the State Legislatures, but Congress may alter the state laws or the state laws become inapplicable if in conflict with an Act of Congress; however, Congress sets the day for holding elections, which day must be uniform throughout the United States, and Congress governs the method for ascertaining election results -
S.J. Res. 1, 28
H.J. Res. 7, 57, 93, 150, 189, 208, 240, 252, 254, 261, 288, 299, 308
H.J. Res. 332
 - b. Prescribed by Congress -
H.J. Res. 24
- 5. Voter qualifications:
 - a. Same as for most numerous branch of state legislature except that state may prescribe less restrictive qualifications and Congress may prescribe uniform residence qualifications -
S.J. Res. 1, 28
H.J. Res. 7, 57, 93, 189, 208, 240, 252, 254, 261, 288, 299, 308, 332
 - b. Same as in the case of voters in election of Senators, but state may prescribe less restrictive residence qualifications, and Congress may adopt uniform age and residence requirements -
H.J. Res. 24
 - c. Same as for electors of Members of Congress, but state may prescribe less restrictive residence qualifications and Congress may adopt uniform age and residence requirements -
H.J. Res. 150
- 6. Congress may provide for case of death, resignation, inability or withdrawal of a candidate:
S.J. Res. 1, 28
H.J. Res. 7, 24, 57, 93, 150, 189, 208, 240, 252, 254, 261, 288, 299
H.J. Res. 308, 332

PROPORTIONAL PLAN

Under the proportional plan, the electoral college would be abolished, but the electoral vote would be retained. The electoral vote in each state would be apportioned among Presidential candidates according to the number of popular votes received, thereby eliminating the present winner-take-all system.

S.J. Res. 51	Cannon et al.	3/22/79
H.J. Res. 88	Vander Jagt	1/15/79
H.J. Res. 125	Ashbrook	1/22/79

1. Percentage of vote required to win:
 - a. Majority -
H.J. Res. 88, 125
 - b. 40% -
S.J. Res. 51
2. Required percentage not attained:

House of Representatives chooses -
H.J. Res. 88 (Senate chooses Vice President), 125
Senate and House in joint session chooses -
S.J. Res. 51
3. Voter qualifications:

Same qualifications requisite for the electors of the most numerous branch of the state legislature -
S.J. Res. 51
H.J. Res. 125
4. Place, time, manner of holding election in states:

Congress will determine the day of the election, which must be uniform throughout the United States, but state legislatures determine the place and manner -
H.J. Res. 88 (Congress determines time for electing only), 125
S.J. Res. 51

DISTRICT PLAN

Under the district plan, the electoral college would be preserved, with each state choosing a number of electors equal to the number of Senators and Representatives to which the state is entitled in Congress. However, in all states, the electors would be chosen by the voters from districts created within the state, and, in addition, two at-large electors would be chosen on a statewide basis. The winner-take-all aspects of the present system would thus be eliminated because a candidate would be credited with only those district electoral votes that he actually won. Further, in contrast to the present method, the candidates for the office of Presidential elector would be required to declare for whom they will cast their votes for President and Vice President and such declaration will be binding.

H.J. Res. 106	(Fuqua, 1/18/79)
H.J. Res. 207	(Conable, 2/19/79)
H.J. Res. 549	(Derwinski, 5/14/80)

1. Percentage of electoral vote required to win: Majority
 - Majority -
H.J. Res. 106
H.J. Res. 207
H.J. Res. 549

2. Tie vote in electoral college: Person with the greatest number of electoral district votes, rather than at-large electoral votes should win.
 H.J. Res. 207
 H.J. Res. 549
3. Required percentage not attained: Senate and House of Representatives choose President and Vice President from persons with three highest number of votes.
 H.J. Res. 207
 H.J. Res. 549
4. Required majority not attained: Senate and House of Representatives choose President and Vice President from the pairs of candidates not exceeding three having the highest number of electoral votes.
 H.J. Res. 106
5. Voter qualifications: Same qualifications requisite for the electors of the most numerous branch of the state legislature.
 H.J. Res. 106
 H.J. Res. 207
 H.J. Res. 549
6. Manner of holding elections in states:
 - a. Congress will determine -
 H.J. Res. 207
 H.J. Res. 549
 - b. States will determine subject to alterations by Congress -
 H.J. Res. 106

AUTOMATIC ELECTORAL VOTE PLAN

Under this plan, the Electoral College would be abolished but the electoral votes of each state would be retained. According to this method, the electoral vote of each state would automatically be awarded to the candidate receiving the greatest number of popular votes for President in that state. Thus, as in the present system, the winner of the greatest portion of the popular vote would be credited with all of the electoral votes of the state. The proposal also provides for an automatic electoral vote plan but with an additional national pool of electoral votes equivalent to the number of senators plus an additional two for the District of Columbia, to be automatically allocated to the candidate receiving the most popular votes across the nation. S.J. Res. 48 (Bayh, 3/14/79), H.J. Res. 223 (Bingham, 2/26/79).

D. Senate And House Joint Resolutions Introduced In The 97th Congress
Dealing With The Election Of The President And Vice President
 (1981-1982)

DIRECT ELECTION PLAN

Under the direct election proposal, the Electoral College system would be abolished, and the President and Vice President would be elected by the direct popular vote at the November general election.

S.J. Res. 3	Pryor et al.	1/5/81
S.J. Res. 8	Mathias and Hatfield	1/5/81
H.J. Res. 20	Bennett	1/5/81
H.J. Res. 52	Kastenmeier	1/5/81
H.J. Res. 80	Brooks	1/6/81
H.J. Res. 130	Howard	1/23/81
H.J. Res. 140	Danielson	1/28/81
H.J. Res. 163	Won Pat	2/4/81
H.J. Res. 195	Edwards	3/3/81

1. Method of casting vote:

Cast a single vote for candidates for President and Vice President -

All proposals

2. Percentage of vote required to win:

a. 40 %

S.J. Res. 3
 S.J. Res. 8
 H.J. Res. 20
 H.J. Res. 52
 H.J. Res. 80
 H.J. Res. 130
 H.J. Res. 140
 H.J. Res. 195

b. 35 %

H.J. Res. 163

3. Required percentage not attained:

a. Requirement of a runoff election:

S.J. Res. 3
S.J. Res. 8
H.J. Res. 52
H.J. Res. 80
H.J. Res. 130
H.J. Res. 140
H.J. Res. 163
H.J. Res. 195

b. Congress decides in a special session:

H.J. Res. 20

4. Place, time, and manner of holding elections and entitlement to inclusion on the ballot:

Prescribed by state legislatures, but Congress may alter state laws or the state laws become inoperable if in conflict with an act of Congress:

All proposals

5. Voter qualifications:

a. Same as the most numerous branch of the state legislature except that the state may prescribe less restrictive qualifications and Congress may prescribe uniform residence requirements:

S.J. Res. 3
S.J. Res. 8
H.J. Res. 52
H.J. Res. 130
H.J. Res. 140
H.J. Res. 163
H.J. Res. 195

5. Voter qualifications: cont'd

- b. Same as in the case of voters in election of Senators, but state may prescribe less restrictive residence requirements, and Congress may adopt uniform age and residence requirements:

H.J. Res. 20

- c. Same as for electors for Members of Congress, but state may prescribe less restrictive residence qualifications, and Congress may adopt uniform age and residence requirements:

H.J. Res. 80

6. Congress may provide for case of death, inability, or withdrawal of a candidate and for the case of the death of a President-elect and Vice President-elect:

S.J. Res. 3

S.J. Res. 8

H.J. Res. 20 [only in case of death or withdrawal of a candidate]

H.J. Res. 52

H.J. Res. 80 [only in case of death of a candidate or a tie vote]

H.J. Res. 130

H.J. Res. 140

H.J. Res. 163

H.J. Res. 195

DISTRICT PLAN

The district plan would preserve the Electoral College. Each state would choose a number of electors equal to the number of Senators and Representatives to which the state is entitled to in Congress. The electors would be chosen by voters from districts created within the state, and two electors would be chosen on a statewide basis. The winner-take-all aspect of the present system would thus be eliminated since a candidate could win district electoral votes even when he or she did not win statewide.

H.J. Res. 12

H.J. Res. 29