

STATEMENT

by

SENATOR BIRCH BAYH

upon

INTRODUCTION OF AN AMENDMENT TO THE CONSTITUTION

proposing

DIRECT POPULAR ELECTION OF THE PRESIDENT AND THE VICE PRESIDENT

May 18, 1966



Mr. President, from the inception of our nation, controversy and complexity has surrounded the question of how to choose the President of the United States.

Indeed, one of the framers of the Constitution, James Wilson, described this problem as "the most difficult of all" to resolve at the Convention.

The framers discussed, debated and discarded a number of ideas--including plans for the governors to choose a President and the Virginia Plan whereby the Congress would do the choosing.

The direct popular vote was rejected for several reasons. First, the states had widely diverse qualifications for the franchise--in fact, only an extremely small percentage of the adult population were qualified to vote in most of the original states. Second, there was no radio, television or mass-circulation magazines or rapid means of transportation. Thus, the people could be expected to vote parochially and without sophisticated understanding of the issues. Third, there were no political parties--hence, little chance for any candidate to win a significant number of votes.

But the idea of direct popular election of a President was not forgotten. As early as 1826, a constitutional amendment was introduced in Congress proposing the direct popular election. Similar plans have been studied and discussed time and again throughout our history. Several of our present and former colleagues--Senator Humphrey, Senator Burdick, Senator Smith, Senator Mansfield, Senator Keating, Senator Aiken, just to name a few--have made similar proposals and I trust that their long experience in this area of legislation will prove invaluable to the subcommittee in its current deliberations.

Most often, they have been discarded with similar complaints. "It may be a fine idea, but it will never pass."

Today, Mr. President, the situation is different. Today, for the first time in our history, we have achieved the goal of universal suffrage regardless of race, religion or station in life. Today, we are witnessing a political development in our states where for the first time in decades, legislatures fully represent people.

Today, the next logical outgrowth of the persistent and inevitable movement toward the democratic ideal is the popular election of our national officers--an election in which each person has the right to vote for President without an artificial barrier separating him from the choice of his Chief

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Executive.

Now is the time, Mr. President. It can be done.

Therefore, I send to the chair a proposed amendment to the Constitution providing for direct popular election of the President. In the hearings on electoral reform being conducted by the Subcommittee on Constitutional Amendments, this proposal among others will be carefully considered.

The Subcommittee previously has examined proposed amendments, including one which I offered, suggesting various changes in the electoral college system. All proposals will receive serious and thorough consideration. We must bear in mind, however, that proposals for direct popular election of the President have not received adequate study. It may well be that mere procedural changes in the present system would be like shifting around the parts of a creaky and dangerous automobile engine, making it no less creaky and no less dangerous. What we may need is a new engine, Mr. President, because we are in a new age.

Simply stated, the amendment provides that any Presidential-Vice Presidential ticket receiving the greatest number of popular votes is declared elected, providing the ticket receives at least 40 per cent of the total popular vote cast. If no ticket gets 40 per cent of the vote, the Congress would meet in joint session to choose from the two tickets receiving the most votes. A majority of the combined membership of the House and Senate would be required to elect the President and Vice President.

Some may say this proposal is too new, too radical a break with tradition. In all honesty, Mr. President, I was among that number only a few short months ago. Then, we began hearings on the problem. I consulted with scholars in the field. I did a great deal of study and reflection. I came to the conclusion that this idea was not truly a break with tradition at all. It was, in fact, a logical, realistic and proper continuation of this nation's tradition and history--a tradition of continuous expansion of the franchise and equality in voting.

Today, we would not think of barring Catholics or Jews from voting. Yet some of our colonial governments did so.

Today, we would not think that a man must own property in order to exercise his right to vote. Yet it was 1851 before all states had dropped property requirements as a requisite to voting.

Today, we would not tolerate the idea of United States Senators being appointed by the State Legislatures. Yet it was 1914 when the first Senators were elected by the people.

Today, we take for granted the enormous role played by women in our  
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elections. Yet women did not have the vote until 1920.

Today, we have removed the poll tax as a financial barrier to the right to vote.

Today, we have witnessed the climax of the long struggle to guarantee Negroes the right to exercise the franchise--the 14th, 15th and 24th Amendments; the Civil Rights Acts of 1957, 1960 and 1964, and the Voting Rights Act of 1965.

And today, we guarantee that all people in a state shall have a vote equal to all other people within a state so that they may be represented nearly equally in the state lawmaking bodies.

In fact, we have only one election remaining, Mr. President, wherein some votes are not equal to others and wherein millions of votes do not count in the final result--and that is in the election of the most powerful political officer in the world, the President of the United States.

It is not radical to suggest that we abolish the Electoral College and elect our President by direct popular vote--no more so than if we suggested the advantages of grounding an open-cockpit biplane in favor of a supersonic jet.

A major criticism of extending the direct vote to all Americans in electing their President has been that it somehow would be inconsistent with our federal system. Again, I wish to state that this was my own impression--but it was an impression that careful thought and study swept away.

The Electoral College was not created so that states might act as units in electing a President. As I suggested earlier, the unit system grew out of the development of political parties and the need, therefore, to change the original system. It was never contemplated that electors from any given state would vote automatically and unanimously for the same candidate--quite the opposite; it was believed that the people, lacking communications and transportation, might be so inclined. The electors were to be the wisest of persons in each of the states and they would choose the national executives, free from popular passions. Needless to say, it did not work out that way. By 1800, the system created by the framers had foundered, necessitating adoption of the 12th Amendment which resulted eventually in the use of the winner-take-all, state-unit method of electing Presidents.

It is not necessary to dwell on the inequities of the present system. All of us know how the system can operate to elect men receiving fewer votes than their opponents--all agree it happened in 1888, and many suggest it happened also in two other elections.

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We all know how a shift of some 29,000 votes in three states in 1948 would have resulted in Governor Dewey's election, even though President Truman received a plurality of more than 2,000,000 votes.

In 1960, we all are familiar with the problem in Alabama, where a voter was unable to express clear support for Senator Kennedy. To this day, there is no way of knowing for certain how the Alabama vote went or whether it would have affected the total popular vote cast for each candidate.

And we are familiar with the practice of concentrating the quest for votes in national elections in a handful of large states--for it is a fact of the present electoral system that a candidate winning by the slimmest of margins in 12 states has been elected President, no matter what the people in the remaining 38 states may decide.

Must we wait for another election of 1800 before we are moved to correct a glaring wrong in our system? Must it come to a situation so bitter that political rivals would become as irreconcilable as a Hamilton and a Burr? It would not end today in a duel to the death--but in this day and age, we cannot risk wounds so deep that they might make the nation a divided camp where vengeance would triumph over reason. If it comes to a time when a President is again elected despite receiving fewer votes than his opponent, such wounds would be inflicted widely among the American people.

We hold out an alternative--an alternative that clearly is in keeping with American tradition and which does no violence to the federal concept.

Direct election of the President would make that office truly national. We elect our local official locally; our Congressmen by districts to protect district interests; our Governors and Senators statewide. Why should we not elect the President and Vice President nationally? The President has no authority over state government. He cannot veto a bill enacted by a state legislature. Why then should he be elected by state-chosen electors? He should be elected directly by the people, for it is the people of the United States to whom he is responsible. It seems to me that from township trustee, to county clerk, to members of Congress, to Governors of our states, each person has the right to cast his vote directly for the candidate of his choice--except in the election of the President of the United States.

Direct election, contrary to the beliefs of many, would strengthen the role of smaller states in the national election. It would truly nationalize the election and the campaign preceding it. Candidates would have to go

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where the votes are, and that is everywhere. Today, the small states are virtually ignored. But under direct election, candidates would not only be concerned with winning good majorities where they are strong, but with winning respectable minorities as well in areas where they are not so strong.

Direct election would greatly encourage voter participation. Today, if a state votes traditionally in the column of one party, voters of the other party correctly assume that their vote will count for naught. Under direct election, these votes will be as important as votes cast anywhere else.

Direct election will strengthen the two-party system. No longer will the traditionally minority party in any state be without the incentive to bring out as many votes as possible for the candidate leading the national ticket of his party. Nor will a small third party, by carrying two or three states in a close contest for electoral votes, be able to force the choice into the House of Representatives where it could exert disproportionate power.

In sum, direct popular election brings with it many virtues and no vices; it would substitute clarity for confusion, decisiveness for danger, popular choice for political chance.

James Madison, the father of our Constitution, knew that the President had to be independent of the Congress. He knew, also, that in deciding upon a means of choosing a President some compromise would be reached. But he had his own ideas as to how the President would best be elected.

Madison said that "the people at large...was the fittest in itself."

We are at long last arriving at the place and time in our history where meaning has been brought to the preamble of our Constitution--"We, the People of the United States..." Today we are, indeed, "We, the People..."

If there was doubt about it in the early years of the Republic, there can be no doubt today. Let us echo Madison. Let us put our trust in the people.