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American Bar Association Special Committee on Election Reform, Symposium on the Vice-Presidency, Panel Discussion 1. Introduction and Summary of Reform Proposals

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THE SYMPOSIUM

I. INTRODUCTION AND SUMMARY OF REFORM PROPOSALS

MR. FEERICK: The American Bar Association Special Committee on Election Reform has been intimately involved in looking at the electoral process since 1973 with a view to better acquaint observers of the process with the process and to assist in developing appropriate reforms that will lead to the improvement of the process. Toward that end, the American Bar Association has, over the past several years, indeed, as far back as 1967, been very much concerned about many aspects of the present system and has recommended a number of changes, including the abolition of the Electoral College,¹ the adoption of a nationwide voter registration law, campaign-financing reforms, and similar recommendations.

When our committee was originally set up as a result of a resolution introduced in the governing body of the American Bar Association, it was our committee's judgment that the best way we could be of service to the members of the American Bar Association, and far beyond the Association to the public, was to bring together a panel of outstanding Americans who, because of their unique qualifications with reference to the Vice-Presidency, could exchange their views in an open session, and that in the process we would be best able to help develop whatever improvements seem to be called for. We will leave it to the judgment of the members of the Symposium as to how long they feel they should address any particular subject that is raised.

Before turning over this program to the distinguished panel we have here today, I would like to call on Joel Goldstein, who is perhaps the one member of the panel who has not yet disclosed his own bias on the subject, to give us a general and brief overview of the proposals that have been made on this subject.² Joel graduated at the top of his class at Princeton in 1975 and is in the second year of what could be a three-year study at Oxford of the Vice-Presidency.

MR. GOLDSTEIN: During the past few years there has been much discussion on the Vice-Presidency and ways of reforming it. And there have been no shortages of proposed reforms; in fact there probably have been four or five dozen, many of which are new and many of which date back to the nineteenth century.

I think in discussing ways to reform the Vice-Presidency, it is important to consider not only the effect that a particular reform

1. Commission on Electoral College Reform, American Bar Association, *Electing the President* (1967).

2. See Appendix B.

would have on the Vice-Presidency but also the way in which it would affect other parts of the system of government. And I think this factor makes the discussion and consideration of the Vice-Presidency at once very difficult and also very fascinating.

I think perhaps the easiest way of categorizing the proposed reforms that have been made, is according to what part of the system they address: the nomination process, the election process, or the office itself. So what I will try to do is briefly sketch some of the prominent suggestions and try to indicate what sort of change each would require, whether it would be a constitutional amendment or a statute or a change in party rules, or other sorts of reforms. As I say, this will just be a sketch, and I assume that members of the panel who are interested in different parts can provide some of the body to this framework.

Of course, in terms of the nomination process, perhaps it is well to begin with the status quo. Some people believe that we ought to retain the present system whereby, essentially, the Presidential nominee, following his own nomination, recommends somebody and usually there is no serious opposition to his choice and the delegates generally select his choice for his running mate overwhelmingly.

People have made three criticisms of this system, one being that it is undemocratic that one person exercises such a large role; also, that sometimes it operates very hastily; people feel that the wrong criteria are emphasized in the choice, and that these lead to unqualified Vice-Presidents.

So among the alternate proposals that have been made, some would seek to reform by allowing voters in primaries a role in the process. One way of doing this would be to have a system of Vice-Presidential primaries. A second way would be to have a nationwide Presidential primary in which the runner-up was designated the Vice-Presidential candidate. A third way would be to have the Presidential and Vice-Presidential candidates run on slates in the primaries, and, of course, a modification of this last proposal would be similar to the Reagan-Schweiker plan that was used or attempted at the 1976 Republican convention.³

A second set of proposals would seek to give the delegates a larger role either by having an open convention in which the delegates would choose a Vice-Presidential candidate without a recommendation from the nominee, or with a partially open convention in which they would choose from a list that the Presidential nominee had submitted.

3. See note 12 *infra*.

Others feel that the chief problem with Vice-Presidential selection is related to the lack of sufficient time given. Their proposals tend to run in two directions, either to rearrange the convention schedule to allow an extra day between the choice of a Presidential candidate and Vice-Presidential candidate, or else to delay the choice of a Vice-Presidential candidate until after the convention and then perhaps have the National Committees meet and make the choice.

Finally, some would seek to improve the system by increasing the screening of potential candidates, either by having FBI checks on potential candidates or else creating party advisory committees to collect data and to come to and consult with the Presidential nominee on this choice.

In terms of election, there have been fewer proposals and I think I will just mention what I think are the two more important. One would be to have the President and Vice-President run separately and to allow voters if they chose to, to vote for a Presidential candidate of one party and a Vice-Presidential candidate of another. The second proposal would be to remove the Vice-Presidential candidates from the election and just have Presidential candidates run and then following the election of the President-elect, nominate a running mate subject to confirmation of both houses of Congress. Of course, this would be similar to the procedure used in the twenty-fifth amendment, by which Vice-President Ford and Vice-President Rockefeller were chosen.

Finally, I think the most dramatic change suggested concerning the office of Vice-President would be to amend the Constitution to abolish the office of Vice-President. People who favor this generally suggest that upon a vacancy in the Presidency, we have an interim President, either the Speaker of the House or the Secretary of State, who would act as President pending a special Presidential election. A related proposal would be to retain the Vice-Presidency but to abolish section two of the twenty-fifth amendment⁴ so that there wouldn't be any appointed Vice-Presidents, so to speak.

Another would be to have a Constitutional amendment to enlarge the Vice-President's legislative role by perhaps giving him a vote on all Senate business. And the final one, I think, would be to expand the role of the Vice-President in the executive branch by either amending the Constitution to allow him to be a member of the President's Cabinet or giving him more responsibilities in the executive branch.

I think those are the major ones.

4. "Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress." U.S. Const. am. XXV, § 2.