

MINUTES OF THE House COMMITTEE ON Elections

The meeting was called to order by Representative Richard L. Harper at
Chairperson

9:00 am a.m./p.m. on Tuesday, February 19, 1985 in room 521-S of the Capitol.

All members were present except: Representative Holmes, excused

Committee staff present: Myrta Anderson, Legislative Research Department
Ramon Powers, Legislative Research Department
Mary Hack, Revisor of Statutes Office
Eric Rucker, Secretary of State's Office
Dottie Musselman, Committee Secretary

Conferees appearing before the committee:

Representative Duncan
Eric Rucker, Secretary of State's Office
Representative Hensley
Jim Kaup, Staff Attorney, League of Kansas
Municipalities
Representative Blumenthal
Representative Guldner

Chairperson Harper called the meeting to order and recognized Representative Duncan. Representative Duncan, Chairman of the Joint Committee on Administrative Rules and Regulations, came before the committee to give them a briefing of HB 2252. HB 2252 amends K.S.A. 25-604 which pertains to the printing of ballots. This bill is to clear up a technical situation where-as the secretary of states' office can approve rates of ballots, rather than calling a meeting of Rules and Regulations.

Eric Rucker stood for questioning from the committee. As there were no questions, Chairperson Harper closed the hearing on HB 2252.

HB 2197 - An Act relating to elections; concerning state committees of political parties; concerning alternate members, was next on the agenda. Representative Hensley was called upon to give the committee an explanation of HB 2197. The Representative noted that a similar bill was before the 1984 Elections Committee, and had passed out of committee, but was rereferred to the Federal and State Affairs Committee, and had gotten lost at the end of the session. The purpose of this bill is to help clarify the law in circumstances where any state committee meetings of political parties are called, and the delegate is absent, but there is an alternate from the same county -- this bill would provide that the alternate present could take the absent delegates place if so designated by the county chair. Chairperson Harper opened the meeting for questions, but there being none, closed the hearing on HB 2197.

HB 2291 - An Act concerning cities; relating to the qualifications of certain city officers, was next on the agenda. This bill was a request made by the Kansas League of Municipalities. Mr. Kaup, of that organization, was recognized by Chairperson Harper. Mr. Kaup gave the committee a short briefing on this bill. It was noted that because of a lack of precision in the wording of the statutes which establish the residency qualifications of council members, commissioners and mayors, some confusion exists as to when residency must be established in order for a candidate to be legally qualified to hold elective city office. Mr. Kaup had appeared before the committee on an earlier date, and had presented hand out material on this bill. Representative Justice told the committee he would like an amendment added to HB 2291. Therefore, no action was taken on this today.

HB 2292 - An Act relating to elections; concerning presidential electors, was next up for hearing. Representative Blumenthal, the author, was now recognized by Chairperson Harper. HB 2292 addresses concern regarding a step towards reform of the electoral college by distributing electoral votes on a Congressional District basis. (Attachment 1).

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Elections

room 521-S, Statehouse, at 9:00 am a.m./p.m. on Tuesday, February 19, 1985

The Chairperson ask for questions on HB 2292, and at this time, there were none, the hearing was closed.

Chairperson Harper called on Representative Guldner to offer an amendment on HB 2184. Copies of the amendment on this bill were passed to committee members. Representative Guldner moved that HB 2184 be accepted as per the amendment handed out. Motion carried. At this time Representative Knopp had a policy question whether or not to allow more time on line 58.

After some discussion on allowing more time on line 58, Representative Knopp made a motion to amend line 58 to change the number to "45" days rather than "30". Seconded by Representative Flottman. Motion carried.

Representative Guldner made a motion to pass HB 2184 out of committee favorably, as amended. Seconded by Representative Kline. Motion carried.

Representative Kline made a motion to Pass HB 2252 out of committee, and that it be placed on the Consent Calendar. Seconded by Representative Knopp. Motion carried.

Representative Blumenthal made a motion to pass HB 2197 out of committee favorably. Seconded by Representative Helgerson. Motion carried.

Representative Justice made a motion to accept the minutes of the February 14, 1985, meeting. Seconded by Representative Crumbaker. Motion carried.

Meeting adjourned.

GARY H. BLUMENTHAL
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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: ELECTIONS
 JUDICIARY
 PUBLIC HEALTH AND WELFARE

Mr. Chairman and members of this committee, I appreciate this opportunity to speak in favor of HB 2292:

The current electoral system can be characterized as "archaic, undemocratic, and dangerous."

At the time of its inception, the framers of the Constitution deemed it necessary to write into that important document a provision to avoid the direct election of the President. The founding fathers did not do this to be "undemocratic", but at that time, they deemed it necessary to protect the selection of our Chief Executive of our nation from the majority of citizens whom were thought not to be sufficiently informed to make such a momentous decision. It was also done to recognize the role of the states, as well as individuals in the governance of our nation. But that was 200 years ago, when the citizens of America did not have effective forms of communication and education. The advent of mass communication and the public school system, as well as the use of party politics as we know it, have made the wise decision of our founding fathers certainly "undemocratic" and "archaic". To ignore the vast progress of the last two centuries, in light of the inefficiencies of the Electoral College is to condone inflexibility and hypocrisy in our governmental process.

HB 2292 addresses my concern regarding a step towards reform of the electoral college by distributing electoral votes on a Congressional district basis, great effort would be achieved in reducing the feeling of disenfranchisement that many Kansans feel about our present system. Some Kansans feel disenfranchised their votes had no bearing on the state's choice of electors. The

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 (attachment #1)

principal mischief in the present system is custom of the states awarding their electoral votes on a winner-take-all basis. The winner-take-all system effectively disenfranchises those who vote for a losing candidate. In as much as the presidency is a single national office, the critics argue every voter is entitled to have his ballot counted in a single national pool. No less than this may I remind you is demanded by the one man, one vote standard promulgated by the Supreme Court.

The Electoral College does not need to be abolished, just modified to reflect the many societal and political changes of the last two centuries. One way, like HB 2292, of doing this has been termed the "district plan." During the 1950's and 1960's, two Republican Representatives, Karl Mundt and Frederic Condert, sponsored legislation in the U.S. Congress to reform the Electoral College. It would work like this, five of Kansas' electoral votes would be determined through a district-by-district counting of votes, a mini "winner-take-all" election in each congressional district. The remaining two electoral votes would be decided by the statewide vote, the plurality winner receiving both votes HB 2292 would improve problems with the current Electoral College system by being more reflective of the popular vote, while still retaining the structure given to us by the framers of the Constitution. This bill would also encourage political activity on a bi-partisan basis by opening the state is more heated competition furing the Presidential elections.

I suggest the committee give HB 2292 a ^{f2}vavorable recommendation.

The District Plan

This approach to reform of the electoral college has a long history dating back to a proposal made by Representative John Nicholas of Virginia on March 14, 1800, and has the distinction of being the only currently advocated reform proposal that has actually been used by some states, during the early history of the electoral college. District plans have varied widely in their specific provisions. However, the plan that has been given the most consideration in the last two decades is the so-called Mundt, or Mundt-Coudert plan, which was repeatedly introduced during the 1950s and 1960s by Senator Karl Mundt, Republican of South Dakota and during the 1950s by Representative Frederic R. Coudert, Jr., Republican of New York.

This reform of the electoral college system would retain individual electors (although constitutionally bind them),²⁴ retain the constant two electoral votes per state, change to a joint session of Congress contingent procedure, and retain the possibility that the winner in popular votes might not win the election. Its chief result would be to divide a state's electoral votes, although not as thoroughly as under the proportional plan. In each state, the two electoral votes corresponding to the two senators would be decided by the statewide vote, with the plurality winner receiving both votes. The remaining electoral votes would be determined through a district-by-district counting of votes, in other words, a series of miniature winner-takes-all elections involving 481 different district and state electoral units.²⁵ The unit rule, then, would be eliminated only to a limited degree, and not at all for the very smallest states. In the case of a state with the minimum of 3 electoral votes, those 3 votes would always constitute an unified bloc, since the single district results would also be the statewide results. In the case of a state with 4 electoral votes—such as Mundt's South Dakota—the maximum division of electoral votes would be 75 percent to 25 percent, since at least one of the two district results would have to agree with the statewide results.²⁶ The unit rule is also preserved, for every state, in the statewide two votes, and the min-

iatore winner-take-all feature incorporated in the district elections.

The district plan had its chief moment of glory, in recent decades, in the form of the Mundt-Coudert plan of the 1950's. The result of years of effort by backers of this plan, together with backers of the Lodge-Gossett plan (the proportional plan), resulted, in 1956, in a shotgun marriage in the form of the "Daniels substitute," which would give each state a choice between the proportional and district plans for casting its electoral vote. This startling idea was approved by the Senate by a vote of 48 to 37, on March 27, 1956, as a substitute for a pending proportional plan, but was eventually dropped when it became evident that it lacked the necessary two-thirds vote for final passage as a constitutional amendment.²⁷

The analysis of possible results under the district plan is greatly complicated by the limitations of congressional district election data for many past presidential elections. However, an examination of the six recent elections summarized in figure 1 is illuminating. Except in 1948, in each election the second- and third-place candidate in electoral votes would have done better under the district plan than under the electoral college and would have done worse under either than under the proportional plan. In other words, the district plan represents state-by-state minority preferences better than the present system, but less well than the proportional plan.

Inherent in the district plan, however, is a great unevenness of representation of these state-by-state minorities. In 1968, under the existing system, Nixon with a very thin margin of 223,326 votes in California out of an over 7-million-vote total, received all 40 of that state's electoral votes. If the election had been held on a district basis, however, Nixon would have received 23 electoral votes to 17 for Humphrey.²⁸ The proportional plan results would have been even closer: 19.127 for Nixon, 17.895 for Humphrey, and 2.687 for Wallace (who would have received no electoral votes under the two other plans).²⁹

Results under the district plan may differ from the popular vote, however, in result as well as in degree. If the 1960 elec-

tion had been held under the district plan, it would have given an undisputed electoral college verdict to Nixon in spite of a questionable or undeterminable popular vote margin.³⁰ How would this have happened? An examination of some particular state voting patterns will help to answer this question.

In 1960 Kennedy carried Missouri with 50.3 percent of the popular vote, yet, under the district plan, he would have lost that state by 7 electoral votes to 6. He carried the four districts including Saint Louis and Kansas City by large margins sufficient to narrowly carry the state as a whole, for a total of 6 electoral votes. However, in the seven districts outside the two major metropolitan areas Kennedy lost each by relatively thin margins, thus losing 7 electoral votes.

Likewise, in two other states in 1960, Illinois and Michigan, thin popular vote statewide leads for Kennedy would have been turned by the district plan into electoral vote leads for Nixon. One way of calculating the national impact of this phenomenon is to look at the number of congressional districts each candidate would have carried under the district plan, excluding in this total the statewide electoral votes they also would have won. As shown in table 6, in 1960 Kennedy carried 196 congressional districts and Nixon 227, this despite a virtual dead-heat in popular votes. This happened because of a greater geographical concentration of Democratic votes, which means a greater number of votes wasted in districts already carried for the candidate. In the districts carried by Kennedy in 1960, there was an average margin of 20.7 percentage points above the needed plurality; in the Nixon districts, this average margin was but 13.8 percentage points.³¹ It was because of this greater waste of votes in districts already decided for Kennedy that the district plan would have greatly favored Nixon in 1960.

Whether this Republican advantage under the district plan is a short-range bias peculiar to this one election or whether there is a more durable tendency for Democratic presidential votes to be more geographically concentrated in congressional districts than are Republican votes is a crucial question. Table 6 reports comparable data for the three elections of the 1960s. In each

TABLE 6
Geographic Concentration of Presidential Votes
in Congressional Districts

Election		Number of Congressional Districts Carried	Average Margin, in Percentage Points, above Plurality Needed to Carry District
1960 ^a	Kennedy (D.)	196	20.7
	Nixon (R.)	227	13.8
	Unpledged Electors	11	18.4
1964 ^b	Johnson (D.)	371	28.3
	Goldwater (R.)	60	21.7
1968 ^c	Humphrey (D.)	161	21.4
	Nixon (R.)	226	14.1
	Wallace (A.I.P.)	48	23.2

Sources: Congressional Quarterly Inc., *Congressional Quarterly Almanac: 1960* (Washington, D.C.: Congressional Quarterly, 1961), pp. 1033-75; *Congressional Quarterly Weekly Report*, March 26, 1965, pp. 465-512; and *Congressional Quarterly Weekly Report*, June 6, 1969, pp. 885-921.

^aThe analysis of presidential election results by congressional districts for 1960 excludes the single at-large congressional district in Connecticut, which also had local districts, and excludes one of the two at-large congressional districts in New Mexico and North Dakota.

^bThe analysis of presidential election results by congressional districts for 1964 excludes the single at-large congressional district in Maryland, Ohio, and Texas, each of which also had local districts, and excludes one of the two at-large congressional districts in Hawaii and New Mexico. It includes the District of Columbia presidential election results as a congressional district.

^cThe analysis of presidential election results by congressional districts for 1968 excludes one of the two at-large congressional districts in Hawaii and includes the District of Columbia as a congressional district.

case the Democratic candidate had an average margin in percentage points in those districts that he carried considerably in excess of the comparable Republican margin in Republican-carried districts. Only in 1964, when the Republican candidate carried some Deep South districts by margins in excess of 70 percentage points, did the Republican excess margin approach the Democratic figure. In the other two instances, the Democratic figure was close to half again as large as the Republican figure. On the basis of this limited analysis, it would appear

that there is a contemporary tendency for Democratic presidential votes to be more geographically concentrated in congressional districts than Republican presidential votes. The district plan would, therefore, introduce a distinct partisan bias into the electoral process—in addition to its other shortcomings.

Arguments for the District Plan

The district plan would allow for the division of electoral votes within a state to the degree that presidential candidate strength differs in different districts within the state. As a result the national electoral vote totals would correspond to the popular vote totals somewhat better than under the present system.

The problem of the faithless elector would be solved either by requiring an elector to cast his vote as anticipated or by abolishing the office of elector.

The House contingent election procedure would be replaced by a more equitable joint session of Congress contingent procedure.

Federalism would continue to be supported because of the district plan's retention of the constant two electoral votes for each state, no matter how small.

Two-party competition would be encouraged in those states where each party has a chance of carrying at least one district.

The district plan would, to a degree, encourage minor parties and reflect their popular votes in electoral votes—but only those minor parties capable of carrying electoral districts.

The district plan would lessen any extraordinary power that organized minorities in large urbanized states may have under the existing system, since they would no longer be able to swing large blocs of electoral votes except in the unlikely case that they are distributed in large numbers in all of a state's districts.

The results of fraud and accidental circumstances would be localized in individual districts.

The district plan is the only currently advocated electoral reform plan that has actually been used by some states, during the early history of the electoral college. By adopting the dis-

trict plan, we would be returning to a well-tested, historic system.

Through making the election of the president more resemble the election of Congress, harmony between the two branches would be heightened.