PRESIDENTS - U.S.

THE LIBRARY OF CONGRESS
LEGISLATIVE REFERENCE SERVICE

CONSTITUTIONALITY OF PRESIDENT AND VICE PRESIDENT
BEING RESIDENTS OF THE SAME STATE. 1968.

Elizabeth Yadlosky
Legislative Attorney
American Law Division
August 2, 1968

Washington D.C.

CONSTITUTIONALITY OF 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

This provision has prompted many questions as to whether it requires that the President and Vice President so elected be residents of different states. Although we know of no judicial decision which has interpreted this sentence, it is generally construed as not prohibiting the election of a President and Vice President from the same state. It is regarded as merely prohibiting the electors of the electoral college of a particular state from voting for two men (one to be President, the other Vice President) who are both inhabitants of the same state as the electors who are voting. In other words, the electors of State A can vote for only one man who is an "inhabitant" of State A. For the second office, the electors of State A must either vote for an inhabitant of any state other than State A, or lose their electoral vote as to that office. However, the electors of all the other forty-nine electoral colleges may vote for the two men from State A if they choose.

The clause "one of whom, at least, shall not be an inhabitant of the same state with themselves" was originally incorporated in the Constitution as Art. II, sec. 1, cl. 3 and was considered to be a concession to the smaller states which were fearful that the President would be chosen always from the larger states. It was designed to exclude the

absolute predominance of any local interest or local partiality. Story, Commentaries on the Constitution, §1469. Its purpose was to force the electors to look beyond the boundaries of their own states to search for men of national reputations. The framers of the Constitution were concerned with the persistence of provincialism in the politics of the new republic. They assumed that the electors in each state, with or without the direction of the people, would almost always vote for a native son for President. This provision, they thought, would be "one sure way in which to raise 'continental characters' above the dull herd of native sons." Rossiter, American Presidency, p. 185.

At the convention which drafted the Constitution, the first suggestion that it was desirable that the President and Vice President be inhabitants of different states (as reported in Madison's notes) was advanced by Mr. Williamson and taken up by Mr. Govr. Morris:

> Mr. Williamson was sensible that strong objections lay agst. an election of the Executive by the Legislature, and that it opened a door for foreign influence. The principal objection agst. an election by the people seemed to be the disadvantage under which it would place the smaller States. He suggested as a cure for this difficulty, that each man should vote for 3 candidates. One of these he observed would be probably of his own State, the other 2 of some other States; and as probably of a small as a large one.
>
> Mr. Govr. Morris liked the idea, suggesting as an amendment that each man should vote for two persons one of whom at least should not be of his own State.
>
> Mr. (Madison) also thought something valuable might be made of the suggestion with the proposed amendment of it. The second best man 11/ in this case would probably

11/ Crossed out: "in the partial Judgment of each Citizen towards his immediate fellow Citizen".

> be the first, in fact. The only objection which occurred was that each Citizen after havg. given his vote for his favorite fellow Citizen wd. throw away his second on some obscure Citizen of another State, in order to ensure the object of his first choice. But it could hardly be supposed that the Citizens of many States would be so sanguine of having their favorite elected, as not to give their second vote with sincerity to the next object of their choice. It[12/] might moreover be provided in favor of the smaller States that the Executive should not be eligible more than times in years from the same State.
>
> 12/ Crossed out: "As a further safeguard".
>
> (Farrand, The Records of the Federal Convention, vol. II, pp. 114-114)

In discussing the role to be played by the United States Senate, at a time during the convention when consideration was being given to placing contingent election of the President in the Senate, if a majority of the votes of the electoral college did not fall to any one candidate, Mr. Govr. Morris was reported to have been of the following opinion:

> Mr. Govr. Morris thought the point of less consequence than it was supposed on both sides. It is probable that a majority of the votes will fall on the same man, As each elector is to give two votes, more than ¼ will give a majority. Besides as one vote is to be given to a man out of the State, and as this vote will not be thrown away, ½ the votes will fall on characters eminent & generally known. Again if the President shall have given satisfaction, the votes will turn on him of course, and a majority of them will reappoint him, without resort to the Senate: If he should be disliked, all disliking him, would take care to unite their votes so as to ensure his being supplanted.
> (Farrand, supra, p. 512)

The debate, although far from conclusive, indicates that the framers of the Constitution did not intend in their final draft to prohibit two men from the same state from acting as President and Vice President. It may be assumed that, had they so desired, they would have specifically so provided. They chose rather to encourage candidates from different states by the method finally adopted.

The comments of those who have studied the subject do not serve further to explain this provision. For example, McKnight, in his work entitled Electoral System of the United States, comments on the clause as follows:

> By the Constitution the choice by the Electors is limited in only three directions, which exceptions make their authority more absolute in all others.
>
> Firstly, one at least of the persons for whom they vote shall not be an inhabitant of the State wherein the Electors live. The provision was intended to prevent fraud possibly, or it was a policy which the Fathers thought advisable; but it has an object which is not very clear to-day, and therefore, it may be presumed, is religiously adhered to.
>
> Why, for example, both a President and Vice President may not be taken from New York is not quite obvious. The fact is that candidates from New York ran for both offices in 1876, though on different tickets; there was no political significance in it however, nor would any be clear if they had been on the same ticket. In case of a failure to elect at the Opening of the Votes in 1877, the President would have been elected by the Democratic House and the Vice President by the Republican Senate, and we should thus have had Tilden and Wheeler from the State of New York, without violence done to any principle or policy which is apparent.
>
> It might have been devised to prevent one section of the country combining against the other; but any two adjoining States, by agreement, might accomplish the same result, and yet obey the letter of the law.
>
> (pp. 123-124)

Art. II, sec. 1, cl. 3, of the Constitution, in which the language "one of whom, at least, shall not be an inhabitant of the same state with themselves" originally appeared, was superseded by the Twelfth Amendment. However, none of the changes made by the Twelfth Amendment affected this clause, the language of which was incorporated exactly in its original form.

At the time of the debate on the resolution ultimately adopted as the Twelfth Amendment, the question of the meaning of this clause was apparently not raised. It was referred to only once or twice during the course of the debate and then not in any attempt to interpret or change the language of the clause but in an effort to illustrate the resistence of the small States to any possible loss of influence and the concessions made in the original text of the Constitution, to the small States. For example, during the debate, Senator Tracy observed:

> In the article which obliges the Electors of President to vote for one person not an inhabitant of the same State with themselves, is discovered State jealousy. In the majorities required for many purposes by the Constitution, although there were other motives for the regulations, yet the jealousy of the small States is clearly discernible. Indeed, sir, if we peruse the Constitution with attention, we shall find the small States are perpetually guarding the federative principle, that is, State equality. And this, in every part of it, except in the choice of the House of Representatives, and in their ordinary legislative proceedings. They go so far as to prohibit any amendment which may affect the equality of States in the Senate.
> (Annals of Congress, 8th Cong., 1st Sess. Oct. 17, 1803 - March 3, 1804, p. 162)

Another impression gained from the debate on the Twelfth Amendment is that those who favored the Amendment as well as those who opposed it desired to change the provisions of the Constitution as little as possible and still accopmplish their objective. As expressed by one Member, "to innovate as little as possible on the Constitution". Annals, supra, p. 422 and see also p. 430.

For a more comprehensive discussion of the Twelfth Amendment, see Stanwood, History of the Presidency, pp. 77-82. For a collection of debates and reports on the electoral process, see Counting Electoral Votes, Mis. Doc. No. 13, 44th Cong., 2nd Sess. (1876).

Elizabeth Yadlosky
Legislative Attorney
American Law Division
August 2, 1968