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L. C. Miller

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TAKING THE CROSS-WORD PUZZLE OUT OF ELECTIONS

L. C. MILLER*

THE choosing of electors and the election by them of the President and Vice President of the United States is, to the average voter, a cross-word puzzle, cumbersome, expensive, and conducive to mistakes.

Much thought, but very little energy, has been expended in devising ways of making the ballot laws of various states more nearly in harmony with the desire and the conduct of the voters.

An amendment to the Federal Constitution permitting direct election of presidents and vice presidents would greatly simplify matters and would bring about a big economy in the way of election expense, but the realization of this idea seems far distant.

Wisconsin, in common with Illinois, Iowa, and Nebraska, has decided not to wait for a constitutional amendment but to bring about the desired result by state legislation which simplifies the choosing of electors of president and vice president and at the same time complies with the Federal Constitution and the Acts of Congress.

The new law adopted in Wisconsin this year provides for a simple, direct, and economical method of choosing presidential electors. The antiquated and cumbersome method in use throughout the Union has been discarded for the up-to-date and effective method that has been in use in Nebraska and Iowa, and which has been adopted this year by the state of Illinois. The new method has so many advantages in those states where a large number of electors are chosen that it, no doubt, will be quite generally adopted at least by many of the more populous states.

Heretofore, in Wisconsin, the names of all the candidates for presidential electors appeared on the ballot, thirteen in each party column. A party that could muster up enough votes to elect one elector could elect all, and the possibilities of a "split" electoral vote hinged not upon the desire of the voters but more upon the technicalities of the law; the inabilities of the voter to follow out the cumbersome details of the law in such a way as not to waste any of his votes. This has brought about a large "straight" party vote in all the states where the method has been in vogue. Rather than run the risk of spoiling his ballot the voter would vote the party column "straight." This fear of spoiling a

*Attorney for the Illinois Board of Election Commissioners. The writer was instrumental in securing the passage in Illinois of an act in respect to presidential electors which has substantially the same effect as the new Wisconsin law.

Following is the form of the new Wisconsin official ballot:

OFFICIAL PRESIDENTIAL BALLOT

Make a cross (X) or other mark in the ☐ opposite the names of the candidates for whose electors you desire to vote. Vote in ONE square only.

{	John Doe	President	}	Democrat	<input type="checkbox"/>
{	John Doe	Vice President			

{	John Doe	President	}	Prohibition	<input type="checkbox"/>
{	John Doe	Vice President			

{	John Doe	President	}	Republican	<input type="checkbox"/>
{	John Doe	Vice President			

{	John Doe	President	}	Socialist	<input type="checkbox"/>
{	John Doe	Vice President			

{	John Doe	President	}	Independent	<input type="checkbox"/>
{	John Doe	Vice President			

ballot in an attempt to split the votes was greatly augmented by the propaganda of the various party organizations.

Under the new system, the names of the candidates for electors will not go on the ballot, but in their stead will be the names of the respective party candidates for president and vice president. A vote for the candidates for president and vice president will be counted as a vote for each and everyone of the nominees of that party for electors, and thus the electors pledged for the successful candidates for president and vice president will be automatically elected, and in turn will meet in the college of presidential electors and express their choice for president, there being no change in the law in respect to the actual election of the president, but merely in the method of choosing electors.

No state can go further until the Federal Constitution and federal laws are changed. In the minds of the voters, the presidential electors have long been nothing but "rubber stamps," and it is quite generally

felt that the president and vice president should be elected by a direct vote. Wisconsin's new law comes close to meeting that demand.

It was not contemplated by the framers of the constitution that the presidential electors should necessarily be elected by the voters. Their only idea was that they should be chosen by the states in any manner that the respective legislatures might devise and that they should meet on a given date—the same throughout the Union—and choose the president and vice president. Congress was given the power to fix the date of the election and the date of the convening of the college of presidential electors, and Congress has provided that the electors shall be chosen on the first Tuesday after the first Monday in November of the year before the expiration of the term of the incumbent. The new Wisconsin statute complies with these Federal provisions.

Article 2, Section I, Paragraph 2, of the UNITED STATES CONSTITUTION provides as follows:

"Each state shall appoint, *in such manner as the legislature thereof shall direct*, a number of electors equal to the whole number of Senators and Representatives to which the state may be entitled in the congress," etc.

Paragraph 4 of the same section provides as follows:

"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."

Under the foregoing constitutional provision, Congress has passed a law providing that the electors "shall be appointed in each state on the Tuesday next after the first Monday in November." (*Compiled Statutes of U. S., Section 199, Title III.*)

The respective states therefore find themselves in this situation: They may choose or appoint presidential electors in any manner they see fit, but each and every state must make its choice on a given date, which under the present Act of Congress is the first Tuesday after the first Monday in November of the year previous to the expiration of the president's term of office. The new Wisconsin law complies with all these restrictions.

The State of Illinois has had several proposals, and after the session of the legislature in 1923, Governor Small of that state vetoed an act of the legislature providing for a shorter ballot and gave as his reason the fact that the law was of doubtful constitutionality and that the State of Illinois, with its large representation in the college of electors, should take no chances of forfeiting its participation in the election of a president.

At the 1925 session of the Illinois Legislature, an act which brings about a method very similar to that now adopted in Wisconsin was ap-

proved by Governor Small of that state, he having been convinced that the new method was constitutional and within the provisions of the Federal Statutes.

Every state in the Union until this new method was proposed has been choosing its electors by a cumbersome "popular" vote.

There have been five types of presidential ballots: one type makes no provision for voting for electors as a group. This type is used in Arkansas, Colorado, Florida, Mississippi, Montana, Nevada, New Jersey, Oregon, Tennessee, and Wyoming. The voter in these states must mark separately each elector for whom he wishes to vote. In most of these states there is some dividing line or identification indicating the electors of the respective party groups but in Florida the twenty-nine candidates of the various parties at the last election were printed in a single column, alphabetically arranged regardless of parties and with no indication of what party the respective candidates represented. The Florida scheme is well calculated to confuse the voter and is conducive to split electoral votes which is contrary to the real desire of the voters.

Another type provides for voting for electors in a group but only by voting a straight party ticket. With the change this year in Illinois, there are still eighteen states using this form. In the states using this type of ballot a voter wishing to split his vote is called upon to make as many crosses for presidential electors as there are candidates to be elected. In Illinois this necessitated twenty-nine crosses for electors alone. This form of ticket was popular with the straight party voter and party organization but very unpopular with the independent voter. Alabama, Connecticut, Delaware, Georgia, Idaho, Indiana, Kentucky, Louisiana, Michigan, Missouri, New Mexico, Oklahoma, South Carolina, South Dakota, Texas, Utah, Washington, and West Virginia have this type of ballot. Illinois was in this list until 1925.

Nine states have a provision for voting for electors as a group by one cross without the necessity of voting a straight party ticket but in these states they also provide that the electors may be voted for individually. California, Maryland, New Jersey, Pennsylvania, Maine, New York, North Carolina, Ohio, and Vermont have this form of ballot; Wisconsin had this form until this year. The latter five of these have a separate ballot for presidential electors, the same as Wisconsin has heretofore had.

The separate ballot for presidential electors is not popular with some party organizations as it necessitates the voter voting for the electors separately from the regular ballot and makes it easy for him to split his ticket. In New York at the last election, with Coolidge (Republican) carrying the state on the small ballot, Smith (Democratic) carried the state on the other ballot. Had all of the candidates been on one

ballot there would have been less likelihood of one party carrying the presidential ticket and another party carrying the state ticket. Some Republicans claim Coolidge would have carried through the entire state ticket had it been on the same ballot. For apparent reasons some party organizations are avowed enemies of this form.

In New Hampshire, Arizona, Rhode Island, and North Dakota the electors are grouped and may be voted for only as a group by putting a cross in the square applying to any one group, or by a cross marked in the circle at the top of the ticket containing that same group.

Massachusetts, Minnesota, Kansas, and Virginia have the names of the candidates grouped according to the office for which they are running and there is no party column or party circle. The electors are grouped together according to the party they represent and can be voted for only as a group.

In all of the states except Iowa and Nebraska heretofore—and Wisconsin and Illinois now—the names of the candidates for electors are printed on the ballot, and the laws of many of the states contain the provision that election officials must instruct the voters how to commit the absurd act of splitting votes for presidential electors.

"Presidential electors are state officers and it is within the exclusive jurisdiction of the state to punish fraudulent voting for them." *Fitzgerald v. Green*, 1890, 10 Sup. Ct. 586, 587; 134 U. S. 377; 33 L. Ed. 951.

"Congress has never undertaken to interfere with the manner of appointing electors or, where (according to the now general usage) the mode of appointment prescribed by law of the state is election by the people, to regulate the conduct of such election or to punish any fraud at voting for electors, but has left those matters to the control of the states."

Wisconsin also liberalized the law in respect to absent voters. The voter now need only to make affidavit that he expects to be absent for any reason. The physician's certificate to prove sickness is no longer necessary. One objection to the absent voters' law, not only in Wisconsin, is the fact that clerks cannot get the ballots in time to mail them out and get them back before election. Wisconsin has remedied this by providing that the ballots shall be in the hands of the local clerks at least ten days before, instead of twelve hours before an election. Similar legislation failed of passage in Illinois this year.

With the 1925 changes the state of Wisconsin had the most progressive legislation of any state in the Union in respect to elections.