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Miss Robinson

Address Delivered before the Kentucky College of Electors at Frankfort by Dean Elvis J. Stahr, Jr., University of Kentucky, College of Law, December 9, 1948.

Mr. Chairman, Members of the Electoral College, and distinguished Kentuckians and friends:

I am deeply honored to have been invited to stand before you on this historic day and to attempt to sketch for you the historic background of this occasion, to recall to your minds a little of what has been done by those who have preceded you in the College of Electors in these United States, and especially in Kentucky.

The great Constitutional Convention of 1787, meeting in Philadelphia, thought and fought long and hard to decide how the chief magistrate of the new republic, and his chief lieutenant, should be selected. At no time did they appear seriously to consider having them elected by direct national popular vote. Of the numerous plans considered, the system of having some sort of group of electors actually choose the President and Vice-President was inherent in most. But how designate the Electors? When we remember that states' rights were far more prominent then--because there was yet no real political union--it is not surprising that the matter was left up to the states; and that meant to the State Legislatures. Here is the plan the founding fathers agreed upon, and that went into the Constitution as Article II, Section 1--this was the plan under which the first four presidential elections were held:

Each state was to "appoint"--in any manner its own Legislature should see fit--a number of Electors, equal to the total number of Senators and Representatives which the state was entitled to send to Congress. The Electors were to meet in their respective states and vote by ballot for two persons, making no distinction between President and Vice-President. Only one of the two could be an inhabitant of the state. The votes were to be certified and sent to the President of the United States Senate, who would open the certificates in the presence of both Houses of Congress. The person having the greatest number of all the electoral votes would become President, if his votes equalled a majority of the total number of Electors. If no one received such a majority, the House of Representatives was to choose the President from the top five. In case two persons tied in electoral votes and both had a majority (as was possible since each Elector had two votes), then the House of Representatives had to select the President from those top two. But the members of the House of Representatives could not vote as individuals when it fell to them to make the final choice; the vote had to be taken by states--and a majority of the states was necessary to a choice. In any case, the Vice-President was to be the man with the second highest total of votes for President, whether the President was elected by the Electors or had to be elected by the House of Representatives.

As I said, our presidential elections were held under these provisions. In the first one, in 1789, Kentucky did not participate--she was not admitted to the union, of course, until 1792. But Kentucky has cast electoral votes in every presidential election since, beginning with that of 1793--and today, Mr. Chairman, Kentucky's Electors will vote for a President and Vice-President of the United States for exactly the fortieth time!

In that first election of 1789, General George Washington received one of the votes of every Elector. Again in 1793, when Kentucky first voted, he was unanimously elected. Since that time, nearly 156 years ago, no man has ever received the unanimous vote of the Electors. But it nearly happened in 1820, when James Monroe received 231 and John Quincy Adams received 1. A New Hampshire Elector, one William Plumer, former Senator and Governor of that state, voted against Monroe because, he said, he did not trust him.

There were only 69 Electors in that first election, compared to 531 today. Rhode Island and North Carolina did not have any, although they were among the original "Thirteen colonies"; they had not yet ratified the Constitution--I wonder how many people today could tell us why! The reason was that the two Houses of the New York Legislature got into a squabble about how the New York Electors should be chosen and could not come to an agreement on the matter before the deadline had passed! That may have been the first--but it certainly was not the last--legislative deadlock in American history!

How did the Legislatures of the other ten original states decide that the Electors for their states should be chosen? New Hampshire had the people nominate Electors but left the appointment to the Legislature. (And the two Houses of the New Hampshire Legislature almost had a deadlock after the people voted--but settled it a few minutes before midnight of the deadline date, when the lower House capitulated to the State Senate). Massachusetts had a rather complicated scheme, which nevertheless really boiled down to leaving the final selection of Electors to the Legislature. In five other states the Legislature chose the Electors with no pretense of reference to the people. Pennsylvania, Maryland and Virginia alone let the people elect the Electors directly from the start. Times have changed indeed since the day of the founding fathers!

They began to change rather early, as a matter of fact. By 1824, there were 24 states in the Union, but in only six of these were presidential Electors still chosen by the State Legislature. By 1828 only two states adhered to that system (Delaware and South Carolina)--and from 1832 to the Civil War, only South Carolina continued to give the people no voice in the selection of presidential Electors. . . .

But actually, for one reason or another, which need not be elaborated here, 1872 was the first time in American history when all Electors were chosen by vote of the people--and 1876 seems to have been the last time any other method was used. Colorado was admitted to the Union that year, but too late to hold a popular election of Electors.

When did Kentucky give the right to her people? I'm happy to say that not since 1796 has the General Assembly chosen presidential Electors in this state. However, matters did not fully assume their present aspect in Kentucky until the election of 1828. For seven elections, beginning in 1800, Kentucky employed the district system, by which the people in each district could elect one Elector. The district system was clearly more democratic than either the present general-ticket system or the system of selection by the Legislature, because it gave the minority party a chance to get at least a part of a state's electoral vote, just as today the minority party can often elect at least a part of a state's Congressional delegation. But once a substantial number of states had adopted the general-ticket system, by which all of the electoral votes of a state go to the party having a statewide plurality, the rest were

practically compelled to go along, in order not to risk losing the political potency that followed from being able to throw a solid bloc of electoral votes into the scales. Kentucky went over to the general ticket in 1828. Still, only Maryland, of all the states in the union, used the more democratic district system in more elections than Kentucky--ten in all. In Maryland, all too often it resulted in cancelling her votes, because her Electors would split them. The funny thing is that Kentucky's Electors voted unanimously every time even under the district system! True, in the election of 1809, when Madison beat Pinckney and Clinton, one Kentucky Elector didn't vote at all--(the other seven all voted for Madison)--but that was because he--his name was Walton--could not make it to the meeting of the Electors. A footnote to that is that Mr. Walton wrote a letter about it--but for some strange reason the House of Representatives, the day after the formal count in Washington, voted down a motion to amend the record to show why Kentucky's vote was deficient!

(I might add that neither Kentucky nor any other state ever came up with quite as strange a system as that used by Tennessee in the early days. Down there, the Legislature passed an act giving to certain named citizens the power to appoint the state's presidential Electors!)

The last time any state used the district system was in the 1892 election, when Grover Cleveland beat incumbent Benjamin Harrison. Michigan's Legislature, which was Democratic, realizing that the Republicans would carry Michigan, provided for a district system and thereby saved five of Michigan's fourteen electoral votes for Cleveland. I wonder why that sort of thing has not occasionally occurred in other states.

Permit me to go back for a moment. Things went along under the original Constitution fairly well for the first three presidential elections. You will recall that each Elector could cast two votes for President in those days though only one for any one man. The results seem a little peculiar to us today. Thus, while Washington was receiving his unanimous 69 votes in the first election, no less than eleven other men received the other 69 votes. John Adams got 34, a plurality, and became the first vice-president. In the second election, when Washington was unanimously reelected with 132 votes, and when Kentucky, with four Electors, participated for the first time, Kentucky gave four votes to Washington and four to Thomas Jefferson. They were the only votes Jefferson received out of a possible 132--and the first electoral votes he ever received. Kentucky Democrats may well be proud of those Electors of 1793! Adams, Clinton and Aaron Burr received the rest of the electoral votes over the country and Adams, with 77 in all, became Vice-President again. Burr actually only got one, from South Carolina.

Kentucky's four Electors gave Jefferson and Burr four votes each in the 1797 election--but in the final count, conducted by Adams as President of the Senate, Adams beat Jefferson just 71-68! for the honor of becoming second President of the United States. Jefferson, of course, became Vice-President, being second high man of the 13 men who received votes. Then--four years later, things really happened. There was a bitter campaign between Jefferson and Adams. Aaron Burr was on the "ticket" with Jefferson, and each of them received four votes from Kentucky, as had been the case four years earlier. But--the ticket held together in the same way in all the states they carried, and Jefferson and Burr each wound up with 73 electoral votes, while Adams and his running mate on the Federalist ticket got 65 and 64, respectively. That should have ended the

matter, perhaps, but remember that under the Constitution the tie vote meant a run-off in the House of Representatives between Jefferson and Burr. And it suddenly appeared that Burr wanted to be President! Well, you know the story. The Federalists, bitter about Jefferson beating Adams, decided to support Burr. Voting was by states. Kentucky had two Congressmen in those days--and both stuck with Jefferson all the way, thus throwing Kentucky's single vote to him. There were 16 states in the United States at the time--thus it took nine for a majority. For 35 ballots and six days the vote stood eight states for Jefferson, six for Burr and two with evenly split Congress delegations and thus no vote at all. On the 36th ballot, Jefferson was elected--and I wish I had time to tell you of the switches that occurred on that ballot!

The big point today is that the dramatic fight resulted in a constitutional amendment--the XIIth Amendment--requiring Electors from that time to this to vote separately for President and Vice-President, distinctly listing which person is voted for for which office. And also, if no person has a majority when the electoral votes are counted by Congress, then the House of Representatives must elect the President from the top three men, and the Senate elect the Vice-President from the top two.

(Incidentally, Jefferson's party did not nominate Burr for reelection as Vice-President in 1804! The rest of the story of Mr. Burr can no further concern us this morning.)

Kentucky went down the line for Jefferson, Madison and Monroe, each of whom served two terms. Then, in 1824, another remarkable election took place. Kentucky threw her 14 votes to Henry Clay, who carried the state by 11,000 over Andrew Jackson. But Jackson received 99 electoral votes altogether; John Quincy Adams polled 84 and William H. Crawford 41, while Clay only received 37. Clay thus did not quite get into the run-off which was thrown into the House of Representatives. Jackson had had an electoral plurality of 15 and a small plurality in popular vote--but the House of Representatives elected John Quincy Adams by a vote of 13 states to seven for Jackson and four for Crawford. Kentucky voted for Adams (eight Congressmen to four). Incidentally, the Electors in those days certainly voted as they pleased--and three of the New York Electors who had been expected to vote for Clay deserted him and went, one each, to the other three candidates. If all had stuck by Clay,--but then we haven't time for "iffy" questions. The Vice-Presidency that year was never in doubt--John C. Calhoun won in a walk and no run-off was necessary. Clay received two electoral votes for Vice-President, oddly enough, from two of the Delaware Electors, and became the first Kentuckian to receive any electoral votes for Vice-President. Kentucky split her own electoral votes for Vice-President,--seven for Calhoun and seven for Nathan Sandford of New York. Calhoun was elected, as I mentioned.

Kentucky's Electors got back on a winning candidate in 1828, going for Jackson against Adams. But when Clay ran again in '32, though Kentucky supported him, he was badly beaten by Jackson. However, Kentucky clung to the Whigs (by a small popular margin) in 1836, giving its 15 electoral votes to William Henry Harrison, who, nonetheless, lost to Van Buren. Kentucky stuck with Harrison, though, and helped him turn the tables on Van Buren and the Democrats in the "Tippecanoe and Tyler Too" race of 1840. But the Whigs could not repeat in '44. The Democratic dark horse, Polk, beat Clay, in Clay's third and last race for the Presidency--despite Kentucky's loyalty to Clay. The electoral vote was 170 to 105. Clay carried Kentucky in popular vote by 9300 out of 130,000 votes cast. The election

nationally was really so close that a change in 8000 votes, properly distributed, would have given Clay a clear majority of 103 electoral votes!

Kentucky's Electors went for a winner, Zachary Taylor, the next time, but a strange thing happened in 1852. The Democrats nominated an unknown named Franklin Pierce; the Whigs put up General Winfield Scott. Kentucky's Electors voted for Scott--three other states voted for Scott--but 27 states went for Pierce. What kind of company was Kentucky in? Believe it or not, the other three states for Scott were Tennessee, Massachusetts and Vermont! (Maine and Vermont evidently had not yet learned to stick together.)

The Whigs were breaking up. Kentucky went over to the Democrats in 1856, helping elect Buchanan, and have been there most often since--although for many years after the Civil War it was seldom the winning side.

Before leaving the pre-Civil War period, I'd like to tell you of some interesting things that happened in connection with the Vice-Presidency. In 1836, when Kentucky supported William Henry Harrison in his losing battle against Jackson's hand-picked candidate, Vice-President Van Buren--a Kentuckian, Colonel Richard M. Johnson, was Van Buren's running mate. Although Van Buren received a majority of the electoral vote for President, over four other candidates, Colonel Johnson had only a plurality over his three opponents, his total being 147 and their combined total being 147. This was the only time in our history when the election of a Vice-President has been thrown into the Senate. The Senate picked Colonel Johnson--so he was Kentucky's first Vice-President, but--the interesting footnote is that Kentucky's own Electors had voted solidly against Colonel Johnson! If they had voted for him, he would have won easily without the run-off. Incidentally, Kentucky had a total of 15 electoral votes in the elections of 1832, '36, and '40--the most she has had, before or since. Only four states had more in those days--New York, Pennsylvania, Ohio and Virginia. Fifteen states have more than Kentucky today.

Well, Colonel Johnson was on the Democratic ticket with Van Buren again in 1840, and again Kentucky turned him down--and this time he lost the election--to John Tyler, who became President when Harrison later died in office. As we've seen, Kentucky stuck with the Whigs in '44 and '48--and in the latter year once again Kentucky turned down a native son for Vice-President. General William O. Butler of Kentucky was the running mate of Lewis Cass--but Kentucky's votes went to Taylor and Fillmore. If the Democrats hadn't been split by the Barnburners, General Butler would have been Vice-President despite Kentucky!

Kentucky's third important candidate for the Vice-Presidency was the first to receive Kentucky's own electoral votes and the second to be elected. He was John C. Breckinridge, Democratic running mate of James Buchanan in 1856, the first presidential election after the birth of the Republican party.

How many popular votes do you imagine that Abraham Lincoln received in 1860 in Kentucky? 1,364 out of 146,000 cast. Who received Kentucky's electoral vote? I wonder how many remember? It wasn't Stephen A. Douglas, the Democrat--and it wasn't Kentucky's own native son, John C. Breckinridge--it was John Bell of Tennessee, candidate of the Constitutional Union party, which ran fourth in popular vote over the nation in a field of four. It was the party of peace and union--both of which Kentucky wanted--but war and secession were in the cards instead. Only two other states went for Bell, out of 33 then in the Union. They were Virginia and Tennessee.

Kentucky refused her electoral votes to Lincoln again in '64. Tennessee and Virginia had gone into the Confederacy of course--but New Jersey and Delaware joined Kentucky in supporting General George McClellan. Lincoln won, 212 to 21, in the electoral college.

Kentucky remained on the losing Democratic side from 1868 through 1880, but her side became the winner again in 1884 when Grover Cleveland finally crashed through, defeating Republican James G. Blaine. But--it is still being debated whether the Republicans didn't steal the notorious election of 1876, when Governor Hayes of Ohio beat Governor Tilden of New York by 185 to 184! On the other hand, the Democrats at least tried to steal it--they offered huge bribes to any Republican Elector who would vote for Tilden. After weeks of contested elections, double certifications of Electors and other exciting goings-on, Congress met to count the electoral votes. It took them 30 days to do it, and the story of what went on in those 30 days is a fascinating lesson in American politics, though too lengthy to narrate here. They finally finished at 4 a.m. on the 2nd of March, 1877, with inauguration due on March 4th, and declared Hayes the winner. Kentucky was for Tilden, of course. Henry Watterson was temporary chairman of the Democratic convention which nominated Tilden. And, also in 1876, Green Clay Smith of Kentucky was the first Presidential candidate of the Prohibition Party.

There is also an interesting footnote on the election of 1872, when Horace Greeley, who carried Kentucky and six other states against President U. S. Grant, died before the Electors met. His Electors scattered their 63 votes among four other men (though three Georgia Electors persisted in voting for the deceased Greeley). Kentucky's Electors voted eight for Thomas Hendricks of Indiana, and four for B. Gratz Brown of Missouri-- (almost-forgotten men, like many defeated Presidential candidates of latter years).

Even more strange was what happened in the 1872 Vice-Presidential race. There were nine candidates who were able to poll one or more electoral votes. Among them were two Kentuckians, Thomas E. Bramlette and Willis B. Machen, who had not been nominated by any party. Their electoral votes all came from Kentucky Electors and totaled: Bramlette 3, Machen 1. Kentucky's other eight went to B. Gratz Brown of Missouri--the four Electors who wanted Bramlette or Machen for Vice-President had all voted for Brown for President. Of course, Grant had won and Greeley had died and I don't guess it made much difference.

Well, Kentucky was with Cleveland twice in victory and once in defeat. In the second victory (1892) the Electors of four states split their votes for President, but Kentucky was not among them. One lone Ohio Elector cast the first Democratic electoral vote from Ohio since the founding of the Republican party nearly 40 years before. This was that same election in which Michigan temporarily went back to the district system and split wide open.

And along with that second victory for Cleveland, there came the election of the third native Kentuckian to become Vice-President of the United States. Adlai E. Stevenson, who was born in Christian County, was Cleveland's running mate. Stevenson had moved to Illinois, however--another great native Kentuckian of political fame--and it had been Henry Watterson, not Stevenson, who was the choice of Kentucky's delegates to the Democratic convention. But Kentucky's Electors all voted for Stevenson and Cleveland.

It was Kentucky's turn to split in 1896, along with California, in the contest between Billy Bryan and William McKinley. In popular vote, McKinley carried Kentucky by exactly 281 votes out of 436,000 cast. One of Kentucky's Electors nevertheless gave his vote to Bryan, and the split was 12 to 1. I have heard a fairly plausible explanation for this, but it would take more time than I have remaining to give it to you, and I'm sure most of you know the story anyway. But I might mention that in this same campaign of '96, no less than ten states saw their electors split their votes for Vice-President. Kentucky was among them--but I will offer any odds that Kentucky's Electors will not split their Vice-Presidential votes in the year of our Lord 1948!

We're now getting up to the time of living memory--though we haven't yet quite reached mine. Kentucky's Electors all voted for Bryan in 1900, but it did no good. It was the only state McKinley lost that he had carried in '96. They also voted against Teddy Roosevelt in 1904, and against William Howard Taft in 1908. But they picked a winner once again in Woodrow Wilson. The electoral vote in 1912 was highly interesting. Although Wilson received only about 6,300,000 out of some 15,000,000 popular votes cast, his electoral vote was 435, to 88 for "T. R." and only eight for Taft. Taft carried Utah and Vermont.

The closest electoral vote thus far in the 20th century was in 1916--when Wilson received 277 and Charles Evans Hughes 254. We've heard a lot about California in that race. How many people realize that if Kentucky's 13 Electors had voted for Hughes, he would then have been President of the United States, by 267 to 264!

Kentucky loyally went down with Governor Cox and Franklin Roosevelt in 1920, although Tennessee's Electors were voting for Harding and Coolidge. But--apparently grown tired of losing its electoral votes so often, Kentucky Electors have voted for the winners ever since--Coolidge and Dawes--Hoover and Curtis--and Franklin D. Roosevelt four straight times, with Garner twice, Wallace once and Truman once as his running mates. There's a strong rumor over the Commonwealth that you Electors are going to help elect another pair of winners today, including the fourth native Kentuckian in history to become Vice-President. Your forebears of the past 39 Kentucky Electoral Colleges would applaud you, I am sure! And the people of Kentucky showed how they felt when they selected you November 2nd. What you do here today will become a part of the great stream of American history--as fascinating a story as mankind has ever seen.

Sent by Blakey Helm, Chairman of Kentucky College
of Electors, 1948