

REPORTS OF SECTIONS AND DIVISIONS 1

American Bar Association

ADOPTED BY THE HOUSE OF DELEGATES

February 9, 2001

**Weinberg, Robert L., District of Columbia Bar Delegate
(Report No. 104)**

RESOLVED, That the American Bar Association supports (1) review of the nature and causes of the problems experienced in the 2000 Presidential election in connection with the casting, counting and challenging of votes for a State's presidential electors; (2) appropriate statutory, administrative or constitutional changes designed to improve and simplify the presidential election process and ensure that it accurately reflects the will and intentions of the voters; and (3) fair and expeditious means for administrative and judicial review and resolution of potentially outcome-determinative disputes in the contests for presidential electors; and

FURTHER RESOLVED, That appropriate ABA entities such as the Standing Committee on Election Law, the Sections of State and Local Government Law, Administrative Law and Regulatory Practice, and state, local, and territorial bar associations are urged to undertake these efforts.

REPORT

Taking note of difficulties encountered in the resolution of the disputed presidential election of 2000, the resolution proposes creation of a Commission on Presidential Election Disputes to be appointed by the President of the Association.

Under the ABA Constitution and Bylaws, the House of Delegates may create a Commission, specifying its size and terms of reference, and the Commission's members are appointed by the ABA President. Unlike a Committee of Section members or a Standing Committee, a Commission may include members from outside the ABA.

In appointing the Commission, it is respectfully suggested that the President seek out a diverse, broad-based, well qualified group of Commissioners, giving consideration, in the President's discretion, to including among her appointments the following: one or more past-presidents of the Association; distinguished academics and experts from outside the Association's membership; and persons recommended by concerned ABA entities, including the Sections of Administrative Law and Regulatory Practice, Individual Rights and Responsibilities, Litigation, Science and Technology, and State and Local Government Law; the Government and Public Sector Lawyers Division, the Judicial Division, the Senior Lawyers Division, the Young Lawyers Division; the Standing Committee on Election Law, the Standing Committee on Judicial Independence; and the National Conference of Bar Presidents.

This Report and accompanying Recommendation are prepared on the eve of the November 29 deadline for submission of House resolutions, in order to provide a place on the agenda of the House where delegates may address the critical legal and constitutional issues which, at this writing, are the focus of national attention.

Events intervening between our House filing deadline and our February Midyear Meeting in San Diego may of course put in a different perspective the issues raised by the 2000 presidential election count. Amendments to the proposed resolution, whether friendly or unfriendly, may provide for a better floor debate about the problems and a better means for the ABA to contribute to their solution.

But the subject is one on which the ABA should have a constructive role to play. The members of our profession have been integrally involved in the election dispute process, as litigators, counselors, and judges. Threats to the independence of the judiciary have been raised. The ABA, as the nation's largest independent professional association, and as a non-partisan organization dedicated to the preservation of judicial independence and to maximizing citizen participation in the electoral process, can make a valuable contribution to a continuing national debate. *The New York Times*, for example, in a November 24 editorial entitled "Updating the Way We Vote," opined that "One very important lesson of the 2000 presidential election, regardless of its outcome," is that Congress faces a challenge "to develop a uniform national electoral process that safeguards the sanctity of Americans' right to vote."

A Commission appointed by the ABA President should be able to generate significant proposals for reform of voting and challenge procedures that could be in place by the time of the 2004 presidential election.* At least our Association should begin this process.

Respectfully submitted,

Robert L. Weinberg
Delegate, District of Columbia Bar

* It is not the intent of the proponent of the Resolution to focus attention primarily on proposals to abolish the electoral college. It appears unlikely that in the foreseeable future ratifications would be obtained from the required 38 States of any constitutional amendment abolishing the electoral college that might attain the requisite two-thirds vote of the House and Senate. Reforms in implementing existing constitutional procedures for presidential elections are the *intended focus of the proposed Commission*.

GENERAL INFORMATION FORM

1. Brief summary of recommendation
Creation of an ABA Commission on Presidential Election Disputes, to make proposals for reforms.
2. Approval by submitting entity
Approved by delegate submitting the Resolution on November 27, 2000.
3. Previously submitted to House of Delegates?
No.
4. What existing Association policies are relevant to this recommendation?
The ABA has adopted numerous policies supporting the right of citizens to vote in fair Elections (see, e.g., the "Green Book" at pages 222 - 224). The recommendation to establish a Commission is consistent with these previously adopted policies.
5. Explain what urgency exists requiring action at this meeting.
There has been a great public concern with the issue, and it will probably be the subject of hearings and proposed legislation in the new Congress.
6. Cost to the Association
Policy Administration estimates the cost to be approximately \$100,000. That would be about \$0.25 per ABA member. The cost could be reduced by reducing the number of Commission members or the number of Commission meetings.
7. Conflicts of interest
None

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8. Referrals

A copy of the recommendation will be referred to the ABA entities named in the Report,
and to recent past presidents of the ABA.

9. Contact Person (prior to meeting)

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10. Contact person/presenter (at the Midyear Meeting)

Same as no. 9.