

CONSTITUTIONAL CONVENTION

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Giving citizens resident outside the State the right to vote in Presidential elections

1. Article 12 of the Irish Constitution addresses the matter of who has ‘the right to vote at an election for the President’. Article 12.1 provides that the ‘President shall be elected by direct vote of the people’, and in Article 12.2 this is limited to ‘every citizen’ who possesses the ‘right to vote at an election for members of Dáil Éireann’. The constitutional entitlement to vote in Dáil elections is found in Article 16, where the right is tied to ‘the provisions of the law relating to the election of members of Dáil Éireann.’ The result of law and practice is that Irish citizens who are defined as resident outside the state are not eligible to vote in Presidential elections. There are consequences for Irish citizens ‘in this island’ (resident in Northern Ireland) and Irish citizens globally.
2. This must now be framed by the fundamental constitutional changes flowing from the Belfast/Good Friday Agreement 1998 (democratically endorsed on 22nd May 1998). Article 2 of the Irish Constitution merits citation:

‘It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish Nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage.’
3. Articles 2 and 3, when read with Article 1 and related provisions, place an emphasis on ‘people’ and ‘persons’ in a transformed understanding of what it means to be ‘part of the Irish nation’. Article 3, for example, directs the ‘Irish Nation’ towards a conception of unity by consent that is ‘democratically expressed, in both jurisdictions in the island’. Irish citizens also have a fundamental political duty of ‘[f]idelity to the nation’ (Article 9.3). According a constitutional right to vote to Irish citizens is a modest and logical outworking of the new democratic constitutionalism in Ireland. It is in keeping with Ireland’s global role, recognition of the civil and political rights of citizens, Irish-British relations, North-South co-operation, and the fundamental principles of the agreements adopted since 1998.
4. The Irish President occupies a constitutional position of symbolic and practical significance to all those who are ‘part of the Irish nation’. The President must, for example, dedicate her or his ‘abilities to the service and welfare of the people of Ireland’ and ‘maintain the Constitution of Ireland and uphold its laws’ (Article 12.8). There is now an opportunity for constitutional recognition of Irish citizens resident outside the state as ‘part of the Irish nation’. It is a proposed constitutional change that is consistent with the guiding spirit of the Irish Constitution, the democratic orientation of the new Irish constitutionalism, and the fundamental principles of the agreements flowing from the peace process. It would be a timely, modest, and appropriate constitutional step.