Y4
.J89/2
P 92/8/
PT. 1
GOVERNMENT
Storage

Senate - Judiciary

NOMINATION AND ELECTION OF PRESIDENT AND VICE PRESIDENT AND QUALIFICATIONS FOR VOTING

KANSAS STATE UNIVERSITY
REFERENCE
LIBRARY
DEPARTMENT
MANHATTAN, KANSAS

A11600 676783

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

S.J. RES. 1, S.J. RES. 2, S.J. RES. 4, S.J. RES. 9, S.J. RES. 12, S.J. RES. 16, S.J. RES. 17, S.J. RES. 23, S.J. RES. 26, S.J. RES. 28, S.J. RES. 48, S.J. RES. 96, S.J. RES. 102, S.J. RES. 113, AND S.J. RES. 114

PROPOSING AMENDMENTS TO THE CONSTITUTION RELATING TO THE METHOD OF NOMINATION AND ELECTION OF THE PRESIDENT AND VICE PRESIDENT

AND

S.J. RES. 14, S.J. RES. 20, S.J. RES. 54, S.J. RES. 58, S.J. RES. 67, S.J. RES. 71, S.J. RES. 81, AND S.J. RES. 90

PROPOSING AMENDMENTS TO THE CONSTITUTION RELATING TO QUALIFICATIONS FOR VOTING

MAY 23, 26, JUNE 8, 28, 29, AND JULY, 13, 1961

PART 1

STATEMENTS OF SENATORS SPONSORING PROPOSED AMENDMENTS

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
70784 WASHINGTON : 1961

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMITTEE ON THE JUDICIARY

JAMES O. EASTLAND, Mississippi, *Chairman*

ESTES KEFAUVER, Tennessee
OLIN D. JOHNSTON, South Carolina
JOHN L. McCLELLAN, Arkansas
SAM J. ERVIN, JR., North Carolina
JOHN A. CARROLL, Colorado
THOMAS J. DODD, Connecticut
PHILIP A. HART, Michigan
EDWARD V. LONG, Missouri
WM. A. BLAKLEY, Texas

ALEXANDER WILEY, Wisconsin
EVERETT McKINLEY DIRKSEN, Illinois
ROMAN L. HRUSKA, Nebraska
KENNETH B. KEATING, New York
NORRIS COTTON, New Hampshire

SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS

ESTES KEFAUVER, Tennessee, *Chairman*

JAMES O. EASTLAND, Mississippi
THOMAS J. DODD, Connecticut
WM. A. BLAKLEY, Texas

EVERETT McKINLEY DIRKSEN, Illinois
KENNETH B. KEATING, New York

JAMES C. KIRBY, JR., *Chief Counsel*

CONTENTS OF PART I

	Page
Opening statement of Hon. Estes Kefauver, a U.S. Senator from Tennessee, chairman of the Subcommittee on Constitutional Amendments	1
Text and summary of—	
S.J. Res. 1	3
S.J. Res. 2	7
S.J. Res. 4	8
S.J. Res. 9	9
S.J. Res. 12	12
S.J. Res. 14	13
S.J. Res. 16	13
S.J. Res. 17	14
S.J. Res. 20	15
S.J. Res. 23	15
S.J. Res. 26	16
S.J. Res. 28	18
S.J. Res. 48	19
S.J. Res. 54	21
S.J. Res. 58	21
S.J. Res. 67	22
S.J. Res. 71	22
S.J. Res. 81	22
S.J. Res. 90	23
S.J. Res. 96	23
S.J. Res. 102	25
S.J. Res. 113	26
S.J. Res. 114	27
Provisions of the U.S. Constitution governing election of President and Vice President	29
Statement of—	
Hon. Kenneth B. Keating, a U.S. Senator from the State of New York (S.J. Res. 23, 58, 67, and 90)	31
Hon. Karl E. Mundt, a U.S. Senator from the State of South Dakota (S.J. Res. 12)	41
Hon. Margaret Chase Smith, a U.S. Senator from the State of Maine (S.J. Res. 1)	69
Hon. Thomas J. Dodd, a U.S. Senator from the State of Connecticut (S.J. Res. 4)	74
Hon. Spessard L. Holland, a U.S. Senator from the State of Florida (S.J. Res. 58)	81
Hon. Thruston B. Morton, a U.S. Senator from the State of Kentucky (S.J. Res. 12)	108
Hon. Francis Case, a U.S. Senator from the State of South Dakota (S.J. Res. 48)	122
Hon. Ralph Yarborough, a U.S. Senator from the State of Texas (S.J. Res. 58)	154
Hon. Roman L. Hruska, a U.S. Senator from the State of Nebraska (S.J. Res. 12)	161
Hon. Estes Kefauver, a U.S. Senator from the State of Tennessee:	
(S.J. Res. 17)	167
(S.J. Res. 14, 16, and 20)	268
(S.J. Res. 113)	278
Hon. Jennings Randolph, a U.S. Senator from the State of West Virginia (S.J. Res. 71)	179
Hon. Joseph S. Clark, a U.S. Senator from the State of Pennsylvania (S.J. Res. 81)	191

Statement of—Continued
Hon. Leverett Saltonstall, a U.S. Senator from the State of Massachusetts (presented by Jonathan Moore, legislative assistant to Senator Saltonstall) (S.J. Res. 28) ... Page 239
Hon. Strom Thurmond, a U.S. Senator from the State of South Carolina (S.J. Res. 12) ... 241
Hon. Sam J. Ervin, Jr., a U.S. Senator from the State of North Carolina (S.J. Res. 96) ... 250
Hon. Gale W. McGee, a U.S. Senator from the State of Wyoming (S.J. Res. 26) ... 257
Hon. William Proxmire, a U.S. Senator from the State of Wisconsin (S.J. Res. 102) ... 279
Hon. Clifford P. Case, a U.S. Senator from the State of New Jersey (S.J. Res. 114) ... 285
Statement submitted by—
Hon. Mike Mansfield, a U.S. Senator from the State of Montana (S.J. Res. 23) ... 58
Hon. Margaret Chase Smith, a U.S. Senator from the State of Maine (S.J. Res. 1) ... 59
Hon. Dennis Chavez, a U.S. Senator from the State of New Mexico (S.J. Res. 1) ... 173
Hon. Olin D. Johnston, a U.S. Senator from the State of South Carolina (S.J. Res. 2) ... 174
Hon. George A. Smathers, a U.S. Senator from the State of Florida (S.J. Res. 9) ... 176
Exhibits:
Summary of statement by Senator Keating on replies from Governors of 32 States on impact and reform of residence requirements for voting ... 34
Letter from Legislative Reference Service, Library of Congress, subject: Analysis of legal effect of Senate Joint Resolution 58, 87th Congress, 1st session ... 85
Analyses of voting laws of the Thirteen Original States ... 88
Analyses of voting laws of certain States in 1912 ... 94
Provisions of Democratic and Republican Party platforms concerning poll tax abolition, 1944–60 ... 101
Florida registration statistics ... 103
Tables submitted by Senator Francis Case concerning effect of Senate Joint Resolution 48 upon past elections ... 132
Statement of Hon. Ellis Arnall concerning 18-year-old voting ... 181
Letter from Legislative Reference Service, Library of Congress, subject: Anti-poll-tax legislation ... 193
"Presidential Preference Primaries," by Mollie Z. Margolin, legislative attorney, American Law Division, Legislative Reference Service, Library of Congress ... 197
"The Case Against Electoral Reform," by Anthony Lewis, from the Reporter, December 8, 1960 ... 259
Letter of James A. Michener, from the Washington Post of January 12, 1961 ... 262
Minority views of Representative Clifford Case, House of Representatives, 82d Congress, 1st session, Report No. 1199 ... 290

NOMINATION AND ELECTION OF PRESIDENT AND VICE PRESIDENT AND QUALIFICATIONS FOR VOTING

TUESDAY, MAY 23, 1961

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m. in room 457, Old Senate Office Building, Senator Estes Kefauver (chairman of the subcommittee) presiding.

Present: Senators Kefauver and Keating.

Also present: James C. Kirby, Jr., counsel for the subcommittee, and Angelina T. Gomez, clerk.

Senator KEFAUVER. The meeting will come to order.

To begin with, I have a brief opening statement for the record:

The widespread dissatisfaction with our elective process is evidenced by the number and scope of the proposals under consideration at these hearings. Each is an effort to remove some obstacle which prevents or endangers full expression of the popular will through the ballot box. The vitality of our democracy has increased in direct proportion to participation in voting and effectiveness of the people's voice in the election of public officials.

The constitutional amendments following the War Between the States, the 19th amendment granting women's suffrage, and the recent extension of the vote to the District of Columbia, are milestones on the road to fulfillment of democracy's promise of government of, by, and for the people. But there remain serious obstacles which keep our elective process from fully carrying out its intended purpose. Among these are our outmoded methods of nominating and electing the President and restrictions upon voting rights which have no place in 20th century America.

Defenders of the electoral college are hard to find. No less than 20 Members of the U.S. Senate have introduced proposals before us today which are careful attempts to correct the inequities and dangers of this outmoded relic. Originally adopted as a compromise, the electoral college resulted from a distrust of the people and conditions of geography and communications which no longer exist. Despite its confusion and uncertainties, by sheer luck it has managed in most instances to elect a President who reasonably reflected the choice of a majority of the people. But this good fortune has lulled us into inaction after each election and the system has continued from one election to the next. Every 4 years the electoral college is a loaded pistol pointed at our system of government. Its continued existence

is a game of Russian roulette. Once its antiquated procedures trigger a loaded cylinder, it may be too late for the needed corrections.

History clearly demonstrates the hazards of the system. The most dramatic is, of course, the disputed Hayes-Tilden election of 1876, which put the country on the verge of civil war. Edward Stanwood, in summarizing this bitter spectacle, wrote:

> It is to be hoped that the patriotism of the American people and their love of peace may never again be put to so severe a test as that to which they were subjected in 1876 and 1877.

More recently, we have seen electors violate their popular mandates and vote in the electoral college for candidates other than those selected by the people of their States—a right which is granted to electors by the Constitution. In 1960, we saw an unsuccessful, but serious move to withhold a State's electoral votes from President Kennedy unless he made local concessions and bargained for them.

Millions of citizens lose their votes as completely as if they had never been cast because of the tradition of unit voting which gives all a State's electoral votes to the winner of the popular vote, regardless of how narrow his margin.

Hanging over every close election is the nightmarish specter of the election being thrown into the House of Representatives where each State would have one vote. This has happened twice and the possibility lurks in the wings of every election. It has been the announced goal of third-party movements in recent years.

We cannot assume that U.S. Presidents for the space age can continue to go into office in the oxcart furnished by the electoral college. It should have been changed long ago.

The first time election in the House happened was in 1804 in the Jefferson-Burr election. The second time was in 1824 when Andrew Jackson received the most popular votes and most electoral votes, over Crawford and Henry Clay and John Quincy Adams. In the House of Representatives, amid rumors of trades and collusion, the House elected John Qincy Adams as President.

Now is the time for serious and nonpartisan study of this problem. Now is the time for action.

The various proposals before the subcommittee dealing with the electoral college are all serious efforts to bring our principal office closer to the popular will. As a result of these hearings, I hope we will be able to report out an amendment which remedies the evils of the electoral college and which will be acceptable to the Congress and three-fourths of the State legislatures.

But reforming the electoral college deals with only part of the problem. The general election offers to the people only the candidates who weather the stormy sea of the nominating process. Many share the chairman's long opinion that the nominating conventions dominated by political party machinery are a poor means of narrowing the choice which the American people must make. Three proposals before the subcommittee concern nomination by presidential preference primaries. They, too, are efforts to perfect our system of elections and move us further toward the fulfillment of democracy.

In every election there are millions of adult American citizens who are barred from participating in any method of election. They are those who are turned away from the polls because of unfair or tech-

nical restrictions upon their right to vote. Several proposals are directed at qualifications upon voting. Sixty-seven Senators have joined in a proposal which continues the long fight to abolish the poll tax as a prerequisite for voting, so that no American citizen must pay for the privilege of voting.

Another barrier to the ballot box is the maze of local residence requirements for voting in the various States. These are outmoded and unjust in their application to our increasingly mobile population. It is reliably estimated that 8 million adult citizens were disenfranchised in the 1960 presidential election because they could not meet State, county, or precinct residence requirements. Many of these had moved across State lines prior to the election but did not meet the residence requirements of their new States and were not permitted to vote by absentee ballot in their old States. The chairman has introduced a resolution which offers a solution to this problem.

It has become increasingly clear that citizens between the ages of 18 and 21 not only have a great stake in the results of elections, but that in many instances they are better informed, more aware of public problems, and more idealistic in their attitudes than are many of their elders. Four proposed amendments would extend the right to vote to persons 18 years of age.

In these hearings, the subcommittee will receive not only the views of Members of Congress, but those of political and governmental leaders throughout the country, distinguished political scientists and others who wish to be heard. I hope that action will result which moves our Federal elections system closer to its intended purpose, that of giving all our citizens an effective voice in democracy.

The face which America holds to the world must leave no room for doubt that our elected leaders speak for all the American people.

Now, Mr. Kirby, you have some matters to submit for the record and statements to make.

Mr. KIRBY. First, I should like to submit the various resolutions which are the subject of the hearings.

Senator KEFAUVER. They will be printed in the record.

Mr. KIRBY. And then one-paragraph summaries of the principal provisions of the resolutions.

Senator KEFAUVER. Let the summaries come after each resolution.

(The full texts of the resolutions, together with their respective summaries, follow:)

S.J. RES. 1

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid for all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be nominated and elected as hereinafter provided.

"SEC. 2. The official candidates of political parties for President and Vice President shall be nominated at a primary election by direct popular vote. Voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, but, in the primary election each

voter shall be eligible to vote only in the primary of the party of his registered affiliation. The time of such primary election shall be the same throughout the United States, and, unless the Congress shall by law appoint a different day, such primary election shall be held on the first Tuesday after the first Monday in August in the year preceding the expiration of the regular term of President and Vice President. No person shall be a candidate for nomination for President or Vice President except in the primary of the party of his registered affiliation, and his name shall be on that party's ballot in all the States if he shall have filed a petition at the seat of the Government of the United States with the Secretary of State, which petition shall be valid only if (1) it is determined by the Secretary of State to have been signed on or after the first day of January of the year in which the next primary election for President and Vice President is to be held by a number of qualified voters, in any or all of the several States, equal in number to at least 1 per centum, but not more than 2 per centum, of the total number of popular votes cast throughout the United States for all candidates for President (or, in the case of the primary election first held after the ratification of this article, for electors of President and Vice President) in the most recent previous presidential election, and (2) it is filed with the Secretary of State not later than the first Tuesday after the first Monday in June of the year in which the next primary election for President and Vice President is to be held. No person's name shall appear on the ballot in any primary election as a candidate for nomination for both President and Vice President; but the foregoing shall not, except in the case of a runoff election, prohibit the name of a candidate for nomination for President, or the name of any other person, from being written on the ballot by the voters for nomination for Vice President, or the name of a candidate for nomination for Vice President, or the name of any other person, from being written on the ballot by the voters for nomination for President.

"SEC. 3. For the purposes of this article a political party shall be recognized as such if at any time within four years next preceding a primary election the Secretary of State determines such party has had registered as members thereof more than 5 per centum of the total registered voters in the United States.

"SEC. 4. Within fifteen days after such primary election, the chief executive of each State shall make distinct lists of all persons of each political party for whom votes were cast, and the number of votes for each such person, which lists shall be signed, certified, and transmitted under the seal of such State to the seat of the Government of the United States directed to the Secretary of State, who shall forthwith open all certificates and count the votes. The person receiving a majority of the total number of popular votes cast for presidential nominees by the voters of the party of his registered affiliation shall be the official candidate of such party for President throughout the United States, and the person receiving a majority of the total number of popular votes cast for vice presidential nominees by the voters of the party of his registered affiliation shall be the official candidate of such party for Vice President throughout the United States. If no person receives a majority of the total number of popular votes cast for presidential nominees by the voters of a political party, a runoff election to determine the nominee of such political party for President shall be conducted throughout the United States on the twenty-eighth day after the day on which the primary election was held. Such runoff election shall be between the two persons who received the greatest number of popular votes cast for presidential nominees by the voters of such political party in the primary election. If no person receives a majority of the total number of popular votes cast for vice presidential nominees by the voters of a political party, a runoff election to determine the nominee of such political party for Vice President shall be conducted throughout the United States on the twenty-eighth day after the day on which the primary election was held. Such runoff election shall be between the two persons who received the greatest number of popular votes cast for vice presidential nominees by the voters of such political party in the primary election. No person ineligible to vote in the primary election of any political party shall be eligible to vote in a runoff election of such political party. Within fifteen days after a runoff election for the nomination of a political party for President or Vice President, the chief executive of each State shall, in the case of a runoff election for nomination for President, transcribe on an appropriate document the names of the two persons on the party's ballot for nomination for President and the number of votes cast in such State for each, and, in the case of a runoff election for nomination for Vice President, transcribe on an

appropriate document the names of the two persons on the party's ballot for nomination for Vice President and the number of votes cast in such State for each, which documents shall be signed, certified, and transmitted under the seal of such State to the seat of the Government of the United States, directed to the Secretary of State, who shall forthwith open all certificates and count the votes. The person receiving the majority of popular votes for President in a runoff election to elect a nominee for President shall be the official candidate of such political party for President throughout the United States. The person receiving the majority of popular votes for Vice President in a runoff election to elect a nominee for Vice President shall be the official candidate of such political party for Vice President throughout the United States.

"SEC. 5. In the event a person shall receive in any such primary election, as the result of write-in votes, a majority of the total number of votes cast by the voters of the party of his registered affiliation for nominees for President and a majority of the total number of votes cast by such voters for nominees for Vice President, such person shall declare which nomination he accepts; and a runoff election shall be conducted for the nomination such person does not accept between the two persons who received the next highest number of votes for such nomination.

"In the event a person shall receive in any such primary election, as the result of write-in votes, the highest or second highest number of votes cast by the voters of the party of his registered affiliation for nominees for President (and no person receives a majority) and the highest or second highest number of votes cast by such voters for nominees for Vice President (and no person receives a majority), such person shall declare the office for which he will be a candidate in the runoff election provided for in section 4 of this article and such person may not be a candidate for nomination for the other office. The runoff election for the nomination for such other office shall be between the two persons who received the next highest number of votes for such other office.

"In the event a person shall receive in any such primary election, as the result of write-in votes, a majority of the total number of votes cast by the voters of the party of his registered affiliation for nominees for President and the highest or second highest number of votes cast by such voters for nominees for Vice President (and no person receives a majority), or such person receives a majority of the total number of votes cast for nominees for Vice President and the highest or second highest number of votes cast of nominees for President (and no person receives a majority), such person may, in either such case, accept a nomination for the office for which he received a majority of the votes cast, and a runoff election shall be conducted for the other office between the two persons who received the next highest number of votes for such office; or, such person may refuse the nomination for the office for which he received a majority of the votes cast and declare himself a candidate in the runoff election provided for in section 4 of this article for the office for which he received the highest or second highest number of votes. If such person refuses the nomination for an office for which he received a majority of the votes cast, a runoff election shall be conducted for such office between the two persons who received the next highest number of votes for such office. Any runoff election provided for in this section shall be conducted at the same time, and the results thereof certified in the same manner, as provided for runoff elections under section 4 of this article.

"If, in any case in which a runoff election would otherwise be held, only one candidate of a party remains for nomination for President or Vice President, as the case may be, such candidate shall be the official candidate of such party for such office and no runoff election shall be conducted for such office.

"SEC. 6. In the event of the death or resignation of the official candidate of any political party for President, the person nominated by such political party for Vice President shall be the official candidate of such party for President. In the event of the deaths or resignations of the official candidates of any political party for President and Vice President, or in the event of the death or resignation of the official candidate of any political party for Vice President, a national committee of such party shall designate such candidate or candidates, who shall then be deemed the official candidate or candidates of such party, but in choosing such candidate or candidates the vote shall be taken by States, the delegation from each State having one vote. A quorum for such purposes shall consist of a delegate or delegates from two-thirds of the States, and a majority of all States shall be necessary to a choice.

"SEC. 7. The electoral college system of electing the President and Vice President of the United States is hereby abolished. The President and Vice President of the United States shall be elected at a general election by the people of the several States by direct popular vote of the qualified voters in each State who shall have the qualifications requisite for electors of the most numerous branch of the State legislature. The time of such election shall be the same throughout the United States, and unless the Congress shall by law appoint a different day, such election shall be held on the first Tuesday after the first Monday in November in the year preceding the expiration of the regular term of the President and Vice President. The names of candidates officially nominated in primaries as herein provided, and only such names, shall appear upon the official ballot in every State for the offices of President and Vice President; but the foregoing shall not, except in the case of a runoff election, prohibit the names of a candidate for President, or the name of any other person, from being written on the ballot by the voters for Vice President or the name of a candidate for Vice President, or the name of any other person, from being written on the ballot by the voters for President.

"SEC. 8. Within fifteen days after such general election, the chief executive of each State shall make distinct lists of all persons receiving votes for President and all persons receiving votes for Vice President, and the number of votes cast in such State for each, which list shall be signed, certified, and transmitted under the seal of such State to the seat of the Government of the United States, directed to the Secretary of State, who shall forthwith open all certificates and count the votes. The person receiving a majority of the total number of popular votes cast for President shall be President, and the person receiving a majority of the total number of popular votes cast for Vice President shall be Vice President. If no person receives a majority of the total number of popular votes cast for President, a runoff election to choose the President shall be conducted throughout the United States on the twenty-eighth day after the day on which the general election was held. Such runoff election shall be between the two persons who received the greatest number of popular votes for President cast in the general election. If no person receives a majority of the total number of popular votes cast for Vice President, a runoff election to choose the Vice President shall be conducted throughout the United States on the twenty-eighth day after the day on which the general election was held. Such runoff election shall be between the two persons who received the greatest number of popular votes for Vice President cast in the general election. Within fifteen days after a runoff election to choose a President or Vice President, the chief executive of each State shall, in the case of a runoff election for President, transcribe on an appropriate document the names of the two persons on the ballot for President and the number of votes cast in such State for each, or, in the case of a runoff election for Vice President, transcribe on an appropriate document the names of the two persons on the ballot for Vice President, and the number of votes cast in such State for each, which document shall be signed, certified, and transmitted under the seal of such State to the seat of the Government of the United States, directed to the Secretary of State, who shall forthwith open all certificates and count the votes. The persons receiving the majority of popular votes for President in a runoff election for President shall be President. The person receiving the majority of popular votes for Vice President in a runoff election for Vice President shall be Vice President. No person constitutionally ineligible to the office of President shall be eligible to that of Vice President.

"SEC. 9. In the event a person shall receive in any such general election, as the result of write-in votes, a majority of the total number of popular votes cast for President and a majority of the total number of popular votes cast for Vice President, such person shall declare which office he accepts; and a runoff election shall be conducted for the office such person did not accept between the two persons who received the next highest number of votes for such office.

"In the event a person shall receive in any such general election, as the result of write-in votes, the highest or second highest number of popular votes cast for President (and no person receives a majority) and the highest or second highest number of popular votes cast for Vice President (and no person receives a majority), such person shall declare the office for which he will be a candidate in the runoff election provided for in section 8 of this article and such person may not be a candidate for the other office. The runoff election for such other office shall be between the two persons who received the next highest number of votes for such other office.

"In the event a person shall receive in any such general election, as the result of write-in votes, a majority of the total number of popular votes cast for President and the highest or second highest number of popular votes cast for Vice President (and no person receives a majority), or he receives a majority of the total number of popular votes cast for Vice President and the highest or second highest number of popular votes cast for President (and no person receives a majority), such person may, in either such case, accept the office for which he received a majority of the votes cast, and a runoff election shall be conducted for the other office between the two persons who received the next highest number of votes for such office; or, such person may refuse the office for which he received a majority of the votes cast and declare himself a candidate in the runoff election provided for in section 8 of this article for the office for which he received the highest or second highest number of votes. If such person refuses the office for which he received a majority of the votes cast, a runoff election shall be conducted for such office between the two persons who received the next highest number of votes for such office. Any runoff election provided for in this section shall be conducted at the same time, and the results thereof certified in the same manner, as provided for runoff elections under section 8 of this article.

"If, in any case in which a runoff election would otherwise be held, only one candidate remains for the office of President or Vice President, as the case may be, such candidates shall be deemed elected to such office and no runoff election shall be conducted for such office.

"SEC. 10. The Congress shall have power to enforce this article by appropriate legislation.

"SEC. 11. The Congress shall have power to provide by appropriate legislation for cases in which two or more persons receive an equal number of popular votes for President or Vice President in any such primary or general election.

"SEC. 12. The Congress shall have power to provide by appropriate legislation for methods of determining any dispute or controversy that may arise in the counting and canvassing of the votes for President and Vice President in any such primary or general election. The places and manner of holding such primary or general election shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations.

"SEC. 13. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of the submission hereof to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 1

Senate Joint Resolution 1 (introduced by Senator Smith of Maine with Senators Beall, Chavez, Morse, and Aiken as cosponsors) abolishes the electoral college. It provides for direct election of the President and Vice President by popular vote and nomination of candidates by national primaries. In both primaries and the general election, runoff elections are held if no candidate receives a majority.

S.J. RES. 2

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That an amendment is hereby proposed to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by three-fourths of the legislatures of the several States. Said amendment shall be as follows:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as provided in this Constitution.

"The electoral college system of electing the President and Vice President of the United States is hereby abolished. The President and Vice President shall be elected by the people of the several States. The electors in each State shall

have the qualifications requisite for electors of the most numerous branch of the State legislature. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress.

Within forty-five days after such election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall make distinct lists of all persons for whom votes were cast for President and the number of votes for each, and the total vote of the electors of the State for all persons for President, which lists he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall in the presence of the Senate and House of Representatives open all certificates and the votes shall then be counted. Each person for whom votes were cast for President in each State shall be credited with such proportion of the electoral votes thereof as he received of the total vote of the electors therein for President. In making the computations, fractional numbers less than one one-thousandth shall be disregarded unless a more detailed calculation would change the result of the election. The person having the greatest number of electoral votes for President shall be President. If two or more persons shall have an equal and the highest number of such votes, then the one for whom the greatest number of popular votes were cast shall be President.

"The Vice President shall be likewise elected, at the same time and in the same manner and subject to the same provisions, as the President, but no person constitutionally ineligible for the office of President shall be eligible to that of Vice President of the United States.

"SEC. 2. Paragraphs 1, 2, and 3 of section 1, article II, of the Constitution, and the twelfth article of amendment to the Constitution, are hereby repealed.

"SEC. 3. This article shall take effect on the 10th day of February following its ratification.

"SEC. 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 2

Senate Joint Resolution 2 (by Senator Johnston) abolishes the electroal college but retains the electoral votes of the States and provides for porportional division of each State's electoral votes. The candidate receiving the highest number of electoral votes is elected.

S.J. RES. 4

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That an amendment is hereby proposed to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by three-fourths of the legislatures of the several States. Said amendment shall be as follows:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as provided in this Constitution.

"The electoral college system of electing the President and Vice President of the United States is hereby abolished. The President and Vice President shall be elected by the people of the several States. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined

by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress.

"Within forty-five days after such election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall make distinct lists of all persons for whom votes were cast for President and the number of votes for each, and the total vote of the electors of the State for all persons for President, which lists he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. On the 6th day of January following the election, unless the Congress by law appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the President of the Senate shall in the presence of the Senate and House of Representatives open all certificates and the votes shall then be counted. Each person for whom votes were cast for President in each State shall be credited with such proportion of the electoral votes thereof as he received of the total vote of the electors therein for President. In making the computations, fractional numbers less than one one-thousandth shall be disregarded. The person having the greatest number of electoral votes for President shall be President, if such number be at least 40 per centum of the whole number of such electoral votes. If no person have at least 40 per centum of the whole number of electoral votes, then from the persons having the two highest numbers of electoral votes for President the Senate and the House of Representatives sitting in joint session shall choose immediately, by ballot, the President. A majority of the votes of the combined authorized membership of the Senate and the House of Representatives shall be necessary for a choice.

"The Vice President shall be likewise elected, at the same time and in the same manner and subject to the same provisions, as the President, but no person constitutionally ineligible for the office of President shall be eligible to that of Vice President of the United States.

"The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a Vice President whenever the right of choice shall have devolved upon them.

"SEC. 2. Paragraphs 1, 2 and 3 of section 1, article II, of the Constitution, the twelfth article of amendment to the Constitution, and section 4 of the twentieth article of amendment of the Constituion, are hereby repealed.

"SEC. 3. This article shall take effect on the tenth day of February following its ratification.

"SEC. 4. This article shall be inoperative unless it shell have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION

Senate Joint Resolution 4 (by Senator Dodd) abolishes the electoral college and provides for division of each State's electoral votes in proportion to the popular votes received by each candidate. If no candidate receives 40 percent of the whole electoral vote, the Senate and House of Representatives, assembled together and voting as individuals, elect from the two highest candidates. A majority of the combined authorized votes is necessary for election.

S.J. RES. 9

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution

of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE—

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years and, together with the Vice President, chosen for the same term, be elected as provided in this Constitution.

"SEC. 2 The nominees of each political party for election as President shall be nominated in primary elections held in the several States as provided by this section. The places and manner of holding such primary elections shall be prescribed in each State by the legislature thereof. Congress shall determine the time of such primary elections, which shall be the same throughout the United States. The voters in such primary elections in each State shall have the qualifications requisite for electors of the most numerous branch of the legislature of such State. Any such voter shall be eligible to vote only in the primary of the political party of his registered affiliation. No person shall be a candidate for nomination except in the primary of the political party of his registered affiliation, and the name of each such candidate shall appear on the ballot of that party in all of the States. A political party shall be recognized as such as such for the purposes of any primary election held pursuant to this article if at any time within four years preceding such election the number of its registered members shall have exceeded 10 per centum of the total number of registered voters in the United States.

"Within fifteen days after any such primary, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall make separate lists of all persons for whom votes were cast as nominee for President and the number of votes for each, which lists he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Speaker of the House of Representatives, open all certificates, and the votes shall then be counted.

"Each political party in each State shall be entitled to a number of nominating votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress. Each person for whom votes were cast as nominee for President in any State shall be credited with such proportion of his party's nominating votes in such State as he receives of the total popular vote of his party therein for President. In making the computation fractional numbers less than one one-thousandth shall be disregarded unless a more detailed calculation would change the result of the election. The person having a majority of the nominating votes as nominee for President in the case of each party shall be the nominee of that party for President. If in any political party no person receives a majority of the nominating votes as nominee for President, then a second primary for that political party shall be held and the names of the two persons seeking the Presidential nomination of that party who have received the greatest number of nominating votes in the first primary shall appear on the second primary ballot, and the one person receiving the greater number of nominating votes in the second primary shall be the nominee of that political party for President.

"In the event of the death or resignation, prior to the election, of the nominee of any political party for President, the national committee of such party shall designate a successor, but in choosing such successor the vote shall be taken by States, the delegation from each State having one vote. A quorum for such purpose shall consist of a delegate or delegates from two-thirds of the States, and a majority of all States shall be necessary to a choice.

"SEC. 3. The electoral college system of electing the President and Vice President of the United States is hereby abolished. The President and Vice President shall be elected by the people of the several States. The voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. The places and manner of holding such election shall be prescribed in each State by the legislature thereof. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. Each State shall be en-

titled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress.

"Within forty-five days after such election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall make distinct lists of all persons for whom votes were cast for President and the number of votes for each, and the total vote of the electors of the State for all persons for President, which lists he shall sign and certify and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. On the 6th day of January following the election, unless the Congress by law appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the President of the Senate shall in the presence of the Senate and House of Representatives open all certificates and the votes shall then be counted. Each person for whom votes were cast for President in each State shall be credited with such proportion of the electoral votes thereof as he received of the total vote of the electors therein for President. In making the computations, fractional numbers less than one-thousandth shall be disregarded. The person having the greatest number of electoral votes for President shall be President, if such number be at least 40 per centum of the whole number of such electoral votes. If no person have at least 40 per centum of the whole number of electoral votes, then from the persons having the two highest numbers of electoral votes for President, the Senate and the House of Representatives sitting in joint session shall choose immediately, by ballot, the President. A majority of the votes of the combined authorized membership of the Senate and the House of Representatives shall be necessary for a choice.

"The Vice President shall be likewise elected at the same time and in the same manner and subject to the same provisions, as the President, but no person constitutionally ineligible for the office of President shall be eligible to that of Vice President of the United States.

"The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a Vice President whenever the right of choice shall have devolved upon them.

"SEC. 4. Whenever the powers and duties of the office of President shall devolve upon the Vice President or upon one of the persons designated by the Congress to act as President in the absence of a Vice President, and the date of the next general election for Senators and Representatives in Congress to be held more than ninety days after such powers and duties shall have so devolved is at least two years prior to the date on which the next regular quadrenial election for President is to be held, a special election shall be held in the several States for the purpose of choosing a President and Vice President. Such special election shall be held at the time of the next general election for Senators and Representatives in Congress, and, except as provided in this section, candidates for such special election shall be nominated and elected in the same manner as in the case of regular elections. The lists required by the first section of this article to be transmitted to the seat of the Government shall be transmitted within ten days after the elecion and shall be opened and the votes counted on the fifteenth day following such election. A President and Vice President elected at a special election held pursuant to this section shall take office on the fifth day following the day on which the result of such election shall have been determined and shall hold office until noon on the 20th day of January following the expiration of four years after the date on which they take office, and the terms of their successors shall then begin. Thereafter, except as provided in this section, the terms of the President and Vice President shall end at noon on the 20th day of January in each fourth year, and the terms of their successors shall then begin.

"SEC. 5. Paragraphs 1, 2, and 3 of section 1, article II, of the Constitution, and the twelfth article of amendment to the Constitution, and section 4 of the twentieth article of amendment to the Constitution, are hereby repealed.

"SEC. 6. This article shall take effect two years following its ratification.

"SEC. 7. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 9

Senate Joint Resolution 9 (by Senator Smathers) abolishes the electoral college and provides for division of each State's electoral votes in proportion to the popular votes received by each candidate. If no candidate receives 40 percent of the whole electoral vote, the Senate and House, assembled together and voting as individuals, elect from the two highest candidates. A majority of the combined authorized votes is necessary for election. It also provides for nomination by primary elections and for special elections when the Vice President succeeds to the Presidency and more than 2 years remain in the term of office.

S.J. RES. 12

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. Each State shall choose a number of electors of President and Vice President equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be chosen an elector.

"The electors to which a State is entitled by virtue of its Senators shall be elected by the people thereof, and the electors to which it is entitled by virtue of its representatives shall be elected by the people within single-elector districts established by the legislature thereof; such districts to be composed of compact and contiguous territory, containing as nearly as practicable the number of persons which entitled the State to one Representative in the Congress; and such districts when formed shall not be altered until another census has been taken. In choosing electors of President and Vice President the voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

"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; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, direct to the President of the Senate; the President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors chosen; and the person having the greatest number of votes for Vice President shall be the Vice President, if such a number be a majority of the whole number of electors chosen.

"If no person voted for as President has a majority of the whole number of electors, then from the persons having the three highest numbers on the lists of persons voted for as President, the Senate and the House of Representatives, assembled and voting as individual members of one body, shall choose immediately, by ballot, the President; a quorum for such purpose shall be three-fourths of the whole number of the Senators and Representatives, and a majority of the whole number shall be necessary to a choice: if additional ballots be necessary, the choice on the fifth ballot shall be between the two persons having the highest number of votes on the fourth ballot.

"If no person voted for as Vice President has a majority of the whole number of electors, then the Vice President shall be chosen from the persons having the three highest numbers on the lists of persons voted for as Vice President in the same manner as herein provided for choosing the President. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

"SEC. 2. The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President or a Vice President whenever the right of choice shall have devolved upon them.

"SEC. 3. This article supersedes the second and fourth paragraphs of section 1, article II, of the Constitution, the twelfth article of amendment to the Constitution and section 4 of the twentieth article of amendment to the Constitution.

"SEC. 4. This article shall take effect on the first day of July following its ratification, but shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 12

Senate Joint Resolution 12 (introduced by Senator Mundt, with Senators Thurmond, McClellan, Hruska, Morton, and Blakley as cosponsors) preserves the electoral college, but provides for the selection of electors by single-elector districts with two electors being selected at large from the State. The districts are to be established by the State legislatures and each is to be composed of contiguous and compact territory and is to contain as nearly as practicable the number of persons entitling the state to one Representative in the Congress. If no candidate receives a majority of the whole number of electoral votes, the Senate and House, assembled together and voting as individuals, elect from the three highest candidates. A majority of the combined authorized votes is necessary for election.

S.J. RES. 14

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years of the date of its submission by the Congress:

"ARTICLE —

"The residence requirement for voting for President and Vice President shall be residence within one of the several States for a period not to exceed one year. A qualified voter changing residence from one State to another shall be entitled to vote for President and Vice President by absentee ballot in the State from which he moves for a period of two years after the change of residence, provided he is not qualified to vote in another State within that period."

SUMMARY OF SENATE JOINT RESOLUTION 14

Senate Joint Resolution 14 (by Senator Kefauver) limits State residence requirements for voting in presidential elections to a period not to exceed 1 year. It provides further that a qualified voter moving from a State may vote there by absentee ballot for a period of 2 years provided he does not become qualified to vote in another State within that period.

S.J. RES 16

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years of the date of its submission by the Congress:

"ARTICLE —

"The Congress shall have power to provide for nomination of candidates for President and Vice President by primary elections to be held in each State, the District of Columbia, and the territories, and to make all laws which shall be necessary and proper for carrying into execution this provision."

SUMMARY OF SENATE JOINT RESOLUTION 16

Senate Joint Resolution 16 (by Senator Kefauver) authorizes Congress to provide by legislation for the nomination of candidates for President and Vice President by primary elections to be held in each State, the District of Columbia, and the territories.

S.J. RES. 17

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That an amendment is hereby proposed to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by three-fourths of the legislatures of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as provided in this Constitution.

"The electoral college system of electing the President and Vice President of the United States is hereby abolished. The President and Vice President shall be elected by the people of the several States. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress.

"Within forty-five days after such election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall make distinct lists of all persons for whom votes were cast for President and the number of votes for each, and the total vote of the electors of the State for all persons for President, which lists he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. On the 6th day of January following the election, unless the Congress by law appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the President of the Senate shall in the presence of the Senate and House of Representatives open all certificates and the votes shall then be counted. Each person for whom votes were cast for President in each State shall be credited with such proportion of the electoral votes thereof as he received of the total vote of the electors therein for President. In making the computation, fractional numbers less than one one-thousandth shall be disregarded. The person having the greatest number of electoral votes for President shall be President, if such number be at least 40 per centum of the whole number of such electoral votes. If no person has at least 40 per centum of the whole number of electoral votes, then from the persons having the two highest numbers of electoral votes for President the Senate and the House of Representatives sitting in joint session shall choose immediately, by ballot, the President. A majority of the votes of the combined authorized membership of the Senate and the House of Representatives shall be necessary for a choice.

"The Vice President shall be likewise elected, at the same time and in the same manner and subject to the same provisions, as the President, but no per-

son constitutionally ineligible for the office of President shall be eligible to that of Vice President of the United States.

"The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of death of any of the persons from whom the Senate and the House of Representatives may choose a Vice President whenever the right of choice shall have devolved upon them.

"SEC. 2. Paragraphs 1, 2, and 3 of section 1, article II, of the Constitution, the twelfth article of amendment to the Constitution, and section 4 of the twentieth article of amendment to the Constitution, are hereby repealed.

"SEC. 3. This article shall take effect on the tenth day of February following its ratification."

SUMMARY OF SENATE JOINT RESOLUTION 17

Senate Joint Resolution 17 (by Senator Kefauver) abolishes the electoral college and provides for division of each State's electoral votes in proportion to the popular votes received by each candidate. If no candidate receives 40 percent of the whole electoral vote, the Senate and House of Representatives, assembled together and voting as individuals, elect from the two highest candidates. A majority of the combined authorized votes is necessary for election.

S.J. RES. 20

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"The right of citizens of the United States, who have reached the age of eighteen years, to vote shall not be denied or abridged by the United States or by any State on account of age. The Congress shall have power to enforce this article by appropriate legislation."

SUMMARY OF SENATE JOINT RESOLUTION 20

Senate Joint Resolution 20 (by Senator Kefauver) provides that voting rights of 18-year-old citizens shall not be abridged by the United States or any State on account of age.

S.J. RES. 23

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by conventions in three-fourths of the several States:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during a term of four years, and, together with the Vice President, chosen for the same term, shall be elected by votes cast by the people of the several States. No person constitutionally ineligible for the office of President shall be eligible for that of Vice President of the United States.

"The Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Con-

gress, such election shall be held on the Tuesday next after the first Monday in November of the year in which the regular term of the President and Vice President, as herein provided, is to begin.

"The persons voting in each State in such election shall have the qualifications requisite for persons voting for members of the most numerous branch of the legislature of that State. The places and manner of holding such election shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations. The candidates for the offices of President and Vice President shall be selected in such manner as the Congress shall by law provide. The names of the candidates so selected shall be placed on the ballot in each State, and shall so appear thereon that a single vote will be cast by each voter for the candidate of a political party for the office of President and the candidate of the same party for the office of the Vice President.

"SEC. 2. Within two weeks after such election, the chief executive of each State shall make distinct lists showing the number of votes cast in such State for the candidates of each political party for the offices of President and Vice President, which lists shall be signed, certified, and transmitted under the seal of such State to the seat of the Government of the United States directed to the President of the Senate.

"On the twenty-first day following such election the President of the Senate shall open all certificates in the presence of the Speaker of the House of Representatives and the Chief Justice of the United States, and the votes shall then be counted. The candidates for the offices of President and Vice President having the greatest number of votes shall be President and Vice President, respectively. If two or more candidates shall have an equal number of votes for President and Vice President and such number is greater than that received by any other candidate, the candidate shall be deemed elected who shall have received the greatest number of the votes in each of the greatest number of States. The Congress may by law provide for the case wherein one or more of the persons referred to in the first sentence of this paragraph are unable to be present on the day fixed for the opening of the certificates, declaring who shall act in their places.

"SEC. 3. The terms of the President and Vice President shall end at noon on the first day of December in the fourth year of their term; and the terms of their successors shall then begin.

"SEC. 4. The first, second, third, and fourth paragraphs of section 1, article II, of the Constitution, the twelfth article of the amendment to the Constitution, that part of section 1 of the twentieth article of amendment to the Constitution which refers to the terms of the President and Vice President, and section 4 of the twentieth article of amendment to the Constitution are hereby repealed.

"SEC. 5. This article shall take effect on the first day of June following its ratification.

"SEC. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in three-fourths of the several States, as provided in the Constitution, within seven years from the date of its submission to the States by Congress."

SUMMARY OF SENATE JOINT RESOLUTION 23

Senate Joint Resolution 23 (introduced by Senator Mansfield with Senator Keating as cosponsor) abolishes the electoral college and provides for direct election by popular vote. The condidate having the greatest number of votes is elected. It also advances to December 1 the date when the President assumes office. Ratification of this amendment is to be by conventions within the States, rather from by State legislatures.

S.J. RES. 26

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during a term of four years, and together with the Vice President, chosen for the same term, be elected as provided in this Constitution. No person constitutionally ineligible for the office of President shall be eligible for that of Vice President of the United States.

"SEC. 2. Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress. There shall be held in each State an election to determine what candidates for the offices of President and Vice President shall receive the electoral votes of that State. The voters in such election shall vote for the candidate of a political party for President and for the candidate of the same political party for Vice President. The candidate for President receiving the greatest number of popular votes in any State shall receive all of the electoral votes of that State for President, except that if the candidates of more than one political party receive an equal number of popular votes in any State and such number is greater than the number received by any other candidate, the electoral votes of the State shall be divided equally among the candidates of such parties. The candidate for Vice President of a party whose candidate for President receives electoral votes of a State for President shall receive the same number of electoral votes of such State for Vice President. If, in any State, the candidate of any political party for President receives popular votes as the candidate of more than one political party for President and different persons are the candidates of any of such parties for Vice President, the electoral votes of such State for Vice President shall be given to the candidate for Vice President of the political party as the candidate of which the candidate receiving the electoral votes of such State for President received the greatest number of popular votes. The voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. The places and manner of holding such election shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations. The Congress shall determine the time of such election, which shall be the same throughout the United States, and, unless otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of President and Vice President is to begin.

"SEC. 3. Within forty-five days after the election, the chief executive of each State shall make distinct lists showing the number of votes cast in such State for each of the candidates for the offices of President and Vice President, the names of the candidates receiving the electoral votes of such State, and the number of such electoral votes, which lists shall be signed, certified, and transmitted under the seal of such State to the seat of the Government of the United States directed to the President of the Senate. On the 6th day of January following the election, unless the Congress by law appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the President of the Senate shall in the presence of the House of Representatives open all the certificates and the result of the election shall then be ascertained. The person having the greatest number of electoral votes for President shall be the President, if such number is a majority of the whole number of the electoral votes; and if no person has such a majority, then from the persons having the highest numbers not exceeding three on the list of those receiving electoral votes for President, the House of Representatives shall choose immediately, by ballot, the President. In choosing the President the votes shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States and a majority of all the States shall be necessary to a choice. The person receiving the greatest number of electoral votes for Vice President shall be the Vice President, if such number is a majority of the whole number of the electoral votes; and if no person has such a majority, then from the persons having the two highest numbers on the list of those receiving electoral votes for Vice President, the Senate shall choose the Vice President. A quorum for this purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. The Congress may by law provide for the case of the death of any person who, except for his death, would have been

entitled to receive a majority of the electoral votes for President or Vice President.

"SEC. 4. Paragraphs 1, 2, and 3 of section 1, article II, of the Constitution, and the twelfth article of amendment to the Constitution are hereby repealed.

"SEC. 5. This article shall apply to the election of Presidents and Vice Presidents whose regular terms begin more than two years after its ratification.

"SEC. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 26

Senate Joint Resolution 26 (introduced by Senator McGee) abolishes the electoral college but preserves the electoral votes of each State. The person receiving the highest number of popular votes is credited with all the State's electoral votes. If no candidate receives a majority of the entire electoral vote, election is in the House of Representatives with each State having one vote and a majority of the whole number of States' votes being necessary for election.

S.J. RES. 28

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That an amendment is hereby proposed to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by three-fourths of the legislatures of the several States. Said amendment shall be as follows:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as provided in this Constitution.

"The electoral college system of electing the President and Vice President of the United States is hereby abolished. The President and Vice President shall be elected by the people of the several States. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State many be entitled in the Congress.

"Within forty-five days after such election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall make distinct lists of all persons for whom votes were cast for President and the number of votes for each, and the total vote of the electors of the State for all persons for President, which lists he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. On the 6th day of January following the election, unless the Congress by law appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the President of the Senate shall in the presence of the Senate and House of Representatives open all certificates and the votes shall then be counted. Each person for whom votes were cast for President in each State shall be credited with such proportion of the electoral votes thereof as he received of the total vote of the electors therein for President. In making the computations, fractional numbers less than one one-thousandth shall be disregarded. The person having the greatest number of electoral votes for President shall be President, if such number be at least 40 per centum of the whole number of such electoral votes. If no person have at least 40 per centum of the whole number of electoral votes, then from the persons having the two highest numbers of electoral votes for President the Senate and the House of Representatives sitting in joint session shall choose immediately, by ballot,

the President. A majority of the votes of the combined authorized membership of the Senate and the House of Representatives shall be necessary for a choice.

"The Vice President shall be likewise elected, at the same time and in the same manner and subject to the same provisions, as the President, but no person constitutionally ineligible for the office of President shall be eligible to that of Vice President of the United States.

"The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a Vice President whenever the right of choice shall have devolved upon them.

"SEC. 2. Paragraphs 1, 2, and 3 of section 1, article II, of the Constitution, the twelfth article of amendment to the Constitution, and section 4 of the twentieth article of amendment to the Constitution, are hereby repealed.

"SEC. 3. This article shall take effect on the tenth day of February following its ratification.

"SEC. 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 28

Senate Joint Resolution 28 (by Senator Saltonstall) abolishes the electoral college and provides for division of each State's electoral votes in proportion to the popular votes received by each candidate. If no candidate receives 40 percent of the whole electoral vote, the Senate and House of Representatives, assembled together and voting as individuals, elect from the two highest candidates. A majority of the combined authorized votes is necessary for election.

S.J. RES. 48

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during a term of four years, and together with the Vice President, chosen for the same term, be elected as provided in this Constitution. No person constitutionally ineligible for the office of President shall be eligible for that of Vice President of the United States.

"SEC. 2. Each State shall be entitled to a number of presidential and vice-presidential unit votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress. There shall be held in each State an election to determine what candidates for the offices of President and Vice President shall receive the presidential and vice-presidential unit votes of that State and the number of such votes each shall receive. Voters in such election shall vote for the candidate of a political party for President and for the candidate of the same political party for Vice President. The voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. The places and manner of holding such election shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations. The Congress shall determine the time of such election, which shall be the same throughout the United States, and, unless otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of President and Vice President is to begin.

"SEC. 3. On or before the first Monday after the second Wednesday in December following the election, the chief executive of each State shall make distinct lists showing the number of votes cast in such State for each of the candidates for the offices of President and Vice President, which lists shall be signed, certified, and transmitted under the seal of such State to the seat of the Government of the United States directed to the President of the Senate. On the sixth day of January following the election, unless the Congress by law appoints a different day not earlier than the fourth day of January and not later than the tenth day of January, the President of the Senate shall in the presence of the House of Representatives open all the certificates and the result of the election shall then be ascertained. For such purpose, the presidential unit votes of a State shall be divided among the candidates for President as follows:

"(1) If each of two candidates receives more than one-third of the total popular votes received by all candidates, each of such two candidates shall receive a number of presidential unit votes which bears the same ratio to the total of such presidential unit votes as the number of popular votes received by him bears to the number of popular votes received by both such candidates, except that (a) where such candidates would be entitled to unequal fractional parts of a presidential unit vote, such unit vote shall be given to the candidate entitled to the major fractional part thereof unless each such candidate would thereby become entitled to an equal number of presidential unit votes in which case it shall be given to the candidate receiving the greater number of popular votes and (b) where such candidates would be entitled to equal fractional parts of a presidential unit vote, such vote shall be given to the candidate receiving the greater number of popular votes, unless they received an equal number of popular votes in which case such unit vote shall be divided equally between them.

"(2) If the candidate of only one political party receives more than one-third of the total popular votes received by all candidates, the candidate of that political party shall receive all of the presidential unit votes.

"(3) If no candidate receives more than one-third of the total popular votes received by all candidates, the presidential unit votes of such States shall be divided in the manner prescribed by paragraph (1) between the two candidates receiving the greatest number of popular votes.

"The vice-presidential unit votes of a State shall be divided among the candidates for Vice President in the same manner.

"The person having the greatest number of presidential unit votes shall be the President, if such number is a majority of the whole number of such votes; and if no person has such a majority, then from the persons having the highest numbers not exceeding three on the list of those receiving presidential unit votes, the House of Representatives shall choose immediately, by ballot, the President. In choosing the President the votes shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States and a majority of all the States shall be necessary to a choice.

"The person receiving the greatest number of vice-presidential unit votes shall be the Vice President, if such number is a majority of the whole number of such votes; and if no person has such a majority, then from the persons having the two highest numbers on the list of those receiving vice-presidential unit votes, the Senate shall choose the Vice President. A quorum for this purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. The Congress may be law provide for the case of the death of any person who, except for his death, would have been entitled to receive a majority of the presidential or vice-presidential unit votes.

"SEC. 4. Paragraphs 1, 2, and 3 of section 1, article II, of the Constitution, and the twelfth article of amendment to the Constitution are hereby repealed.

"SEC. 5. This article shall apply to the election of Presidents and Vice Presidents whose regular terms begin more than two years after its ratification.

"SEC. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 48

Senate Joint Resolution 48 (by Senator Case of South Dakota) abolishes the electoral college and provides for proportional division of a State's electoral votes where the minority candidate receives one-third of the popular vote. If no candidate receives a majority of the whole number of electoral votes, election is in the House of Representatives with each State having one vote and a majority of the whole number of States being necessary for election.

S.J. RES 54

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age. The Congress shall have power to enforce this article by appropriate legislation.

"SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 54

Senate Joint Resolution 54 (by Senator Dirksen) provides that voting rights of 18-year-old citizens shall not be denied or abridged by the United States or any State on account of age.

S.J. RES. 58

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The right of citizens of the United States to vote in any primary or other election for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax or to meet any property qualification.

"SEC. 2. Nothing in this article shall be construed to invalidate any provision of law denying the right to vote to paupers or persons supported at public expense or by charitable institutions.

"SEC. 3. The Congress shall have power to enforce this article by appropriate legislation."

SUMMARY OF SENATE JOINT RESOLUTION 58

Senate Joint Resolution 58 (introduced by Senator Holland, with 66 other Senators as cosponsors) provides that the right of citizens to vote in primary or other elections for presidential electors, or for Senators or Representatives,

shall not be denied or abridged by the United States or any State for failure to pay any poll tax or meet any property qualification. It provides further that it shall not be construed to invalidate laws denying the right to vote to paupers or persons supported at public expense or by charitable institutions.

S.J. RES. 67

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The right of citizens of the United States, who have reached the age of eighteen years, to vote shall not be denied or abridged by the United States or by any State on account of age. The Congress shall have power to enforce this article by appropriate legislation.

"SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE RESOLUTION 67

Senate Joint Resolution 67 (by Senator Keating) provides that voting rights of 18-year-old citizens shall not abridged by the United States or any State on account of age.

S.J. RES. 71

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age. The Congress shall have power to enforce this article by appropriate legislation.

"SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 71

Senate Joint Resolution 71 (by Senator Randolph with Senator Byrd of West Virginia as cosponsor) provides that voting rights of 18-year-old citizens shall not be abridged by the United States or any State on account of age.

S.J. RES. 81

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, and the said article shall be valid to all intents and

purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax or to meet any property qualification.

"SEC. 2. Nothing in this article shall be construed to invalidate any provision of law denying the right to vote to paupers or persons supported at public expense or by charitable institutions.

"SEC. 3. The Congress shall have power to enforce this article by appropriate legislation."

SUMMARY OF SENATE JOINT RESOLUTION 81

Senate Joint Resolution 81 (introduced by Senator Clark, with Senators Hart, Williams of New Jersey, Long of Missouri, Humphrey, Gruening, and Symington as cosponsors) provides that the right of citizens to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senators or Representatives, shall not be denied or abridged by the United States or any State for failure to pay any poll tax or meet any property qualification. It provides further that it shall not be construed to invalidate laws denying the right to vote to paupers or persons supported at public expense or by charitable institutions.

S.J. RES. 90

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. No citizen of the United States who is otherwise qualified to vote in any election held in any State for the purpose, in whole or in part, of choosing electors of President and Vice President shall be denied the right to vote for such electors in such election because of any residence requirement imposed by such State if such citizen has resided in such State, or the political subdivision thereof with respect to which the requirement applies, for a period of at least ninety days preceding such election.

"SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 90

Senate Joint Resolution 90 (by Senator Keating) limits State residence requirements for voting in presidential elections to a period not to exceed 90 days.

S.J. RES. 96

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as provided in this Constitution.

"The electoral college system of electing the President and Vice President of the United States is hereby abolished. The President and Vice President shall be elected by the people of the several States. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. The places and manner of holding such election shall be prescribed in each State by the legislature thereof, but the Congress may by law make or alter such regulations. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. Each State shall be entitled to a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress.

"Within forty-five days after such election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall make distinct lists of all persons for whom votes were cast for President, and of all persons for whom votes were cast for Vice President, the number of votes for each, the total vote of the electors of the State for all persons for President, and the total vote of the electors of the State for all persons for Vice President, which lists he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. On the 6th day of January following the election, unless the Congress by law appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the President of the Senate shall in the presence of the Senate and House of Representatives open all certificates and the votes shall then be counted. Each person for whom votes were cast for President in any State shall be credited with such proportion of the electoral votes thereof for President as he received of the total vote of the electors therein for President, and each person for whom votes were cast for Vice President in any State shall be credited with such proportion of the electoral votes thereof for Vice President as he received of the total vote of the electors therein for Vice President. In making the computation, fractional numbers less than one one-thousandth shall be disregarded. The person having the greatest number of electoral votes for President shall be President, if such number is at least 40 per centum of the whole number of such electoral votes. If no person has at least 40 per centum of the whole number of electoral votes, then from the persons having the highest numbers not exceeding three on the list of those receiving electoral votes for President, the House of Representatives shall choose immediately, by ballot, the President. In choosing the President the votes shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States and a majority of all the States shall be necessary to a choice. The person having the greatest number of electoral votes for Vice President shall be the Vice President, if such number is at least 40 per centum of the whole number of such electoral votes; and if no person has at least 40 per centum of the whole number of electoral votes, then from the persons having the two highest numbers on the list of those receiving electoral votes for Vice President, the Senate shall choose the Vice President. A quorum for this purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. No person constitutionally ineligible for the office of President shall be eligible to that of Vice President of the United States.

"SEC. 2. Paragraphs 1, 2, and 3, of section 1, article II, of the Constitution, and the twelfth article of amendment to the Constitution are hereby repealed.

"SEC. 3. This article shall take effect on the tenth day of February following its ratification.

"SEC. 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 96

Senate Joint Resolution 96 (by Senator Ervin) abolishes the electoral college and provides for the division of each State's electoral votes in proportion to the popular votes received by each candidate. If no candidate receives 40 percent of the whole electoral vote, election is in the House of Representatives with each State having one vote and a majority of all the States necessary for election. The place and manner of elections are to be prescribed by the State legislatures, but subject to change by Congress.

S.J. RES. 102

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE—

"SECTION 1. The official candidates of political parties for President shall be nominated at a primary election held in the various States as provided by this article. Voters in each State in such primary election shall have the qualifications requisite for voters in elections of members of the most numerous branch of the State legislature. The time of such primary election shall be the same throughout the United States and, unless Congress shall by law appoint a different day, such primary election shall be held on the first Tuesday after the first Monday in August in the year preceding the expiration of the regular term of President. The places and manner of holding such primary election shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations.

"The name of any person shall be included on the ballot as a candidate for nomination for President in any such primary election only if, within sixty days prior to the day of such primary election, such person shall have filed at the seat of the Government of the United States with the Secretary of State a petition containing the signatures of a number of qualified voters equal to at least 1 per centum of the total number of popular votes cast throughout the United States for electors of President and Vice President in the next preceding presidential election, including the signatures of a number of qualified voters in each of two of the sixteen most populous States, a number of qualified voters in each of two of the sixteen next most populous States, and a number of qualified voters in each of two of the eighteen least populous States, equal in each case to not less than 5 per centum of the total number of popular votes cast in the State for electors of President and Vice President in the next preceding presidential election.

"SEC. 2. Within fifteen days after any such primary, or at such other time as the Congress shall by law provide, the official custodian of the election returns of each State shall make separate lists for each political party of all persons for whom votes were cast as nominee for President and the number of votes for each, which he shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the Secretary of State. The Secretary of State shall open all certificates and determine the results of the primary election.

"For the purpose of such determination, each political party shall be entitled for each State to a number of nominating votes equal to the whole number of Senators and Representatives to which such State is entitled in Congress, and the person receiving the greatest number of popular votes in his political party shall be entitled to all of the nominating votes of such political party for that State. The person having a majority of the nominating votes of any political party for all the States shall be the nominee of that party for President. If in the case of any political party no person shall receive a majority of the nominating votes of all the States as nominee for President, then a second primary election for that political party shall be held and the names of the two persons seeking the nomination of that party for President who have received the greatest number of nominating votes in the first primary election

shall appear on the ballot in the second primary election. The time of the second primary election shall be the same throughout the United States and, unless Congress shall by law appoint a different day, such primary election shall be held on the first Tuesday after the first Monday in September. The votes in the second primary election shall be counted in the same manner as in the case of the first primary election, and the person receiving the greater number of nominating votes of his political party shall be the nominee of that political party for President. The Congress may by law provide for the manner of choosing a successor in event of the death or resignation, prior to the election, of the nominee of any political party for President.

"This article shall apply to a political party only if its candidates received 10 per centum or more of the total popular vote cast in the next preceding presidential election for electors of President and Vice President.

"SEC. 3. This article shall take effect at the beginning of the second calendar year following the year in which it is ratified.

"SEC. 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission."

SUMMARY OF SENATE JOINT RESOLUTION 102

Senate Joint Resolution 102 (by Senator Proxmire) provides for nomination of party candidates for President by primary elections held within each State. Qualifying petitions signed by 5 percent of the number of voters in the last presidential election must be filed from six States. Each State has a number of nominating votes equal to its electoral votes and a plurality wins a State's nominating votes. Runoff is to be held if no candidate wins a majority of the whole number of nominating votes. Political parties affected are those which received 10 percent of the popular vote in the last preceding election.

S.J. RES. 113

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during a term of four years, and together with the Vice President, chosen for the same term, be elected as provided in this Constitution. No person constitutionally ineligible for the office of President shall be eligible for that of Vice President of the United States.

"Each State shall be entitled to cast for President and for Vice President a number of electoral votes equal to the whole number of Senators and Representatives to which such State may be entitled in the Congress. Such electoral votes shall be cast, in the manner provided by section 2 of this article, upon the basis of an election in which the people of such State shall cast their votes for President and for Vice President. The voters in each State in any such election shall have the qualifications requisite for persons voting for members of the most numerous branch of the State legislature.

"The Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin.

SEC. 2. In such election within any State, each voter by one ballot shall cast his vote for President and his vote for Vice President. The name of any person may be placed upon any ballot for President or for Vice President only with the consent of such person. The electoral votes which each State is entitled to cast for President and for Vice President shall be cast for the persons who in

such election in that State receive the greatest number of votes for President and Vice President, respectively, except that if the person for whom any State casts its electoral votes for President is an inhabitant of that State, its electoral votes for Vice President shall be cast for the person not an inhabitant of that State who receives the greatest number of votes for Vice President.

"Within forty-five days after the election, or at such time as the Congress shall direct, the official custodian of the election returns of each State shall prepare, sign, certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate, a list of all persons for whom votes were cast for President and a separate list of all persons for whom votes were cast for Vice President. Upon each such list there shall be entered the number of votes cast for each person whose name appears thereon, the total number of votes cast for all such persons, and the name of the person for whom the electoral votes of such State are cast.

"SEC. 3. On the 6th day of January following the election, unless the Congress by law appoints a different day not earlier than the 4th day of January and not later than the 10th day of January, the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, and the person having the greatest number of votes for Vice President shall be the Vice President, if such number be a majority of the whole number of electoral votes. If no person has a majority of the whole number of electoral votes for President or Vice President, then from the persons not exceeding three, having the highest number of electoral votes for such office, the Senate and the House of Representatives sitting in joint session shall choose such officer immediately by ballot. The vote of each Member of each House shall be publicly announced and recorded. A quorum for this purpose shall consist of three-fourths of the whole number of the Senators and Representatives, and the person receiving the greatest number of votes shall be chosen.

"SEC. 4. The Congress may by law provide for the case of the death of any of the persons from whom the Senate and the House of Representatives may choose a President or a Vice President whenever the right of choice shall have devolved upon them, and for the case of death of any person who, except for his death, would have been entitled to receive a majority of the electoral votes for President or for Vice President.

"SEC. 5. The first, second, and third paragraphs of section 1, article II, of the Constitution, the twelfth article of amendment to the Constitution, and section 4 of the twentieth article of amendment to the Constitution, are hereby repealed.

"SEC. 6. This article shall take effect on the 10th day of February following its ratification, but shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 113

Senate Joint Resolution 113 (by Mr. Kefauver) abolishes the electoral college but preserves the electoral votes of each State. The electoral votes of each State are cast for the person receiving the greatest number of popular votes. Voters in each State shall have the qualifications requisite for voting for members of the most numerous branch of the State legislature. If no person receives a majority of the electoral votes, the Senate and House of Representatives in joint session elect from the three highest candidates, with three-fourths of the combined membership constituting a quorum, and a plurality of the votes cast being sufficient to elect.

S.J. RES. 114

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of

the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"ARTICLE —

"SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice President, chosen for the same term, be elected as provided in this Constitution.

"SEC. 2. The electoral college system of electing the President and Vice President of the United States is hereby abolished. The President and Vice President shall be elected by the people of the several States. The voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. The places and manner of holding such election shall be prescribed in each State by the legislature thereof, but the Congress may by law make or alter such regulations. Congress shall determine the time of such election, which shall be the same throughout the United States. Until otherwise determined by the Congress, such election shall be held on the Tuesday next after the first Monday in November of the year preceding the year in which the regular term of the President is to begin. The voters in such election shall vote for the candidate of a political party for President and for the candidate of the same political party for Vice President.

"SEC. 3. Each State shall be entitled to a number of electoral votes equal to the whole number of Senators, and Representatives to which such State may be entitled in the Congress. The candidate for President receiving the greatest number of popular votes in any State shall receive all of the electoral votes of that State for President, except that if the candidates of more than one political party receive an equal number of popular votes in any State and such number is greater than the number received by any other candidate, the electoral votes of the State shall be divided equally among the candidates of such parties. The candidate for Vice President of a party whose candidate for President receives electoral votes of a State for President shall receive the same number of electoral votes of such State for Vice President. If, in any State, the candidate of any political party for President receives popular votes as the candidate of more than one political party for President and different persons are the candidates of any of such parties for Vice President, the electoral votes of such State for Vice President shall be given to the candidate for Vice President of the political party as the candidate of which the candidate receiving the electoral votes of such State for President received the greatest number of popular votes.

"SEC. 4. Within forty-five days after the election, the official custodian of the election returns of each State shall make distinct lists showing the number of votes cast in such State for each of the candidates for the offices of President and Vice President, the names of the candidates receiving the electoral votes of such State, and the number of such electoral votes, which lists shall be signed, certified, and transmitted under the seal of such State to the seat of the Government of the United States, directed to the President of the Senate. On the sixth day of January following the election, unless the Congress by law appoints a different day not earlier than the fourth day of January and not later than the tenth day of January, the President of the Senate shall in the presence of the House of Representatives open all the certificates and the result of the election shall then be ascertained. The person having the greatest number of electoral votes for President shall be the President, if such number is at least 35 per centum of the whole number of the electoral votes. If no person has at least 35 per centum of the whole number of such electoral votes, then from the persons having the two highest numbers on the list of those receiving electoral votes for President, the House of Representatives shall choose the President. The person having the greatest number of electoral votes for Vice President shall be the Vice President, if such number is at least 35 per centum of the whole number of such electoral votes. If no person has at least 35 per centum of the whole number of such electoral votes, then from the persons having the two highest numbers on the list of those receiving electoral votes for Vice President, the House of Representatives shall choose the Vice President. A quorum of the House of Representatives for the purpose of choosing a President or Vice President shall consist of two-thirds of the whole number of Representatives. Each Member shall have one vote, and a majority of the whoe number shall be necessary to a choice. No person constitutionally ineligible for the

office of President shall be eligible for that of Vice President of the United States.

"SEC. 5. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President or Vice President whenever the right of such choice shall have devolved upon them.

"SEC. 6. Paragraphs 1, 2, and 3 of section 1, article II, of the Constitution, the twelfth article of amendment to the Constitution, and section 4 of the twentieth article of amendment to the Constitution, are hereby repealed.

"SEC. 7. This article shall take effect on the tenth day of February following its ratification.

"SEC. 8. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of is submission to the States by the Congress."

SUMMARY OF SENATE JOINT RESOLUTION 114

Senate Joint Resolution 114 (by Mr. Case of New Jersey) abolishes the electoral college but preserves the electoral votes of each State. The place and manner of elections are to be prescribed by the State legislatures subject to change by Congress. Voters in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. The person receiving the highest number of popular votes in a State receives its electoral votes. If no person receives 35 percent of the whole number of electoral votes, the House of Representatives elects from the three highest candidates, with each member of the House having one vote, a quorum consisting of two-thirds of the House, and a majority of the whole number of the House necessary to elect.

Mr. KIRBY. I should like to insert in the record the Federal constitutional provisions governing the election of President and Vice President.

Senator KEFAUVER. They will be made a part of the record at this point.

(The document referred to follows:)

PROVISIONS OF THE U.S. CONSTITUTION GOVERNING ELECTION OF PRESIDENT AND VICE PRESIDENT

ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected, as follows:

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

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.

AMENDMENT XII

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; they shall name in their ballots the persons voted for as President, and in distinct ballots the persons voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; The Presi-

dent of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority; then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

AMENDMENT XX

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of the successors shall then begin.

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SECTION 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

AMENDMENT XXIII

SECTION 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

Senator KEFAUVER. The chairman wishes to welcome the distinguished Senator from New York, Mr. Keating, who is also a member of the subcommittee, who is the author of several resolutions which are being considered here.

Senator Keating has a statement, and we will be glad to hear from you at this time.

STATEMENT OF HON. KENNETH B. KEATING, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator KEATING. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate the fact that the chairman has called these hearings on electoral reforms and that so many prominent and knowledgeable citizens have been scheduled to appear before us.

The time for electoral reform is now. The momentum for reform developing out of the 1960 election has brought about a deep and widespread agreement in the Congress and throughout the country that we need to revise and revitalize our outmoded electoral system. We must review our voting mechanisms and discard the "electoral buttonhooks" of the past.

Twentieth century democratic government requires a modern and dynamic electoral system. In the world of the astronaut, we cannot continue to use and depend on an election system geared to the age of the horse and buggy.

Broadly speaking, there are two major problems which we must deal with in the area of electoral reforms.

First of all, we must see to it that in presidential elections a majority of the American people can and do determine who is to be our Nation's Chief Executive. The 1960 election made this need abundantly clear. Only by some accident of fate did we avert having the major candidate with the smaller number of popular votes receive a majority in the electoral college. I do not believe that any candidate would want to be elected to the highest office of our land over an opponent who received a larger number of votes.

A second pressing area for electoral reforms involves our responsibility to insure every qualified American the right to vote. The reason for the relatively low voter turnout in the United States is not simply apathy, but is also attributable to cumbersome and unfair electoral laws which deny to many their right to vote.

There are a number of pending constitutional amendments which would increase voter turnout. Liberalizing residence requirements for presidential elections and eliminating the poll tax are key examples.

Another serious bar to the right to vote is discrimination against minority groups. With the possible exception of the poll-tax amendment, this problem is one which can be resolved by Federal legislation and by State and local efforts and does not require a constitutional amendment. I hope that the vigor which this committee is devoting to electoral reforms and to the rights of citizens in a modern democracy to vote will be contagious and will spill over into other fields in which freedom must be buttressed and expanded.

A third and certainly important area in which the right to vote is denied to many involves election fraud and malpractice. This is a difficult problem to resolve by legislation or constitutional amendment. More than anything else, it requires the vigilant efforts and

continued scrutiny of private citizens who believe in the will of a free government.

There are four amendments before this committee in which I am particularly interested and which would have the effect of either solidifying the majority's right to decide or increasing the scope of the franchise. Briefly they are:

(1) Abolishing the electoral college;

(2) Placing a reasonable maximum on residence requirements for voting in presidential elections;

(3) Permitting 18-year-olds the right to vote; and

(4) Abolishing the poll tax.

Senator KEFAUVER. Senator Keating, the second one, with reference to residence requirements, has not yet reached the subcommittee. I assume that it will be here shortly.

Senator KEATING. I realize that, Mr. Chairman.

Senator KEFAUVER. We will order it to be printed along with the others.

Senator KEATING. I would appreciate it if that could be done.

First, the elimination of the electoral college. The distinguished majority leader, Senator Mansfield, has taken the lead in introducing a constitutional amendment, Senate Joint Resolution 23, which calls for the complete elimination of the electoral college. I am a cosponsor of this amendment and I feel very strongly that it represents the only real solution to the basic problems inherent in the electoral college system.

We cannot indefinitely perpetuate a system which allows the possibility of a minority President, nor should we be willing to entrust to posterity a system which places no legal control over how presidential electors shall cast their vote once they are selected.

Writing shortly after the 1960 election, Roscoe Drummond made this point very well. He said:

> My plea that we free ourselves from the tentacles of the electoral system does not rest primarily on what might have happened to the candidates; it rests primarily on what might have happened to the right of the American people to pick their President by majority vote. This election has shown again how the electoral-vote system is a one-way street with a built-in trapdoor through which the will of the American people can disappear at any time.

Mr. Chairman, we must not forget that twice in our history candidates have been defeated who have received a majority of the popular vote for President; in 1876, Samuel Tilden, and in 1888, Grover Cleveland. And, in 1824, Andrew Jackson was defeated by John Quincy Adams in an election which was decided in the House, despite the fact that Jackson's popular vote was believed to be considerably greater than that of Adams.

At this point, Mr. Chairman, I want to comment briefly on the proposed revision of the electoral college to allocate State electors in direct proportion to the popular vote. This is perhaps the most widely supported revision of the electoral college now before this subcommittee.

Under the electoral college as it is now constituted, in 1956, a voter in Mississippi had the same weight in voting for a candidate for President as did five voters in New York. The proportional allocation system would not redress this imbalance. Similarly, it would not prevent the election of a President by a minority vote.

In the Senate debate on the original Lodge-Gossett amendment, Senator Taft cited an interesting and illustrative example of the latter point. In the election of 1900, William McKinley had a total popular vote of 7,219,000, or 52.8 percent. William Jennings Bryan had a popular vote of 6,358,000, or 47.2 percent. McKinley won the 1900 election with an electoral college vote of 292 to Bryan's 155.

If the proportional allocation system had been used, said Taft, Bryan would have had 218 electoral votes, and McKinley 214. Yet Bryan carried only 17 States in that election, 11 of them in the South, 2 border States, and 4 Western States, while McKinley carried 28 States, including all of the Eastern, Middle Western, and Pacific Coast States, 3 border States, and 2 Western States.

Now, another constitutional amendment in which I am deeply interested relates to residence requirements for voting. This is Senate Joint Resolution 90 which I recently introduced. Eight million Americans were prevented from voting in the 1960 presidential election because they moved shortly prior to November 7 and therefore did not meet the residence requirements of the jurisdiction into which they moved.

I recently introduced a resolution (S.J. Res. 90) proposing an amendment to the Constitution setting a 90-day maximum on residence requirements for voting in presidential elections only. The coincidence of having the number of this resolution (S.J. Res. 90) the same as my proposed maximum residence requirement gives me cause to hope this relationship is prophetic of great success for our subcommittee in this area.

Senator KEFAUVER. Let me see if I understand you. In other words, any State cannot have a residence requirement of more than 90 days for voting for a presidential elector.

Senator KEATING. Just for President and Vice President. The amendment would not even apply to elections for the Senate or the House of Representatives and would not, of course, apply to any local election.

Senator KEFAUVER. That provision is also contained in Senate Joint Resolution 14, which the chairman filed.

But, Senator Keating, what would happen, say, in the case of a citizen leaving Tennessee 30 days before the election, moving to Virginia, and by leaving Tennessee he could not vote there, and he has been in Virginia but 30 days, and he would still not be able to vote.

Senator KEATING. Well, that is right. There would still be a relatively small number disenfranchised even if this amendment were adopted, unless it were coupled with a provision of State law, and I think the adoption of such an amendment would be a spur to the States, that a person could vote by absentee ballot if he had moved within a certain length of time. I would say that this should also be within 90 days, which would insure him the right to vote someplace or the other. My feeling is that every duly qualified citizen should have that right to vote somewhere for President and Vice President.

Senator KEFAUVER. And if the States adopt a uniform statute about absentee voting for 90 days everybody would have that right.

Senator KEATING. Yes, and I recognize that that could be done without an amendment, if enough of the States saw fit to do that, and some have.

Senator KEFAUVER. Most States have one-year residence requirements, some States have 2; isn't that correct?

Senator KEATING. Some have two. They vary all the way from 6 months up to 2 years. There is quite a hodgepodge in the various States on that subject.

I recently conducted a survey of the 50 Governors and received replies from 32. From those replies, I recognize that most of the State chief executives, very naturally, believe that residence requirements for voting are and should be solely within the jurisdiction of the States.

There are two or three who felt that it should be a minimum standard set by the Federal Government, and all, nearly all, recognized the inequity in the present situation whereby so many of our citizens are disenfranchized in every election.

I have a summary of that which I believe might be helpful.

Senator KEFAUVER. Do you wish to put the summary in the record?

Senator KEATING. Yes, I will attach that to my statement, if I may.

Senator KEFAUVER. Very well.

(The document referred to follows:)

SUMMARY OF STATEMENT BY SENATOR KEATING ON REPLIES FROM GOVERNORS OF 32 STATES ON IMPACT AND REFORM OF RESIDENCE REQUIREMENTS FOR VOTING (MAY 15, 1961)

On Washington's Birthday of this year, I addressed the Senate briefly on the plight of the approximately 8 million "politically disposed" Americans disqualified to vote by residence requirements in the 1960 presidential election. I included in my remarks at that time excerpts from an excellent study by Mr. Walter Kravitz of the Legislative Reference Service of the Library of Congress. I later sent copies of that statement to the 50 State Governors.

I have received replies from more than 30 States. Most were quite informative and sympathetic.

Mr. President, the kindest word we can use to describe the current situation is chaos.

Three States, for example, require 2 years' residence within their boundaries before they will permit an elector to cast his ballot. In 35 States the requirement is 1 year; in 12 others it is 6 months.

Three States demand 1 year's residence in the county. Eight others require 6 months; 17 specify anywhere from 2 to 4 months; and 6 others ask 30 to 40 days.

Finally, one State actually requires 1 full year's residence in a precinct, and three others expect 6 months' residence in an equivalent locality. Nine States demand from 2 to 4 months, while 23 require from 10 to 40 days.

The situation is not only chaotic. It is unjust, unreasonable, discriminatory, and dangerous.

It is unjust because it penalizes the mobile elements of our population.

It is unreasonable because of the great variation in these requirements and because a citizen may be stripped of his vote for a month, or 2 months, or even a year, if by merely moving across the street he also crosses a district or precinct line.

It is discriminatory because the weight of disfranchisement leans most heavily on urban voters.

It is dangerous because it may distort the outcome of a close election, because it alienates responsible segments of our citizenry, and—most frightening of all—because it encourages the fearful cancer of electoral apathy.

How many persons are affected by archaic State residence requirements? According to the American Heritage Foundation, some 8 million potential voters were barred from voting in the 1960 elections because of inability to meet State, county, or locality qualifications.

In other words, some 7½ percent of the total civilian population of voting age were disfranchised by these residence laws. Mr. President, the percentage margin of victory in dozens of elections last year was less than 7½ percent. I refer not only to the popular vote for the Presidency but also to a great many congressional races.

Who are these victims of this anachronism? The tragedy of the whole affair is that they include some of our most intelligent and informed citizens.

The American Heritage Foundation again reports that the disfranchised include many of our better educated and more responsible citizens—people with the initiative and character needed to pull up stakes and seek advancement in a new community. Many are educators, lawyers, clergymen; others are business executives.

A General Electric Co. spokesman reports that 6 percent of its executive personnel were disfranchised in 1960 because of being shifted from State to State.

Oil companies, chainstores, and large corporations frequently transfer engineers, managers, salesmen, and their executives. Each change of residence within a year usually disfranchises two votes and in some cases more.

Mr. President, it is no exaggeration to compare apathy in a democracy to cancer. Like that dread disease, apathy may so consume the body politic as to bring about its death.

We have some expert testimony on the relationship between residence disqualifications and political apathy. Consider how the States ranked in percentage of civilians of voting age who voted in the 1960 election. The 8 States with the largest percentage turnout all have laws that encourage voting. The 8 States with the smallest percentage turnout all raise formidable legal barriers to voting.

I do not for a moment deny the basic merit of the principles underlying the requirement of residency qualifications of some sort for voters. Fraud is deterred by such requirements. Furthermore, residence provides some assurance that the citizen has acquired a reasonable familiarity with local candidates and issues.

It is the severity and harshness of some of these requirements that trouble me. Is anything really gained by depriving a citizen of his suffrage because he lacks 2 years' State residence? Does that citizen really lose his competence to vote for State officers because he has moved within a State from one county to another less than 6 months before election day? Is movement from one precinct to another sufficient cause for the total loss of voting rights, even though the move may have occurred within 30 days of the election?

I question both the justice and the wisdom of such severity. Nevertheless, as far as State and local issues and State and local elections are concerned, the Congress does not have a direct role to play and the qualifications for voters can and should be left up to the State.

When we turn to national elections, and especially to the election of the President and Vice President, I fail to see the relevance of residence restrictions. State and local residence requirements have absolutely no bearing on the competence of any American citizen to cast a vote in a national election.

How are we to correct this injustice? The situation is admittedly a delicate one. As matters now stand, the Constitution clearly gives the responsibility for setting voters' qualifications to the States. It is something of a paradox that the question of who votes in a presidential and vice-presidential election is determined at the State and local level.

A Governor of one of our States and two distinguished political scientists have indicated to me that the solution is to be found in congressional action.

Mr. President, I also ask unanimous consent to include at this point a very forceful and perceptive letter expressing the same viewpoint from Prof. Rhoten A. Smith, professor of politics at the New York University School of Law.

There being no objection, the letter was ordered to be printed in the Record, as follows:

NEW YORK UNIVERSITY
SCHOOL OF LAW,
New York, N.Y., April 26, 1961.

Senator KENNETH B. KEATING,
U.S. Senate, Washington, D.C.

DEAR SENATOR KEATING: I appreciate very much your letter of March 27 requesting some amplification of my views concerning residency requirements. I am happy to respond to this request.

My reasons for believing that the method of constitutional amendment, however cumbersome, is the only sure cure for the problem, stem largely from the clear language of section 2, article II of the Constitution: "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors."

This seems to me clearly to give plenary power to the State legislatures over the selection of electors, which would include, since they are all now popularly elected, the power to set the qualifications for voting for such electors. This, in turn, includes any residency requirement.

Now it might be argued with considerable logic (in my judgment at least) that the 14th amendment could be so construed as to grant to Congress the right to set voting qualifications insofar as they relate to elections for presidential electors and Members of Congress. But, as is well known, since the time of the civil rights cases (109 U.S. 3 (1883)), the Supreme Court has fairly consistently held to the view that the 14th amendment does not constitute a positive grant of new powers to Congress to legislate in this area so much as it prevents the States from taking certain positive steps which abuse the privileges and immunities of citizens, deprive persons of life, liberty, or property without due process of law, or deny persons equal protection of the laws.

A citizen prevented by the residency requirements of a State from voting for presidential electors might, of course, bring suit under the 14th amendment claiming a denial of the equal protection of the laws. However, so far as I know, no one has brought such a suit, and the decisions in this area of political questions seems to me to offer little hope that the Supreme Court would be likely to find for the plaintiff in such a case.

It is in this context, then, that I should think the most certain approach to the problem lies in constitutional amendment.

My own preference would be for an amendment which approached the problem not only of the voter who loses his right to vote for presidential electors through moving, but also those who lose in this way their right to vote for Members of Congress. To mention a personal note: I was once disfranchised altogether and prevented from voting in a senatorial election in which I had personally worked actively for one of the candidates, because within 10 days of the election I had to move a few miles away and out of the precinct in which I had formerly lived. This must be a fairly common occurrence today.

Since you have invited me to do so, I will be bold enough to suggest one form such an amendment might take:

"The Congress shall have the power to set all requirements and qualifications for voting for electors for President and vice President of the United States and for Members of the House of Representatives and Senate of the United States. Nothing in this section shall be construed, however, to deprive the respective States of the power to provide other and different requirements for voting for officers of the State and of other jurisdictions within and subject to the State: *Provided*, That such other qualifications do not contravene any other provision of this Constitution."

Such language might be considered too broad; politically, such an amendment might encounter opposition from some who fear, for a variety of reasons, such broad control of the National Government over voting requirements for national officers. On the other hand, the problem of disfranchisement through residency requirements, it seems to me, is only part of a larger problem: the need for a right to vote in national elections which is under the jurisdiction of and enforcible by the National Government. This suggested amendment—or some version thereof—would, I think, meet that larger problem.

Under authority of such an amendment, were it adopted, one may hope the Congress would pass legislation setting U.S. citizenship as the sole criterion for voting for presidential electors (or, at the most, requiring in addition thereto, residence within the boundaries of the United States for some minimum period just prior to any presidential election). Qualifications for voting in elections to choose U.S. Senators would perhaps be confined to those who had been a resident of the State concerned for some minimum period, regardless of the period of their residency within any lesser subdivision. The residency requirement for voting for Members of the U.S. House of Representatives might include, in addition to residency with the State, a reasonable minimum period of residency within the congressional district in which one votes.

Let me say again that I appreciate your interest in my views. I hope the foregoing may be of some value to you in your search for a solution to this problem of increasing seriousness.

Sincerely yours,

RHOTEN A. SMITH, *Professor of Politics.*

There have been certain small but encouraging trends to liberalize residency requirements in recent years. Some States have lowered their overall requirements. Others have eased the restrictions on intrastate movement.

Even more heartening are the reforms seven States have adopted to safeguard the vote in presidential elections of those who have moved from one State to another.

Connecticut and Vermont permit ex-residents to vote for President by absentee ballot within certain specified time periods. This is referred to as the Connecticut approach.

The Wisconsin approach adopted by Wisconsin, California, Missouri, Ohio, and Oregon waives all or part of the normal residence requirements for new residents who wish to vote for presidential and vice presidential electors.

I had known about an earlier recommendation of the Council of State Governments, made in 1955, for the adoption of a model law patterned after the Connecticut plan. A more recent report, dated January 1961, explores what the States can do on their own initiative to remedy existing inequities and to avert Federal interference in a field traditionally reserved to the jurisdiction of the States.

The study considers both the Wisconsin and Connecticut approaches, the breadth and gaps in their respective coverage, and the encouraging statistics of increased voter participation in the States which have adopted either of these two plans. Both approaches, the report points out, deal solely with presidential elections, but each solves only half the problem. Connecticut's absentee ballot system makes no provision for new residents; the Wisconsin plan takes care of new residents but ignores the plight of former residents. Very sensibly, the report suggests that the States adopt both methods.

Along this line, Gov. John Dempsey of Connecticut, whose State was the first to permit ex-residents to vote for President by absentee ballot, informs me that his secretary of state this year sponsored the introduction of additional legislation. The new bill follows the Wisconsin approach and would reduce the 1-year residence requirement to 60 days for voting in presidential elections.

Apparently Connecticut can bring about such a reform by legislation. Unfortunately, as the National Governors' Conference study notes, most States must amend their constitutions to achieve the same result.

This is the problem, for example, in Delaware, Governor Carvel's office informs me. Governors Rockefeller, of my own State of New York, Quinn, of Hawaii, Kerner of Illinois, Combs of Kentucky, Meyner of New Jersey, Sanford of North Carolina, Lawrence of Pennsylvania, Rossellini of Washington, and Gage of Wyoming have written to me that they face the same obstacle.

To circumvent this difficulty, the Governors' conference report suggests an ingenious legal alternative. I quote from page 5 of the report.

"It has been indicated in the preceding discussion that virtually all State constitutions refer specifically to residence requirements for voting—thus proposals to shorten or eliminate the waiting period for voting in presidential elections would apparently have to be accomplished by State constitutional amendment. However, it has been suggested that the qualifications for those voting for presidential electors can be established by State legislative action alone. The line of reasoning used in support of this contention is the assumption that qualifications for voting in presidential elections may be governed by the provisions of the Federal Constitution which says: 'Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors.' "

The report notes that during the early years of the Republic, State legislatures selected the presidential electors themselves:

"It was apparently taken for granted that this was a matter left up to the State legislatures to decide. Only gradually was legislation adopted in the States to provide for popular election of presidential electors."

The report cautions the States not to proceed precipitously in this matter, since there is no thorough study of the constitutional questions involved. Such a study was recently initiated by the Council of State Governments.

Interestingly enough, Governor Meyner, of New Jersey, mentioned this very point last December. In returning a bill to his State's general assembly, the Governor wrote:

"At least one case has suggested that this provision (i.e., art. 2, sec. 1, clause 2) empowers a State legislature to disregard the constitution of the State in determining the manner of appointment of presidential electors (*McPherson* v. *Blacker*, 146 U.S. 1 (1892)). In the absence of a definitive decision, however, we should not lightly assume that the legislature can override our constitution in this respect."

Governor Meyner also disagrees with another contention of the Governors' conference study. According to that study:

"Absentee voting provisions are usually statutory in nature and can be amended by simple enactment of the law. This is the Connecticut approach to preserve voting rights and can in most instances be adopted by the States promptly."

Governor Meyner, in the same message from which I quoted above, applauds the movement toward reducing residence requirements. But he points out, in his veto of Connecticut-type legislation, that his State's constitution specifically limits the vote to residents:

"Thus, our constitution gives the legislature no power to extend the vote to persons who are not domiciled in New Jersey and in the county for the requisite periods. It is plain that this bill cannot be sustained under the State constitution."

Presumably, other States may run into the same difficulty.

Another objection to the absentee ballot system raised by Governor Meyner was also cited to me by Governor Hatfield of Oregon:

"The State of previous residence has no obligation to the citizen who has moved to another State."

The absentee ballot system, he continues, ignores "both the administrative difficulties and possibility for fraud." The Oregon system, which permits new Oregon residents to vote for President and Vice President after only 30 days' residence, is, according to the Governor, far superior.

Here, then, are the merits and defects of the solution advanced to permit newly moved citizens to retain their right to vote in presidential elections. The Connecticut absentee voter plan covers former residents, but ignores new residents, increases administrative difficulties, widens the possibility of fraud, and may be constitutionally infeasible in some States. The Wisconsin system of waiving the usual requirements for new residents who wish to vote for President and Vice President is simpler and more straightforward, but it omits newly removed residents and adoption usually requires use of the cumbersome, time-consuming, and difficult constitution-amending process.

I am reassured by the letters I have received from so many Governors. Most of them are fully aware of and concerned about the injustices I have described. Thirty-two Governors have written to me as of this date. All but six emphatically agree that this problem requires serious attention.

As expected, the overwhelming opinion of the chief executives from whom I have heard is that this is most definitely an area of State jurisdiction and responsibility. Only two Governors mentioned Federal action favorably. Governor Guy, of North Dakota, thought uniformity on voting in Federal elections could be achieved only by a Federal election law. Governor Egan, of Alaska, suggested that Congress investigate stringent absentee-voting requirements.

The Governors of three States in which the residence requirements for new residents have been lowered for presidential elections write that they are quite satisfied with the results. The Governors of 12 other States say they also favor the Wisconsin approach. In six of these States, legislation liberalizing residency requirements for new residents was introduced this year.

Only two Governors indicated they favored the Connecticut approach, and one of them favors it in coordination with the other method. Connecticut itself, as I have mentioned, is moving toward adoption of the Wisconsin model.

I was glad to have my belief confirmed that this is a nonpartisan issue. Of the 26 Governors who responded affirmatively, 16 are Democrats and 10 are Republicans. This is roughly the same ratio as there are Democratic and Republican Governors presently in office.

Mr. President, I am very pleased to report that the chief executive of my own State, Gov. Nelson A. Rockefeller, is intensely interested in the matter of residence requirements. In the closing days of the recent session of the New York

State Legislature, he recommended a complete revision of the suffrage article in the State's constitution.

The Governor's suggestions are thorough and comprehensive. First, he would bring about a general reduction for the State's newcomers. Requirements for residence in the State would drop from 1 year to 6 months, and in the county from 4 months to 3. The 30-day election district requirements would be unchanged.

Once a citizen has qualified under these regulations, suggests the Governor, he should be permitted to retain his voting right no matter how close to election day he may move, so long as he remains in the State.

In addition, paragraph 3 of the proposed amendment would empower the legislature to provide special procedures that would permit newcomers with at least 30 days residence in the State to vote for presidential and vice presidential electors.

Finally, the amendment would permit the legislature to make special provision for ex-residents who had moved to another State within 1 year of the election and had not yet met the requirements of their new State. The voting rights of these persons would be limited to a presidential election.

If these proposals are adopted, and I certainly hope they will be, New York will have it the most advanced residence requirement law in the Nation. With Governor Rockefeller's support, there is every hope that the measure will be adopted.

Senator KEFAUVER. Is it not true also that if the chief executive and legislature of a State want to do something about residence requirements, in many cases they are met with provisions of the State constitution which would prevent a change?

Senator KEATING. That is right. In many instances it would involve a change in a State constitution and that, of course, is a somewhat cumbersome process.

In our State, the legislature has to pass an amendment twice and it has to be submitted to the voters twice. Many other States have a rather cumbersome process for changing their constitutions.

I recognize that there is merit in combining an amendment such as mine with a proposal to insure that voters who move to a new State or district and cannot meet the residence requirements in that district will be able to vote absentee in their place of previous residence. The distinguished chairman of this committee, as he just pointed out, has an amendment along those lines which I feel would be highly desirable. It would involve some intricate mechanical problems, but it would result in every qualified citizen having the right to vote somewhere, and I hope eventually we will realize that goal.

To my way of thinking, State and the local residence requirements have absolutely no bearing on the competence of an American citizen to cast his vote in a national election for President and Vice President.

Is it the intention of the chairman to print Senate Joint Resolution 90 at the beginning of the hearing? If not, I was going to ask that it be inserted at this point. Perhaps I should.

Senator KEFAUVER. Yes. It will be printed along with the other resolutions at the beginning of the hearing.

Senator KEATING. Let me make it absolutely clear at this point that my amendment would not apply to State or local elections or to elections for the Senate or House of Representatives.

Many States and election districts already have adopted residence requirements lower than 90 days for presidential elections. I believe this is desirable, and I am hopeful that all States and political

subdivisions will be able to set their requirements for new voters well below 90 days for presidential elections. The four States which have already done this are: Wisconsin, 10 days; Ohio, 40 days; California, 54 days; Missouri, 60 days. In addition, six States have legislation pending to liberalize their residence requirements for presidential elections, including New York State, where Governor Rockefeller has proposed a special 30-day requirement for presidential elections.

As I just pointed out, on the basis of my survey of Governors on State and local residence requirements, I am aware that most State chief executives believe residence requirements for voting are and should be solely within the jurisdiction of the States. While I agree with them on the fundamental jurisdictional issue, I am afraid that there are many States and areas in which residence requirements will never be liberalized unless some minimal Federal action is taken. I believe that my 90-day amendment represents a reasonable and workable solution, without at the same time infringing unduly upon the prerogatives and responsibilities of the States.

Mr. Chairman, there are two other amendments before this committee in which I am very much interested. The first concerns the 18-year-old vote. I have introduced a constitutional amendment on this subject in the 87th Congress (S.J. Res. 67) and have introduced similar amendments in both the Senate and the House over the past 8 years. I strongly believe that 18 year olds, in this day and age, have sufficient education and a broad enough understanding of national issues to intelligently express themselves at the polls. I am delighted that the new administration has endorsed this proposal as it relates to the soon-to-be-considered District of Columbia election code.

It is the argument that additional educational advantages have led to the earlier maturity on the part of our young people as regards governmental affairs which I think is the strongest argument for this amendment.

We hear the argument that if a man is old enough to fight he is old enough to vote. That has some merit and is not to be lightly cast aside. But I do not believe it is the strongest argument in favor of lowering the voting age.

If I may indulge in a personal reference, my daughter, who studied the normal subjects in school, at 18 knew more about her Government and how it was run and who was qualified to run it in State, local, or National levels, than I did at 21. I think, eventually, we are going to come to this throughout the Nation. I personally think that young people at 18 should have the right to vote.

Next is the poll tax amendment.

Senator KEFAUVER. One other point about that is, that with modern science and medicine and medical care, the average life of our citizens has increased very greatly. I do not know the number of years, but the average age of the voter now is considerably older than it was, say, 20 years ago.

Senator KEATING. Yes.

Senator KEFAUVER. This would give us a better balance between youth and age, would it not?

Senator KEATING. I think it would; yes; you are entirely right, Mr. Chairman.

Finally there is the poll tax amendment. Senator Holland has introduced a constitutional amendment to abolish poll taxes (S.J. Res. 58) of which I am cosponsor with some 65 of my colleagues. This is indeed a fruitful area for electoral reform. The poll tax has long been used to discriminate against certain minority groups. The elimination of the poll tax would take away another lethal weapon from the arsenal of those who seek to limit the franchise.

Taking an overall look at these several pending electoral reforms, Mr. Chairman, I suggest that there is real justification for having this subcommittee report a comprehensive constitutional amendment, for the first time recognizing that our presidential election is a truly national election.

Such an amendment would abolish the electoral college and would establish procedures for electing the President and Vice President by popular vote. It would irrevocably proclaim the standard: One American, one vote.

Nothing would please me more than having this subcommittee take the bold step of reporting the Mansfield amendment and including in it liberalized provisions relating to residence requirements, such as the chairman and I have discussed, voting age, poll taxes, literacy tests, and other relevant voting requirements.

Mr. Chairman, I urge that our committee accept this challenge. We have a unique opportunity to frame a comprehensive and inclusive constitutional amendment on national elections. I firmly believe that this is one of the greatest and most important contributions which the Congress must today make, to see to it that the structure of our democracy is consistent with the pace and conditions of the 20th century.

Thank you, Mr. Chairman.

Senator KEFAUVER. Thank you very much, Senator Keating.

The Chairman, of course, knows of your active and most intelligent interest in these various proposals since you first came to the House of Representatives many, many years ago.

Senator KEATING. Where I served with the chairman, with great pleasure, and where he added so much to our deliberations.

Senator KEFAUVER. Thank you, sir. It is very fine that you are continuing your interest and support. I know it will be persuasive to our colleagues in the Senate and the House and the public toward getting these resolutions and amendments passed.

We are highly pleased to have present our distinguished colleague, Senator Mundt of South Dakota, who is the sponsor of Senate Joint Resolution 12.

STATEMENT OF HON. KARL E. MUNDT, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator MUNDT. Thank you, Mr. Chairman. May I say, first of all, it is a pleasure to be back before the chairman of this committee on a subject which is close to his heart, I know, and close to mine, and on which I have appeared several different times before the Senate Committee on the Judiciary, dealing with the important problem of electoral college reform.

My main theme in this whole connection, Mr. Chairman, can be stated in the first short paragraph of my report, that is that I believe, and I hope you believe, and think you believe, that every voter in this country, whether he lives in California, Delaware, New York, or South Dakota, ought to have equal voting power when it comes to electing the President of the United States.

This is the only important respect in which our electoral college system, so-called, has failed to function with fairness with only minor changes, important though they are, in effect, it has stood the practical test of time since our country was established. It has carried us through 44 presidential elections, through peace and war, from George Washington to John F. Kennedy. It was after the fourth presidential election that the 12th amendment was added to the Constitution to require presidential electors to vote specifically for President and Vice President, rather than, as the original provision provided, for two persons for President. Since then, 40 presidential elections have been held. It is obvious, therefore, that any system that has functioned so well for so long should not be changed lightly. Changes proposed or made should be the absolute minimum required to bring about the desired and necessary results.

Such minimum and wholly practical changes are proposed in Senate Joint Resolution 12, which I am sponsoring together with Senators Thurmond, McClellan, Hruska, Morton, and Blakley. This is the old Mundt-Coudert amendment, with which most of us are familiar, with an important change, an antigerrymandering provision which corrects a wholly valid criticism of the amendment as written in 1955.

Our Founding Fathers, in the Constitutional Convention of 1787, gave long and careful consideration to the method of electing the President. At first it decided he should be elected by the Congress. Then it changed its collective mind and transferred the power of choice to an electoral college that was to be an exact counterpart of Congress with the representation of the States as units, corresponding to the Senators, as well as population of the States, corresponding to Representatives, and which should meet at the seat of government.

Upon further consideration this plan was dropped because of the fear that the electors wouldn't travel so far for a single purpose. It took days in those times to cover distances that we span in a few hours. The Convention went back to its original idea that a President should be elected by a joint session of Congress. They did this with reluctance because it ran counter to their strong beliefs in the principle that separation of powers of the executive and legislative branches of the new government.

At this point the idea developed that the electors could meet and cast their votes in their own States and transmit the certificates of their ballots to the seat of government.

Accordingly, the work of electing the President was divided. The Convention transferred the act of voting from a joint session of Congress to electoral colleges in the several States, the results to be transmitted to the President of the Senate. It left with Congress, in joint session, the function of counting the certified results from the States, as would have been the case had Congress done the voting.

This plan appears in article II, section 1, of the Constitution—a part of which has been superseded by the 12th amendment:

> Each State shall appoint, in such a manner as the Legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative or person holding an office of trust or profit under the United States shall be appointed an Elector.

The exclusion of Members of Congress and Federal officeholders is required by the cardinal principle of separation of powers.

In Senate Joint Resolution 12, the clause, "in such manner as the legislature thereof may direct," is eliminated. In its stead, Senate Joint Resolution 12 requires:

> The electors to which a State is entitled by virtue of its Senators, shall be elected by the people thereof, and the electors to which it is entitled by virtue of its Representatives shall be elected by the people within single elector districts established by the legislature thereof; such districts to be composed of compact and contiguous territory containing, as nearly as practicable, the number of persons which entitled the State to one Representative in the Congress; and such districts, when formed, shall not be altered until another census has been taken.

It is the clause, "In such manner as the legislature thereof may direct," that is the root of the present problem. Only 10 States participated in the election of our first President, George Washington. North Carolina and Rhode Island had not yet ratified the Constitution; and New York's two houses of the legislature could not agree on who the electors should be.

No uniform method of choosing electors was followed. Electors were chosen in a variety of ways: election by legislatures, election by the people in districts, and election by the people on a general ticket which means that each voter in the State could vote for every one of the State's electors. In Massachusetts, each of the eight districts chose two electors from which the legislature selected one per district and added two electors at large.

In the succeeding presidential elections through 1832, the various methods were used with States changing from one to the other. In 1836, the general ticket system was used in every State but South Carolina, which continued to elect by the legislature through 1860.

After Washington's two elections, the Presidency was contested every 4 years on a party basis as it is today. The majority party in each State was quick to see the advantage of consolidating its electoral strength either through legislature selection or through use of the general ticket system so as to exert maximum influence in electing a President. Federalists did this where they were in control, in the New England States for example, and the anti-Federalists, later Jefferson's Republicans, did the same thing in their States.

Since 1836, with the exception of South Carolina, there have been only three instances of departures from the general ticket system, the one we now employ. They were Florida in 1868 and Colorado in 1876, in which the elections were by the legislature, and Michigan in 1892, when the district system with two electors at large was used.

It is extremely doubtful if any voter living today has used anything but a general ticket system in presidential elections. This use of the general ticket system in every State is largely responsible for many of the misunderstandings of the electoral college system which

exist today and for much of the notion that the electors are archaic and unnecessary.

When we regard the electoral college as the exact numerical counterpart of Congress we can see readily that it combines the two principles of representation in our Federal Union of States. We have the federal principle of equal representation of the States in the Senate, regardless of population, and, then, we have the national principle of unequal representation of the States in the House of Representatives based on their unequal populations. State representation in the House in the present Congress ranges from 1 to 43.

Each citizen of each State is represented in the Senate by two Senators and in the House of Representatives by one Representative, with a few exceptions. His representation in Congress, therefore, is two parts federal and one part national. In the electoral college, with the general ticket system in force in every State, there is no equality of citizen representation. It ranges from a high of 45 members of the electoral college for a citizen of New York—which the preceding witness and my good friend, Senator Keating, represents so well—to 3 for a citizen of each of the 6 States that sent only 1 Representative to the present Congress.

Conversely, each citizen has as many votes in presidential elections as his State has members in the electoral college, because they are elected on a general ticket. In other words, when a New York voter pulls a voting machine lever for a presidential ticket, he is actually casting 45 votes, 1 for each of 45 electors on a party slate.

Senator KEATING. Forty-three, now.

Senator MUNDT. Forty-five—forty-three members of the House and two of the Senate.

It may be hard to believe—this is a startling statistic I want this committee to reflect on—it may be hard to believe, but there are or were actually more than 325 million votes cast in New York in the last presidential election by something over 7 million voters.

On the other hand, the citizens of the six States which have only one Member of the House of Representatives had only three votes each in the presidential election. In my own State of South Dakota, each citizen had four votes.

This tremendous disparity in voting weight between the citizens of the large States and the small States is the true source of all the valid complaints which have been made against the electoral college system. The real culprit is the use of the general ticket by every State. Of course, each State legislature could abandon the general ticket, but none will without certain knowledge that all other States will abandon it at the same time. This is why a consitutional amendment is necessary to bring about a change.

I might add that the State of Florida in the last session of the legislature considered very seriously by State action eliminating the general ticket system, and on wise reflection decided they would be penalizing only themselves if they did, and every other State continued the bloc system of voting, the winner-take-all general ticket system.

Mr. Chairman, there is no more justification for choosing electors on a general ticket than there is for electing a State's delegation to the House of Representatives, counterparts of electors, on a statewide, bloc basis, which is what the general ticket does. Imagine the howls

of rage that would arise all over the country if a district's Representative was to be taken from it, and given to the entire State. And yet it would be just as fair to use the general ticket for Representatives as it is for their counterparts in the electoral college.

I submit that the number of persons which entitles a State to one Representative in the Congress should entitle the same group of people to one member of the electoral college.

What have been the effects of the general ticket system of choosing electors? I suggest these:

(1) It excludes from the Office of President of the United States all men, no matter how able and outstanding they may be, unless they come from a State with a large bloc of electoral votes.

(2) By the same token, the dominant forces in the large, pivotal States which are responsible for the nomination and election of our Presidents have inordinate influences at the White House and in the executive branch of our Government.

Senator KEATING. Who has inordinate influence?

Senator MUNDT. The dominant forces in the large pivotal States are responsible for the nomination and election of our President.

Senator KEATING. Of course, there are exceptions to that.

Senator MUNDT. There are exceptions.

Senator KEATING. I am informed—I have nothing to do with it—but I am informed that the dominant forces in the State of New York at present do not have an overriding influence in the White House. I do not know anything about that.

Senator MUNDT. I think you are, perhaps, mixing up in your mind the prominent people with the dominant forces behind the prominent people.

Senator KEATING. I did not know that was what the Senator referred to.

Senator KEFAUVER. Can the Senator from New York tell us who the dominant forces are in New York?

Senator KEATING. There seems to be some conflict between the dominant forces as to the dominant forces which are more dominant.

Senator KEFAUVER. Or less dominant.

Senator KEATING. Or less dominant.

Senator MUNDT. A cursory reading of the major party platforms and the speeches of their presidential candidates gives proof that they are directed almost entirely at the dominant elements in these large States.

(3) It invites fraud in the large States that are crucial and where the vote is expected to be close. The results in Illinois, Texas, and Missouri in the last election brought forth charges of vote frauds. The effect of such vote fraud is statewide under the general ticket. A fraudulent vote, undetected, counts just as much as a valid vote in the statewide total.

By utilizing the district system, if fraud would still prevail, it could influence simply the electors coming from that specific electoral district. It would, therefore, minimize the impact of fraud and, consequently, tend to minimize the importance of anybody coming forth.

(4) Although the Constitution gives each State the same numerical representation in the electoral college that it has in the whole Con-

gress, by using the general ticket for electors, we have formed a constituency for the President which is altogether different from that which elects the Congress. The great difference between these two constituencies is that almost all Representatives are elected in single member districts while their counterparts in the electoral college are elected in multimember districts consisting of entire States. This situation permits voters of a State, voting straight party tickets, to produce one result in the electoral college and an altogether different result in the House of Representatives at the same election. The effect of all this is that we have what I have called a presidential United States and a congressional United States that are, politically speaking, two different countries within one national boundary.

(5) Many critics of the present system contend that the electoral college is an archaic institution, outmoded by our tremendous improvements in transportation and communications, and that it is incompatible with modern democratic principles. In the main, these charges are based on either a misunderstanding of the electoral college, or on deliberate intentions to change the structure of our constitutional system and change our Republic into something radically different.

(6) Another criticism of the electoral college is in the contention that presidential electors are in no way bound to vote for the presidential candidate of the party on whose slate they were elected. This is coupled with the contention that the Founding Fathers intended the electors to be free agents. Both these contentions are without basis in fact. On the contrary, there is overwhelming evidence that from the very first it was clearly understood that the elector's function was to express the view of those who had chosen him.

Since 1820, a total of 14,018 presidential electors have been chosen. Of these only eight are alleged to have voted contrary to the views of those who named them. In no case did any of these votes affect the outcome of a presidential election. In 1820, one elector did not vote for James Monroe. In 1948, a Tennessee elector voted for Thurmond, the States rights candidate, instead of for President Truman, but he had announced before the election that he would do this. The last case was in the 1960 election when a Republican elector in Oklahoma voted for Senator Harry F. Byrd instead of Richard M. Nixon.

It is said, too, that the Founding Fathers had no notion of political parties. But, in the very first election, Alexander Hamilton, leader of the Federalists, saw to it that John Adams would not run equally with Washington, as both men were being voted for as President. In fact, Washington received 69 votes and Adams only 34.

An outstanding authority on the Constitution, the late Chief Justice Charles C. Nott of the Court of Claims, has stated flatly that the notion that the framers of the Constitution had no plan in mind for electing a President different from that which is in force is completely in error. In the Encyclopedia Americana Judge Nott wrote:

> It is said by some of the commentators, and indeed it is now generally believed, that the electoral colleges were intended to be "deliberative bodies." In one sense this is true—in the legal sense. The electors are not ministerial or administrative officers; they do not perform a specific work in a way determined by higher official authority; in legal contemplation the responsibility of their action rests upon themselves. But the framers of the Constitution never supposed that the electors would disregard the political pledges upon which they

were chosen, or that the American people, either directly or through their State legislatures, would blindly choose electors to evolve a President out of their inner consciousness. On the contrary, they contemplated the successful candidates receiving the votes of "a majority of the whole number of electors," and they required the electors to vote "in their respective States," and to vote on the same day. If they had framed a provision requiring all of the electors to convene at the seat of government in one body, and there in their own way and time proceed to choose a President, there would be good reason for saying that actual deliberation was intended; but they did not give to the electors one single power of attribute by virtue of which they could deliberate * * * .

The idea that it was ever intended that the electors should nominate the candidate for whom they themselves should vote is a myth which has been unthinkingly reiterated by most eminent writers, but which does not rest upon a single fact * * * . He who supposes that the framers (of the Constitution) intended that 13 different bodies should convene in 13 different places at one time for one object and for 1 day, and that object the selection of the executive of a nation, confesses a most superficial knowledge of the greatest constructive statesmen of their century and of the great work which they deliberately planned and built.

As originally introduced several years ago, the Mundt-Coudert amendment provided that a State's electors corresponding to its Representatives in Congress should be elected from congressional districts and the two corresponding to its Senators should be elected statewide, as Senators are elected. Critics, most of them supporters of the status quo, objected strongly and with justice that the use of congressional districts was open to criticism since in some States district lines had been unfairly drawn by whatever political party controlled the State legislature, a practice long known as gerrymandering.

To meet this criticism the amendment, as now proposed, provides for the setting up, as I have previously stated, of electoral districts to be composed of—

compact and contiguous territory, containing as nearly as practicable the number of persons which entitled the States to one Representative in the Congress.

Our amendment, if adopted, would require State legislatures to follow this constitutional directive. If they failed to do so Congress would have the power to step in and see to it that fair and equitable districts for electors are established.

It is altogether likely that these nongerrymandered electoral districts would at least sharply curtail the practice of setting up unfair congressional districts since it would be extremely difficult for a State legislature to justify one set of districts for electors and another for Representatives.

Senator KEATING. May I interrupt there?

Senator MUNDT. Yes.

Senator KEATING. You would not force them to do that; in other words, they could have separate districts.

Senator MUNDT. Precisely.

Senator KEATING. Your point is it would act as a moral force then to have them the same.

Senator MUNDT. Yes, it would place a good example before them, you are quite right; we would not force them.

There is another often-raised objection to the present system of electing a President. It is the provision that if no candidate receives a majority of the electoral votes when they are counted in Congress that the House of Representatives shall choose immediately a President from among the candidates with the three highest numbers of

electoral votes. The vote in such a case—the last time it occurred was in 1824—is by State; each State delegation having one vote. In the event a State's House delegation is evenly divided its vote is not recorded. A majority of the States is required for election.

The objection to this system is that it is grossly unfair to the larger States, giving New York, California, and Pennsylvania no greater voice than Alaska, Delaware, and Nevada despite the great population disparities.

Senate Joint Resolution 12 cures this situation. It provides that in the event no presidential candidate has a majority of the electoral vote that—

> then from the persons having the three highest numbers on the list of persons voted for as President, the Senate and the House of Representatives, assembled and voting as individual members of one body, shall choose immediately, by ballot, the President; a quorum for such purpose shall be three-fourths of the whole number of Senators and Representatives, and a majority of the whole number shall be necessary for a choice; if additional ballots be necessary, the choice on the fifth ballot shall be between the two persons having the highest number of votes on the fourth ballot.

The Constitution also provides that if no candidate for Vice President has a majority that the Senate shall choose him from among the two candidates with the highest electoral vote total. Senate Joint Resolution 12 provides that both Houses in joint session and voting by the head, as for President, shall select the Vice President from among the candidates with the three highest numbers of electoral votes.

So I point out that while we equalize the rights of individual citizens to vote for President, we recognize the validity that bigger States should have more authority if it comes to be decided in the House of Representatives, so in that direction we are fair and equitable to the big States by giving them more authority than they have now.

Our system of electing a President has, generally speaking, served us well during the 172 years since our Republic was established. It has never failed to give us a President.

Through no fault of the Founding Fathers, it has, however, become distorted through the use of the general ticket system. Most of the framers of the Constitution, it should be pointed out, went on record favoring a district system for choosing electors, as the fairest method of expressing the popular will.

Senate Joint Resolution 12 is, in my opinion and the opinion of the many who support it, the only simple method by which each voter in every State will have the same voting weight in electing a President. It is the only one among the various electoral reform proposals which have been offered which will bring about a needed reform without a basic change in our constitutional system. It alone leaves control of the election machinery in the States, where it belongs.

It is the office and person of the elector, and nothing else, that maintains the intrastate character of presidential elections. Interstate candidacies are legally unknown and unprecedented under the Constitution, and would remain so under Senate Joint Resolution 12. Now, party nominees for President and Vice President are extralegal, outside the law. They achieve constitutional status only when votes are cast for them in the electoral college. If we abandon the office and person of elector we will of necessity establish interstate candidacies

which, in turn, will open the door for ultimate Federal control of elections, including the qualifications of voters. Few Americans will favor such a change.

Senator KEFAUVER. Senator Mundt, we thank you very much for a well-prepared statement, which has been forcefully and persuasively presented.

The Chair recognizes that you have great knowledge in this field, and Senate Joint Resolution 12 is a very important proposal.

There are a good many questions that I am sure Senator Keating and others would like to ask you. Could you appear sometime later on for a full discussion?

Senator MUNDT. I shall be happy to return and try to answer any questions that you want to ask at that time.

Senator KEFAUVER. Then we will put the colloquy immediately following your statement.

(Pursuant to the above discussion, Senator Mundt appeared before the subcommittee on June 8, 1961. This portion of the hearings of that date follows:)

Senator KEFAUVER. The committee is glad to have Senator Mundt back with us. Senator Mundt has previously testified at some length in support of the resolution of which he is the principal sponsor, Senate Joint Resolution 12.

Since your earlier appearance here, Senator Mundt, we have heard the testimony of your cosponsors, Senator Morton of Kentucky and Senator Hruska of Nebraska, and Senator Thurmond is scheduled to be here today.

I am glad you have come back, Senator Mundt, because some of your colleagues on the Republican side took Senator Morton to task rather briskly on some points in connection with your resolution.

Senator MUNDT. Senator Morton of Kentucky?

Senator KEFAUVER. Yes. Senator Keating and Senator Case of South Dakota had some searching questions, in which they indicated that they did not see the resolution in the same light that you do.

Senator MUNDT. I am sorry that I have not had a chance to see that testimony, Mr. Chairman, because I might have some comments to make about it.

Senator KEFAUVER. I can tell you the points they made.

Senator MUNDT. Yes; I would appreciate that.

Senator KEFAUVER. Senator Keating and Senator Case made, first, the point that your resolution requires election districts so as to get away from the gerrymandering which we now have in congressional districts. They expressed great doubt as to how you were ever going to get the legislatures to adopt election districts which would contain approximately the same number of voters. They pointed out that although that should be done as to congressional districts, that it had not been done, that Congress has no power over getting the legislatures of the States to do anything, and that the only alternative would be for Congress to attempt to do it itself for the various States, and that would be a very doubtful and unwise invasion of States rights.

That was their first argument.

Senator MUNDT. May I have the others and then I shall try to answer them.

Senator KEFAUVER. The second argument was that under your resolution, people in the district would be voting for only three electors, that is, the two electors at large in the State, plus the one in the district, and that, therefore, each political party would put up for the three electors the most glamorous votegetters they could possibly find, and that people in the district might very well to some substantial extent be voting for good old John Smith who is the elector, rather than for the man who is the candidate of the party, and that any political party that was worth its salt would find the best votegetter in the district, would advertise his name, his picture, put his picture in the papers, and he would make a personal appeal, and many people who were his friends would want to do him the honor of electing him as presidential elector.

Senator MUNDT. Were there other objections?

Senator KEFAUVER. Those, I believe, were the two principal ones that Senator Morton was involved in.

Senator MUNDT. If I may, I will devote myself first off to those two, unless there are other questions you want to take up first.

Senator KEFAUVER. I may think of some other points they raised, but those are the principal ones.

Senator MUNDT. Thank you.

After the testimony becomes available, so that I have a chance to see the transcript, if I have failed to cover any of your points, perhaps I can get a few minutes during the public witness sessions.

Senator KEFAUVER. Yes; we will be glad to give you any time you want, or if you wish to file anything additional to cover the points, we will have them printed in the record.

Counsel will furnish you with a stenographic copy of what they had to say.

Senator MUNDT. Thank you very much.

Devoting myself first of all to those criticisms which you have attributed to Senator Keating and Senator Case in the earlier testimony, the first one is about the requirement of electoral districts and how that would be handled. Let me point out, Mr. Chairman, that is quite correct that at the present time Congress exercises no control over gerrymandering of congressional districts and I presume that the reason it exercises no control is that it has no constitutional basis for so doing. There is nothing presently in the Constitution which gives Congress the authority to determine that congressional districts should not be gerrymandered. That being true, quite obviously Congress cannot go beyond the purview of its authority.

My resolution, Senate Joint Resolution 12, as you know, spells out specifically the constitutional authority for Congress and the criteria for insisting upon districts which are "compact, contiguous, and relatively equal in population," and I was happy to read in your press release, Mr. Chairman, for May 26 that you stated you considered these to be fair and accepted standards for the districts. You followed that by raising some doubt that such provisions could be enforced.

So that I think we are agreed——

Senator KEFAUVER. That is in section 1, paragraph 2, of your resolution?

Senator MUNDT. Yes.

Now, I think we are agreed, therefore, that the standards are fair and acceptable, so we can discuss the means of enforcement.

That is inherent, in the first place, in the fact that it would then become a part of the Constitution. There are various ways in which this could be enforced, Mr. Chairman.

The first is that States, since they establish these districts by State law, would then have an enforceable statute and if anybody felt aggrieved that these new districts were improperly devised and drawn in conformity with the constitutional criteria which would be part of my amendment, they could challenge the districting in the State court.

Politics being what they are, I do not think there is a State or a district in the United States but what there is always somebody whose candidate fails to win or who feels that his side is not getting as good as advantage as he would like to have, and obviously if a gerrymandering device took place in violation of the Constitution, he would be quick to go to court in order to challenge it.

With the constitutional amendment provided by Senate Joint Resolution 12, however, he could also take the matter into Federal court since this would be a violation of a Federal constitutional provision, and it would be necessary to demonstrate that this electoral district was, one, compact; two, contiguous; and, three, that it was as nearly as possible or relatively equal in population with the rest.

Then there is a final power, Mr. Chairman——

Senator KEFAUVER. Before you get to the final one——

Senator MUNDT. Yes.

Senator KEFAUVER. I do want to say again on the record here that I think this is a fair standard and that it greatly improves the resolution that you are sponsoring over what it was in the past.

Senator MUNDT. Yes.

May I say that I am grateful for the fact that these legislative hearings in the past have proved their value in many ways, and one way was to point out what I think was a weakness in our original constitutional amendment, because it did not go to the problem of gerrymandering. That was brought out in the hearing and, as a consequence, in our current resolution and in our modified resolution of the last Congress, we have met this problem in the manner which I have described to you.

Senator KEFAUVER. You were talking about the right of somebody going to court——

Senator MUNDT. Yes.

Senator KEFAUVER. To secure a mandatory injunction that there be redistricting of the electoral districts. But we know court proceedings are slow and the right of appeal is freely given. Suppose the election catches you when you are still in court. The court case has not been determined when the general election comes around. Then what happens?

Senator MUNDT. I think that is conceivable, although courts have historically acted with unusual alacrity when dealing with an election problem because they recognize that the course of history marches on.

But assuming the worst that the court had not had an opportunity to act, we are still not without authority to enforce this provision. I am sure that this final authority which I am going to mention now is strong enough, direct enough, and prompt enough to eliminate the likelihood of any electoral district sacrificing its franchise by trying

to defy the Constitution through the vice of gerrymandering, because this additional method is the fact that the Congress itself in the Constitution and under the Federal statute, meeting together as we did to count the electoral votes, would have the power and the duty to provide that electoral votes not chosen in compact and continguous districts should be refused by Congress and not counted and not accepted.

The present law, section 15 under title 3 of the United States Code, provides the procedures which now prevail in the counting of the electoral votes by the Congress and the joint session, and vests its right to reject electoral votes or an electoral vote improperly before the Congress in joint session.

Senator KEFAUVER. Well, you mean, Senator Mundt, that if in the counting of an electoral vote a State has not established electoral districts so as to equalize the rights of people that Congress would then determine to throw out the votes.

Senator MUNDT. I would put it this way: If the State had violated the criteria set out in the constitutional amendment, then the Congress has the right to reject the electoral votes which would be improperly cast because of a failure to comply with the constitutional provision.

Senator KEFAUVER. Might that not in a close election result in great uncertainty prior to the meeting of the Congress to count the votes?

Senator MUNDT. I think not because these criteria are not subjective criteria. They are objective criteria. It would be known long in advance that an electoral district would be subject to challenge because gerrymandering is at least one kind of bad practice that you cannot engage in in the dark of the moon. It would be well known to everybody well in advance of an election. That would be challenged in the courts. You have raised the question where a lethargic court may not have finally adjudicated the case so it would be known well in advance that this would then be subject to the challenge of Congress.

I think it is entirely unlikely that this would ever occur, because I am convinced that this triple procedure for enforcement is sufficiently strong and the desire of every voter to have his votes counted is sufficiently great that no State would violate the new constitutional provision against gerrymandering.

Also, you stated that Senators Keating and Case raised the question——

Senator KEFAUVER. Before you get to the question, where in Senate Joint Resolution 12 is the right of Congress to do something in the event that States fail?

Senator MUNDT. That is in present law, Mr. Chairman. Section 15, of title 3, of the United States Code provides the statutory provision existing now to determine the manner in which electoral votes are counted and rejection of electoral votes which are subject to challenge.

Senator KEFAUVER. So the ultimate right of correction is not in the Congress meeting as it ordinarily does by the passage of a bill in House and Senate subject to Presidential veto. It is the joint session for the counting of the electoral votes.

Senator MUNDT. That is correct.

Senator KEFAUVER. Well, is it contemplated then in paragraph 2 of section 1 of Senate Joint Resolution 12——

Senator MUNDT. Paragraph 2, Senate Joint Resolution 12.

Senator KEFAUVER. Is it contemplated in that section that the number of persons—what would it mean by practicable?

Senator MUNDT. The object, Mr. Chairman, is that you cannot have congressional districts with exactly the same number of people in them; so we say "as nearly as practicable the number of persons."

As you know, that figure is around 300,000; I believe it is in that general area. So, we could avoid the lopsided district which is associated with gerrymandering, or sometimes you have a congressional district with twice as many people in it as another. It would mean that they would all have relatively the same number of voters.

Senator KEFAUVER. All right. Do you want to pass on to the second objection?

Senator MUNDT. Yes.

The other objection was, if I understood it, that the electoral district system would tend to induce voters to vote for popular and glamorous electors instead of voting for the presidential candidate. That was the criticism.

I think this is a completely unrealistic criticism, Mr. Chairman. I am glad it is not made by the chairman but by others. It seems to me this is quite a tribute to Senate Joint Resolution 12 if the opponents grasp for straws in seeking reasons to oppose it which are as unrealistic as that.

If this were true, certainly where you have one of the three electors chosen for the local district, the other two being statewide—so you vote for three electors—it would also be true today. If people are going to be pulled in one direction or another because one of the three electors happens to be a popular fellow or a television personality or a good-looking individual, then certainly it would be much more true today where you can have a whole group of electors that you could get from a team of Hollywood stars and television personalities and good-looking electors whose collective sex appeal would certainly, under this concept of voting, entirely destroy the voter's desire to vote for a Democrat or a Republican or a third-party member as a presidential candidate.

I just do not believe there is any validity to that argument whatsoever, and certainly it has no validity when you recognize that you are not voting for one elector in your electoral district. You are voting for three. Two of them are selected at large, and only one of them is what we could call a "hometown boy" or a "hometown girl."

No, I do not believe that people in a presidential election now or under any other system vote for electors. They vote for, usually, I believe, either a party or a candidate. People, regardless of who is the candidate, are going to vote for the party of their choice, but I think even more generally they vote for an individual whom they admire and respect, in whom they have confidence and who they hope to find associated with the party of their choice.

Senator KEFAUVER. Of course, in States that have one Congressman, people in that State, as in the case of Nevada or Delaware, vote for three electors at the present time, and I think you are right that

they consider the party primarily and not the personality of the electors in the States.

Senator Keating pointed out that in New York at the present time they vote for 45 electors.

Senator MUNDT. Yes. They have 43 House Members and 2 Senators.

Senator KEFAUVER. And that the great number prevents any personal impact, that by virtue of the number of 45 so diluting the personality of anyone, the voter will think of the candidate although voting for the electors.

He argued if you got it down to three in his State in his congressional district of Rochester, then the local people would be thinking more of the hometown boy in Rochester.

Senator MUNDT. Well, I do not believe that there would be one voter out of a thousand, maybe out of five thousand, who on that rare day in November, once he has the right to vote and can stand up and in his majesty determine the trends of human history and votes for a presidential candidate and a vice presidential candidate and a man who belongs to a great political party and a whole set of principles selected at a convention, all of which have been ventilated up and down the highways and byways of this land by television, by radio, by personal appearance—I do not think there is 1 man in 5,000 when he finally leaves his office or his home and finds his way to the polling place who goes in there and says, "Well, here is a fellow, one man out of three that I know because he belongs to my particular unit of the Elks Lodge, and I am going to vote for him, since he is a candidate as an elector."

If that were true, as I say, under the proposal for electoral districts under Senate Joint Resolution 12, it would be true today, because undoubtedly among the 45 electors of New York State they do select some popular individual from Rochester and from communities of that size, and if they were going to be pulled in one direction or another because he is 1 out of 3, they would be pulled in the same direction because he was 1 out of 45.

Senator KEFAUVER. Now, I just thought of another argument that they presented.

Senator MUNDT. Good.

Senator KEFAUVER. And that is that there is enough confusion now, particularly in the large cities where the center of the street might be the boundary line of a congressional district. If you impose on top of that another kind of district, such as an electoral district, the confusion would be compounded. The voter in the 10th district of New York, assuming that is one of the downtown ones, would go to one place to vote for his Congressman and he would have to go to another place to vote for electors for President and Vice President, and that he would not only be confused but that campaignwise there would be confusion. In one place, they would have the picture of the presidential candidates with one Congressman; across the street they would have to have a picture of the presidential candidates with another Congressman; and that this would confuse the voter and result in less voting, and it would also confuse the campaign oratory in various congressional districts.

Senator MUNDT. There might be an element of poetic justice in confusing the campaign oratory, Mr. Chairman, because campaign oratory is sometimes designed to confuse a lot of people, and it may be if this were reciprocal this would be good.

Answering seriously your question as to the argument advanced by the two Senators, however, let me say that there might be some validity to that if you were to assume the realism and the validity of the argument we have just finished discussing that people were voting for electors instead of a President. There is actually no reality or validity to it at all, however, because wherever they vote and however they vote, citizens are voting for a candidate for President; they are not voting for electors. So when they get into this polling place, there they find the party and the name of the presidential candidate in one column or in one place on the voting machine, there they find the label and the candidate for President of another party on another party voting machine. They vote for the President, they vote for the Vice President, they vote for the candidates because the names are there.

There is no opportunity to confuse them. There they are. So that they are not voting for electors but they are voting for candidates for President, and that same candidate for President appears under the same party label in every State of the Union, in all of the electoral districts. The only change at all would be that in some States they use a symbol in addition to a label and a name. I do not know whether you have that in Tennessee or not, but in some places the rooster is the symbol for the party, and in another the donkey is and the elephant, and so forth, which is pretty much of a hangover from the days when we had a great many illiterate voters in this country, and they were taught to vote by symbol.

Happily, our rate of literacy is pretty high now, and I think the idea of voting for a symbol is growing less and less universal, but I do think it still prevails in certain areas.

Senator KEFAUVER. I probably did not make clear the principal part of this argument about having different elector districts from congressional districts. That is, that a voter might have to go to one place to vote for Congressman and then he might have to go to another place to vote for electors because he might be in one electoral district and in another congressional district.

Senator MUNDT. The answer to that part of the argument, Mr. Chairman, is that you and I know, and I am sure these other Senators know, too, that if they would reflect upon it a little more deeply, that this argument would be true only if you had just one voting place in the congressional district and one voting place in a presidential district. Voting in America has been increasing, and it would be inconceivable to cut through a precinct so that the precincts are going to be located in areas where they could vote jointly. I just do not believe that this type of split-voting situation would exist because of our very happy and very desirable system of voting by precincts. If voting were by counties or districts and there were just one place to vote, then you might have a fellow that had to vote in a congressional district and a different electoral district, but the precincts would not be divided against themselves, I am sure.

Senator KEFAUVER. Well, I think it was illustrated this way, that suppose a congressional district is 600,000 people. It has been gerry-

manded so as to have 600,000 people—that is the congressional district. Then the electoral district would cut that congressional district in half, so that in half of the congressional district people would vote for Congressmen and then they would have to vote for three electors, but in the other half of the district, they vote for the Congressmen and they would have to vote for three electors, one of whom would be different from the elector in the other elector district.

Senator MUNDT. Precisely; that illustrates my point. They are voting for President. They are voting for the same Congressmen. They are voting in different places, but in this hypothetical case there are two elector districts, but the same man runs in the entire congressional district under this illustration. It doesn't make a bit of difference whether they vote in one voting place or another voting place. They do that anyhow. People do not vote for the electors. They vote for the presidential candidate. While one of the three electors would have a different name over here, the President would have the same name, the party would have the same name, the position on the ballot would be in the same place, and two of the electors would be the same. They could either vote a straight ticket or not vote a straight ticket depending upon the laws of the State in either half of this hypothetical congressional district.

So I just do not believe there is any practical significance whatsoever to the fact that one of the three names happens to be different in each of the electoral districts.

Senator KEFAUVER. Well, Senator Mundt, the committee wants to invite you to read the testimony.

Senator MUNDT. Which I shall be happy to do.

Senator KEFAUVER. And discuss the matter with them orally and then file any additional statements you wish.

Senator MUNDT. Thank you.

Senator KEFAUVER. Finally this question: To me, at least, one of the defects of our electoral system is that the electors are more and more expressing their own independence as to whether they will vote for the candidate of their party. We had in the last election one or two who didn't, several who might not have.

You have expressed yourself about the value of the electoral college, but with that growing danger, is the electoral college really an institution to be kept?

Senator MUNDT. I think it is, Mr. Chairman, and speaking to the danger which you have mentioned, and it really is a danger, it seems to me, which is signalized more by the threat which might occur than by any historical evidence than has been practiced.

I do not know what my associates in sponsorship of Senate Joint Resolution 12 would say, but speaking for myself alone, I think I would not be adverse to a simple change in the amendment which would require the electors to vote in conformity with the mandate which they received from the people of their electoral district. That is almost universally done now. There always is the threat—not always the threat, but there has been the threat, electors will say, "Well, I am going to exercise my own independent judgment; I don't care what the people say," and I concur with the chairman that the whole concept of the electoral college as it is practiced now in modern American history is that the elector is not placed between the voter and the

decision with the expectation that he is to superimpose his independent judgment in the electoral college.

It doesn't very often occur, but speaking for myself, I would not be averse to having it buttoned down in constitutional language as a part of this amendment or any other place to make sure.

There are other advantages, however, of having the electoral college because this helps to maintain our concept of a Federal state. This helps to keep elections for President on a statewide basis before they are brought into this melting pot, this catalyst, this joint session of Congress, the electoral college, where they are counted and recorded, and the votes from an area, a State or an electoral district when as we hope, this amendment becomes operative, are counted, tabulated and recorded.

It seems to me we tend to move away from our concept of a Federal Republic into the concept of a unitary system of government if the electoral college were to be eliminated.

Senator KEFAUVER. I have just been talking with Mr. Kirby, our counsel, to refresh my recollection.

We had one elector in the last election in Oklahoma who was a Republican elector who did not vote for Mr. Nixon but who voted for Senator Byrd, and in Mississippi the electors were unpledged, although they ran as Democrats, and in Alabama about half of them were unpledged, and they voted for Senator Byrd.

Senator MUNDT. In those cases in Alabama and Mississippi, Mr. Chairman, the voters knew in advance what the elector was going to do. So I think this was complete compatibility with the electoral college system. You are quite right about the fellow in Oklahoma. I don't imagine he had made it clear, and it probably came as a surprise or at least he was not selected individually apart from the others.

So I think he should have gone along with the team. As I say, as far as I am concerned, I don't favor putting the decision of an individual man in between the decision of the people and the verdict of the electoral college. I would not be at all averse to putting it in simple language which I am sure, you would agree, would not be hard to add to any of these amendments, or certainly Senate Joint Resolution 12, which would require the elector to go along with the verdict of the voters who selected him.

Senator KEFAUVER. Will you take the responsibility for furnishing the committee with an appropriate amendment for that purpose in the event that is decided upon?

Senator MUNDT. You mean in the event the committee should decide they would like to have the amendment added.

I will do that, and I will also take the responsibility of discussing it with my associates to see whether they might not like to see it incorporated in Senate Joint 12.

I will take the responsibility to have it available for the committee in case by committee action you decide to superimpose it on whichever constitutional resolution you adopt, which I hope and believe will be Senate Joint 12.

Senator KEFAUVER. Anything else, Senator Mundt?

Senator MUNDT. No, thank you, except that if I may have the opportunity to add to this statement after I have a chance to read the testimony——

Senator KEFAUVER. That will be granted, and any further statement will follow the oral presentation this morning.

Senator MUNDT. Thank you very much, Mr. Chairman, and I am happy to be here while my distinguished colleague and conferee and cosponsor and longtime advocate of electoral reform, Senator Thurmond, is here to testify.

Senator KEFAUVER. Mr. Kirby, before we recess you have some letters that have been submitted for the record?

Mr. KIRBY. Yes, sir. Senator Mansfield has submitted a statement in support of Senate Joint Resolution 23.

Senator KEFAUVER. Let it be made a part of the record following Senator Mundt's entire presentation.

(The document referred to is as follows:)

MAY 22, 1961.

Hon. ESTES KEFAUVER,
Chairman, Subcommittee on Constitutional Amendments,
Committee on the Judiciary, U.S. Senate.

DEAR MR. CHAIRMAN: While matters of importance to the U.S. Senate prevent me from testifying in person before your Subcommittee on Constitutional Amendments in behalf of proposed amendments to Federal election laws, I do want to take this opportunity to express my views concerning Senate Joint Resolution 23, which would abolish the electoral college and adopt the direct popular voting system in our presidential elections.

My views on the need for certain reforms in our election laws and procedures have been expressed on a number of occasions. The last presidential election convinced me more than ever that there is a great need for a change. It is vital that we recognize that in the 20th century it is the people who should be electing our President and it is to these people that a popularly elected President should be responsible in this complex age in which we live. Our electoral system is out of date. It is not in tune with present-day realities.

Senate Joint Resolution 23 as written would simply call for the election of the President and Vice President by direct popular vote. It would give to every vote—wherever it may be cast in the Nation—an equal value with all others cast. No one individual would have any more influence than any other person. Such a constitutional amendment would give recognition to the principle of equality and an expression of the majority view in the selection of the President and Vice President.

After this legislation was introduced early in the session, I received considerable mail concerning it and other proposals which pertain to campaigns and campaign expenditures. One objection raised by my constituents and those from States with small populations was that they would not have as much influence in the determination of who was elected. This argument appears to have some validity insofar as some of the States are concerned, but on the other hand should one State have any more influence in the election of our President and Vice President? I do not believe such a method is in tune with the democratic process. The President of the United States represents all citizens of the United States. He is not a representative of just 50 individual States.

During the history of this Nation we have elected Presidents who did not have the expressed support of the majority of those who participated in the election but were elected in the electoral college. As we know, this occurs because of the distribution of popular vote among the States. I am firmly convinced that the President should be subject to the direct and equal control of all the people. The amendment to the Constitution as proposed in Senate Joint Resolution 23 would accomplish this purpose.

I realize that changes in our Constitution do not happen overnight. The electoral system is based on over 150 years of precedent, but a progressive and alert nation does not rely only on the past, it looks to the future for necessary improvements and changes that symbolize a vigorous and alert people. The inequities of the electoral college are in need of immediate attention and I sincerely request that this matter be given attention by your Subcommittee on Constitutional Amendments. The presidential election of 1960 and the campaign which

preceded it are fast becoming memories. The Congress should not forget the obvious need for some reform in our election process until the next national election.

Mr. Chairman, I would appreciate it if my letter would be made a part of the official record of this hearing.

With best personal wishes, I am,

Sincerely yours,

MIKE MANSFIELD.

Mr. KIRBY. Senator Smith of Maine has submitted a detailed statement in support of Senate Joint Resolution 1.

Senator KEFAUVER. Let it be printed at this point in the record.

(The document referred to follows:)

STATEMENT OF SENATOR MARGARET CHASE SMITH IN SUPPORT OF SENATE JOINT RESOLUTION 1

Mr. Chairman and members of the committee, I deeply appreciate the opportunity that you have extended to me to testify in support of Senate Joint Resolution 1, introduced by myself together with the senior Senators from Maryland, New Mexico, Oregon, and Vermont.

The specific proposals of Senate Joint Resolution 1 are to—

(*a*) Abolish the electoral college system of electing the President and Vice President;

(*b*) Provide for election of the President and Vice President by direct popular vote;

(*c*) Abolish the national convention system of nominating the presidential and vice-presidential candidates of political parties;

(*d*) Provide for the nomination of presidential and vice-presidential candidates of political parties by direct primaries (first Tuesday after first Monday in August);

(e) Provide for runoff elections in both the general election and the primary in the event that no candidate received a majority of the total number of votes cast (to be held 28 days later);

(*f*) Require that, in order to qualify as a candidate in the direct primary a person must file a petition signed by at least 1 percent of the total vote cast in the last presidential general election (this would require 688,327 signers for the 1964 primary), to be filed not before January 1 and not later than 2 months prior to the primary election; and

(*g*) Require that a political party have a registered membership of more than 5 percent of the total registered voters in the United States in order to qualify to get on the ballot.

I believe these provisions are clear and require no further elaboration. However, I have prepared a detailed statement approximately 7,500 words in length. But I do not want to impose upon the time of the committee in reading that long statement.

Instead, I would prefer to have the rest of my statement placed in the record and to make myself available to the committee at a future date to answer any questions that you may have after having had a full opportunity to study my statement.

For a long time I have favored not only abolition of the electoral college but also abolition of presidential nomination by convention. I prefer the direct primary and the direct popular vote election system.

But I am admittedly prejudiced on this subject for I could never have been elected to the U.S. Senate had not the 17th amendment been passed and had not Maine adopted the direct primary—for surely the Maine State Legislature would never have chosen me, and the regular Republican organization bosses, who control conventions, opposed my primary candidacy in 1948 for the Senate.

For the immediate future, the electoral college is here to stay—but with some possible tinkering.

But from the long-term aspect, the electoral college is doomed to be replaced by the direct popular election system. It is only a matter of time. Its years are numbered. For the American people will ultimately assert themselves and demand that the will of the majority prevail, and the American people will prevail over the powers-that-be who cling to perpetuation of the status quo.

It may take another razor-thin Kennedy-Nixon type election or an Adams-Jackson, Hayes-Tilden, or Harrison-Cleveland type election—where the popular vote winner loses—to arouse the people to successful revolt against the electoral college. Whatever sets off the time fuse, the electoral college is ultimately doomed.

The foremost objective to the popular election vote proposal is that under it the small population States like my own State of Maine would lose proportional power to the large population States like New York.

My answer to that argument is that it is the will of the people—the will of a majority of the voters—rather than the proportional power of any State that is important and that should prevail—the people should not be secondary and subservient to the States.

A good starting point for the elaboration of these fundamental points is to ask why the current intense interest in changing the electoral college system of electing Presidents? Hasn't this ever occurred to anyone before? Why the sudden interest?

Obviously, the current interest stems from the closeness of the 1960 presidential election in which Mr. Kennedy edged Mr. Nixon by only sixteen one-hundredths of 1 percent of the total vote—by only 112,881 votes out of the 68½ million votes cast.

Mr. Kennedy received 49.48 percent of the vote to 49.32 percent for Mr. Nixon—thereby making Mr. Kennedy a minority president since he received less than 50 percent of the total votes cast.

Yet, in the electoral college he received 303 to Mr. Nixon's 219 and 15 for Senator Byrd—or Mr. Kennedy received 56.6 percent of the electoral college vote but only 49.48 of the popular vote.

In short, we have a President elected by the electoral college even though he was close to trailing in the popular vote. In addition to that we had some members of the electoral college who defied the voters of their States and voted for someone other than whom the voters of their own States had voted for.

This has disturbed and aroused many people as to the dangers and weaknesses of the electoral college, which can be used to thwart the will of the majority in our country. Many aroused people want to remove such a danger.

But this is nothing new. There have been many times in the history of our country when we have had a minority President. There have been times when the candidate getting the greatest number of votes in the direct popular vote was defeated in the electoral college.

Our minority Presidents have been Adams in 1824, Polk in 1844, Taylor in 1848, Buchanan in 1856, Lincoln in 1860, Hayes in 1876, Garfield in 1880, Cleveland in 1884 and in 1892, Harrison in 1888, Wilson in 1912 and 1916, Truman in 1948, and Kennedy in 1960. In most of these instances, there were minority Presidents because there were more than two nominees for President.

Even more striking were the elections of 1824, 1876, and 1888 in which the direct popular vote winner lost in the electoral college. In 1824 Andrew Jackson beat John Quincy Adams 4 to 3 in the direct popular vote as Jackson received 43.13 percent of the vote while Adams received only 30.54 percent of the vote, with Clay and Crawford each getting 13 percent of the vote.

In 1876 Samuel J. Tilden beat Rutherford B. Hayes 51 percent to 48 percent in direct popular votes but lost the election under the electoral college system. In 1888 Grover Cleveland beat Benjamin Harrison 49 percent to 48 percent in direct popular votes but under the electoral college system lost to Harrison.

These results—and the repeated possibilities—have worried Americans often in the past and they have tried to do something about changing the electoral college system, which would permit such unfair results. In fact, more than 200 amendments have been introduced in the past 71 years.

The attempts to make changes first started back in 1797 when Congressman William L. Smith of South Carolina introduced the first amendment.

A complete historical review of the attempts to change or abolish the electoral college is neither necessary nor appropriate. For the most part, I will confine my mention of the attempts to the time during which I have served in the U.S. Senate—that is, since 1949.

In 1950 the late Senator Langer proposed an amendment to abolish the electoral college and replace it with nomination and election by direct popular vote. The Langer amendment was defeated by a 60 to 31 vote. I voted for it. Republicans voted nearly evenly with a 21 to 20 vote against it. Democrats voted narly 4 to 1 against it by 39 to 11.

Three other amendments offered that day were defeated by even more lopsided votes than the Langer amendment. But the Lodge proportional amendment did pass by a 64 to 27 vote and I voted for it. It also had a provision to require at least 40 percent of the electoral vote for anyone to get elected President.

But the Lodge amendment, passed by the Senate, died in the House because the House Rules Committee bottled it up in committee and refused to let it get out for a vote by the House.

The next attempt was in 1956. This time Senator Langer again offered his direct popular vote nomination and election proposal. But this time it was defeated 69 to 13—twice as great a defeat as 6 years before. This was because of a great shift on the Republican side.

While the Republicans voted 21 to 20 against the Langer amendment in 1950, they voted 41 to 2 against it in 1956.

Whereas Senator Lehman had voted against the Langer amendment in 1950, 6 years later, in 1956, he offered half of the original Langer proposal by the Lehman amendment, which would continue nomination by convention but would have abolished the electoral college and provided election by direct popular vote. But his amendment was defeated 66 to 17.

Senator Case of New Jersey offered an amendment to provide for the proportional system with a bonus for States with high voting participation and penalty for States with low voting participation. The Case amendment was defeated 66 to 20.

A majority of the Senate, by a 48-to-37 vote, did vote for the Daniel compromise amendment which would give each State a choice between the proportional plan or the district plan—but the Daniel amendment failed because it fell short of the required two-thirds majority.

Nothing has happened since that vote—except the several proposals that have been introduced this year. Before turning to these proposals for discussion, I want to touch upon what appears to be the sentiment of the American people for a change in the electoral college system of electing Presidents.

In 1948 the Gallup Poll showed that the American people favored a change by a better than 2-to-1 margin—57 percent for, to 22 percent against. On November 17, 1960, the Gallup Poll showed the sentiment to be down a bit but still about 2 to 1 for a change with the percentages being 50 percent for and 28 percent against.

The latest poll that I have received is the one sent to me on George Washington's Birthday. It was a poll taken by the social studies class of the Danville, Va., Junior High School.

That group reported a survey of 158 persons—of which 76 percent knew what the electoral college was—and of which 63 percent wanted the electoral college abolished. This was a record sentiment of 5 to 1 against the electoral college.

And before getting into a discussion of the current proposed changes, let us take a look at the arguments, pro and con, on the present electoral college system of electing Presidents.

Those who defend the electoral college point to the fact that it is still with us after 174 years and that, on the whole, it has produced able Presidents.

They say that only rarely has a popular vote loser won in the electoral college. They point out that even the minority Presidents would probably have won had there been runoff elections such as I propose.

They say that the system gives protection to the smaller States—that it provides some protection against tyranny by a majority.

They contend that the unit rule system of the electoral college whereby the winner in a State takes all the electoral votes—that such winner-take-all unit rule helps prevent the growth of splinter parties such as plagued France with its political instability.

They contend that it gives desirable balance between urban and rural areas and their respective powers on influencing the final outcome of a presidential election.

And they finally conclude that in the event of a very close and bitter election, the electoral college tends to give the impression that the country is behind the winner because he has won a greater percentage in the electoral college than in the direct popular vote.

Of all the arguments made by the defenders of the electoral college system, I find this to be the most fatuous and guilty of sheer sophistry.

70784—61—pt. 1——5

I think the arguments against the electoral college system, as it is now constituted, are far more logical and impressive. One of the greatest arguments against it is the result of past elections. As I have pointed out, it has produced three Presidents—Adams, Hayes ,and Harrison—who lost the popular vote to their opponents.

And it simply is not right for the wishes of the majority to be thwarted. That is certainly not the democracy that we give so much lipservice to. To paraphrase a national columnist-commentator, it does not "Make democracy live."

Those who oppose the electoral college contend that our Founding Fathers never intended that there be en bloc winner-take-all voting by each of the States. Its unfairness is obvious.

A very incisive argument against the system is that it makes it practically impossible for anyone from a small electoral bloc State to be nominated but instead tends to limit the possibilities to persons from large States like New York or California or Pennsylvania or Ohio.

And in such large States, if the division between parties tends to be razor thin, then certain pressure groups gain a disproportionate and unfair bargaining power under the unit system of the electoral college. It gives tremendous power to small, highly disciplined, well-organized pressure groups in large pivotal States.

Critics of the electoral college contend that its unit system not only invites vote frauds by juggling a few votes in the large pivotal States where the vote may be close, but that it also discourages maximum voting participation.

For example, in Mississippi the unit system of winner take all of the electoral votes gives little incentive to a Republican to vote in the presidential election because he knows when he enters the voting booth that Mississippi is going Democratic anyway and consequently that his vote won't count at all under the unit system.

Critics further point out that if one candidate fails to get 269 electoral votes, under the present electoral college system, the voting is then thrown into the House where each State, voting under the unit system, has only a single vote regardless of the size of its population.

The one point of criticism on which there is the greatest agreement is that there is nothing binding, legally, upon an elector to vote for a candidate to whom he pledged himself prior to election or on whose ticket he ran. For example, in 1960, a Nixon elector voted for Senator Byrd.

One thing is sure on this subject—that most people are dissatisfied with the electoral college and want to change the system of electing Presidents. The trouble is that they can't get together and agree on the changes to make—and their division among themselves is why no change has been made and why it will be difficult to get any change.

The standpatters—the perpetuators of the status quo—the defenders of the electoral college system, without change, have the great advantage of being united and having one simple goal, merely to resist any and all proposals for change.

As to how many proposals for change there are, I am reminded of what the President of France said to me in 1954 when I asked him why France didn't drop its multiparty political system and adopt a two-party system like the United States to obtain greater stability in the French Government.

Very patiently he smiled at me and said softly, "Because, my dear Senator, in France there are 50 million Frenchmen and that means that there are 50 million political parties."

Yet, we can group the major proposed changes into three basic proposals: the district plan, the proportional method, and the direct vote for President. Let us examine each of these and the arguments for and against them.

The district plan is just like its name sounds. Under it, electors would be elected just like Congressmen and Senators. They would be elected by congressional districts, with the presidential candidate, who received the plurality vote, getting the vote of the one elector of that particular congressional district, and with the presidential candidate with a plurality, statewide, getting the two electoral votes equal to its two Senators.

In the early days of our Federal Government the district plan was easily the most popular reform proposal. It has come the nearest of any of the proposed changes to being adopted.

The proposed changes have less difficulty in getting by the Senate than in the House. While the Senate has several times passed proposed changes, such

changes have died in the House. In other words, the House is the bottleneck or barrier against change.

The closest to ever breaking the House barrier was in 1820 when the House voted for a district plan proposed change by a 92-to-54 vote. But this wasn't enough for the required constitutional two-thirds majority.

In other words, it was within six votes of passage—for had six Congressmen voted for it instead of against it, then the States would probably have ratified the proposed change—and today and for the past 140 years we would have the district plan of electing Presidents.

One can speculate dramatically what changes there would have been in our history had the district plan been in effect, for Abraham Lincoln and Woodrow Wilson might never have been President—and certainly John Quincy Adams and Benjamin Harrison would never have been President.

In modern history, the basic district plan has been that offered by Senator Mundt and Representative Coudert. It would keep the electors but have them chosen at the polls in the same way that Senators and Representatives are chosen—with the further provision that if no candidate received a majority of the electoral votes, the election would be thrown into a joint meeting of the Senate and the House—not just the House as under the present system—at which meeting the Senators and Representatives in the new Congress would vote and as individuals rather than be block under the unit rule—choosing between the top three candidates. The candidate getting a plurality on the first ballot would be the winner.

Senator Mundt has reintroduced his proposal this year. It is Senate Joint Resolution 12. Joining him as cosponsors are Senator Strom Thurmond, who was the Dixiecrat presidential candidate in 1948, Senator Thruston B. Morton, the Republican National Committee chairman, and Senators McClellan, Hruska, and Blakley.

There are half a dozen or more major arguments advanced in support of the district plan. Historical persuasion is attempted in the argument that the district plan is what our Founding Fathers, in their wisdom, contemplated in actual practice in the system they did set up.

It would be a return to the system they really intended. For in the early years of the electoral college, electors were chosen from the most distinguished leaders of each State and they voted as individuals in electing Presidents.

But that was short lived for politics moved in fast and political parties started to dominate the selection of electors. So that the intent of our Founding Fathers was subverted in actual practice as electors became merely representatives of political parties—and with this development came the death of independent voting by electors.

Among those who supported the district plan in the early days were John Quincy Adams, Hamilton, Jackson, Jefferson, Madison, Van Buren, and Webster. But the political bosses moved in and when they did so did the unit rule and the district plan in practice was completely eliminated by 1836.

A second major argument for the district plan is that it is more representative of the actual popular vote than the present system in that the district plan eliminates the statewide unit rule "winner take all" operation.

A third argument for the district plan is that it would make political parties give small population States consideration on the selection of the presidential candidates—just as much as is given to the large States under the present system that tends to penalize any presidential aspirant from a small State.

A fourth argument is that it would make the President more responsive and sensitive to the same political pressures as those felt by Congressmen and Senators because all of them would be elected by the same constituencies.

A fifth argument for the district plan is that on the one hand it would not encourage splinter parties because they would have little chance of winning electoral districts—but on the other hand it would tend to build a stronger two-party system by giving courage and incentive to the minority party in what are considered to be one-party States.

For example, the Republicans would have a chance to win some presidential electoral votes in the South in some of the rare few congressional districts that have Republican Congressmen—or the Democrats in those exceptional instances when they have had Congressmen from Republican States like Vermont and Maine.

Other arguments advanced in support of the district plan are that it would take control of selection away from political bosses and from State legislatures

that it would prevent vote frauds, local bad weather, or other accidental circumstances from tipping the scales of the entire electoral vote of a State.

That it would provide fair balance of population representation for both urban and rural areas, both predominantly Democratic and predominantly Republican districts—and that it would minimize claimed inordinate influence of minorities in population centers of large States.

The principal arguments against the district plan center around the possibilities of inordinate minority influence. It is argued that under this plan it would still be possible for a minority President to be elected because of the two electoral votes given each State on the basis of two Senators for each State.

It is pointed out that under the district plan, splinter parties could still concentrate on swinging electoral districts to provide the balance in a close national election. The danger of gerrymandering districts by State legislatures is raised.

And some minority groups contend that the district plan would penalize them because it could isolate—and thus devaluate—the influence of minority groups in individual districts.

A final argument against the district plan is that while it eliminates the application of the "winner take all" unit rule on a Statewide basis, it is at best only an improvement or change in degree on the unit rule since the unit rule would be applied at the district level even if removed from the State level.

They contend that such a compromise falls far too short of the goal of maximum control by the individual voter—the goal to make the individual voter's vote controlling nationally instead of controlling just by State or just by district.

The second basic proposal of change in the present electoral college system of electing Presidents in the proportional method. Oversimplified, this proposal is to divide the electoral vote of a State according to the percentage of the total vote in the State that each candidate receives.

For example, Maine has five electoral votes. If the Democratic nominee received 40 percent of the total vote in Maine and the Republican nominee received 60 percent, the electoral vote would be divided three for the Republican and two for the Democrat instead of all five electoral votes going to the Republican.

It was first proposed 84 years ago by Congressman Levi Maish of Pennsylvania—and a similar proposal was made in the same year by Congressman Jordan Cravens of Arkansas. The difference in their proposals was that Maish proposed that the proportional division be in whole numbers while Cravens proposed that the division be carried out to the third decimal place.

In 1950 the Senate by a 64-to-27 vote passed the Lodge-Gossett amendment, which was practically identical to the Cravens plan. But it died in the House—and because of a group about which you have been reading much this year—the House Rules Committee.

It died in the House because the House Rules Committee bottled it up in committee and would not clear it for being voted up by the full House.

Six years later in 1956 a majority of the Senate voted 48 to 37 in favor of the proportional method but the amendment was defeated because it failed to obtain the required two-thirds majority vote.

Senators Johnston of South Carolina, Dodd of Connecticut, Smathers of Florida, Kefauver of Tennessee, and Saltonstall of Massachusetts have introduced proportional method resolutions this year.

Perhaps the most effective argument and support for the proportional method resolutions now before Congress is that they would abolish the office of elector and thus remove the potential abuses it encourages.

This is only a part of the general argument that under the proportional method the voters would have a more direct voice than under the present system in electing Presidents—yet in the compromise nature of the proposal, the Federal principle of the two extra electoral votes for each State would be retained.

It would provide a method by which State legislatures could not tamper with the system as they can—and sometimes do—now. It would make less likely accidents and frauds frustrating the will of the people since no longer would a few questionable votes be able to swing the entire electoral vote of a State.

It is contended that the proportional method would be fairer with respect to minority groups—both in giving them fair representation and in preventing them from obtaining inordinate influence. Votes of the minority parties would be counted as they are under the unit system now in effect and under the district plan, but their bargaining power would be cut down to size because it would be measured by their actual numbers rather than their relatively few votes provid-

ing the thin margin for a winner-take-all result under the present unit system.

The proportional method is attractive to many of the minority in one-party States as their votes would really count in the total national result rather than being canceled out under the winner-take-all unit system with all electoral votes going to one candidate regardless of how close the vote in a State.

And the basic argument for the proportional method is that it would provide a far more accurate division of popular strength between the candidates than does the present system.

Against these arguments for the proportional method are the arguments that can be expected against any compromise plan. Just as its compromise character provides it with strength, that compromise character creates weaknesses.

It would not protect against the possibility that a candidate losing the popular vote contest could still win the election with the electoral votes. Had it been in effect in the past, in 1880 James Garfield would have been defeated under the proportional method although winning the popular vote, and in 1896 William Jennings Bryan would have defeated McKinley.

There is some resistance to it in Congress because it is viewed as the opening wedge of a threat to extend proportional representation to Congress—in other words, instead of electing Representatives by congressional districts, to elect them statewide. The threat this poses is that of the multiparty system that has made the Government of France so unstable.

The third basic proposal of change is the direct-election plan of electing Presidents. It was first considered in 1787 at the Constitutional Convention. It was rejected by the States by a vote of 9 to 2 against—Delaware and Pennsylvania being the only two States to vote for it.

The arguments used to defeat it at that time were not very flattering to the American people when judged by our present-day concepts. The arguments reflected on the intelligence and tolerance of the American people and imputed regional prejudice to them.

Most effective argument was that the American people just didn't know enough to be able to vote intelligently—didn't know enough about the qualifications and character of the candidates.

There was the fear of regional favoritism leading to favorite son candidacies and resulting inability of States to agree on one candidate sufficiently to give him a clear majority.

The first attempt to amend the Constitution to provide for the direct-election plan was made by Representative William McManus of New York in 1826. Since that time there have been approximately 90 amendments embodying the direct-election plan proposed in Congress.

I have already alluded to the unsuccessful efforts in 1950 and 1956 by Senator Langer. There are two current proposals now before the Senate and several before the House.

One is Senate Joint Resolution 23 introduced by Senator Mike Mansfield of Montana, the majority leader of the Senate. The other is Senate Joint Resolution 1, introduced by myself with Senators Aiken, of Vermont, Beall, of Maryland, Chavez, of New Mexico, and Morse, of Oregon.

There are two basic differences between the Mansfield plan and the Smith plan. First, under the Mansfield plan the election could be won by a plurality and without a clear majority—while under the Smith plan the election could be won only with a clear majority.

Secondly, the Smith plan proposes nomination by direct primary, while the Mansfield plan would retain the present nomination by convention system.

Principal argument against the direct-election plan is that it would be at the expense of minorities and would provide no protection against what has been called the tyranny of the majority. It is contended in this respect that it violates the republic concept of our Government—the limited democracy that places some restraints upon the majority for the protection of the minority.

Specifically, it is pointed out that this would penalize a small State like my State of Maine and would reward a large State like the State of New York in that it would remove the slight advantage of the two extra electoral votes given each State, regardless of size of population.

The States rights issue is raised against the direct-election plan because it tends to national laws regulating voting for President—such as minimum voting age, whether 21 or 18, poll taxes, education, and other criteria—which might extend to all other offices.

A further detailed argument on the States rights issue is that the direct-election plan would give relative weight by the actual number voting rather than by the population of a State. Consequently, States with smaller voter participation, such as Mississippi, feel the heavy voter participation States would gain too much advantage under the direct-election plan.

Finally, this very type of opposition is given as a practical reason for opposing the direct-election plan: That with small States and Southern States opposing it, a direct-election amendment would never be ratified by the necessary three-fourths or 38 of the 50 States.

Answers to these "anti" arguments are quick. The direct-election plan for President is no more a threat of tyranny of the majority and impairment of our republic form of democracy than is the direct-election system that practically all of our States have for all elective offices.

As to the penalty it would place on a small State like my own Maine by removing the slight advantage of the two electoral votes given to each State regardless of population size, I say that it is the individual citizen who is more important than the state and that the will of the individual must not be subservient to that of the state as in totalitarian nations.

As to States rights—as to the fostering of national uniform laws on elections—and election results being made by those who vote instead of just by State population and thereby indirectly to some extent to those who don't vote—I say that these are actually the very objectives to be sought rather than opposed.

As to the argument that Congress should not pass the direct-election plan because the small States and Southern States would probably refuse to ratify it, I say this is a defeatist attitude—it is the standpat perpetuation of the status quo attitude—and "faint heart never won fair lady."

In my opinion, not only do these observations answer such arguments against the direct-election plan but the arguments for it are unanswerable. Under it the vote of every citizen would count equally. It would remove the feeling of frustration on the part of many voters in one-party States. It would stimulate the two-party system.

It would abolish all the potential abuses under the present system. It would prevent the possibility of electors disobeying instructions from the voters. It would prevent State legislatures from tampering with the election of Presidents.

It would remove the unfair advantages of small population States over big population States and vice versa. It would prevent the possibility that the popular-vote winner would not be elected President by the quirks of the electoral college with its unit-rule system. It would insure that the President would be elected by the people.

The arguments advanced against the direct-election plan are accentuated with even greater emphasis against the Smith plan than against the Mansfield plan because the Smith plan goes further and would extend to primaries and would abolish the national convention system of nominating Presidents.

Naturally I am prejudiced for the Smith plan or I would never have introduced it. My position is very, very simple. I think the party nominees for President should be chosen by the voters at direct primaries instead of by party delegates at national conventions.

I believe this for the very same reasons as those advanced for electing Presidents under the direct-election plan. What is good enough for electing Presidents should be good enough for nominating party candidates for President.

It is only the logical end of putting the power in the hands of the people, for they should be able to choose among all possible candidates and not just in the final round at the general election.

In addition to abolishing the electoral college and electing the President by direct popular vote, my plan would provide the following changes. It would abolish the nominations by national conventions and replace this system with direct primaries on the first Tuesday after the first Monday in August.

In the event that no one candidate received a clear majority or more than 50 percent of the total vote cast, a runoff election would be held between the two highest candidates 28 days later. This runoff system would apply both in the primary and in the general election.

In order to qualify as a candidate in the direct primary, a presidential aspirant would have to file a petition signed by at least 1 percent of the total vote cast in the last presidential general election—this would require 688,327 for a 1964 primary.

A political party would have to have a registered membership of more than 5 percent of the total registered voters in the United States in order to qualify to get on the ballot.

There is one other significant point in my proposal for direct primaries. It is significant in that under this arrangement it would be the people themselves—millions of Americans making the choice for Vice President—instead of that privilege being limited to two men—the Democratic nominee for President and the Republican nominee for President who choose their own running mates—instead of the choice for voters being limited to between only two persons, each handpicked by one person.

Now having considered these various proposals for reform of the system of electing Presidents, let us apply them to the last election and see what would have been the result in view of the closeness in the popular vote—as contrasted to Mr. Kennedy's very substantial margin in the electoral college vote.

There is one complication in applying the various proposals to the 1960 election results. That is the vote in Alabama where six of the presidential electors elected were Independents who ran as unpledged delegates and five ran as Kennedy delegates.

Strictly speaking, this would mean that while it could not be said, without fear of contradiction, that more than half of Alabama's Democratic vote was against both Kennedy and Nixon, by the same token it could not be said that it was for either of them.

The only valid conclusion that could be made would be that more than half of Alabama's vote was for neither Kennedy nor Nixon—and therefore would have to be withheld from the total given to Mr. Kennedy or Mr. Nixon in computations under the various proposals.

And this is a very important point, because it points up the uncertainty and the conjecture under the present electoral college system—an uncertainty and conjecture that would be removed completely under the direct-election plan and only partially under either the district plan or the proportional method.

When this factor is properly applied, it withholds at least 160,000 votes from Kennedy in the national total otherwise generally accorded to him on the basis of giving him the unpledged votes in Alabama. This would drop his national total to about 50,000 less than that of Mr. Nixon.

With this in mind, under the district plan or the unit rule applied by congressional districts instead of statewide—Mr. Nixon would have garnered more electoral votes than the combination of Mr. Kennedy, the unpledged electors and the splinter candidates—and would have been elected by a clear majority in the electoral college.

With this in mind, under the proportional method plan, Mr. Nixon would have received a razor edge over Mr. Kennedy—but less than a clear majority because of the unpledged electors and percentage for splinter candidates.

Yet, where the proportional method plan as presently advocated, in effect—the Kefauver plan—Mr. Nixon would have been elected because the Kefauver plan does not require a candidate to get a clear majority but only to be the highest man and to get at least 40 percent of the electoral votes.

With this in mind, Mr. Nixon would have won by the 1956 Humphrey compromise plan of giving the two statewide electoral votes to the winner in the State but dividing the rest of the electoral votes in the State by the proportional method.

With this in mind, under the Mansfield direct-election plan, Mr. Nixon—and not Mr. Kennedy—would have won the election and be President today because with the 160,000 or more Alabama votes withheld from Kennedy and given to the unpledged electors, Mr. Nixon would have won the popular vote by a national plurality of 50,000 or more—and the Mansfield plan does not require a majority.

In fact, if any of these plans were applied to the 1960 election, Mr. Kennedy would not have been elected—but instead Mr. Nixon would have been elected. The only major plan existing or advocated, by which it can be said unequivocally Mr. Kennedy would definitely have won the election is the present electoral college system.

On the other hand, the only major proposed reform (other than abolishing electors as such) under which it can be said unequivocally that Mr. Nixon might not have won is the Smith plan. This is it to not say that Mr. Kennedy would have been defeated.

For under the Smith plan neither Mr. Kennedy nor Mr. Nixon would have been elected on November 8, 1960, for the simple reason that neither received a clear majority of the total vote cast.

Under the Smith plan, the decision of the people would not have been made until December 6, 1960, when a required runoff election would have been held between the two of them—and in which one of them would have received a clear majority of the vote of the people and would be an unquestioned majority President today instead of a minority President.

With a final difference of only sixteen-hundredths of 1 percent between Mr. Kennedy and Mr. Nixon in the November 8, 1960, election, who can say which would have won in a runoff election such as would have been required under my plan.

I have given you analyses of the various proposals for changing our way of electing Presidents. Naturally I am prejudiced and think my plan is the best—and I believe that its strongest logic is in the hindsight application of the various reform proposals to the 1960 election results.

Senator KEFAUVER. We will now stand in recess until 9:30 tomorrow morning.

NOMINATION AND ELECTION OF PRESIDENT AND VICE PRESIDENT AND QUALIFICATIONS FOR VOTING

FRIDAY, MAY 26, 1961

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess and subsequent postponement at 9:40 a.m., in room 457, Old Senate Office Building, Senator Estes Kefauver (chairman of the subcommittee) presiding.

Present: Senators Kefauver, Keating, and Dodd.

Also present: James C. Kirby, Jr., counsel to the subcommittee, and Angelina T. Gomez, clerk.

Senator KEFAUVER. The committee will come to order.

The committee is delighted to have with us this morning the very distinguished and able senior Senator from Maine, Senator Margaret Chase Smith, with whom it has been the chairman's privilege to serve in the House of Representatives and in the U.S. Senate for more than 12 years.

Senator Smith has long been interested in reforms in our nominating and election procedures for President and Vice President and other matters of great concern to this committee.

We have before us, which has been made a part of the record, Senate Joint Resolution 1, which Senator Smith filed for herself, Senator Beall, Senator Chavez, Senator Morse, and Senator Aiken. We have already included in the record, Senator Smith, a very splendidly prepared analysis of all that you have submitted to us on Senate Joint Resolution 1, along with a summary which you have prepared.

We appreciate your coming and testifying orally before the committee this morning.

STATEMENT OF HON. MARGARET CHASE SMITH, A U.S. SENATOR FROM THE STATE OF MAINE

Senator SMITH. Thank you very much, Mr. Chairman. It has been an honor to serve with such a great statesman as you. I greatly appreciate this opportunity, as I do all that you are contributing toward our presentations.

I did prepare a long statement, but felt it would be better not to take the time of the committee to read the 7,500 words, and instead highlight it with a very brief summary giving the specific proposals:

(1) Abolish the electoral college system of electing the President and Vice President;

(2) Provide for election of the President and Vice President by direct popular vote;

(3) Abolish the national convention system of nominating the presidential and vice presidential candidates of political parties;

(4) Provide for the nomination of presidential and vice presidential candidates of political parties by direct primaries on the first Tuesday after the first Monday in August;

(5) Provide for runoff elections in both the general election and the primary in the event that no candidate received a majority of the total number of votes cast, to be held 28 days later;

(6) Require that, in order to qualify as a candidate in the direct primary, a person must file a petition signed by at least 1 percent of the total vote cast in the last presidential general election—this would require 688,327 signers for the 1964 primary—to be filed not before January 1 and not later than 2 months prior to the primary election; and

(7) Require that a political party have a registered membership of more than 5 percent of the total registered voters in the United States in order to qualify to get on the ballot.

This resolution, Senate Joint Resolution 1, introduced by myself and the senior Senators from Maryland, New Mexico, Oregon, and Vermont, has already been placed in the record, as the chairman has explained. I believe these provisions are clear, Mr. Chairman, and require no further elaboration. I would prefer to place the remainder of my statement in the record and make myself available to you, to the committee, at any future date to answer any questions you may have after giving full consideration to my statement and the other statements before you.

Senator KEFAUVER. Thank you very much, Senator Smith.

The first provision in your resolution is in connection with the nominating process for political parties, in which the nominating conventions are eliminated and candidates are nominated by direct popular vote.

Senator SMITH. That is correct.

Senator KEFAUVER. And this national primary is to be held the first Tuesday after the first Monday in August, is that correct?

Senator SMITH. That is correct.

Senator KEFAUVER. Is it required in the primary that a candidate must receive a majority of the votes in order to be nominated?

Senator SMITH. That is right. If they do not receive a majority, then there is a runoff. The runoff would be held 28 days later. That would be both in the primary and in the general election.

Senator KEFAUVER. How would it be contemplated under this system, that political parties would attend to the party machinery of adopting a platform and so forth which they do at national conventions?

Senator SMITH. There is no reason why they should not have the national conventions just the same, but I would want, under my plan, the convention held after the primary at which time the platform could, perhaps, be the major matter on the agenda.

Senator KEFAUVER. And in that way the platform would follow, to some extent, the expression of the voters in the primary which preceded?

Senator SMITH. That is right, more nearly so than having the convention before the primary, certainly. Many States have changed

their conventions to the date after the primary instead of the first for that very reason.

Senator KEFAUVER. And then the second point is the election of the President by popular vote, which is contained in sections 7 and 8 of your resolution, where if no candidate receives a majority of the votes for President and Vice President, your resolution provides for a runoff election?

Senator SMITH. That is right, in the general election just the same as in the primary.

Senator KEFAUVER. Do you think it would be an onerous task to require a candidate to secure 5 percent of the total registered votes in order to qualify? I believe you said that would amount to 688,327 signers.

Senator SMITH. No; that is 1 percent.

Senator KEFAUVER. That is 1 percent?

Senator SMITH. That is 1 percent, yes, of the total vote cast in the previous election. And that is for the candidate. Five percent is for the party. I have tried to make the requirement that the political party have a registered membership of more than 5 percent. That would avoid the splinter parties.

Senator KEFAUVER. If a candidate had enough strength to be considered an important or major candidate, he or she should be able to get 1 percent of the vote to qualify?

Senator SMITH. The Chairman is a better judge of that than I since he has covered this country very well. This is modeled after the Maine law.

Senator KEFAUVER. Which part of it is modeled after the Maine law?

Senator SMITH. Getting the primary petitions.

Senator KEFAUVER. 1 percent of the vote?

Senator SMITH. The 1 percent of the last vote. What I am trying to get away from is a minority President, Mr. Chairman.

Senator KEFAUVER. May I ask, Senator Smith, have you discussed this plan with political scientists and people knowledgeable in politics?

Senator SMITH. Yes; with quite a good number of people. I have been working on it for a long time and was cosponsor of early resolutions, as you have been.

Senator KEFAUVER. I know there is a great deal of interest in the general subject, but this is very refined and an all embracing resolution that you have filed. Is it being discussed in the colleges and universities of the Nation?

Senator SMITH. Yes; I think it is. I recently used it for a lecture at Cornell University and found a great deal of interest in it among the students who were in attendance as well among the faculty. We have had a great deal of correspondence from over the country on it.

Senator KEFAUVER. I think there is a great deal of merit in an endeavor to deal with all of these interrelated problems in one resolution, although I contemplate that it might make it a little more difficult to get ratification by the legislature of other States.

Senator SMITH. I quite agree with you, Mr. Chairman, but my thought in this was that if I could get it all in one package, and get it before your committee, get it before the full committee and perhaps

have general discussion across the country on the overall proposal, that we could make a little headway year by year, and point by point, eventually get some of the changes at least that I have recommended.

Senator KEFAUVER. I notice in section 12 that you give Congress the power to provide for the method of determining any dispute or controversy in connection with the votes for President and Vice President.

Senator SMITH. Yes; that is correct. In my overall statement, and I might read one paragraph, Mr. Chairman, as to an earlier question—paragraph as to the argument that Congress should not pass the direct election plan because the small States and other States would probably refuse to ratify it, I say this is a defeatist attitude; it is the stand pat, perpetuation of the status quo attitude, and "faint heart never won fair lady."

Senator KEFAUVER. Then the matter of holding the primary general election shall still be prescribed by each State or the legislature of each State?

Senator SMITH. That is right.

Senator KEFAUVER. Senator Smith, I am sure that you have considered past experiences, what would have happened had this resolution been part of the Constitution back in 1876 during the Hayes-Tilden election and others.

Have you made an analysis of that?

Senator SMITH. Yes; that is in my overall statement, Mr. Chairman, including the last election.

Senator KEFAUVER. What would have happened in some of these elections in the past?

Senator SMITH. If you will just let me refresh my memory here.

Mr. Chairman, talking about the last election, under the present system, and under all of the other proposals except one, Mr. Nixon would have won the election. Mine would have required a runoff because there was not a clear-cut majority. I come to this conclusion by the six electors in Alabama who were unpledged. My figures show that Nixon would have won by about 50,000.

Senator KEFAUVER. But under Senate Joint Resolution 1 a runoff would have been required?

Senator SMITH. Yes, and no one knows what the results would have been under those circumstances I am sure.

Senator KEFAUVER. Mr. Kirby, do you wish to ask Senator Smith some questions?

Mr. KIRBY. Senator Smith, as you doubtless know, Senator Mansfield also has a proposal for direct election, of which Senator Keating is a cosponsor.

Senator SMITH. Yes. I am greatly indebted to Senator Mansfield for letting me introduce mine first and getting No. 1.

Senator KEFAUVER. How do you manage to get a Senate Joint Resolution 1?

Senator SMITH. I worked at it. It was largely because of Senator Mansfield's kindness and courtesy in letting me go in first.

Mr. KIRBY. Senator Mansfield's resolution calls for ratification by conventions within the States, rather than by State legislatures, apparently feeling there might be some resistance in State legislatures. Would you consider that alternative?

Do you feel there will be resistance in the State legislatures?

Senator SMITH. I think there might be resistance in a convention. I have not considered it enough to give you any real worthwhile answer. Either way would be acceptable to me. It is a question of which one could be worked out.

Senator KEFAUVER. Well, the legislature is a convention in a way. The machinery for the election has already been set up. I agree with you that it is probably as amenable to a legislature as a convention would be.

I believe in the history of our amendments, that is most of them have been ratified by legislatures. Is that not true?

Mr. KIRBY. All of them except repeal of the 18th.

Senator Smith, your resolution also requires that voters register with a particular party and vote only in the primary in that party, does it not?

Senator SMITH. That is correct.

Mr. KIRBY. Do you feel there would be a necessity for a national election law with the national aspects of the primary and general elections to prescribe voting frauds, selection of voting officials, and that sort of thing?

Senator SMITH. It would not be necessary, Mr. Kirby, as I see it, although experience might indicate it would be more practical.

Mr. KIRBY. The chairman has a proposal aimed at nomination by primaries which merely authorizes the Congress to legislate for primaries. Would you favor a broad approach such as that as an alternative to your proposal?

Senator SMITH. Yes, indeed.

Mr. KIRBY. I believe your resolution keeps the requirement that a qualification for voters shall be those in each State requisite for the most numerous branch of the State legislature——

Senator SMITH. That is right.

Mr. KIRBY. One criticism in the past of direct election has been that it would cause the States to go to the lowest common denominator, with each one trying to get out the largest number of popular votes that it could. Do you see a danger, and do you care to comment on it, from the lack of uniform voting qualifications in the States?

Senator SMITH. No; I think the objective would be to get out as large a vote as we could, but always keeping an eye on the qualifications and uniformity of election laws. I think anyone's objective is to get a large vote.

I personally feel that that is what we should be doing, and watching the qualifications.

Senator KEFAUVER. I believe we have a number of resolutions before us, lowering the voting age requirement, and making it uniform at 18 instead of leaving that to the States. Two States have 18, one has 19, and another has 20. But that is not a matter that is dealt with in your resolution.

Senator SMITH. No, it is not. I have been for lowering the voting age to 18. I voted for it, Mr. Chairman, when the matter came before us in the Senate.

Senator KEFAUVER. I believe the matter came up about 5 years ago in a resolution of the late Senator Langer from North Dakota.

Senator SMITH. That is right.

Senator KEFAUVER. For some reason it did not pass the Senate.

Senator SMITH. That is right.

Senator KEFAUVER. Maybe that is the reason you leave it out of your resolution, Senator Smith?

Senator SMITH. No. I did not think this resolution was the place for it.

Senator KEFAUVER. Senator Dodd, I know that you want to discuss this matter with Senator Smith.

Senator DODD. I am very interested. I think Senator Smith has presented us with a very constructive, valuable idea. I have some different ideas, as you know, but I think there is much to commend in Senator Smith's resolution.

Senator SMITH. Thank you, sir.

Senator DODD. Pretty near anything Senator Smith says is of value or importance, I think.

Senator KEFAUVER. In that the chairman certainly agrees.

Senator SMITH. Thank you very much, you are very kind.

Senator KEFAUVER. We appreciate your coming.

Senator SMITH. I appreciate this opportunity of coming in here, and I appreciate more having my overall statement filed with you, in the hands of your very capable staff member and counsel, so that it may be given full consideration as a part of the program.

Senator KEFAUVER. We will see that the colloquy that has gone on here follows the overall statement that you have filed.

Senator SMITH. Fine. Thank you very much.

Senator KEFAUVER. Senator Dodd.

Senator DODD. Mr. Chairman, in the interest of time, I will not read in full a statement I have prepared having to do with the resolution I introduced concerning the reform of the electoral college, but I ask that it be included in the record.

Senator KEFAUVER. Senator Dodd, your resolution is Senate Joint Resolution 4, which has been made a part of the record, and has to do with the amendment of the Constitution relative to the election of President and Vice President.

Senator DODD. That is right.

Senator KEFAUVER. We are glad to have your statement as part of the record at this point, and we appreciate your interest in preparing a statement of your views.

STATEMENT OF HON. THOMAS J. DODD, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator DODD. The 1960 presidential election has spotlighted once again the antiquated, badly corroded, and dangerously inadequate machinery which Americans continue to use in the election of the most important and influential officeholder in the world. The razor-thin margin dividing the popular votes received by President Kennedy and Mr. Nixon, the election of so-called unpledged electors in several Southern States, and cries of "fraud" in several pivotal States, which if proven, could have reversed the outcome of the election, have rekindled the flame of controversy over the reform of the electoral college method of electing the President of the United States.

Immediately following the election and for weeks thereafter, congressional mailbags bulged with letters demanding electoral college

reform, and editorial comment throughout the country emphasized the need for prompt remedial action.

The glaring defects apparent in the electoral college system are no reflection on the wisdom of the Founding Fathers. The plan which they devised for the election of a Chief Executive was a compromise, designed to sell and cement the Federal system; it was tailored for a society in which rapid travel and communication was impossible, and for an electorate which was largely illiterate and uninformed.

Fortunately, these conditions no longer persist. In addition, the most pernicious aspect of the present system, the so-called unit system of casting all of the electoral votes of a State en bloc for the candidate receiving a plurality in that State, was far from the original plan of the drafters of the Constitution.

The Constitutional authors had intended that each State should choose its most distinguished citizens as electors, and that the electors would then deliberate and vote as individuals in choosing a President. The unit rule was grafted onto the system prior to the Civil War, and has controlled every presidential election during the past 100 years. Three factors have contributed to its perpetuation: the power of State legislatures to specify the method of choosing presidential electors; the fact that a "safe" State under the unit rule can deliver the entire electoral vote of the State for its candidate instead of merely a large proportion thereof; and the obvious political advantage of a State employing the unit rule over States refusing to adopt it.

A number of the major objections to the present electoral college system are traceable directly to the unit rule. Under the system, minority popular votes not only are not counted, but they are actually counted for the opposition. As Senator Thomas Hart Benton, of Missouri, said in 1824:

> To lose their votes is the fate of all minorities, and it is their duty to submit; but this is not a case of votes lost, but of votes taken away, added to those of the majority, and given to a person to whom the minority is opposed.

The patent unfairness of this procedure needs no further comment.

In large, pivotal States which are fairly evenly divided between the parties, the unit system inflates the influence and bargaining power of splinter parties and small minority groups far beyond any legitimate weight, and invites domination of presidential campaigns by small, organized, well-disciplined pressure groups.

The emphasis on large, solid blocs of electoral votes is also an invitation to fraud, since juggling of a few votes can swing the electoral votes of an entire State, and perhaps an entire election, as claimed by some Republicans in Illinois and Texas following the 1960 presidential election.

This same stress on large blocs of electoral votes leads almost invariably to the selection of presidential candidates from large States, foreclosing the election of gifted men and strong leaders from less thickly populated areas. In our tense modern world, such deliberate wastage of valuable human resources is unthinkable.

The winner-take-all emphasis of the unit rule has also had a severe dampening effect upon the development of a healthy two-party system in States which are clearly "safe" for either party. There is little incentive for the Republican Party to campaign seriously in Georgia, or for the Democratic Party to intensify its efforts in Vermont, know-

ing beforehand that all of the State electoral votes will be cast for the majority party regardless of the intensity and quality of their own campaign.

This feeling of futility in the ranks of the minority party is matched by an air of complacent apathy within the majority party. The result is an embarrassingly small voter turnout which does nothing to enhance the picture of American democracy before our free world friends and our Communist adversaries.

Criticism of the present electoral system is not limited to the problems created by the unit rule, however. The complications inherent in the operation of the system and the varying complexity of the ballots used for the selection of electors in many States have led the American people in increasing numbers to feel that some sleight-of-hand small print is depriving them of a direct and meaningful voice in the election of a President.

Even after almost 200 years of operation, the actual mechanics of the present system are relatively unknown and misunderstood. The electorate is confounded, and to some extent frustrated, by a system which translated a sixteen one-hundredths of 1 percent plurality of the popular vote into an 84-electoral-vote plurality in electing President Kennedy by an electoral count of 303 to 219 in 1960.

And the fact that it remains quite possible for a President to be elected under the present system by a clear majority of electoral votes despite the fact that he actually received fewer popular votes than his opponent remains a cause of puzzlement and grave concern.

More serious, however, and more blatantly unfair, is the machinery provided under the present system for resolving doubtful elections. Election of a President when no candidate receives a majority of the electoral votes is thrown into the House of Representatives. Each State delegation is given one vote, regardless of the size of the State or the delegation, and the vote of evenly split delegations is not counted at all.

This totally unrepresentative system can completely distort the popular will in the selection of a President, and has done so on at least one occasion in the past.

Quite clearly these defects and criticisms are not new. Following each close and hotly contested election they have been repeated, reemphasized, and restudied, and throughout the years a series of remedial plans have been developed. The amendment to the Constitution of the United States which I have introduced (S.J. Res. 4) is drawn from these previous proposals and represents what I believe to be the soundest approach to a difficult problem.

The system which it embodies, known as the proportional distribution plan, was first introduced in Congress in 1877, and was actually passed by the Senate, in essentially its present form, in 1950. Just prior to the 1960 election, in April 1960, a Gallup poll showed 50 percent of the population favoring the proportional distribution plan, 28 percent opposed to a change, and 22 percent with no opinion. Following the election, the portion in favor of a change is almost certain to have increased significantly.

The amendment which I have introduced creates a system for the election of a President which is simple in both concept and operation, and easily understood by the average voter. Under its provisions the

electoral college is abolished, but the electoral vote is retained, with each State continuing to be credited with one vote for each of its Representatives and Senators.

Following a presidential election, the electoral vote in each State is apportioned among the candidates in accordance with the number of popular votes which they receive, instead of on the present winner-take-all basis. The candidate with the most electoral votes throughout the Nation is elected President if he has received at least 40 percent of the electoral votes.

In the unlikely event that no candidate receives more than 40 percent of the electoral vote, the President is selected from the persons having the two highest numbers of electoral votes by the Members of the Senate and House of Representatives sitting in joint session and voting individually. A majority of the votes of the combined authorized membership of the Senate and the House of Representatives is necessary for a choice.

This is a system which the American people can understand and respect. Each voter can readily see that his vote has a direct effect upon the outcome of the election, and will not and cannot be counted against the candidate of his choice. The innate fairness and equity of the system is buttressed by Gallup poll evidence of the fact that it seems fair and normal to the average citizen.

The middleman elector is eliminated, together with the very real possibility of election manipulation by State legislatures. Since these bodies have complete control over the method of selection of electors, they may, if they like, choose the electors themselves, perhaps even after the election but before the electoral vote as threatened by Louisiana in the 1960 election.

Death, incapacity, or disqualification of electors would no longer be a factor, and the possibility of a natural disaster preventing the casting of votes by some or all of the electors in a given State on the designated day would also be removed.

In additional to these benficial effects, the proportional distribution system which I propose will provide a series of remedies for existing defects, and a number of advantages over existing methods, which lead me to urge strongly its immediate adoption and submission to the American people for their approval.

(1) Under most circumstances the proportional distribution system will prevent election of a candidate receiving less than a plurality of the popular vote. Such an event could only occur if one candidate picked up most of his electoral votes in States where the number of voters relative to the number of electoral votes is low, and with the proportional system in effect a clean sweep of those States, of the magnitude required to bring about such a result, is highly unlikely.

(2) With the elimination of the winner-take-all unit rule, the proportional distribution system would give equal weight to popular votes cast in large pivotal States and to those cast in States where one party is certain to win by a wide margin. Thus, no longer could a few votes in lower Manhattan or upstate New York tip the scales of the popular vote in New York and swing the entire electoral vote of the State to one candidate or another. Within the limits of existing inequalities in the representative weighting of the States, a few

70784 O—61—pt. 1——6

hundred votes in Manhattan, N.Y., would have exactly the same weight as an equal number of votes in Manhattan, Kans.

As a result, four currently existing dangers would be removed. First, the chance that the will of the people might be thwarted by fraudulent manipulation of the few votes necessary to shift the entire electoral vote of a closely contested, large, pivotal State would be substantially reduced. In order to influence the outcome of any but the closest of elections, fraudulent conduct would have to be of monumental proportions. Only a very few electoral votes could be influenced by the most successful and widespread fraud in any single State.

Secondly, the possibility of a storm or flood or other disaster in a local party stronghold which could effect the vote sufficiently to tip the scales in favor of the opposite party and shift the entire electoral vote of a closely contested pivotal State would be eliminated.

Thirdly, the exaggerated influence of small, tightly knit, minority organizations and pressure groups upon the policies and activities of the major parties will be sharply curtailed. Under the proportional distribution system, the power of such groups to influence the outcome of a national election will depend solely upon their numbers and the effectiveness of their arguments upon other voters. No longer will they be able to blackmail party leaders with threats of their very real pivotal strength.

And fourthly, the choice of presidential candidates will no longer be limited to men from the large States. With the threat of losing entire blocs of electoral votes from large pivotal States removed, party leaders will be able to consider good men from any area of the Nation, north or south, rural or urban, on the basis of merit and political appeal alone.

(3) New life and vigor would almost certainly be breathed into the two-party system in America by the proportionate distribution plan. Since the number of electoral votes received by each party candidate in each State would depend entirely upon the total number of popular votes which he received in each State as compared with those received by his opponent, the plan would provide a powerful incentive for campaigning in every State, especially those presently considered as "safe" by either party and in which little or no campaigning is carried on under the present system.

Despite the tremendous impact of radio and television on modern campaign methods, voters in relatively safe States today have little opportunity to obtain and digest accurate information on campaign issues or to personally assess the relative merits of the candidates.

Under the system which I have proposed, no candidate will dare ignore any area of the country without running the risk of losing important electoral votes. This will mean, of course, that State party organizations will have to be strengthened and rebuilt and staffed with able leaders in every State in the Union.

No longer will mere delivery of a majority of the popular vote in a State be considered as a successful campaign. The highest possible favorable vote, contrasted with the lowest possible adverse vote, will be the goal of every State party organization, and the competition will be tremendous. This will lead directly, of course, to an improvement in the embarrassingly small turnout of American voters at the polls in presidential elections. In selling our American form of demo-

cratic government to the uncommitted and newly formed nations of the world, it is frequently difficult to explain the fact that many Americans apparently do not care about or believe in their own governmental system enough to take part in the election of their Chief Executive.

Under the proportional distribution system, the emphasis on overwhelming numbers as the basis for winning electoral votes will force political leaders to emphasize the need for getting out the vote in every campaign, and can only result in a vast improvement in the numbers of Americans participating directly in presidential elections.

The type of campaign required to win elections under this system can only be organized and carried out successfully if local workers are mobilized in force and are carefully coordinated by tightly knit national organizations. In the face of such party fronts, splinter parties will find barren ground in which to sow their seed.

They will, of course, be able to pick up a few electoral votes in States where their strength can be concentrated, but their hopes of winning an election are as small or smaller under proportional distribution as they are under the present system. And the few electoral votes which they manage to win will be poor payment for the loss of the highly magnified bargaining power which they presently enjoy in the pivotal States. No longer will they be able to dictate party policy in the fields of their special interest on threat of upsetting the balance in pivotal States by throwing their small, compact, highly organized vote to the opposition.

Their influence in party councils will be limited to the number of votes which they can deliver throughout the country, and to the cogency of their arguments in support of their position. Outside the party councils, their effect will be gaged solely upon their ability to convince the voters of the justice and desirability of their programs.

As a result, the major parties will be freed from the disproportionate pressure which such groups now can and do apply, and will be better able to formulate distinctive national policies designed to provide for the good of the greatest majority of the people of the Nation.

(4) Proportionate distribution of electoral votes in a presidential election would reflect more accurately the popular strength of the various candidates. The present system, with its winner-take-all allocation of electoral votes, carries a built-in distortion of popular support which leads to "landslide" election triumphs when popular support is only lukewarm.

In 1912, Woodrow Wilson, with only 42 percent of the popular vote, received 84 percent of the electoral vote. In 1936, Franklin Roosevelt received 98 percent of the electoral vote on the basis of 60 percent of the popular vote.

These are not isolated instances, but illustrations of the normal effect of the present system. This type of illusory electoral strength provides a questionable basis for the exercise of power, and could easily lead to an abuse of authority.

The system, once again, was not planned by the drafters of the Constitution with this effect in mind. In the interests of stability, they did provide for a slight distortion in favor of the smaller States by apportioning electoral votes on the basis of the number of representatives in both Houses of Congress.

The votes corresponding to the two Senators from each State weigh the scales slightly against the larger States. This advantage was probably necessary to secure the support of the smaller States for the original Constitution, and while at this point it may no longer be essential for the preservation of our Federal system, it still goes far toward prevention of feelings of dissatisfaction and injustice among the smaller States without appreciably damaging the rights or the powers of the larger States. It has therefore been retained in my proposal under the proportionate distribution plan.

(5) One additional feature of the present electoral college system remains undisturbed by the amendment which I have submitted. Voter qualifications under the Constitution are left entirely within the control of the States. There is still a great enough disparity among the cultural patterns in the various States of the Union to justify retention of this authority by the States. It is still essentially a local matter.

Even if this were not the case, as a matter of political reality, this is perhaps the worst time in the past half century to attempt to impose Federal controls upon voter qualifications, and any such attempt would almost certainly fail.

My amendment makes no change in the present system, and leaves this power where it rightly belongs, to the hands of the States.

(6) The last, and perhaps the most important, adjustment which is accomplished by the proportional distribution plan outlined in my amendment is the elimination of the grossly unfair method, provided at present, for the decision of elections which are thrown into the House of Representatives because no candidate receives a majority of the electoral votes.

Under this antiquated system, only Representatives are permitted to vote. This means that the large delegations from States such as New York, Pennsylvania, and California carry no more weight than the delegations from Idaho, Alaska, and Rhode Island. Under such a system, the will of the people can readily be perverted, as it was in the election of 1824, when Adams was elected President by the House despite the fact that Jackson received a plurality of more than 12 percent of the popular vote.

The continuing concentration of our population in large urban areas and the consequent growth in the proportionate strength of States encompassing such areas increases the blatant injustice of this system with each passing year. My amendment provides for the election of a President by both Houses of Congress, sitting jointly and voting individually, in the event that no candidate receives at least 40 percent of the popular vote. This type of vote reflects, with a much greater degree of accuracy, the popular will and will result, in most cases, in a decision acceptable to a majority of the voters of the Nation.

These, then, are the major considerations which have led me, after much deliberation, to propose the serious step of amending our Constitution in order to provide a sounder method for the election of our President. I have not taken this step lightly.

The proportionate distribution plan which forms the heart of my proposed amendment is not a perfect system, but its merits so far outweigh any objections which have been brought to my attention that I feel compelled to bring it before you for your consideration.

The present electoral college system is grossly unfair and unduly complicated, and must be replaced at the earliest opportunity. The proportional distribution plan, in my judgment, stands head and shoulders above any of the alternative solutions which have been formulated and provides a sound, easily understood, and equitably designed election plan. It is my conviction that it should be adopted, and soon. I earnestly solicit your support in this serious and important undertaking.

The CHAIRMAN. Thank you very much, Senator Dodd.

The committee is delighted to have with us this morning the distinguished senior Senator from Florida, Senator Holland, who has filed Senate Joint Resolution 58 proposing an amendment to the Constitution of the United States relative to the qualification of electors.

Senator Holland, the resolution has been made a part of the record. We appreciate your presence here this morning to discuss it.

STATEMENT OF HON. SPESSARD L. HOLLAND, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator HOLLAND. Thank you very much, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity, which you and your colleagues have given me, of appearing and testifying here today in support of Senate Joint Resolution 58, proposing an amendment to the U.S. Constitution, relating to the qualifications of electors. I have been joined in cosponsoring this resolution by the following 64 cosponsors.

And I note with a great deal of interest and appreciation that all of the members of the subcommittee, the distinguished chairman, Senator Kefauver, the Senator from Connecticut, Senator Dodd, and the Senator from Illinois, Senator Dirksen, and the Senator from New York, Senator Keating, are among the 65 who have joined the cosponsors. And I ask that the entire list be copied into the record at this place.

Senator KEFAUVER. Without objection, that will be done.

(The list of cosponsors referred to is as follows:)

Aiken
Allott
Anderson
Bartlett
Beall
Bennett
Bible
Boggs
Bridges
Burdick
Bush
Butler
Byrd of West Virginia
Cannon
Capehart
Carlson
Case of New Jersey
Chavez
Church
Cooper
Cotton
Curtis
Dirksen
Dodd
Engle
Fong
Gruening
Hartke
Hayden
Hickenlooper
Hruska
Humphrey
Jackson
Keating
Kefauver
Kerr
Kuchel
Lausche
Long of Hawaii
Long of Louisiana
Long of Missouri
Mansfield
McCarthy
McGee
Metcalf
Morse
Morton
Moss
Muskie
Neuberger
Pastore
Pell
Prouty
Randolph
Saltonstall
Schoeppel
Scott
Smathers
Symington
Wiley
Williams of Delaware
Williams of New Jersey
Yarborough
Young of North Dakota
Young of Ohio

With minor changes, Senate Joint Resolution 58 is identical to similar resolutions which I have introduced in every Congress beginning with the 81st.

The following Senators have cosponsored this proposal during the Congresses specified, and I ask that the lists of the cosponsors for the 81st, 82d, 83d, 84th, and 85th Congresses be copied into the record at this time.

Senator KEFAUVER. That will be done.

(The list of cosponsors is as follows:)

EIGHTY-FIRST CONGRESS

Holland (Florida)
George (Georgia)
Connally (Texas)
O'Conor (Maryland)
Tydings (Maryland)
Ellender (Louisiana)
Long (Louisiana)
Broughton (North Carolina)
Robertson (Virginia)

EIGHTY-SECOND CONGRESS

Holland (Florida)
Smathers (Florida)
George (Georgia)
Hoey (North Carolina)
Smith (North Carolina)
McClellan (Arkansas)
Fulbright (Arkansas)
Byrd (Virginia)
Robertson (Virginia)
O'Conor (Maryland)
Ellender (Louisiana)
Long (Louisiana)

EIGHTY-THIRD CONGRESS

Holland (Florida)
Smathers (Florida)
George (Georgia)
Hoey (North Carolina)
Smith (North Carolina)
Ellender (Louisiana)
Long (Louisiana)
McClellan (Arkansas)
Fulbright (Arkansas)
Robertson (Virginia)

EIGHTY-FOURTH CONGRESS

Holland (Florida)
Smathers (Florida)
George (Georgia)
Ellender (Louisiana)
Long (Louisiana)
McClellan (Arkansas)
Fulbright (Arkansas)
Ervin (North Carolina)
Scott (North Carolina)
Thurmond (South Carolina)

EIGHTY-FIFTH CONGRESS

Holland (Florida)
Smathers (Florida)
McClellan (Arkansas)
Ellender (Louisiana)
Long (Louisiana)

Senator HOLLAND. During the 86th Congress, the sponsors were substantially the same as the present sponsors of the resolution, with changes reflecting changes in the personnel of the Senate.

In fairness to the Senator from South Carolina, Mr. Thurmond, let me state for the record that he withdrew his name as a cosponsor of the measure in the 84th Congress soon after the bill was introduced.

Hearings were held by a subcommittee of this committee in the 81st, 83d, 84th, and 86th Congresses, and in each instance the hearing record was printed and is now available. In the interest of the economy and brevity in the record of this hearing, I shall not ask that materials printed at length in the record of those hearings be reprinted, but I shall, nevertheless, appreciate consideration of such materials just as if they had been reprinted here.

I should say, Mr. Chairman, that the records of the subcommittee will show the printed copies of those hearings in the preceding Congresses which I have just mentioned, and it seems to me it would be a waste of public funds to ask for the reprinting at this time, so I certainly hope that they will be made available both to the committee and to the Senate.

Senator KEFAUVER. Well, we have a supply of the records of these hearings of each of the Congresses you have referred to, Senator Holland. Particularly in the 86th Congress we had lengthy hearings on this resolution at which time a number of Senators, Governors, and high officials appeared or submitted statements. I think we do have an ample supply of the hearings of the last Congress which are available to all the Members of the Senate.

Senator HOLLAND. Thank you, Mr. Chairman. It is interesting to note that in the 81st and 83d Congresses, there was no opposition to the joint resolution in the hearings. In the 84th Congress, there were two opposition witnesses, the Honorable Thomas A. Wofford, then a Senator from South Carolina, and Clarence Mitchell, director, Washington Bureau, National Association for the Advancement of Colored People. In the 86th Congress, the Honorable John Stennis, our friend and colleage from Mississippi, appeared in opposition, as did Mr. Mitchell and Joseph L. Rauh, Jr., representing Americans for Democratic Action. Statements in opposition were submitted by, or in behalf of Senators Lister Hill, A. Willis Robertson, John Sparkman, Gov. J. Lindsay Almond, of Virginia, and Capt. John B. Minnick.

Mr. Chairman, I have stated these matters for the record because it is quite apparent that this resolution must be regarded as a moderate one since it has drawn fire and opposition only from the witnesses which are mentioned in the paragraph which I have just read, who come from both ends of the rainbow.

In 1956 and 1959, the subcommittees recommended that the proposed amendment be reported favorably by the full Judiciary Committee. On February 2, 1960, the Senate, by a vote of 72 to 16, incorporated this proposal into Senate Joint Resolution 39, then pending, relating to House vacancies and passed the amended resolution by a vote of 70 to 18. For tactical reasons, the House Judiciary Committee deleted the poll tax provision from the resolution. However, Chairman Emanuel Celler, in a statement on the House floor, pledged his full support for this amendment during the 87th Congress.

Mr. Chairman, I have long been interested in the poll tax as an impediment to voting. In 1937, as a Florida State senator, I participated in the successful fight to remove the poll tax as a requirement for voting in Florida. This action has, in my opinion, been beneficial to the State of Florida for two reasons. First, it has resulted in a great increase in the exercise of voting responsibilities by both the white and Negro people of our State.

And I want to make it clear that I am speaking now about the percentage of those participating. Because, of course, our State has grown greatly, and I would not want the record to indicate that it is only the increased number that I speak of as participants, but that it is also a greatly increased percentage.

When this proposal was on the Senate floor last year, I inserted at pages 1369 and 1370 of the Congressional Record for January 28, 1960, two tables showing the increase in registration in Florida over the years. I believe it is noteworthy that there was a marked increase in registration and voting immediately after the Florida poll tax was abolished.

Second, the abolition of the poll tax has contributed to clean politics in our State. It is a matter of common knowledge that in some counties there had previously been considerable exercise of control over local elections through the payments by some of the poll taxes of others. This means of undemocratic and corrupt control was terminated by the poll tax repeal.

The poll tax requirement is now limited to five States; namely, Alabama, Arkansas, Mississippi, Texas, and Virginia. It has been accorded far greater importance that it deserves. The fact of the matter is that the amount of poll tax now required to be paid in the several States is so small as to impose only a slight economic obstacle for any citizen who desires to qualify to cast a ballot. This requirement operates, of course, equally on citizens of all races and colors and is generally subject to important exemptions which limit its application, such as the exemption of veterans, women, and citizens beyond a certain age. Nevertheless, the question has remained a vexing one.

For the subcommittee's information, the votes of the five poll tax States in the 1960 presidential election were as follows:

State	Total vote	Percent of population over 21 voting
Alabama	570,225	31.1
Arkansas	428,509	41.1
Mississippi	298,171	25.5
Texas	2,311,845	41.8
Virginia	771,449	33.4
5 States, total	4,380,199	36.8

Mr. Chairman, may I digress long enough to say that one of the fine things already apparent from the introduction of Hawaii and Alaska to Statehood has been the very large particiption in elections by the citizens of those two States. And I remember that in the case of Hawaii the whole Nation was refreshed by the showing of almost complete participation by the citizens of that State in their elections last year.

Senator KEFAUVER. I remember that. Do you remember the percentage, approximately?

Senator HOLLAND. According to Senator Long of Hawaii, it was 93 and a major fraction percent of those registered who voted. In round numbers, 94 percent.

I have asked the Library of Congress to bring down to date its analysis of the proposed amendment's legal effect which appears on pages 12–14 of the hearings for August 17, 1959. At this point, I would like to insert this analysis into the record, if I may have consent to do so.

Senator KEFAUVER. Without objection, that will be inserted in the record.

(The material referred to follows:)

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., May 23, 1961.

To: Hon. Spessard Holland (Attention Mrs. Knight).
From: American Law Division.
Subject: Analysis of legal effect of Senate Joint Resolution 58, 87th Congress, 1st session.

The constitutions and statutes of the various States have been examined to determine the nature of such economic barriers to qualifying for voting as are now exercised in the States. These economic qualifications imposed by the States have been examined in the light of Senate Joint Resolution 58 introduced on February 28, 1961, by Senator Holland for himself and Senators Aiken, Allott, Anderson, Bartlett, Beall, Bennett, Bible, Boggs, Bridges, Burdick, Bush, Butler, Byrd of West Virginia, Cannon, Capehart, Carlson, Case of New Jersey, Chavez, Church, Cooper, Cotton, Curtis, Dirksen, Dodd, Engle, Fong, Gruening, Hartke, Hayden, Hickenlooper, Hruska, Humphrey, Jackson, Keating, Kefauver, Kerr, Kuchel, Lausche, Long of Hawaii, Long of Louisiana, Long of Missouri, Mansfield, McGee, Metcalf, Morse, Morton, Moss, Muskie, Neuberger, Pastore, Pell, Prouty, Randolph, Saltonstall, Schoeppel, Scott, Smathers, Symington, Wiley, Williams of New Jersey, Williams of Delaware, Yarborough, Young of North Dakota, and Young of Ohio, proposing to amend the Federal Constitution. The proposal is designed to eliminate any requirement that a tax be paid or property be owned in order to qualify for voting for presidential electors, U.S. Senators, or Representatives in Congress. The amendment would apply to both primaries and general elections.

Each State generally exacts the same qualifications requisite for voting in the primary as in the general election and for voting for State as for national officers.

Senate Joint Resolution 126 would obviously eliminate constitutional and statutory provisions requiring payment of a poll tax for voting for Federal officers, including presidential electors, in either the primary or general election in five southern States. The five States are:

Alabama, $1.50 (Constitution, art. VIII, sec. 178).
Arkansas, $1 (Constitution, art. III, sec. 1; amendment No. 8).
Mississippi, $2 plus $1 (Constitution, art. XII, sec. 241).
Texas, $1.50 (Constitution, art. VI, sec. 2).
Virginia, $1.50 (Constitution, art. II, sec. 21).

The States which have, in recent years, repealed laws making payment of a poll tax prerequisite for voting are:

North Carolina (Laws 1920 (ex.), ch. 93).
Pennsylvania (Constitution, art. VIII, amendment, Nov. 7, 1933; Laws 1933, No. 855).
Louisiana (Laws 1934, No. 230).
Florida (Laws 1937, ch. 18061; Laws 1941, ch. 20986).
Georgia (Laws 1945, No. 43).
South Carolina (Laws 1949, p. 773; Laws 1951, p. 24; amendment adopted November 1950).
Tennessee (amendment adopted November 1953).

The States of Texas and Virginia recently rejected, by a vote of the people of those States, proposals to eliminate the tax.

The proposed amendment would also nullify a permissive poll tax provision in Florida's Constitution, even though the legislature of this State has repealed the levy.

A provision in South Carolina's Constitution permitting a person to qualify either through ownership of property or meeting the educational requirement would be nullified.

The proposed amendment would possibly require new legislation in certain New England States. The Constitution of New Hampshire, article 28, states that a person excused from paying taxes at his own request is disqualified from voting. The proposed resolution would appear to nullify this provision.

In Maine, voting registers are made up in reliance on lists prepared by tax assessors. However, any eligible voter whose name did not appear in the tax list, thus transmitted, may be registered by applying in person to such boards.

In Massachusetts, a similar method is used to draw up the voting register, and the persons omitted must then show proof of their qualifications to vote.

In Vermont payment of poll taxes and old-age assistance taxes is a prerequisite to voting in town meetings (no mention of general elections).

It is questionable whether the laws of Maine, Massachusetts, and Vermont would be effected by the proposed resolution.

In Rhode Island constitutional and statutory provisions reducing the length of residence required for persons owning real estate would also be eliminated.

Several of the States have constitutional provisions disqualifying for voting "Indians not taxed" or "persons under guardianship." Indians have been granted citizenship by an act of Congress, and, though that does not grant them the right to vote, through State court decisions Indians are generally no longer disqualified from voting. Nevertheless, those provisions relating to "Indians not taxed" and such provisions relating to "persons under guardianship" when construed to mean "Indians not taxes" would violate the proposed amendment.

THE EXCLUSION OF INDIANS FROM VOTING

If not taxed:

New Mexico (art. VII, sec. 1; but see unreported State court decisions).
Washington (art. VI, sec. 1).

Under guardianship, as applied to Indians not taxed:

Arizona (art. VII, sec. 2; but see *Harrison* v. *Laveen* (1948), 67 Ariz. 337).
Massachusetts (amendment III).
North Dakota (art. V, sec. 127).
Rhode Island (art. II, sec. 4).
South Dakota (art. VII, sec. 8; code (1939) sec. 65.0801; but see *State* v. *Nimrod* (1912), 30 S.D. 239).

SAMUEL H. STILL, Jr., *Legislative Attorney.*

JANUARY 15, 1960.

Revised by Louis C. Woolf, Legislative Attorney.

Senator HOLLAND. Mr. Chairman, I call attention to six significant facts concerning this proposed amendment:

First, it is applicable both to primaries and other elections.

Second, it prohibits poll taxes only with reference to the right to vote for the specific Federal offices of electors for President or Vice President, Senators, and Representatives in Congress. It does not prevent the imposition of a poll tax as a prerequisite for voting for State or local officials or upon State or local issues. I emphasize this point, Mr. Chairman, because many of us who are cosponsors of this joint resolution strongly feel that the election of State and local officials and the making of decisions on strictly local matters, such as bond issues, tax millage questions, referendums, recall procedures, and the like, are properly and more effectively handled on the State and local level, and we would strenuously oppose any effort to control such matters by Federal law.

Third, the amendment prohibits Federal as well as State enactments so restricting the right to vote for these Federal offices. It is not beyond the realm of possibility that there will be a change of sentiment in Congress which would threaten the unrestricted exercise of voting rights for these officials.

In other words, this amendment would be operative against Congress as well as against the several States.

Fourth, the proposed amendment would prohibit any tax other than the ordinary poll tax as we know it from being prescribed as a prerequisite for voting for elective Federal officials.

We place that in, Mr. Chairman, because it is quite apparent from the historical record which has been printed in detail in the earlier hearing records before this subcommittee that many States have imposed taxpayment conditions other than poll taxes as a requirement for voting.

Fifth, the proposed amendment would prevent both the United States and the States from setting up any property qualifications as a prerequiste for participation in an election for these Federal officials, with the specific exemption of qualifications denying the right to vote to paupers or persons supported at public expense or by charitable institutions. This prevents nullification of the amendment's effect by resort to subterfuges in the form of property qualifications or other types of taxes.

I might add there, Mr. Chairman, that the historical record really shows that many States have required property qualifications as prerequisites for voting.

Sixth, the resolution includes the usual provision limiting the period of ratification to 7 years from the date of submission by the Congress.

Many good citizens have indicated their feeling that this subject matter should be dealt with by the passage of a Federal statute rather than through the adoption of a Federal constitutional amendment. Our position is concurred in by able constitutional lawyers from every section of the Nation, who believe and contend that the only legal way to deal with this question, other than through action by the States themselves, is by Federal constitutional amendment, and that action through Federal statute would clearly violate the provisions of article I, section 2, and of the 17th amendment of the Constitution, both of which state that electors for Federal officials in each State—

shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

Mr. Chairman, may I digress long enough to say that one of the ablest arguments made on this particular legal point, constitutional point, was made by our friend and former colleague the distinguished former Senator from Wyoming, Mr. O'Mahoney. And I am sure that the chairman of the subcommittee remembers that fact.

Senator KEFAUVER. Yes, I do remember it. His argument was thorough, persuasive, and I think we should at this point in the record refer to the place in the Congressional Record where this argument appears.

Senator HOLLAND. It not only is found in the Congressional Record, Mr. Chairman, but also in the records of the hearing of the Senate committee held in either the 80th or the 81st Congress. And I will assist the clerk in finding that reference.

(The reference mentioned follows:)

Senator O'Mahoney's speech was made in the 77th Congress on November 20, 1942. It appears in volume 88, part 7, of the Congressional Record at pages 9005–9014.

Senator HOLLAND. I think that it is worthy of mention that this is the only provision contained in the Constitution of the United States which appears twice and is stated each time in the same identical words. I think it is also worthy of note, that just as the framers of the Constitution in 1787 felt that they had worked out a formula which was sound and acceptable as a basis for inclusion in our fundamental law, the Constitution, so also the Members of Congress in 1912, after there were many more States in the Union than existed in 1787, felt that the formula was still sound for continued inclusion in the Constitution and, instead of making any effort to change it, they de-

cided to follow that time-honored formula and to reincorporate it in the identical words which I have quoted.

A number of arguments have been made that these constitutional provisions do not prevent the passage of a Federal anti-poll-tax statute. However, such arguments lose any force or effect which they might have when we study the voting laws of the Thirteen Original States as an indication of the meaning of the term "qualifications" as it was used by the Constitutional Convention of 1787 in section 2 of article I of the Constitution.

In my 1959 testimony before this committee, I inserted an exhaustive analysis of the voting laws of these States at that time, which appears on pages 23–29 of the 1959 hearings. This analysis shows beyond question that the State poll tax and property requirements for voting then in effect were clearly understood by the delegates from those States to the Constitutional Convention to constitute voting qualifications within the meaning of section 2 of article I. I also inserted into the record at pages 33–38 an analysis of the voting laws of a number of States in 1912 to show that State poll tax laws were clearly understood at that time to constitute "qualifications" for voting within the meaning of the 17th amendment. I shall appreciate the subcommittee's consideration of these analyses as part of the record of this hearing.

Senator KEFAUVER. I think, Senator Holland, that we should include in the record at this point the two insertions that you refer to in the previous hearings, the analysis which begins on page 23 of the hearings of August 1959 and the subsequent one you referred to on page 33.

Senator HOLLAND. Mr. Chairman, I appreciate the suggestion. I was not going to suggest that because of the amount of printing that would be involved, but I agree with the chairman that it will simplify getting at the real gist of these questions to anyone who is studying the record at this hearing—and I hope every Senator will—to have available the analyses referred to and which have now been included in the record.

Senator KEFAUVER. I will ask that they be included.

(The documents referred to follow:)

Because it is the only State which at the time had a poll tax requirement, I place first in the record two provisions of the constitution of 1784 of the State of New Hampshire. The whole of the constitution is available, if desired, for any reason, in the custody of the Library of Congress, which prepared these excerpts for me; but I will endeavor to shorten the record by placing in the record only those provisions which bear directly upon the use of the word "qualifications" or similar words and the prescribing by these constitutions of qualifications for electors to elect the most numerous branch of their State legislature.

I asked the Library of Congress not only to furnish me these quotations, but after I drafted them to then recheck them against the charters and against the original constitutions and the later constitutions which I refer to so there would be no question as to their accuracy. I do now state that check has been made.

NEW HAMPSHIRE

Mr. Chairman, I shall quote the provisions applicable to the election of the senate first because they are adopted by reference when it comes to prescribing for the more numerous branch of the State legislature:

"The Senate shall be the first branch of the legislature, and the Senators shall be chosen in the following manner, viz: Every male inhabitant of each town and parish with town privileges in the several counties in this State, of 21

years of age and upwards, paying for himself a poll tax, shall have a right at the annual or other meetings of the inhabitants of said towns and parishes, to be duly warned and holden annually forever in the month of March; to vote in the town or parish wherein he dwells, for the Senators in the county or district whereof he is a member.

"And every person *qualified* as the constitution provides shall be considered an inhabitant for the purpose of electing and being elected into any office or place within this state, in that town, parish, and plantation where he dwelleth and hath his home."

The word used there is "qualified," which I have italicized. For the convenience of the committee, I have underlined similar words in the quotations used throughout my statement.

Quoting later with reference to the House:

"The Members of the House of Representatives shall be chosen annually in the month of March, and shall be the second branch of the legislature.

"All persons *qualified* to vote in the election of Senators shall be entitled to vote within the town district, parish, or place where they dwell, in the choice of representatives."

The word "qualified" is used again.

Mr. Chairman, it is wholly futile for anyone to say, looking at that constitution, either that the poll tax was not known to the framers of the original constitution or that that was not within the purview of the qualifications for election of the most numerous branch of the State legislature, because to so hold would be to deny force and effect to the specific and express wording of the State constitution then in existence; that is, the New Hampshire constitution of 1784.

MARYLAND

Now, Mr. Chairman, I quote next with reference to Maryland:

"ARTICLE II. That the House of Delegates shall be chosen in the following manner: All freemen, above twenty-one years of age, having a freehold of fifty acres of land, in the county in which they offer to vote, and residing therein—and all freemen, having property in this state above the value of thirty pounds current money, and having resided in the county, in which they offer to vote, one whole year next preceding the election, shall have a right of suffrage, in the election of Delegates for such county; and all freemen, as *qualified*, shall on the first Monday of October, seventeen hundred and seventy-seven, and on the same day in every year thereafter, assemble in the counties, in which they are respectively *qualified* to vote, at the courthouse, in the said counties, or at such other place as the Legislature shall direct; and, when assembled, they shall proceed to elect, viva voce, four Delegates, for their respective counties, of the most wise, sensible, and discreet of the people, residents in the county where they are to be chosen, one whole year next preceding the election, above twenty-one years of age, and having, in the State, real or personal property above the value of five hundred pounds current money; and upon the final casting of the polls, the four persons who shall appear to have the greatest number of legal votes shall be declared and return, duly elected for their respective counties."

The chairman has noted, of course, the use of the word "qualified" in two places in the quoted provision of the Maryland constitution and has noted an alternative requirement much more sever than paying the poll tax, one that the elector must be a freeholder; the other that he must be a freeman having property above the value of the 30 pounds current money.

I call attention to the fact that the requirement of ownership of 500 pounds applies to the delegates and not to the elector. But it is crystal clear that such requisites as ownership of property were specifically—and that is a more difficult requirement than the requirement of payment of poll tax and a much more conservative one—comprehended within the meaning of the word "qualified" and the meaning of the word "qualifications" under this constitution of Maryland in 1776 and in force at the time of the framing of the Constitution of the United States.

NEW JERSEY

Next, the State of New Jersey. The constitution of 1776, article IV:

"That all inhabitants of this Colony, of full age, who are worth fifty pounds proclamation money, clear estate in the same, and have resided within the county in which they claim a vote for twelve months immediately preceding the election, shall be *entitled* to vote for Representatives in Council and Assembly; and also

for all other public officers, that shall be elected by the people of the county at large."

In that particular provision, Mr. Chairman, the word is "entitled," but article XIII which I now quote with reference to the same prerequisites uses the word "qualified." I now quote article XIII:

"That the inhabitants of each county, *qualified* to vote as as aforesaid, shall at the time and place of electing their representatives, annually elect one Sheriff, and one or more Coroners; and that they may reelect the same person to such offices until he shall have served three years, but no longer, after which, three years must elapse before the same person is capable of being elected again. When the election is certified to the Governor, or Vice President, under the hands of the six freeholders of the county for which they were elected, they shall be immediately commissioned to serve in their respective offices."

There can be no question, Mr. Chairman, that in that case as in the preceding ones, the word "qualified" is specifically used with reference to a property requirement or qualification.

SOUTH CAROLINA

Now, the State of South Carolina, and I quote out of the constitution of 1778 as follows:

"The *qualification* of electors shall be that every free white man, and no other person, who acknowledges the being of a God, and believes in a future state of rewards and punishments, and who has attained to the age of one and twenty years, and hath been a resident and an inhabitant in this State for the space of one whole year before the day appointed for the election he offers to give his vote at, and hath a freehold at least of fifty acres of land, or a town lot, and hath been legally seized and possessed of the same at least six months previous to such election, or hath paid a tax the preceding year, or was taxable the present year, at least six months previous to the said election, in a sum equal to the tax on fifty acres of land, to the support of this government, shall be deemed a person *qualified* to vote for, and shall be capable of electing, a representative or representatives to serve as a member or members in the Senate and House of Representatives, for the parish or district where he actually is a resident, or in any other parish or district in this state where he hath the like freehold. Electors shall take an oath or affirmation of *qualification*, if required by the returning officer."

The chairman has noted, I am sure, that the word "qualification" has twice been used, and the word "qualified" once used with reference to these various requirements, ownership of a freehold, ownership of a lot in town, actual payment of tax in the preceding year, obligation for payment of a tax equal to the tax on 50 acres of land in the present year and which has been due at least 6 months prior to the time of the election. So there could not be any question but that in South Carolina they understood the term "qualification" was applicable to the tax-paying requirement or the property-owning requirement or both.

NEW YORK

The next is the State of New York. I quote article VII and a part of article XII:

"That every male inhabitant of full age, who shall have personally resided within one of the counties of this State for six months immediately preceding the day of election, shall, at such election, be *entitled* to vote for representatives of the said county in assembly: if, during the time of aforesaid, he shall have been a freeholder, possessing a freehold of the value of twenty pounds, within the said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to this State: *Provided always*, That every person who now is a freeman of the City of Albany, or who was made a freeman of the City of New York or on before the fourteenth day of October, in the year of our Lord one thousand seven hundred and seventy-five, and shall be actually and usually resident in the said cities, respectively, shall be *entitled* to vote for representatives in assembly within his said place of residence."

That closes article VII. XII follows:

"That the election of Senators shall be after this manner: That so much of this State as is now parceled into counties be divided into four great districts: the southern district to comprehend the city and county of New York, Suffolk, Westchester, Kings, Queens, and Richmond Counties; the middle district to comprehend the counties of Duchess, Ulster, and Orange; the western district, the city and county of Albany, and Tryon County; and the eastern district, the counties of Charlotte, Cumberland, and Gloucester.

"That the Senators shall be elected by the freeholders of the said districts, qualified as aforesaid, in the proportions following, to wit: In the southern district, nine; in the middle district, six; in the western district, six; and in the eastern district, three. And it be ordained, that a census shall be taken, as soon as may be after the expiration of seven years from the termination of the present war, under the direction of the legislature; and if, on such census, it shall appear that the number of Senators is not justly proportioned to the several districts, that the legislature adjust the proportion, as near as may be, to the number of freeholders, *qualified* as aforesaid, in each district."

The word "qualified," I am sure, is noted by the chairman as applicable to those various property-owing taxpaying requirements.

MASSACHUSETTS

Next is the State of Massachusetts under the constitution of 1780, and I read briefly from it, from the provisions of article II:

"There shall be a meeting on the first Monday in April, annually, forever, of the inhabitants of each town in the several counties of this commonwealth, to be called by the selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be Senators and Councilors; and at such meetings every male inhabitant of twenty-one years of age and upward, having a freehold estate within the commonwealth of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the Senators for the district of which he is an inhabitant. And to remove all doubts concerning the meaning of the word "inhabitant," in this constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office or place within this State, in that town, district, or plantation where he dwelleth or hath his home.

"The selectmen of the several towns shall preside at such meetings impartially, and shall receive the votes of all the inhabitants of such towns present and *qualified* to vote for Senators * * *."

Obviously, they use the word "qualified" in the second paragraph with reference to the property requirements stated in the preceding paragraph.

PENNSYLVANIA

Now, with reference to Pennsylvania, Mr. Chairman, without unduly encumbering the record, I will simply insert the provisions of section 6 of that general portion of the constitution of 1776, styled "Plan or frame of government."

"SECTION 6. Every freeman of the full age of twenty-one years, having resided in this state for the space of one whole year next before the day of election for representatives, and paid public taxes during that time, shall enjoy the right of an elector; provided always, that sons of freeholders of the age of twenty-one years shall be *entitled* to vote although they have not paid taxes."

GEORGIA

In the case of Georgia, I quote from the constitution of 1777, article IX, as follows:

"All male white inhabitants of the age of twenty-one years, and possessed in his own right of ten pounds value, and liable to pay tax in this State, or being of any mechanic trade, and shall have been resident six months in this State, shall have a right to vote at all elections for representatives, or any other officers herein agreed to be chosen by the people at large; and every person having a right to vote at any election shall vote by ballot personally."

In this article, Mr. Chairman, the word "qualified" or "qualifications" is not used. Nevertheless, the fact that tax payment and property-ownership qualifications were found there is very clear.

NORTH CAROLINA

Next is North Carolina, and I quote into the record articles VIII and IX:

"VIII. That all freemen of the age of twenty-one years, who have been inhabitants of any one county within the State twelve months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for the members of the House of Commons for the county in which he resides.

"IX. That all persons possessed of a freehold in any town in this State, having a right of representation, and also all freemen, who have been inhabitants of any such town twelve months next before, and at the day of election, and shall have paid public taxes, shall be entitled to vote for a member to represent such town in the House of Commons: *Provided always*, That this section shall not entitle any inhabitant of such town to vote for members of the House of Commons, for the county in which he may reside, nor any freeholder in such county, who resides without or beyond the limits of such town, to vote for a member for said town."

They prescribe property requirements, but without the use of the word "qualified" or the word "qualifications." However, property requirements and taxpaying requirements are included.

VIRGINIA

The constitution of Virginia of 1776 simply incorporated the right of suffrage as it existed under the ancient charter and the acts of the assembly which had been passed prior to that time, under these words:

"The right of suffrage in the election of members for both Houses shall remain as exercised at present; and each House shall choose its own Speaker, appoint its own officers, settle its own rules of proceeding, and direct writs of election, for the supplying intermediate vacancies."

I am told by the research people in the Library of Congress that the acts of the earlier assemblies under the colonial charter had prescribed not only taxpaying requirements but also property-owning requirements, and that same were in existence and were incorporated in the setup of the new State when that constitution was adopted under the words that I have just read.

COLONIAL CHARTERS

Mr. Chairman, to conclude the list of the Thirteen States, the remaining three, Delaware, Rhode Island, and Connecticut, were all operating under colonial charters and had not adopted new constitutions at that time and the qualifications of their electors were fixed by statute. Delware established qualifications for voting in her constitution of 1792. That came just after the adoption of the constitution. Connecticut and Rhode Island did not adopt constitutions until 1818 and 1842, respectively.

In order, therefore, to determine the qualifications for voting in these three States—Connecticut, Delaware, and Rhode Island—at the time of their entry into the Union, an examination of the statutes of these States in force prior to such has been made for me by the Library of Congress, and the pertinent laws are set forth as follows:

CONNECTICUT

In 1769, in Connecticut, separate qualifications were established for voting for deputies or representatives to the general court (legislature), governor, and deputy governor (Laws 1769, pp. 45, 301), and for voting for town officers (Laws 1769, p. 240). Only freemen were eligible to vote and "An Act Relating to Freemen" set forth the requisites to become a freeman, as follows:

"That the Town Clerks in the several Towns in this Colony, shall enroll in their respective Offices, the Names of all such Persons in their respective Towns as are or shall be admitted Freemen of this Corporation, which enrollments shall be made by the direction of the Authority and Selectmen of the Town, in the open Freemen's Meeting, legally Assembled.

"That all such inhabitants in this Colony as have accomplished the Age of Twenty-one Years, and have the Possession of Freehold Estate to the value of Forty Shillings per Annum or Forty Pounds personal Estate in the General List of Estates in that Year wherein they desire to be admitted Freemen: and also are Persons of a quiet and peaceable Behaviour, and civil Conversation, may, if they desire it, on their procuring the Selectmen of the Town wherein such Persons inhabit, or the major Part of them, to certify that the said Persons are *Qualified* as abovesaid, be admitted and made Free of this Corporation, in case they take the Oath provided by Law for Freemen; which Oath any one Assistant or Justice of the peace is hereby impowered to administer in said Freemen's Meeting."

DELAWARE

Under a temporary act originally passed by the colonial legislature on June 13, 1772, chapter 207, but subsequently reenacted and made permanent (perpetual)

on September 2, 1775, the following qualifications for voting for representatives to the Delaware Assembly were established:

"SEC. 2. *Provided always*, That no inhabitants of this government, shall have right of electing or being elected, as aforesaid (election for members of assembly), unless he or they be natural born subjects of Great Britain, or be naturalized in England, or in this government, or in the province of Pennsylvania and unless such person or persons be of the age of twenty-one years or upwards, and be a freeholder or freeholders in this government, and have fifty acres of land or more well settled, and twelve acres thereof cleared and improved, or be otherwise worth Forty Pounds lawful money of this government clear estate, and have been resident therein for the space of two years before such election: And that every man who shall give his vote without being questioned as aforesaid, or that shall receive any reward or gift for his vote, or that shall give, offer or promise any reward to be elected, or shall offer to serve for nothing or less allowance than the law prescribes, shall forfeit Five Pounds, the one-half thereof to the Governor, and the other to him or them who will sue for the same in any court of record within this Government; and the person so elected shall be incapable to serve for that year."

The voting qualification in Delaware as thus enacted by the act of September 2, 1775, remained in effect until the ratification of the State's constitution of 1792. Under the constitution the qualifications for voting were fixed as follows in article IV:

"SECTION 1. All elections of Governor, Senators, and Representatives shall be by ballot; and in such elections every white free man of the age of twenty-one years, having resided in the state two years next before the election, and within that time paid a state or county tax, which shall have been assessed at least six months before the election, shall enjoy the right of an elector; and the sons of persons so *qualified*, shall between the ages of twenty-one and twenty-two years, be entitled to vote although they shall not have paid taxes."

Mr. Chairman, you will note that the word "qualified" was not used in the colonial charter, but that in 1792, in its first constitution, the State of Delaware does use the word "qualified."

RHODE ISLAND

In Rhode Island prior to admission in the Union a person in order to vote had to be admitted as a freeman and be enrolled as such. In order to be admitted as a freeman the following statutory requirement had to be met:

"SECTION 1. *Be it enacted by the General Assembly, and by the authority thereof it is enacted*, That the freemen of each respective town in this State, at any of their town meetings, shall and they hereby have full power granted them, to admit so many persons, inhabitants of their respective towns, freemen of their towns, as shall be *qualified* according to this act.

"SEC. 2. *And be it further enacted*, That no person whosoever shall be permitted to vote or act as a freeman in any town meeting in this State, but such only who are inhabitants therein, and who at the time of such their voting and acting are really and truly possessed, in their own proper right, of a real estate within this State, to the full value of one hundred and thirty-four dollars, or which shall rent for seven dollars per annum, being an estate in fee-simple, fee-tail, or an estate in reversion which *qualifies* no other person to be a freeman, or at least an estate for a person's own life, or the eldest son of such a freeholder: And that no estate of a less quality shall entitle any person to the freedom of this State."

It might be interesting to note, Mr. Chairman, that the first constitution of the State of Rhode Island was not adopted until 1842. In 1842 they drafted their first State charter. I call attention to this in order to tie in between 1787 and 1912, because in drafting their charter in article II, the State of Rhode Island used that article to describe the subject which they style "Of the Qualifications of Electors." Then in six sections they proceeded to outline the qualifications of electors and under that very word as stated there. I am not going to pursue the question further except to say that they even had more different kinds of property ownerships than did any other of the original States. Maybe it would be interesting to read part of that article.

"ARTICLE II

"OF THE QUALIFICATIONS OF ELECTORS

"SECTION 1. Every male citizen of the United States at the age of twenty-one years, who has had his residence and home in this State for one year, and in the

town or city in which he may claim a right to vote six months, next preceding the time of voting, and who is really and truly possessed in his own right of real estate in such town or city of the value of one hundred and thirty-four dollars, over and above all incumbrances, or which shall rent for seven dollars per annum, over and above any rent reserved, or in the interest of any incumbrances thereon, being an estate in fee-simple, fee-tail, for the life of any person, or an estate in reversion or remainder, which *qualifies* no other person to vote * * *."

You notice that not only did they use the word "qualifications" ahead of this, but just as they did in their colonial charter, they prescribe that this land which is owned in any of these multifarious ways by the elector must not qualify anybody else to vote. It can just qualify him, making it so clear that they regarded that requirement as a qualification.

* * * * * * *

Mr. Chairman, I thought it would be interesting to show affirmatively that at the time of the submission of the 17th amendment in 1912, just as in 1787, the word "qualifications" is found in the State constitutions and it is found as referring to this very thing, the payment of poll tax. In the case of one State, not a southern State, it is found with reference to a different sort of qualification which I will mention in a moment.

First, with reference to the Southern States, I mention the State of Texas calling attention to section 2, article VI. It is not necessary to quote it in full, Mr. Chairman, but it shows clearly that the words "qualification," "disqualifications," "qualified," "shall be deemed a qualified elector," are used. In other words, that is one of the qualifications. The words "disqualified," "disqualification," and "qualified" are all used there. Sections 2 and 3 show that the words "qualified," "qualification," and so forth were used with direct reference to poll-tax requirements in the State of Texas on the date of the submission of this amendment.

Incidentally, Mr. Chairman, the two Senators from Texas, Senators Joseph W. Bailey and Charles A. Culbertson, both voted to submit the amendment.

At this point I wish to insert in the record article VI from the constitution of Texas.

(The material referred to follows:)

"TEXAS

"ARTICLE VI—SUFFRAGE

"SECTION 1. The following classes of persons shall not be allowed to vote in this State; to wit:

"First: Persons under twenty-one years of age.

"Second: Idiots and lunatics.

"Third: All paupers supported by any county.

"Fourth. All persons convicted of any felony, subject to such exceptions as the Legislature may make.

"Fifth: All soldiers, marines, and seamen, employed in the service of the Army or Navy of the United States.

"SEC. 2. Every person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years and who shall be a citizen of the United States and who shall have resided in this State one year next preceding an election and the last six months within the district or county in which such person offers to vote, shall be deemed a qualified elector: *Provided*, That electors living in any unorganized county may vote at any election precinct in the county to which such county is attached for judicial purposes: *And provided further*, That any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election. Or if said voter shall have lost or misplaced said tax receipt, he or she, as the case may be, shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner the wife may pay the poll tax of her husband and receive the receipt therefor. The Legislature may authorize absentee voting. And this provision of the Constitution shall be self-enacting without the necessity of further legislation. [Sec. 2, art. 6, adopted election November 4, 1902; proclamation,

December 26, 1902; amendment adopted election fourth Saturday in July 1921.]

"SEC. 3. All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election, within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town: *Provided*, That no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relations thereto.

"SEC. 4. In all elections by the people the vote shall be by ballot and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box and the Legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more. [Sec. 4, art. 6, adopted election August 11, 1891; proclamation sec. 22, 1891.]

"SEC. 5. Voters shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

"ARKANSAS

"ARTICLE III—FRANCHISE AND ELECTIONS

"SECTION 1. Every male citizen of the United States or male person who has declared his intention of becoming a citizen of the same, of the age of twenty-one years, who has resided in the State twelve months, and in the county six months, and in the voting precinct or ward one month, next preceding any election, where he may propose to vote, shall be entitled to vote at all elections by the people. [See amendment No. 9; *Jones* v. *Floyd*, 129 Ark. 185, 195 S. W. 360. This section is superseded by Amendment No. 8.]

"AMENDMENT NO. 8—EQUAL SUFFRAGE

Supersedes Poll-Tax Amendment of 1908

"That Section 1, of Article III of the Constitution of the State of Arkansas, as amended by Amendment No. 9, adopted January the 14th, 1909, be amended so as to read as follows:

"'SECTION 1. Every citizen of the United States of the age of twenty-one years, who has resided in the State twelve months, in the county six months, and in the precinct, town, or ward, one month, next preceding any election at which they may propose to vote, except such persons as may have committed some felony be deprived of the right to vote by law passed by the General Assembly and who shall exhibit a poll-tax receipt or other evidence that they have paid their poll tax at the time of collecting taxes next preceding such election, shall be allowed to vote at any election in the State of Arkansas: *Provided*, That persons who make satisfactory proof that they have attained the age of twenty-one years since the time of assessing taxes next preceding said election and possess the other necessary qualifications, shall be permitted to vote: *And Provided further*, That the said tax receipt shall be so marked by dated stamp or written endorsement by the judges of election to whom it may be first presented as to prevent the holder thereof from voting more than once at any election. It is declared to be the purpose of this amendment to deny the right of suffrage to aliens and it is declared to be the purpose of this amendment to confer suffrage equally upon both men and women, without regard to sex: *Provided*, That women shall not be compelled to serve on juries.'

"SOUTH CAROLINA

"ARTICLE II

"SEC. 4. QUALIFICATIONS FOR SUFFRAGE.—The qualifications for suffrage shall be as follows:

"(a) RESIDENCE.—Residence in the State for two years, in the County one year, in the polling precinct in which the elector offers to vote four months: *Provided*, That ministers in charge of an organized church and teachers of public schools shall be entitled to vote after six months' residence in the State, otherwise qualified.

"[NOTE.—Amended by a joint resolution and an act: 1929 (36) 695; 1931 (37) 105, 246.]

(b) REGISTRATION.—Registration, which shall provide for the enrollment of every elector once in ten years, and also an enrollment during each and every years of every elector not previously registered under the provisions of this Article.

"(c) QUALIFICATION FOR REGISTRATION UP TO JANUARY 1898—LIST OF REGISTERED VOTERS.—Up to January 1st, 1898 all male persons of voting age applying for registration who can read any section in this Constitution submitted to them by the registration officer or understand and explain it when read to them by the registration officer, shall be entitled to register and become electors. A separate record of all persons registered before January 1st, 1898, sworn to by the registration officer, shall be filed, one copy with the Clerk of Court and one in the office of the Secretary of State, on or before February 1st, 1898, and such persons shall remain during life qualified electors unless disqualified by the other provisions of this Article. The certificate of the Clerk of Court or Secretary of State shall be sufficient evidence to establish the right of said Citizens to any subsequent registration and the franchise under the limitations herein imposed.

"(d) QUALIFICATION FOR REGISTRATION AFTER JANUARY 1898.—Any person who shall apply for registration after January 1st, 1898, if otherwise qualified, shall be registered: *Provided*, That he can both read and write any Section of the Constitution submitted to him by the registration officer, or can show that he owns, and has paid all taxes collectible during the previous year on property in this State assessed at three hundred dollars ($300) or more.

"(e) PAYMENT OF TAXES NECESSARY FOR VOTING.—Managers of election shall require of every elector offering to vote at any election, before allowing him to vote, proof of the payment thirty days before any election of any poll tax then due and payable. The production of a certificate or of the receipt of the officer authorized to collect such taxes shall be conclusive proof of the payment thereof.

"[NOTE.—Amended by a joint resolution and an act: 1920 (36) 695; 1931 (37) 105, 246.]

"(f) CERTIFICATE OF REGISTRATION.—The General Assembly shall provide for issuing to each duly registered elector a certificate of registration, and shall provide for the renewal of such certificate when lost, mutilated, or destroyed, if the applicant is still a qualified elector under the provisions of this Constitution, or if he has been registered as provided in subsection (c).

"TENNESSEE

"ARTICLE IV—ELECTIONS

"RIGHT TO VOTE FOR LEGISLATORS AND LOCAL CIVIL OFFICERS; POLL TAXES; MILITARY DUTY, AUTHORIZED ELECTION LAWS

"SECTION 1. Every male person of the age of twenty-one years, being a citizen of the United States, and a resident of this State for twelve months, and of the county wherein he may offer his vote for six months next preceding the day of election, shall be entitled to vote for members of the General Assembly, and other civil officers for the county or district in which he resides; and there shall be no qualification attached to the right of suffrage, except that each voter shall give to the judges of election, where he offers to vote, satisfactory evidence that he has paid the poll taxes assessed against him for such preceding period as the Legislature shall prescribe, and at such time as may be prescribed by law, without which his vote cannot be received. And all male citizens of the State shall be subject to the payment of poll taxes and the performance of military duty within such ages as may be prescribed by law. The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box.

"NORTH CAROLINA

"ARTICLE VI—SUFFRAGE AND ELIGIBILITY TO OFFICE

"SECTION 1. Every male person born in the United States, and every male person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote at any election by the people in the State, except as herein otherwise provided.

"SEC. 2. He shall have resided in the State of North Carolina for two years, in the county six months, and in the precinct, ward, or other election district in which he offers his vote, four months next preceding the election: *Provided*, That removal from one precinct, ward, or other election district to another in the same

county shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which he has removed until four months after such removal. No person who has been convicted, or who has confessed his guilt in open court, upon indictment, of any crime the punishment of which now is or may hereafter be imprisonment in the State's Prison, shall be permitted to vote unless the said person shall be first restored to citizenship in the manner prescribed by law.

"SEC. 3. Every person offering to vote shall be at the time a legally registered voter as herein prescribed and in the manner hereafter provided by law, and the General Assembly of North Carolina shall enact general registration laws to carry into effect the provisions of this article.

"SEC. 4. Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language; and before he shall be entitled to vote he shall have paid, on or before the first day of May of the year in which he proposes to vote, his poll tax for the previous year as prescribed by Article V, section 1, of the Constitution. But no male person who was on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: *Provided*, He shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for making a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section 2 of this article: *Provided*, Such person shall have paid his poll tax as above required.

"SEC. 5. That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts and to make them so dependent upon each other that the whole shall stand or fall together.

"SEC. 6. All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce.

"SEC. 7. Every voter in North Carolina, except as in this article disqualified, shall be eligible to office, but before entering upon the duties of the office he shall take and subscribe the following oath:

"'I, ————, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as ————. So help me, God.'

"SEC. 8. The following classes of persons shall be disqualified for office: *First*, all persons who shall deny the being of Almighty God. *Second*, all persons who shall have been convicted or confessed their guilt on indictment pending and whether sentenced or not, or under judgment suspended, of any treason or felony, or of any other crime for which the punishment may be imprisonment in the penitentiary, since becoming citizens of the United States, or of corruption or malpractice in office, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.

"SEC. 9. That this amendment to the Constitution shall go into effect on the first day of July, nineteen hundred and two, if a majority of votes cast at the next general election shall be cast in favor of this suffrage amendment.

"MISSISSIPPI

"ARTICLE 12—FRANCHISE

"SEC. 240. All elections by the people shall be by ballot.

"SEC. 241. Every inhabitant of this state, except idiots, insane persons, and Indians not taxed, who is a citizen of the United States, twenty-one years old and upwards, who has resided in this state for two years, and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered, as provided in this article, and who has never been convicted of bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement, or bigamy, and who has paid on or before the first day of February of the year in which he shall offer to vote, all poll taxes which may have been legally required of him, and which he has had an opportunity of paying according to law, for the two preceding years, and who shall produce to the officers holding the election satisfactory evidence that he has paid such taxes, is declared to be a qualified elector; but any minister of the gospel in charge of an organized church shall be entitled to vote after six months' residence in the election district, if otherwise qualified.

"ALABAMA

"ARTICLE VIII—SUFFRAGE AND ELECTIONS

"SEC. 177. Every male citizen of this state who is a citizen of the United States, and every male resident of foreign birth, who, before the ratification of this constitution, shall have legally declared his intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people: *Provided*, That all foreigners who have legally declared their intention to become citizens of the United States, shall, if they fail to become citizens thereof at the time they are entitled to become such, cease to have the right to vote until they become such citizens.

"SEC. 178. To entitle a person to vote at any election by the people, he shall have resided in the state at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the year nineteen hundred and one, and for each subsequent year: *Provided*, That any elector who, within three months next preceding the date of the election at which he offers to vote, has removed from one precinct or ward to another precinct or ward in the same county, incorporated town, or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal.

"GEORGIA

"ARTICLE II—ELECTIVE FRANCHISE

"SECTION I—CHAPTER 2-6—QUALIFICATION OF VOTERS

"2-601. 6395) PARAGRAPH I. ELECTIONS BY BALLOT; REGISTRATION OF VOTERS.—After the year 1908 elections by the people shall be by ballot, and only those persons shall be allowed to vote who have been first registered in accordance with the requirements of law. [Acts 1908, p. 27, ratified Oct. 7th, 1908.]

"In 1912 section 2-603 of the Constitution of Georgia (which constitution was superseded in 1945 by a New Constitution) was worded as follows:

" 'WHO ENTITLED TO REGISTER AND VOTE.—To entitle a person to resigster and vote at any election by the people, he shall have resided in the State one year next preceding the election, and in the county in which he offers to vote six months next preceding the election, and shall have paid all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877, that he may have had an opportunity of paying agreeably to law. Such payment must have been made at least six months prior to the election at which he offers to vote, except when such elections are held within six months from the expiration of the time fixed by law for the payment of such taxes.'

"[EDITORIAL NOTE.—The nine paragraphs of this Section were proposed by Acts 1908, p. 27, and ratified October 7, 1908. Prior to that time this Section consisted of only two paragraphs. Paragraph I was specifically repealed by the amendment of 1908. That paragraph provided that 'In all elections by the people, the electors shall vote by ballot.' Paragraph II of the original Constitution of 1877 provided as follows: 'Every male citizen of the United States (except as hereinafter provided), twenty-one years of age, who shall have resided in this State one year next preceding the election, and shall have resided six months in the county in which he offers to vote, and shall have paid all taxes which may hereafter be required of him, and which he may have had an opportunity of paying, agreeably to law, except for the year of the election, shall be deemed an elector: *Provided*, That no soldier, sailor, or marine in the military or naval service of the United States, shall acquire the rights of an elector, by reason of being stationed on duty in this State; and no person shall vote who, if challenged, shall refuse to take the following oath, or affirmation: 'I do swear (or affirm) that I am twenty-one years of age, have resided in this State one year, and in this county six months, next preceding this election. I have paid all taxes which, since the adoption of the present Constitution of this State, have been required of me previous to this year and which I have had an opportunity to pay, and that I have not voted at this election.' See note following § 2-603."]

"2-602. (6396) PAR. II. WHO SHALL BE AN ELECTOR ENTITLED TO REGISTER AND VOTE.—Every male citizen of this State who is a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in this Article, and possessing the qualifications provided by it, shall be an elector and entitled to register and vote at any election by the people: *Provided*, That no soldier, sailor, or marine in the military or naval services of the United States shall acquire the rights of an elector by reason of being stationed on duty in this State. [Acts 1908, pp. 27, 28, ratified October 7th, 1908.]

"[EDITORIAL NOTE.—This section was modified by Const. U. S., Amend. XIX See § 1-827 and 152/283 (109 S. E. 666).]

"2-603. (6397) PAR. III. WHO ENTITLED TO REGISTER AND VOTE.—To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and in the county in which he offers to vote six months next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeably to law. Such payment must have been made at least six months prior to the election at which he offers to vote, except when such elections are held within six months from the expiration of the time fixed by law for the payment of such taxes. [Acts 1908, pp. 27, 28, ratified Oct. 7, 1908; Acts 1931, p. 102, ratified November 8, 1932.]

"[EDITORIAL NOTE.—By the amendment of 1932 the provision, 'all poll taxes that he may have had an opportunity of paying agreeably to law,' was inserted in lieu of the provision, 'all taxes which may have been required of him since the adoption of the Constitution of Georgia of 1877, that he may have had an opportunity of paying agreeably to law.' See note following § 2-601.]

"2-604. (6398) PAR. IV. QUALIFICATIONS OF ELECTORS.—Every male citizen of this State shall be entitled to register as an elector, and to vote in all elections in said State, who is not disqualified under the provisions of Section II of Article II of this Constitution, and who possesses the qualifications prescribed in Paragraphs II and III of this Section or who will possess them at the date of the election occurring next after his registration, and who in addition thereto comes within either of the classes provided for in the five following subdivisions of this paragraph.

"1. All persons who have honorably served in the land or naval forces of the United States in the Revolutionary War, or in the War of 1812, or in the War with Mexico, or in any War with the Indians, or in the War between the States, or in the War with Spain, or who honorably served in the land or naval forces of the Confederate States, or of the State of Georgia in the War between the States; or,

"2. All persons lawfully descended from those embraced in the classes enumerated in the subdivision next above; or

"3. All persons who are of good character and understand the duties and obligations of citizenship under a republican form of government; or

"4. All persons who can correctly read in the English language any paragraph of the Constitution of the United States or of this State and correctly write the same in the English language when read to them by any one of the registrars, and all persons who solely because of physical disability are unable to comply with the above requirements, but who can understand and give a reasonable interpretation of any paragraph of the Constitution of the United States or of this State that may be read to them by any one of the registrars; or

"5. Any person who is the owner in good faith in his own right of at least forty acres of land situated in this State, upon which he resides, or is the owner in good faith in his own right of property situated in this State and assessed for taxation at the value of $500. [Acts 1908, pp. 27, 28, ratified October 7th, 1908.]

"VIRGINIA

"ARTICLE II—ELECTIVE FRANCHISE AND QUALIFICATION FOR OFFICE

"§ 18. QUALIFICATION OF VOTERS.—Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year, of the county, city, or town six months, and of the precinct in which he offers to vote, thirty days next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the general assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city, or town shall not deprive any person of his right to vote in the precinct from which he has moved until the expiration of thirty days after such removal.

"The right of citizens to vote shall not be denied or abridged on account of sex."

Senator HOLLAND. Beyond the technical requirements of constitutionality, I believe it is much better to submit the question to the "jury of the States" by means of a proposed constitutional amendment. This recognized the rights and responsibilities of the States instead of overriding State prerogatives by means of a Federal statutory enactment.

For the foregoing reasons, Mr. Chairman, I urge this subcommittee to recommend the proposed anti-poll-tax amendment for a favorable report. Although the poll tax question has been maximized far beyond its actual effect, the problem has been so widely discussed and has been so generally regarded as the imposition of an undemocratic handicap on minority groups in our Nation that it would be good public policy in my opinion, and in the interest of sounder democratic government to speedily move, through this proposed amendment, to bring a complete end to the imposition of the poll tax requirement as a condition to participation in Federal elections.

Thank you, Mr. Chairman, for permitting me to testify in favor of this proposed amendment.

Senator KEFAUVER. The committee is very grateful to you, Senator Holland, for this presentation and for the references you have given to the arguments as to why any property or poll tax requirement is not in the best interest of our country.

Senator HOLLAND. I thank you, Mr. Chairman, and I am exceedingly anxious that we bring this amendment up and submit it because I think that, just as the amendment affecting the District of Columbia was so speedily approved in recent action by the State legislatures, that we would find similar speedy approval by the State legislatures of this amendment.

I do not claim, Mr. Chairman, nor do I think, that the adoption of this amendment would automatically solve all problems in the fields of which we are thinking, but I think it would remove the most long-standing troublemaking provisions which have confronted us throughout the years. And I have consistently, and I do now, support the idea that all citizens of the United States who are not disqualified by some reason of conviction of crime or by some mental condition, or by some reasonable requirement of residence or age, should have the right and be encouraged to participate in the selection of a President, Vice President, and their representatives in Federal Government—the Senators and Representatives. And I think we should so restate the position of our country in its fundamental law, the Constitution, as to guarantee that right so far as this statement will do so.

Senator KEFAUVER. Senator Holland, in the hearing of August 1959, at page 47, there is a statement which I think should be included in the record at this point of the platforms of the Republican and Democratic parties of the past with reference to poll tax as a prerequisite for voting.

Senator HOLLAND. Mr. Chairman, I will be very happy to have that included, and I hope that we may ask the clerk of the committee to include similar provisions out of the later party platforms, if such there are. I am not sure whether this specific subject was dealt with, but I think it was always dealt with either in more general terms or in specific terms, and I ask that those quotations be likewise inserted.

Senator KEFAUVER. Very well, we will include those also.

(The document referred to is as follows:)

PARTY PLATFORMS

The Republican Party had the abolition of the poll tax as a platform plank in 1944, 1948, and 1952, as follows:

In 1944:

"The payment of any poll tax should not be a condition of voting in Federal elections, and we favor immediate submission of a constitutional amendment for its abolition."

I am glad to know that they apparently felt that voting in Federal elections was the only thing that should be covered by the amendment.

In 1948:

"We favor the abolition of the poll tax as a requisite to voting."

In 1952:

"We will prove our good faith by * * * Federal action toward the elimination of the poll tax as a prerequisite for voting."

There is no specific reference to the poll tax by name in the Democratic platforms of 1948 and 1952, but it is obviously referred to in the Democratic platform of 1948 in the following language:

"We call upon the Congress to support our President in guaranteeing these basic and fundamental American principles: (1) the right of full and equal political participation; * * *."

In other words, Mr. Chairman, the platform of your political party and mine, in 1948 stated as the first fundamental principle to which our party was pledged by the platform to protect first the right to full and equal political participation.

Also in the 1952 Democratic platform we find an approval of the removal of the poll tax in the following language:

"* * * we favor Federal legislation effectively to secure these rights to everyone: * * * (3) the right to full and equal participation in the Nation's political life, free from arbitrary restraints."

Democratic platform of 1960: "We will support whatever action is necessary to eliminate literacy tests and the payment of poll taxes as requirements for voting."

Senator HOLLAND. I thank you very much, Mr. Chairman.

Senator KEFAUVER. Senator Holland, may we ask you two or three questions?

As I remember, in some of the five States where the poll tax remains as a requirement, there is not only the payment of the poll tax, but it is accumulative, that is, you must have paid it over a period of a certain number of years. Do you recall offhand how that matter now stands?

Senator HOLLAND. The Library of Congress American Law Division tells me that Alabama law requires that all back poll taxes to 1901 be paid; that Mississippi requires payment for the 2 preceding

KANSAS STATE UNIVERSITY REFERENCE LIBRARY DEPARTMENT MANHATTAN, KANSAS

years; and that Virginia requires payment for the 3 preceding years. The Library was unable to advise me on Arkansas and Texas. However, the offices of Senators McClellan and Yarborough tell me that there is no cumulative requirement in their respective States; that it is sufficient to pay current poll taxes without paying back poll taxes.

Senator KEFAUVER. You have spoken of the increased participation by the voters of Florida and other States in presidential and Federal elections when the poll tax has been removed. I remember that when Kentucky eliminated its poll tax Tennessee still had a poll tax requirement, and although our populations were the same there were twice as many who voted, percentagewise, in Kentucky at that time as in my State of Tennessee. Since the poll tax has been eliminated the States have been almost the same in percentage.

Senator HOLLAND. Mr. Chairman, in the debate last year, page 1369 of the Congressional Record of January 28, 1960, I placed in the record tables from the report of the Civil Rights Commission showing the increased registration of the Negro population in our State. And I have referred to the fact and to those tables in my statement today.

Senator KEFAUVER. Would you like to have the table you have just referred to placed in the record again?

Senator HOLLAND. I think that would be a good idea, Mr. Chairman. And I think that also the tables on page 1370, which show the Florida registration statistics from the Civil Rights Commission report, might well be included in the record at this place.

Senator KEFAUVER. Without objection, that will be done.

Senator HOLLAND. Because it shows additional facts on that.

(The tables referred to follow:)

Florida registration statistics

County	Total population, 1950	White population over 21, 1950	Whites registered, 1958	Percent white population over 21 registered	Nonwhite population over 21, 1950	Nonwhites registered, 1958	Percent nonwhite population over 21 registered
Alachua	57,026	27,176	13,433	49.4	9,430	2,169	23.0
Baker	6,313	2,481	3,423	100.0	818	397	48.5
Bay	42,689	21,138	19,159	90.6	4,028	1,904	47.3
Bradford	11,457	4,883	4,535	92.9	1,408	770	54.7
Brevard	23,653	12,466	19,272	100.0	3,544	1,747	49.3
Broward	83,933	44,558	84,997	100.0	12,234	7,607	62.2
Calhoun	7,922	3,623	4,038	100.0	594	265	44.6
Charlotte	4,286	2,534	3,895	100.0	462	273	59.1
Citrus	6,111	2,975	3,576	100.0	879	400	45.5
Clay	14,323	7,226	5,402	74.8	1,230	910	73.9
Collier	6,488	2,688	4,164	100.0	1,402	327	23.3
Columbia	18,216	7,198	5,250	72.9	3,357	971	28.9
Dade	495,084	313,924	337,838	100.0	42,682	20,785	48.7
De Soto	9,242	4,965	3,995	80.5	1,229	915	74.5
Dixie	3,928	1,814	1,948	100.0	307	70	18.1
Duval	304,029	145,484	105,652	72.6	52,832	26,453	50.1
Escambia	112,706	52,167	51,956	99.6	14,521	8,077	55.6
Flagler	3,367	1,267	1,532	100.0	872	19	2.2
Franklin	5,814	2,492	2,897	100.0	904	523	57.9
Gadsden	36,457	11,183	6,310	56.4	10,930	7	.6
Gilchrist	3,499	1,695	1,670	98.5	203	34	16.7
Glades	2,199	771	735	95.3	584	146	25.0
Gulf	7,460	3,070	3,234	100.0	1,129	502	44.5
Hamilton	3,981	2,893	3,805	100.0	1,983	512	25.8
Hardee	10,073	5,764	4,303	74.7	404	292	72.3
Hendry	6,051	2,625	2,339	89.1	1,034	563	54.4
Hernando	6,693	3,301	3,248	100.0	869	486	55.9
Highlands	13,636	6,542	8,922	100.0	2,054	934	45.5
Hillsborough	249,894	140,750	105,116	74.7	24,941	9,822	39.4
Holmes	13,988	7,219	6,698	92.8	326	140	42.9
Indian River	11,872	5,776	6,708	100.0	1,764	521	29.5
Jackson	34,645	12,994	9,440	72.6	5,843	2,090	35.8
Jefferson	10,413	2,395	3,038	100.0	3,272	432	13.2
Lafayette	3,440	1,701	1,902	100.0	176	0	0
Lake	36,340	18,360	16,362	89.1	5,110	1,363	26.7
Lee	23,404	12,506	14,359	100.0	3,017	1,132	37.5
Leon	51,590	19,281	15,054	78.1	11,213	4,089	36.5
Levy	10,637	4,200	5,139	100.0	2,107	413	19.6
Liberty	3,182	1,452	1,706	100.0	333	0	0
Madison	14,197	4,480	3,617	80.7	3,151	953	30.2
Manatee	34,704	18,836	17,293	91.8	4,425	914	20.7
Marion	38,187	15,261	12,018	78.7	8,387	3,004	35.8
Martin	7,807	3,972	5,450	100.0	1,374	615	44.7
Monroe	29,957	17,117	9,856	57.6	2,043	1,648	80.7
Nassau	12,811	5,078	5,041	99.3	2,123	1,263	59.5
Okaloosa	27,533	14,396	15,321	100.0	1,177	684	58.1
Okeechobee	3,454	1,686	2,147	100.0	406	367	90.4
Orange	114,950	63,527	56,358	88.7	14,321	3,146	21.9
Osceola	11,406	7,214	7,102	98.4	958	354	36.9
Palm Beach	114,688	57,518	67,009	100.0	22,253	6,291	28.3
Pasco	20,529	11,528	13,097	100.0	1,713	670	39.1
Pinellas	159,249	108,183	134,223	100.0	12,118	4,610	38.0
Polk	123,997	62,211	55,761	89.6	15,492	5,599	36.1
Putnam	23,615	9,463	10,979	100.0	5,199	1,821	35.0
St. Johns	24,998	11,007	10,605	96.3	5,053	2,170	42.9
St. Lucie	20,180	9,073	11,179	100.0	3,732	1,893	50.7
Santa Rosa	18,554	9,259	10,390	100.0	928	749	80.7
Sarasota	28,827	17,520	20,915	100.0	2,896	683	23.6
Seminole	26,883	9,892	9,529	96.3	6,881	1,581	22.9
Sumter	11,330	5,044	4,216	83.6	1,703	574	33.7
Suwannee	16,986	6,769	5,312	78.5	2,606	397	15.2
Taylor	10,416	4,142	4,483	100.0	1,945	67	3.4
Union	8,906	3,842	2,598	67.6	2,435	0	0
Volusia	74,229	41,392	43,350	100.0	10,415	4,856	46.6
Wakulla	5,258	2,021	2,601	100.0	833	393	47.1
Walton	14,725	7,310	5,479	74.9	1,051	710	67.6
Washington	11,888	5,438	5,564	100.0	1,056	738	69.9
Total	2,766,305	1,458,716	1,448,543	99.4	366,797	144,861	39.5

NOTES

Population figures are from Bureau of Census, 1950.

Registration figures are from secretary of state of Florida, published regularly.

Population shifts, in migration, changes in age of population, or failure to strike the names of deceased or departed registrants have resulted in percentage calculations in excess of 100 registered in some counties. In such cases 100 percent is shown.

Additional Florida registration statistics for past years

County	Total population, 1950	Negro population, 1950	Negro registrants						
			1946	1948	1950	1952	1954	1956	1958
Alachua	57,026	16,551	1,192	1,964	2,152	2,159	2,829	3,153	2,169
Baker	6,313	1,546	32	103	97	113	186	361	397
Bay	42,689	7,165	525	1,770	1,194	2,207	2,434	2,012	1,904
Bradford	11,457	2,800	308	480	232	508	682	859	770
Brevard	23,653	6,001	608	780	1,805	2,042	1,780	2,160	1,747
Broward	83,933	21,359	685	1,825	2,200	3,542	4,720	6,958	7,607
Calhoun	7,922	1,119	2	36	0	58	130	231	265
Charlotte	4,286	672	231	194	194	178	240	268	273
Citrus	6,111	1,555	31	327	213	496	485	580	400
Clay	14,323	2,105	224	750	764	843	843	1,193	910
Collier	6,488	1,986	17	9	9	130	523	741	327
Columbia	18,216	6,124	171	223	338	745	966	1,645	971
Dade	495,084	65,392	5,310	7,666	15,510	18,580	20,155	19,048	20,785
De Soto	9,242	2,002	475	655	760	751	738	807	915
Dixie	3,928	562	58	128	133	241	91	181	70
Duval	304,029	81,840	12,420	14,685	25,717	21,350	25,969	27,368	26,453
Escambia	112,706	25,123	2,467	4,704	6,210	5,769	6,627	6,733	8,077
Flagler	3,367	1,534	5	5	2	2	10	13	19
Franklin	5,814	1,496	250	503	185	356	311	521	523
Gadsden	36,457	20,468	32	137	140	6	8	5	7
Gilchrist	3,499	346	11	10	8	10	11	29	34
Glades	2,199	898	28	172	209	262	261	262	146
Gulf	7,460	2,007	45	142	170	250	415	481	502
Hamilton	3,981	3,790	40	50	55	170	217	507	512
Hardee	10,073	750	12	187	210	280	282	375	292
Hendry	6,051	1,580	2	0	92	324	538	135	563
Hernando	6,693	1,539	90	235	216	396	467	622	486
Highlands	13,636	3,466	535	1,277	1,230	1,111	1,279	1,243	2,169
Hillsborough	249,894	38,315	2,177	6,660	7,959	5,772	5,103	8,856	9,822
Holmes	13,988	609	109	114	122	156	137	130	140
Indian River	11,872	2,962	45	119	232	276	294	427	512
Jackson	34,645	11,574	768	1,557	1,888	2,179	2,847	3,430	2,090
Jefferson	10,413	6,513	147	174	76	125	155	183	432
Lafayette	3,440	325	0	0	0	0	0	0	0
Lake	36,340	8,542	240	802	916	1,327	1,586	1,363	1,363
Lee	23,404	4,694	342	1,243	1,348	1,401	1,473	1,818	1,132
Leon	51,590	20,381	508	2,266	2,745	3,708	3,735	4,046	4,089
Levy	10,637	3,603	87	233	174	472	256	603	413
Liberty	3,182	581	0	0	0	0	0	1	0
Madison	14,197	6,477	0	0	0	0	681	1,010	953
Manatee	34,704	7,916	365	677	997	1,031	1,250	1,686	914
Marion	38,187	14,594	1,389	2,888	3,460	3,891	3,979	4,324	3,004
Martin	7,807	2,203	94	162	315	551	522	706	615
Monroe	29,957	3,221	497	827	902	1,239	1,218	1,652	1,648
Nassau	12,811	4,007	631	654	781	921	964	1,223	1,263
Okaloosa	27,533	2,198	24	195	321	306	413	606	684
Okeechobee	3,454	641	63	261	278	368	266	348	367
Orange	114,950	22,766	1,490	1,934	3,938	2,541	2,744	3,137	3,146
Osceola	11,406	1,492	130	344	203	296	244	358	354
Palm Beach	114,688	34,797	2,416	4,051	5,185	5,205	5,879	6,120	6,291
Pasco	20,529	2,776	160	327	364	651	637	624	670
Pinellas	159,249	18,712	1,514	2,963	3,244	3,673	3,524	3,477	3,610
Polk	123,997	25,577	1,888	3,478	4,478	3,935	3,710	4,989	5,599
Putnam	23,615	8,660	384	1,510	1,067	1,302	1,394	1,770	1,821
St. Johns	24,998	8,327	1,348	1,911	2,107	2,289	2,518	2,951	2,170
St. Lucie	20,180	6,394	406	954	1,158	1,648	1,482	1,813	1,893
Santa Rosa	18,554	1,584	4	92	155	516	628	730	749
Sarasota	28,827	4,611	465	574	711	586	725	783	683
Seminole	26,883	11,940	867	1,768	2,702	3,248	1,643	2,242	1,581
Sumter	11,330	3,052	112	209	184	480	559	790	574
Suwanee	16,986	4,985	248	238	309	381	475	565	397
Taylor	10,416	3,181	110	107	113	109	108	91	67
Union	8,906	3,231	0	1	0	0	0	0	0
Volusia	74,229	16,385	2,847	5,673	5,740	2,433	4,485	5,761	4,856
Wakulla	5,258	1,627	2	65	31	158	144	345	393
Walton	14,725	1,958	303	558	264	725	819	954	719
Washington	11,888	2,119	204	624	564	810	611	733	738
Total	2,766,305	605,246	48,141	85,230	115,415	120,913	130,405	148,236	145,036

NOTES

Population figures are from U.S. census, 1950.
Registration figures are from Florida secretary of state, published regularly.

Senator HOLLAND. Mr. Chairman, I have been so busily engaged this year that I have not been able to bring those figures to date through the 1960 election, and I have not felt that a comparative situation as between my State and other States is either necessary or in good taste. But I do want the record to show that the participation in our State last fall was by far the largest, not only by number of votes, but by percentage, that we have ever had. In other words, the thing is cumulative, the added participation gets greater as time goes along when there is encouragement instead of obstruction. And our total vote in the presidential election last year was very close to 1,550,000, which was a comparatively large vote for us, both from the standpoint of numbers and percentages.

Mr. Chairman, I am so sure that with us the adoption of this change, this reform, has been helpful continuously since we adopted it in our State that I just make that statement as a statement of fact. It has been helpful to us in having cleaner government, in having greater participation in voting, and in having sounder satisfaction on the part of our people with their participation in determining governmental questions.

Senator KEFAUVER. Senator Holland, you have been the distinguished Governor of Florida, and you have been interested in clean and responsible politics. You have made the statement in your prepared statement that the elimination of the poll tax as a requirement for voting does bring much cleaner and more responsive government to the State.

Senator HOLLAND. Mr. Chairman, that is my feeling, and I am sure that it has proven to be true in Florida.

Now, under this amendment, much as I would like to see the five poll tax States move in the same direction as your State has moved and my State has moved and other States which previously had the poll tax, in completely knocking out the poll tax requirement, we still recognize the fact that there are some local questions involved which people locally should have the right to pass upon. It is my insistence through this amendment that those local questions ought not to affect the right of citizens to vote in Federal elections and to help name their President and their Vice President, their Senators and their Representatives.

I think that it is the right thing to do to remove impediments to voting. I think it makes for good sound expression of people's opinion and for good, sound participation in government and for stilling the criticisms and feelings of discrimination in people's minds which results when they are discouraged from voting and a price is put upon the exercise of their right of suffrage.

Senator KEFAUVER. Mr. Kirby, do you wish to ask Senator Holland any questions?

Mr. KIRBY. Just one point, Mr. Chairman.

Senator Holland, since the agenda was made for these hearings Senate Joint Resolution 81 by Senator Clark has been introduced which also purports to abolish the poll tax as a requirement for voting. As I examine them, I see only one minor distinction between the two. Section 1 of Senate Joint Resolution 81 recites "election for President or Vice President or electors for President or Vice President" and your proposal recites "election for electors for President and

for Vice President." Do you regard that as a substantial difference between the two proposals, Senator?

Senator HOLLAND. I was advised by my legislative assistant of that minor difference, after having had a conference with the distinguished Senator from Pennslyvania, Mr. Clark. He told me, and he evidently thinks, that the two amendments are exactly alike because at the time we discussed it he so stated.

Mr. Chairman, I have not had a chance to study any possible differences that might result from this small change in wording, but I have a good reason for hoping that the amendment as introduced by myself and many others will be reported out. Because I have the firm commitment of the chairman of the Judiciary Committee in the House, not only stated by him on the floor, but again renewed in correspondence and in conversation this year, of his willingness to support the identical resolution which we reported last year and voted. And I would not want to change the slightest my commitment to him and will try to get over to him exactly the same amendment. And if they wish to put in this small change, if it is a change, why that is another question.

But as far as I am concerned, I want to do my utmost to give him exactly the same wording which he has committed himself so strongly and so unswervingly to support. And I hope we can be in position to do just that.

Mr. KIRBY. Well, in actual fact there are seven additional Senators who are committed to the principle of your resolution?

Senator HOLLAND. That is right. Sixty-five Senators joined me in this introduction.

Mr. KIRBY. Are there seven additional Senators counting Senator Clark and the six cosponsors of his resolution, who are now sponsoring poll tax abolition along with you.

Senator HOLLAND. Well, I believe most of them are cosponsors of our resolution.

Senator KEFAUVER. The cosponsors of Senate Joint Resolution 81 by Senator Clark and Senator Hart are——

Senator HOLLAND. All right. Senators Clark and Hart are not on the list of 65.

Senator KEFAUVER. Senator Williams of New Jersey.

Senator HOLLAND. He is on the list of 65.

Senator KEFAUVER. Senator Long of Missouri.

Senator HOLLAND. He is on the list of 65.

Senator KEFAUVER. Senator Humphrey of Minnesota.

Senator HOLLAND. He is on the list of 65.

Senator KEFAUVER. Senator Gruening.

Senator HOLLAND. He is on the list of 65.

Senator KEFAUVER. Senator Symington.

Senator HOLLAND. He is on the list of 65.

Senator KEFAUVER. So there seems to be only two more.

Senator HOLLAND. That will raise the total number who are on record as supporting this type of amendment to 68. Including myself there are 66 on my amendment.

But I would like to say this, Mr. Chairman, without at all indicating the names, because Senators will have to take their own position:

seven or eight additional Senators told me that they would be very happy to vote for this amendment, and the record shows that some, or all of them, voted for it last year. But they had reasons which they recited to me as to why they did not want to go into joint sponsorship. And that includes Senators from all parts of the country. So that I have no doubt that the overwhelming majority of the Senate favors, as shown by the vote last year, the submission of this amendment, and I do hope that the able chairman will be able to expedite the report of this amendment.

Last year you will recall while the subcommittee reported the amendment favorably, the full committee did not take such action, and we had to move to attach it to another pending amendment which, by the way, was offered by the distinguished chairman of the subcommittee.

This year I hope we will have the favorable report of the full committee to support our efforts.

Senator KEFAUVER. Mr. Kirby has pointed out the only difference between Senate Joint Resolution 81 and Senate Joint Resolution 58 is that Senate Joint Resolution 81 says "for President or Vice President, electors for President and Vice President," and Senate Joint Resolution 58 says "for electors for President or Vice President or for Senator or Representative in Congress." Where yours says "electors for President or Vice President or for Senator or Representative in Congress," the other says "for President or Vice President" in addition.

Maybe Senator Clark contemplated that the elector system might be abolished some time in the future, and out of abundance of caution used the additional language.

Senator HOLLAND. That might be his purpose. And if that is his purpose, then the wording would be confined to its fulfillment, and I would have no objection.

My legislative assistant, however, tells me that since he feels that this would make it applicable to presidential preference primaries held by parties it would make necessary the use of two separate ballot forms in States and so forth, which would be unnecessarily expensive. It would also, I think, be quite unnecessary for another reason, and that is that I think registration and identification as a member of a party is required in all these States, all of these five States, which are affected by this tax.

I would hope for the reasons I have already stated, not because of any pride of authorship because I want us to get the job done, that the committee will report the amendment in the form which we have submitted here with 65 Senators joining, and with the commitment as I have stated, in the House, a very important source of the support of that specific amendment.

Senator KEFAUVER. Well, thank you very much, Senator Holland.

Senator HOLLAND. Thank you, Mr. Chairman.

Senator KEFAUVER. The committee is very happy to have with us this morning Senator Thruston Morton of Kentucky, who is a cosponsor of Senate Joint Resolution 12 by Senator Mundt, along with Senators Thurmond, McClellan, Hruska, and Blakley.

Senator Morton, we are glad to have you here.

STATEMENT OF HON. THRUSTON B. MORTON, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator MORTON. Thank you, Mr. Chairman.

Let me say, first, that I will have copies of the statement for the use of the committee and for the press, I hope, before I finish delivering it.

Senate Joint Resolution 12, of which I am proud to be a sponsor, will bring about a long-needed improvement in the way we elect our Presidents. It will give every voter in every State the right to vote for three electors, two corresponding to the two electors given his State because of its two Senators and one corresponding to his Representative in Congress.

It does away with statewide blocs of electors chosen under the general ticket system, the real cause of most of the complaints against the way we now elect our Presidents. It will reduce substantially the excessive influence of pressure blocs in selecting candidates, in slanting party platforms and campaigns for the Presidency, and it will do away with the present practical necessity of picking party candidates from only the few largest States.

Senate Joint Resolution 12 leaves control of the election machinery with the States, where it is now and where it has always been. Unlike other electoral reform proposals, it does not open the way to national control of presidential elections, a step which would result, inevitably, in national control of our entire election procedures.

Another section of Senate Joint Resolution 12 which is badly needed is the provision for electing a President in case no party candidate receives a majority of the electoral votes. which he must have to be elected. At present, the Constitution provides that in such an eventuality the House of Representatives shall select a President, each State being entitled to one vote. This is obviously unfair to all except the States with the minimum representation in the House—one Representative each.

Senate Joint Resolution 12 would change this to bring about the election of a President, no candidate having received an electoral majority, by a joint session of both Houses of Congress, with every Senator and Representative having one vote. The selection, as now, would be made from among the party candidates who received the three highest numbers of electoral votes.

There is another section of Senate Joint Resolution 12 which I consider to be of the greatest importance. It provides that a State's electors corresponding to its Representatives are to be chosen from single-elector districts which are to be set up by a State legislature. These elector districts are to be composed of "compact and contiguous territory, containing as nearly as practicable the number of persons" which entitle a State to one Representative in Congress. It is further provided that such districts cannot be changed until after the next census.

What this provision does is prevent gerrymandering of the electoral districts as some congressional districts have been blocked out in some of our States. The term "gerrymander," as some of us know, goes back to the early 1800's when Elbridge Gerry was Governor of Massachusetts. Gerry's party, the Jeffersonians, decided to make sure

they would elect as many Representatives to Congress as possible. They laid out congressional districts in extremely irregular forms. One district was so distorted that it resembled a salamander, or lizard. Opponents attacked this unfair districting, terming the one especially distorted district, first, a salamander and then, more aptly, a "gerrymander." The newly coined word has remained part of our language ever since.

Today, in some of our States, there are congressional districts distorted both in shape and in size. The dominant political party has carved out the odd-shaped districts for its own advantage. Both major parties have done this. Neither party has a monopoly on injustice in this regard. Population shifts over a 10-year period cause numerical inequities in various States. In the present Congress, there is one California Republican whose district has a 1960 population of 1,014,450, the largest in the Nation——

Senator KEFAUVER. Who is that, Senator Morton?

Senator MORTON. I think it is Mr. Lipscomb.

Senator KEFAUVER. It is one of the Los Angeles districts?

Senator MORTON. Yes, and it will be redistricted.

A Michigan Republican has the Nation's smallest district, with only 177,431.

Senator KEFAUVER. Who is that; do you recall?

Senator MORTON. That is the northern peninsula. That is the Representative who took Charlie Potter's place, I think.

The Congressional Quarterly reports that, according to 1960 census figures of the 20 largest congressional districts, 12 are represented by Republicans and 8 by Democrats. Conversely, they report that 12 of the 20 smallest congressional districts are represented by Democrats and 8 by Republicans.

Much of this distortion and inequality of population in congressional districts will be corrected, or at least modified, when the State legislatures reapportion their States in accord with the number of Representatives allotted them for the Congress to be elected in 1962. But, as you know, and I know, there will still be some districts which will be too large or too small or else will have distorted district lines.

This is where Senate Joint Resolution 12 will have a salutary effect. When it becomes a part of the Constitution, the legislatures will have to set up fair elector districts. And, when this is done, it will be pretty difficult not to use these fair and equitable districts for the election of Representatives in Congress.

Mr. Chairman, I might say here that, if I were a member of a State legislature and had to vote for fair districts for electors, I would have a difficult time voting for unfair districts for actual Members of Congress.

This provision in Senate Joint Resolution 12 for fair and equitable districts follows the provisions for setting up congressional districts which were first enacted into law in 1842 and strengthened in later years. This action was taken to insure that Representatives be elected from single-Member districts, to counter a trend to elect them in statewide blocs.

Senator KEFAUVER. Excuse, me, Senator Morton.

Senator Case, won't you come and sit with the committee and participate?

70784—61—pt. 1——8

Senator CASE of South Dakota. Thank you, Mr. Chairman.

Senator MORTON. It is an ironic paradox that Congress took this step to assure election of House Members from single-Member districts at a time when the general ticket system for electors had been adopted in all but one State.

The statute requiring single-Member House districts set up on a fair and equitable basis with near equal population and embracing contiguous territory was reenacted after almost every national census until early in this century, the last time in 1911.

It should be pointed out that the Honorable Emanuel Celler, chairman of the Judiciary Committee of the House of Representatives, has been urging in several Congresses, including this Congress, adoption of a constitutional amendment which would require the establishment of fair and equitable districting for the election of Representatives.

I would like, Mr. Chairman, if I may, to emphasize, as did my colleague, Senator Mundt, before this committee, that this amendment, of course, gives to each and every citizen of the United States an equal vote for the Presidency. We do not have that today. Under the terms of this amendment each and every citizen will vote for three electors. Today in a close election we can well have a situation—for instance, the Spanish-speaking of this country could well determine an election, and could be motivated for emotional reasons.

After the 1960 redistricting goes through, the States of New York, Pennsylvania, Texas, and California will, I think, have about 26 percent of the total electoral vote. These States, as you well know, have a substantial Spanish-speaking population, with Spanish radio stations, newspapers, and so forth. They could easily be motivated, in a close national election, to vote as a bloc because of something that might have occurred in Buenos Aires or elsewhere, and could swing 26 percent of our total electoral vote.

I think that we, today, all of us, are earnestly seeking fair civil rights. We are earnestly seeking an equal opportunity for all of our citizens. I think that this amendment, which gives to every man and woman of voting age in the United States of America equality in that each can vote for three electors, in keeping with the times, and I strongly urge that the committee favor and approve the resolution.

Senator KEFAUVER. We are glad to have Senator Keating, a member of the committee, join us at this time.

And, of course, we are pleased to have Senator Case, who is Senator Mundt's colleague from South Dakota, and who is not a member of the committee, join us.

Senator Case, please join with the members of the committee and counsel in asking questions of our distinguished witnesses, as you wish.

Senator CASE of South Dakota. Thank you.

Senator KEFAUVER. Senator Morton, we appreciate your coming here and your interest in this problem. We know that, from your service in the House of Representatives and the U.S. Senate and also your experience as chairman of the Republican National Committee, you are well qualified to talk about the evils of the present system, about the electoral system, and how it should be corrected.

Senator KEATING. You mean from a constitutional point of view?

Senator KEFAUVER. From a constitutional point of view; yes.

One weakness of the Mundt proposal, as you have pointed out, is that, as presented previously, it had the election of two of the electors statewide representing the Senators and the other electors from congressional districts. And, as you have explained here, one district at present is—at present has a population of 150,000, and another 1 million, so that the people in the district with 150,000 would have 6 times the voice in the election of electors as the people in the district with a population of 1 million. And as you point out, this present resolution, Senate Joint Resolution 12, seeks to remedy that by providing, on page 2—

such districts to be composed of compact contiguous territory containing as nearly as practicable the number of persons which entitle the State to one Representative in the Congress and such districts when formed shall not be altered until another census has been taken.

This would contemplate, I take it, that, while the State might go on and still have these disproportionate population districts for the purpose of electing Congressmen, when it came to voting for electors they would have to have another kind of district. Is that correct?

Senator MORTON. Yes, sir. And I think that will be a powerful weapon on the State legislatures to make more equitable distribution, or districting, for the seats in the House of Representatives. The weakness of the original Mundt-Coudert proposal was the fact that we did have districts of such unequal size.

Senator KEFAUVER. Yes; I think that was one of the weaknesses, the one that was talked about most. Well, now, the question remains: How would you enforce that; how would a constitutional amendment require that the States have approximately the same number of people in each congressional district, each electoral district?

Senator MORTON. I think you would have to have congressional review.

Senator KEFAUVER. What if they did not do it?

Senator MORTON. You mean if we did not do it here?

Senator KEFAUVER. What if the States did not do it?

Senator MORTON. I think they would have to meet certain standards, and I think we would have to have congressional review and approval of it.

Senator KEFAUVER. You mean if a State, notwithstanding the requirement of the constitutional amendment, did not straighten out its electoral districts, Congress by action could do so?

Senator MORTON. Yes; I think it could, just as the courts today do so. They are required to go at large—and my State in 1932, everyone ran at large. I think there will be some States where they will all have to run at large this year, where the States just do not do the redistricting job that is to be done, or next year, I should say.

Senator KEFAUVER. And if they run at large, why, then part of the value coming from the proposed amendment would be lost?

Senator MORTON. Yes; it would, indeed, but I think it would only apply in one election. I think they would straighten themselves out, just as they do in the case of Congressmen running at large.

Senator KEFAUVER. Now, what are you going to do about the States that do not have congressional districts? Mr. Kirby tells me there are three of them. Which are they?

Mr. KIRBY. There are three States which, although they have more than one Representative, still elect some Congressmen at Large. They are Connecticut, New Mexico, and North Dakota.

Senator KEFAUVER. What would you do about those States?

Senator MORTON. I would hope they would redistrict so they do not have a Congressman at Large. I think it is unfair to the Members who serve at large to have the requirement statewise, which a Senator has, with the staff limitations and other limitations that prevail in the House of Representatives. I think that this amendment might encourage those three States to negate the actions which they have taken in the past for Congressmen at Large.

Senator KEFAUVER. Senator Keating, do you have any questions to ask of Mr. Morton?

Senator KEATING. Yes; I have one or two. We welcome Senator Morton's advice, as his presence here, and contribution which he has made. He takes the position that Congressman Celler, of the House, has taken for some time. This, in one way, could be called the Celler-Morton proposal.

Senator MORTON. What is your association?

Senator KEATING. I got into this very fully in the House. We had some hearings on this subject over there. And I always opposed this idea of having the Federal Government step in and have anything to say about how the States should apportion their congressional districts. I realize the Senator's proposal does not do that, but it would seem to me, as you have so properly stated, that the impetus would be most compelling to get the electoral districts the same as the congressional districts.

Senator KEFAUVER. You mean the congressional districts the same as the electoral districts.

Senator KEATING. Yes; that is one way of putting it. In other words, if you set up the electoral districts, and adhered to the standards of compactness and contiguity that are set forth in Senator Morton's proposal, and you did not do that in congressional districts, there would be some very serious objections.

Doesn't the Senator feel that to give the Congress the power to pass on how the States divide up their congressional districts would be unwise? Let's leave out the electoral district for the time being. Does the Senator take the Celler view that the Federal Government should have a supervisory role with reference to the——

Senator MORTON. Well, I would say this, first, that this is a moral influence that is brought to bear.

Senator KEATING. By you and Congressman Celler "morally"; is that what you mean?

Senator MORTON. No; on the State legislatures. But we are not telling the State legislatures how to divide up the congressional districts. They can do it any way they please.

Senator KEATING. But if they did not do it the way provided here, you would have congressional review?

Senator MORTON. Electoral districts, right, but not congressional districts.

Senator KEATING. Let me take it a step at a time.

Senator MORTON. I recognize, Senator, that you have—how many is it; 47 votes——

Senator KEATING. We have 45.

Senator MORTON. You vote for 45 members of the electoral college; I vote for 10; my good friend, Senator Case, 4. We just want to get it on the act a little bit.

Senator KEATING. I do not blame you. I am trying to get your philosophy here, your underlying philosophy here, as to review by the Federal Government of the actions of the States.

Senator MORTON. Insofar as the electoral college is concerned only.

Senator KEATING. All right. Now, let's take this a step at a time. If this were a question of the apportionment of congressional districts, would you say that the Congress should have an overriding authority if the States did not apportion them in a satisfactory way to change it?

In the congressional districts?

Senator MORTON. No. As to electoral districts, they should have, because we are electing a President of the United States and a Vice President of the United States.

Senator KEATING. All right; we are agreed they should not have it as to congressional districts. Would you agree with that?

Senator MORTON. Yes; I agree with that.

Senator KEATING. Well, then, I must say you depart from Congressman Celler in that respect, so that you are in a different situation. Now you think they should have it as to electoral districts; that is to say, the Congress should have the power to override the States if they do not do the proper kind of job as to electoral districts?

Senator MORTON. Yes. I think that all citizens should be equal. I think we should all have an equal voice in the election of the President.

Senator KEATING. In other words, that you and I should have the power to upset Congressman Case's South Dakota decision or Senator Kefauver's Tennessee decision as to electorals?

Senator MORTON. Yes. I think they have to be fair. I think that a President of the United States transcends States rights, if you will, and it should be that each citizen of the United States should have an equal voice in the selection of a President.

Senator KEATING. I am going to come to that in a minute. Don't you feel there would be an almost irresistible effort to change the congressional districts to coincide with the electoral districts if there was a constitutional amendment enacted like this?

Senator MORTON. I agree with you that there would be strong pressure on the State legislatures, as I have said, to make the congressional districts conform with the electoral districts.

Senator KEATING. So that the results, if they did that, and if they did not resist that pressure, would be that then the Congress would be passing on the congressional districts also?

Senator MORTON. Indirectly.

Senator KEATING. Now, you made a point a minute ago that you thought everyone should have one vote, and the majority should control, and that is the basis of the Constitution.

Senator MORTON. Everyone votes with three electors under our proposal.

Senator KEATING. Wouldn't you recognize, and I do not expect you to approve of the system because you have your own plan here, which I may say I consider very much better than the proposal of the per-

centage allocation of electors which is advanced sincerely by some people—but isn't it a fact that the only way for the majority of Americans to have their voice heard in the election and be sure that the majority elects the President is to do away with the electoral college?

Senator MORTON. I do not agree at all. I think we are a Republic, and as a Republic, I think the States, by virtue of being States, should have some additional weight in our electoral college. Now, if you are going to go to your theory, or, it is not yours, but the theory that you just stated——

Senator KEATING. As a matter of fact, it is, because Senator Mansfield and I have introduced a constitutional amendment.

Senator MORTON. Well, you might as well do away with the U.S. Senate, and I do not think any of us around this table are particularly anxious to do that.

Senator KEATING. Well, I would not, of course, concede to that. I would be the last to argue that we should do away with the U.S. Senate. But, to get back to my precise question—which is not which system is preferable because, obviously, you prefer this one—my question was: Is there any way to insure that a President is elected by a majority of the American people except by popular vote?

Senator MORTON. That may be true. I do not quarrel with you there.

Senator KEATING. I do not know; maybe that is not the way to elect a President.

Senator MORTON. I say it is not. I say we are United States of America, 50 United States, and I think that virtue of being States, and we have a Senate of the United States, with two Senators from each State, because we are a United States of America I think each State should have weight in the elector college because it is a State.

Senator KEATING. Well, I respect your viewpoint in that regard, and in every regard. However, I never get terribly aroused over this idea of insisting that we be called a Republic which we are, rather than a democracy. It does not bother me to have this country spoken of as a democracy, but it impresses me that a President should be elected by a majority of the people and there is no way to insure that—if that is your overriding objective—except to have him elected by popular vote. I recognize that does do away the idea that certain States shall have more authority than others as a result.

Now, let me ask just one other line of questions. One difficulty that I have had with this proposal, and, in general, this is what we used to call in the House the Mundt-Coudert proposal, and now as modified some have spoken of as the Celler-Morton proposal, as I have pointed out—nevertheless, here is the thing that has bothered me. In New York, and possibly this does not pertain to Kentucky or South Dakota or other States, but certainly in New York even the League of Women Voters and the most suave politically do not know who are the electors. Their names never appear. Your machines say electors for, and then the names of the President and Vice President. If electors were elected in electoral districts, I would be afraid that the popularity of the elector would be a real factor in the election.

Any political party that did not try to put up a popular man ought to have their head examined. They would both try to select the

most popular men in that electoral district that they could find. Now, true, they would be voting on issues. But we do not want to elect electors; we want to elect a President of the United States. And John Jones, or a wonderful man like Thruston Morton, might be put up as elector, and they might just say, "Well, I cannot vote against old Thruston," and a lot of people on the other side would say, "I just have to vote for Thruston; he helped me one time when I was in trouble and I will never forget it, and I am sure going to vote for old Thruston."

Senator MORTON. I hope enough of them do in 1962. But, Senator, you are not that politically naive. Now, here you have an election, with Mr. Nixon and President Kennedy running against each other. It would be the same thing under this system. The candidates would be the dominating news, not who is the elector.

Senator KEATING. But I say to you, Senator——

Senator MORTON. What is the difference between——

Senator KEATING. I could have gone into plenty of areas where I come from, and from other areas of New York, and I could have said, "I know that you are really a Nixon man, but I am a Kennedy elector, and I want you to vote for me." Well, they would say, "I do not like Kennedy; I do not want anything to do with him." And I would say, "But I am putting this on a personal basis to you, I want you to give me your vote"——

Senator MORTON. That can happen under the present system just as well as under this amendment. You are voting for electors today. You say the League of Women Voters does not know who they are, so there is no difference. Of course, they do not know who they are. So there is no difference. In the State of Delaware today there is only one elector for the congressional district.

Senator KEATING. That is right. But the electors' pictures and names will be spread all over the papers if they are being elected in a small, compact area.

Senator MORTON. A small, compact area like the State of Wyoming.

Senator KEATING. Wyoming is the size of a single electoral district.

Senator MORTON. That is right.

Senator KEATING. You take the congressional district I came from. The hometown papers would have the pictures of the Democratic elector and his life history over here, and the Republican elector and his life history over here. And I do not say that anything like a majority of the voters, or anything like probably a third of the voters, or maybe 10 percent of them, would place their vote on that basis, but I do think there would be a small percentage that would vote on the basis of the man that they were voting for, and whether they liked the color of his hair. And I do not think that is the way to elect the President of the United States.

Senator MORTON. I can see no difference between this proposal and the present law in connection with that. Now, I think that the Senator, with all due respect, is worrying about his 45 votes that he gets now, and wants to hang onto them. But what is the difference between voting for 45 electors or 3?

Senator KEATING. Because in my city of Rochester they are voting for a different elector——

Senator MORTON. For 45——

Senator KEATING. No; for a different one. They are voting for just one elector there.

Senator MORTON. No; three.

Senator KEATING. Oh, three.

Senator MORTON. Two at large.

Senator KEATING. Three; all right. You are voting for three down in Syracuse, but one of those is a different one.

Senator MORTON. Of course.

Senator KEATING. And the two are the same in all the congressional districts. But the fellow, the third fellow, he is going to be the most popular man they can find in that area, and they will put him up—either party will. And if they don't—and the Senator is as able as any man in the political field, and I would not say a politician, but an able man in the political field, a statesman who knows the political game so well, that I am just surprised that he does not recognize that danger. Now, I do not say that is a controlling danger, and I do not say it is necessarily the reason, on overall consideration, for being opposed to this method of electing a President, and I do think we should change that method. I think our present method is unsatisfactory. But I do think this is a real danger inherent in this particular plan.

Senator MORTON. I can only say, Senator, that there are States in this Union where today you only vote for three. Our good friend here from South Dakota votes for four. Now, they claim they raise more bluegrass seed in South Dakota than they do in Kentucky.

Senator KEATING. It is not so.

Senator MORTON. That is because we cannot let our pastures go to seed. We cannot afford to; our land is too valuable. But I really do not quite follow you. You are one of the most sophisticated men that I know in politics, but I do not quite follow your logic on this because there are so many States today where you vote for three, four, or five.

Senator KEATING. In the area I know best, my old home territory, I could almost tell you, this minute, who, under this system, the Democrats and Republicans will put up for that third elector in that congressional district. They would both put up outstandingly popular men throughout the community, and a substantial number of votes would go for those men regardless——

Senator MORTON. Why doesn't that happen in Delaware today? I will bet the League of Women Voters in Delaware cannot tell you who the electors were. Why doesn't it happen today in areas where you only have three or four votes?

Senator KEATING. I am not sure where you only have three or four votes.

Senator MORTON. Do you think the personality of the elector in Delaware, in Wyoming, in Nevada had anything to do with the outcome of this election? Do you really think the personality is the political appeal?

Senator KEATING. I am really not able to say.

Senator MORTON. Well, I am, and it did not.

Senator KEATING. You may be able to say that, and you may be right about that. I cannot question that. However, I do think that under a system like this, a new system, any political party worth its salt would recognize, and if this is passed I shall certainly present

it in the most forceful terms throughout every electoral district in this country, that the Republicans ought to have their heads examined if they do not put up outstandingly popular men, not necessarily the best men to serve in the Congress of the United States, but fellows who are well liked in the community. And the converse of that is that each one of our parties has some creatures who are so disliked that if they were the electors, a lot of people would say, "Well, I like Kennedy, but I certainly am not going to vote for that fellow who is an elector for him; I will never vote for him if it is the last thing I do."

I think personality, pro and con, is something that we should keep out of this, and that is one of my principal reasons for questioning the proposal that is made here. But I respect the Senator, as he knows, and if I were running the State of Kentucky, I would certainly see that Senator Morton's name was on there as an elector, and an elector at large. And the same thing is true, to probably a lesser degree, on your electors at large. And going to those two electors at large, each party is going to try to pick out the most popular men they can find.

Senator MORTON. All electors are at large today.

Senator KEATING. Yes, but in New York the very number 45 creates anonymity, and when you only have 2 it is going to be in all the papers across the State; the 2 Democratic electors are so-and-so and the 2 Republicans so-and-so.

Senator MORTON. Well, I do not agree with you, Senator.

Senator KEATING. Well, anyway, we have had a fine discussion, and I respect the Senator's viewpoint.

Senator KEFAUVER. This demonstrates that members of the Republican Party, like members of the Democratic Party, do not always see eye to eye. [Laughter.]

Senator KEATING. We are not monolithic creatures.

Senator KEFAUVER. Senator Case. Do you have any questions?

Senator CASE of South Dakota. Thank you, Mr. Chairman. First, I would like to express my appreciation for the opportunity to ask Senator Morton a question or two before later coming on with a presentation to the committee directly.

The questions which have just been discussed between Senator Keating and Senator Morton have a great deal of interest to me. In the last election, I might say, in selecting the four presidential electors for South Dakota, we sought to do exactly what Senator Keating suggests. We sought to give representation to the farming interests; we sought to give representation to the young Republicans, and to heal a few wounds out of a primary fight by selecting as one of the electors the wife of one of the defeated primary candidates in a certain congressional district which we were anxious to win back—and did. And we had the support of the defeated primary candidate for his rival in the congressional race by putting his wife on the list of electors.

Now, I would like to ask this question of Senator Morton. You certainly would not want us to divest ourselves of that practice of trying to pick electors who would add strength to the ticket?

Senator MORTON. No; that is one of the best ways of healing political wounds, to make someone an elector. We do that. Of course,

we try to put up people who are not jailbirds for electors. But I do not think the elector in a presidential election dominates your presidential candidate. Your presidential candidate is the dominating figure.

Senator KEFAUVER. May the chairman ask Senator Case if in that situation, as pictured in South Dakota, he feels the personalities of the electors had anything to do with the votes as distinguished from the presidential and vice-presidential candidates?

Senator CASE of South Dakota. We select them with the view in mind that if it did have any effect we wanted the effect to be advantageous.

Senator KEFAUVER. Do you think it did have any effect?

Senator CASE of South Dakota. I think so. We had pretty good results in South Dakota last time.

Senator KEFAUVER. Yes; I remember that.

Senator MORTON. Don't you think Mr. Nixon had something to do with that?

Senator CASE of South Dakota. Yes; he did, but we were seeking to take the statehouse back, to elect the Governor, and we were seeking to win back the congressional seat, and we succeeded in both of those because we used the electors to heal some wounds.

Senator KEATING. We apparently did not heal so many wounds in New York.

Senator CASE of South Dakota. Mr. Chairman, there are two lines of questions I would like to ask, and, for justification of my taking advantage of your invitation, I might say that the representation as to this presidential elector system is a very real problem in South Dakota. The old congressional district that I represented was the Second District, and Senator Mundt had the First.

Our two congressional districts in South Dakota illustrate very graphically this problem of difference. In the First Congressional District there are three times as many voters as there are in the Second District.

The First District has 75 percent of the votes on statewide elections. So that this question has been very directly illustrated as far as Senator Mundt and I are concerned over the years.

Now the original Mundt-Coudert suggestion, as Senator Morton knows, proposed electing some electors on the basis of congressional districts, but that could not be justified in South Dakota because the voters sitting on the west bank of the Missouri River would exercise three times as much voice as the voters just across the river in the First District. So that graphic illustration is the weakness of the original Mundt-Coudert proposal, resulting in this provision which you have proposed for presidential electoral districts along with congressional districts.

Senator KEATING. Senator Mundt came from the area where one-quarter of the people live, did he?

Senator CASE of South Dakota. No; he came from the area where three-fourths of the people lived. I came from the district with one-fourth.

He changed the point of view when he came to the Senate because he could not justify supporting a proposal in South Dakota that gave to the voters in my own congressional district three times the voice

that they had in the First District, and he wanted the voice of both sides of the river to be equal, so he sought to change the basis of his proposal. I do not say he did that from a personal viewpoint; he was already elected to the Senate, but he saw the validity of that argument.

Now, when you go to presidential elections, I would like to ask Senator Morton, with his experience as a national committee chairman, would he want to have to target presidential appeals to a presidential electoral district that was different in its boundaries than a congressional district?

Senator MORTON. I see no objection to that.

Senator CASE of South Dakota. We do not have the problem in South Dakota of having any city which is broken up into congressional districts, but there are cities which have congressional districts just within so many blocks. Assuming that you use presidential districts that are not coterminous with congressional districts, would you not be in the position of having to direct a congressional appeal to the boundaries of a congressional district defined by blocks in a city and having to direct your presidential appeal to the terms of the elector who is running in an overlapping presidential district?

Senator MORTON. No, sir. Your presidential campaign is built around a personality, your man, your nominee. You have that problem today.

Senator CASE of South Dakota. Today you can address your presidential campaign to the voters of the State as a whole.

Senator MORTON. Today to the Nation as a whole.

Senator CASE of South Dakota. But if you have presidential districts, in my judgment, you will have this problem Senator Keating has pointed out, that you will target your appeal to win the electoral vote of each presidential district, which will increase the costs, which will increase the complexity. I would like to have you respond to this although, I am stating it as an opinion of mine. I would like to have you regard it as a question, whether or not this is true: Will you not have to take into consideration the confusion of a voter who, in one instance, is voting within the boundaries of a congressional district defined by blocks in a city, and in another instance must find out where the lines of the presidential district are? And will you not have to consider the people who are developing a campaign for this very popular elector, to whom Senator Keating has referred, who will have to find where to make the appeal to get that particular individual electoral vote?

Senator MORTON. I cannot see that would be a factor at all, frankly. I think that your campaign is going to be Mr. Kennedy, Mr. Nixon, whoever your opponents are. That is going to be your whole campaign, not the electors themselves. All this does is to give each and every citizen of the United States an equal voice in this election of a President.

You are not going to run this thing on the basis of electors. We never have. Maybe in our first election, or one of our first elections, perhaps, in the history of this country, but it has become completely academic since then. Of course we all want to put up electors who are honest men, who are respected citizens, but no one has ever thought of running a presidential election on the basis of the personality of

the members of the electoral college. It is a contest between two or more men.

Senator CASE of South Dakota. Within a State attention is given to the electors, and I think the fact that the popularity of the elector does enter into the results is indicated by the fact that in some States you do have some split electors, where you have different——

Senator MORTON. Yes; we had in Alabama six uninstructed electors.

Senator CASE of South Dakota. Now another question. Wouldn't this probably require splitting the presidential ballot from the State ballot and the congressional ballot? Here is a voter who resides in one congressional district, but, with the districts not coterminous with the congressional districts, he also has to have on his ballot the elector that he is supposed to vote for. If I live on one side of the street, and I am in one presidential district, and my neighbor lives across the street in the same congressional district but in a different presidential district, he has to have a different ballot than I would have, or there has to be some identification, or we would not know whom to vote for.

Senator MORTON. Suppose you live in a different county and you vote for sheriff, you vote for two different people.

Senator CASE of South Dakota. But the ballots today, at least in my State, are printed for each county. So there is no opportunity for the voter in one county to vote for the sheriff in another county. But here you would have to have a ballot so that the voter in X congressional district could vote in the Y presidential district.

Senator MORTON. The same thing occurs today. I cannot conceive of this thing crossing county lines in a State like yours. In New York City you have a good many—and I do not know how many—Members of Congress. Yet you all vote for mayor.

Senator KEATING. It is a different election.

Senator CASE of South Dakota. You have the same problem in a municipal election. In a municipal election, if you elect councilmen by wards, the man who lives in the first ward is not permitted to vote for the councilman who lives in the fourth ward. It seems to me that you are going to have to break your presidential ballots down so that there will be no chance of the voter voting for the wrong presidential elector.

Senator KEATING. If you would yield on that, in referring to New York City, or any large city, in New York today you have a congressional district, you have a State senatorial district, and you have a State assembly district. Now if you create an electoral district across some of those, it is going to be confusing. It is confused enough now and election officials are on the verge of nervous prostration, and if you overlap and put on top of that electoral districts, you have just compounded the thing tremendously unless they are the same as the congressional districts.

Senator CASE of South Dakota. In earlier colloquy you both agreed it would be desirable if the various pressures that operate here would result in re-forming the congressional districts so that they would be coterminous with the presidential districts and more nearly equal in population character, and so forth. There would be a very practical difficulty there based on the experience in South Dakota. Eastern South Dakota is an agricultural country very much like Minnesota or Iowa, and western South Dakota, commonly called the short grass

country, has very diverse interests. That is the reason through all the years, even though the population is three times as great for the first district as it is for the second district, the districts have divided on the Missouri River, the East River, and the West River—because of the similarity of interests within those areas. East of the river is one congressional district today. Up until 1930 we had two congressional districts east of the river and only one west of the river. But because the interests of eastern and southern South Dakota were so much more homogenous, the two congressional districts were merged into one even though the action resulted in disparity of population.

Senator KEATING. Would you yield on that?

And would not the people in the State Legislature of South Dakota rather resent the Morton-Celler idea of having the Federal Government come in and tell them: "We do not approve of the way you set up your districts. You have got to set them up some other way."

Senator CASE of South Dakota. That leads me to the point that I want to make. Article XIV of the Constitution, section 2, reads, in part:

> * * * But when the right to vote at any election for the choice of electors for the President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being 21 years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crimes, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such State.

We are all familiar with that. It is brought up every time the poll-tax question comes up, and it is repeatedly pointed out that the Congress has never enforced the provision. I would suggest to the chairman that the very thing which operated to prevent Congress from reducing the representation of the States which have prevented some people's voting—the resentment of the States—would operate here.

If Congress has not, and will not, act to reduce the basis of representation for the States which have denied voting privileges, I doubt that Congress would ever successfully pressure the States to make the congressional districts coterminous with the presidential districts.

Senator KEATING. They might not, and if they did not, then this would be meaningless, but if they did, it would certainly, in my judgment, be resented within the States, if they tried to do that.

Senator CASE of South Dakota. Mr. Chairman, that is all I am going to ask, and I appreciate your courtesy. This makes a very good foundation for the statements which I later hope to present because I think that the resolution which I have evolved after a great deal of wrestling with this problem answers many of these questions, and, yet, achieves the objectives which Senator Morton and Senator Keating both have expressed here this morning.

Senator KEFAUVER. Senator Morton, do you wish to respond after the colloquy of your two Republican brethren?

Senator MORTON. I just want to see the citizens of South Dakota have as much representation as the citizens of New York.

Senator CASE of South Dakota. They have more today.

Senator KEATING. I do not think that that is an objective, but I will say Senator Mansfield's resolution gives everybody the same opportunity.

Senator KEFAUVER. We are certainly grateful to you for coming here and being with us.

Senator MORTON. Thank you, Mr. Chairman.

Senator KEFAUVER. And for your enlightened presentation.

Senator MORTON. Thank you, sir.

Senator KEFAUVER. The committee is delighted to have Senator Case of South Dakota, who is a great student of the problem of Federal elections, with us, and he will speak in connection with Senate Joint Resolution 48, which is already a part of the record.

Do you have a longer statement that you would like to include in the record?

STATEMENT OF HON. FRANCIS CASE, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator CASE of South Dakota. I do have a longer statement which I would like to put in the record.

Senator KEFAUVER. The written statement will be printed in the record at this point.

(The statement referred to is as follows:)

STATEMENT OF SENATOR CASE OF SOUTH DAKOTA ON BEHALF OF SENATE JOINT RESOLUTION 48

Mr. Chairman and members of the committee, we saw last fall what possibly will be the last erratic performance of the electoral college. I am hopeful that this time the determination for change is strong enough to succeed.

Governments which derive their legitimacy from expressions of the popular will through the electoral process must be grounded upon a true reflection of the popular will. Our constitutional system is held by our people to be a vehicle for the empowering of their choice of leaders as that choice is expressed in the electoral process.

The fact that a government can be empowered through the erratic and unpredictable workings of an undisciplined system of national elections in this country constitutes a menace to the legitimacy of our Government. The interjection between our citizens and their choice for President of an intermediate group who are not legally bound to elect the choice expressed by the voters constitutes a cruel perversion of what has been for well over a century the almost universally acknowledged source of power of the President of the United States—election by the people.

However, the electoral college was intended to function, we know that it is not functioning in that way. The electors are not members of their communities selected by the people as best suited to decide for whom the vote of the community should be cast. They are, instead, expected to be transmitters of the choice of the people. Despite this the electors are legally able to distort the expressed will of the people.

PROPOSALS UNDER CONSIDERATION

This situation has long been recognized. This committee is at present considering several newly offered variations of meritorious proposals which have previously been considered.

The proposals are of three basic types. The first is to make the election of President and Vice President wholly determined by the total popular vote of the Nation, abolishing the method of casting the vote for President and Vice President by State units. The second proposal is to retain the concept of voting by units, but to change the unit itself from the State to a more compact body, thereby making the unit vote more nearly reflective of the will of the people of the area. The third is to retain the State-unit system, but to divide proportionally the unit vote among the various candidates.

These proposals are not new. But they are good proposals. That they are good proposals is attested to by the fact that they have been so often disinterred.

They would each largely correct the faults at which they are aimed. But none of these proposals has ever been accepted. And they are not likely to be accepted now for the same reasons that they have not before been accepted.

INTENTIONS OF THE FOUNDING FATHERS

The writers of the Constitution intended in the design of the electoral college not only to interpose between the people and the selection of the President of the United States a device to make for a wiser choice than a popularity contest might make, but they intended also to provide a protection for the smaller States and the newer States to better allow them to safeguard their interests against those of the larger States.

The Connecticut compromise, which led that Colony to join the Union, gave all States two senators, regardless of size, and based presidential electors on Senators as well as Representatives. These two electors for each State's two Senators historically gave smaller rural States some strength to offset the immigrant population that tended to cluster in cities. Since 33 of the 50 States benefit by that provision and since 37 States would have to ratify a constitutional change, it is doubtful that direct election by popular vote can be achieved regardless of what arguments may now be advanced.

Most citizens of the new States or of those whose populations are small are not prepared to surrender their strengthened status. They value this status. These States were given this status by the Constitution and there is no constitutional way of depriving them of it without the consent of many of them.

CONGRESSIONAL OR ELECTORAL DISTRICT PROPOSAL

The proposal to base the presidential election on congressional or electoral district units would deliver one electoral vote to the candidate receiving the majority of the popular vote cast in each district, with provision to make consequential victory in each State by delivering to the candidate who receives the most popular votes two additional electoral votes.

I believe that such a system would be more equitable than is our present system. There are objections, however, which I consider to be fatal to this proposal. One objection concerns unequal representation. Another concerns the gerrymander.

We all know that the people of the various congressional districts are not equally represented. Some of these districts contain three or four times the number of people who reside in others. In my own State of South Dakota under a congressional district system and in accordance with the present apportionment, the vote of a person living on the west bank of the Missouri River would carry an influence equal to three votes of persons living on the east bank of that river. This could also be made true of electoral districts to be established by the State legislatures.

Too, and especially now after the decennial census, we are all mindful of the gerrymander. The boundaries of congressional districts are too often drawn so as to overrepresent the weight of one political party at the expense of another. I see no reason for inviting this kind of activity into the realm of the election of President and Vice President of the United States by establishing electoral districts. I do not believe that in an effort to correct one fault in our electoral process we should knowingly make provision for other faults of this magnitude.

A MODIFIED ELECTORAL PROPOSAL

The intention of Senate Joint Resolution 48 is simple. This is to abolish the electoral college but yet to retain the State-unit method of voting and to proportion the votes by each State between the candidates who receive more than one-third of the popular vote.

I believe that such a system would utilize the better features of proportional representation, the giving a voice to a substantial minority, but would prevent the extreme splintering of parties which some forms of proportional representation encourage. This is the telling objection to other proposals before Congress in previus years and again before Congress at present calling for the adaptation of some form of proportional representation to our electoral system.

The prospect of splinter parties, each representing a small percentage of the voters of the country, attempting to form governing coalitions which could well be unstable is not attractive to the American voter. This measure which I

recommend would remove such a potentiality by requiring that a party's nominee, to obtain any unit votes in a State, must attract over one-third of the popular vote.

These other proposals have been before the country at other times and have been rejected. The approval of this resolution would recognize this. It would also recognize the historical position of the States of smaller population and of the newer States, yet would give meaning in every State to the presidential election. It would avoid the throwing of a whole State bloc of votes on a paper-thin margin. At the same time it would make it worth while to vote in every State since nearly all votes would then have impact on the national result.

EXAMPLES OF APPLICATION

Examples drawn from the recent presidential election and applied to the system I propose demonstrate its intention. In Illinois there was a margin of 8,858 votes between the Democrat and the Republican candidate. On the strength of these 8,000-plus votes, the 27 electoral votes representing the 4¾ million voters in Illinois were cast. This 8,000-vote margin negated the 2,368,988 votes cast in Illinois for the Republican candidate. By the proposal I offer, Illinois would have divided its vote: 14 votes for the Democrat candidate to 13 votes for the Republican candidate.

A senatorial race, directly affecting only one State, is different. Such a contest is an act complete in itself, necessitating that the votes for one candidate for the Senate be nullified by the fact that another attracted more votes.

The election of a President, elected to be President of all the States, is a process of which the individual State elections are only contributory. The nullification of the losing candidate's vote must ultimately occur, but to allow this on the State level is a distortion of a fair election process. In a presidential election a small margin of votes in each of a few large States can swing the national election against the candidate with the most popular votes. The composite votes of the losing candidates who attract significant support in the States should carry weight nationally.

Further examples are readily cited. Hawaii cast three electoral votes for Mr. Kennedy on the strength of 115 popular votes. By the method I support, the margin would have been 2 to 1.

California, instead of casting 32 electoral votes for Mr. Nixon on the strength of 35,000 popular votes, would have divided—17 votes for the winner and 15 for the loser. The 35,000-vote plurality would have decided to whom the last 2 votes should go, not to whom the entire bloc of 32 should go.

This method of election would correct the situation in several of the States where a voter feels that, since his vote would not count anyway, there is no reason to vote. Nearly all votes cast for a major candidate would count in the national tally.

A MORE ACCURATE REFLECTION OF THE POPULAR VOTE

Had this method been in effect at the time of the recent election, Mr. Kennedy would have won the election but by a much smaller margin—271 unit votes to 261. (The five unpledged votes could not have occurred and have no application.)

I am including for the record the results of the recent election for all the States had the count been computed by this method. I am also including a record of other elections of significant interest.

LESS CAMPAIGN STRAIN

Since we talk of easing the strain of the campaign on presidential candidates, we should apply this consideration to the electrical district electoral vote proposal now before the Congress.

If that measure were adopted, the campaign for the presidential election would shift from the level of the State to that of the electoral district, multiplying the extent of the burden and the expense of campaigning. The character of the electoral district would then be unduly emphasized. The appeal would be directed to the more restricted interests of the district instead of to the broader interests of the State, for the presidential candidate would be the victim of those considerations important to blocs of voters in each district. The issues of the entire campaign would thereby be atomized.

The State could delimit electoral districts almost as it pleased, but to impose its reasons for its delimitation on the presidential candidates would be unduly to impose the reasons of the State on the entire Nation.

This proposal that I offer seeks to make valuable every vote cast for a major candidate. It seeks to recognize the historical position of the States. It seeks to heed the just criticism that a large bloc of votes in a State can be nullified by the fact that only a few more votes were cast for another candidate. It would prevent the rise of splinter parties and the specter of coalition governments which are often encouraged by other proportional representation systems. It would retain the protected status of the 33 smaller and newer States; and, significantly, it would make it possible to obtain ratification of an electoral reform measure.

I appreciate being given this opportunity to appear before the subcommittee.

Senator CASE of South Dakota. At the outset, I think it is basic to recognize that we are dealing with a constitutional amendment. A constitutional amendment requires approval of two-thirds of the Senators voting, and requires ratification by three-fourths of the States.

We work in vain and we work idly, unless we have a proposal that can win two-thirds of the Senators who will be voting and three-fourths of the State legislatures to ratify.

Senator KEFAUVER. Plus two-thirds of the Members of the House of Representatives.

Senator CASE. Plus two-thirds of the Members of the House of Representatives.

But I stress the Senators because the basis of representation in the electoral college achieves its disproportionate character by granting two electors to each State for the two Senators which they have.

It would hardly be necessary to say that today any proposal in the Senate of the United States, any proposal today for a constitutional amendment which would diminish the number of Senators to a State, would never get the approval of two-thirds of the Senators.

Senator KEFAUVER. Senator Case, how many States gain some amount in representation, however small, by virtue of two electors for two Senators?

Senator CASE of South Dakota. Thirty-three. Thirty-three States today have a larger voice in the election of a President, by virtue of having two electors accorded them because of their Senators, than they otherwise would have.

Any proposal to diminish the voice of a State in the Senate of the United States would get nowhere today. Can you imagine any Southern State agreeing today to diminish its number of Senators?

Similarly, can you imagine that any Southern State today would agree to any constitutional amendment which would diminish its voice in the election of a President?

Individual Senators might be broadminded enough to support submitting to the States for ratification an amendment which would adopt the popular vote, but that would not dispose of the problem when the problem came before the State legislature.

The State legislatures, three-fourths of them, still would have to ratify. Three-fourths means 38 States today, and if 33 out of 50 States would have a diminished vote or voice in the election of a President, how could you expect to get 38 States to ratify out of 50, when they would be losing their vote?

70784—61—pt. 1——9

Could you get today 38 States out of 50 to propose a reduction in their voice in the Government of the United States? Of course not. No State would consent to reducing its voice in the Government.

Then, when issues become sensitive—today it is issues that affect the South. Tomorrow it may be issues that affect the West, the State rights in water, for example, which is a very sensitive question west of the Mississippi.

If the issue became involved and wrapped up in the State water right laws, do you think that Western States would accept a diminution of their electoral college vote?

Personally I do not think so, or at least I think that presents such a terrific handicap that when you consider that an amendment must get by both the Senate—get by two-thirds of the Senate and three-fourths of the States, that a look at the practical results calls for something else.

That is one thought.

The other thought that was the basis for my getting into this matter was the experience we had in South Dakota to which I alluded earlier.

I came from the western part of the State. I know that the voters in my part of the State would be flattered if they were given—that is, the voters in the Second Congressional District would be flattered—if they were given the power to elect a presidential elector when it would take three times as many voters on the east side of the river to elect a presidential elector; but the voters in eastern South Dakota would not be very happy about that prospect.

Their voice would only be one-third that of those on the west side of the State.

So that is why I have given the matter some thought, and it is a very difficult problem.

Senator KEFAUVER. That is, in that connection you are referring to——

Senator CASE of South Dakota. To the original Mundt-Coudert proposal.

Senator KEFAUVER. The original one?

Senator CASE of South Dakota. Yes.

And Senator Mundt, recognizing that problem, shifted to this idea of presidential districts.

I think the presidential district, in the way in which I discussed it and interrogated Senator Morton, raises some other questions. But I think that the demands for a change in the methods of electing the President and Vice President were intensified after the last election. The total electoral vote of many States went one way or the other by very small margins. Some electors did not vote in accord with the majority or plurality given by the people of their States—I think you have already had brought to your attention the fact that one Oklahoma elector did not feel bound to follow the vote of his State.

Proposals for reform, however, run into various objections. To meet those objections, and also to make possible the required ratification by three-fourths of the States, I have introduced a proposed constitutional amendment, Senate Joint Resolution 48, which would do three things:

1. Abolish the electoral college; yet
2. Preserve for each State a sum of presidential unit votes equal to the number of their Senators and Representatives;
3. Dividing those unit votes between the candidates according to the popular vote in the State, yet avoid the splintering effect of ordinary "proportional voting" by requiring that a candidate receive more than one-third of the votes in a given State to get any of its presidential unit votes.

The idea for the special feature of the amendment that I have suggested is bound up in that last provision. The so-called Lodge proposal, which did pass the Senate at one time and which called for proportional voting, was subject to the objection that it could encourage splinter parties. I regarded that as a valid objection, and that is why I tried to address myself to that problem.

And I took the solution that we have in many States where, if there is a primary and a candidate does not get at least 35 percent of the vote, the selection has to go to a convention or to a runoff election.

Many States have recognized this problem of splinter voting and called for a runoff or convention or something of that sort.

I do not need to point out that in Texas here recently they had 70-some candidates. If they had had no provision for a runoff or something of the kind, you could have had a person elected to the Senate theoretically who had a very small fraction of the vote.

So if you take the proportional system of voting but make a requirement that a candidate must receive at least one-third of the votes in a given State to get any of its presidential unit votes, you have a workable solution. The one-third requirement makes it possible for even the smallest State with two Senators and one Representative to have its presidential vote reflect its popular vote.

That is, you could take the States which have two Senators and one Representative and in most cases the probable result would be two of their votes cast for the man with the highest vote in a presidential contest and one for the man who ran second.

The language of the amendment was worked out very carefully by the drafting counsel of the Legislative Counsel of the Senate to allow for working this out to the very last fraction that was possible.

You could have a residual fraction for the last elector in a State that was practically evenly balanced but where one candidate got the margin maybe by 100 votes, as he did in Hawaii last year. Hawaii had three electoral votes.

That last elector would be elected by the 100 votes, or at least by that margin of 100, which would be the margin of victory.

It would reflect the margin of victory. It would reflect the same margin of victory by which some representatives may be elected.

But, under this system, the whole vote of Hawaii or the whole vote of Alaska or the whole vote of Illinois or the whole vote of New York would not go to the person who got just 100 votes more.

I suppose from the standpoint of equity that the 8,000 votes which determined the vote in Illinois at the last election were as improperly represented by swinging the entire electoral vote of Illinois to an individual candidate as was the vote in Hawaii or in Alaska.

But if you divide the vote, the presidential unit vote, proportionally, yet require that no candidate gets any of them unless he gets at least a third of the popular votes, you have protection against the splinter party threat.

At the same time, you get a reflection of the popular vote.

Senator KEFAUVER. Would the Senator yield for a clarifying question?

Senator CASE of South Dakota. Yes, sir.

Senator KEFAUVER. I have been interested in this problem for a very long time, even back in the House of Representatives, where I joined in sponsoring, and later in the Senate, what has been known from time to time as the Long-Gossett proposal, which is contained in Senate Joint Resolution 17 here.

The question is:

What would happen, if say, one candidate got 33 percent of the votes but did not get the required 33⅓. There would be no electoral votes recorded for him?

Senator CASE of South Dakota. You have got two situations to consider.

First, if you have just two presidential candidates, the situation would be no worse than it is at the present time. The winner would get the entire electoral vote of the State, but under the illustration that you have given, the winner would receive 67 percent of the vote.

Senator KEFAUVER. That is right.

Senator CASE of South Dakota. As against 33, so that he would have won by a substantial margin, but you have assumed just the marginal situation that he just barely failed to get a third of the votes.

Senator KEFAUVER. Suppose he got 30 percent of the votes?

Senator CASE of South Dakota. Then it would have been 70 to 30.

Senator KEFAUVER. One argument against the present system is that 30 percent, the people constituting the 30 percent would have had no voice in the election of the President, so if one candidate only got 30 percent, his votes would still have no voice in the election of the President.

Senator CASE of South Dakota. Of course I think that oversimplifies it. I think that his vote cast counted toward getting the one-third, and it would avoid the great complaint of these razor-thin margins throwing the whole vote of the State.

Senator KEFAUVER. I do not know if this has ever happened in the history of our country but it might possibly. Suppose you had four candidates and no one of them got 33⅓ percent?

Senator CASE of South Dakota. There is a provision, there is some language in the resolution to take care of a situation like that. It would be theoretically possible that if you had four candidates, but it is inconceivable to me that with two major parties, it would ever split that thinly.

Senator KEFAUVER. Is that on page 4 of section 3, subsection 3:

If no candidate receives more than one-third of the popular votes received by all candidates, the presidential unit votes of such States shall be divided in the manner prescribed by paragraph 1 between the two candidates receiving the greatest number of popular votes?

Senator CASE of South Dakota. Yes. That is what I had reference to, and I was assured by the legislative counsel that they had worked that out so that they thought they took care of every situation you would have. The one theoretical situation that I am not sure we took care of would be a situation where a State had an even number of electors and in the final fraction there were a tie in this last fractional number between the two candidates.

But the possibility in a presidential election of having an absolute tie on the fractional number of votes, when you came to the last elector or the last two electors, seems very remote. My clerk, Mr. Bowen, says that in the final working out of that they suggested there be a division of that vote. But I think everyone would concede that the mathematical possibility of a tie in the number of votes for the last fraction, for the last single elector or the last two electors, would be very remote indeed.

Senator KEFAUVER. The contingency you refer to seems to be provided for at page 4.

Senator CASE of South Dakota. Yes, or in the subparagraph (b), the clause (b).

Senator KEFAUVER. Yes.

Senator CASE of South Dakota (reading):

> Unless they receive an equal number of popular votes, in which case such unit vote shall be equally divided between them.

So, I guess, in the final analysis we have even had that taken care of, and I appreciate the reference of the clerk and my assistant on that.

The advantages of this plan are these:

(1) No defections by presidential electors. There would be no electors. The situation such as the Oklahoma case that I previously mentioned simply would not happen. The votes would go automatically on the numbers and not on the individual whim of an elector.

(2) No gerrymandering of districts. There would be no districts. There would not be any of this confusion between a presidential election district and a congressional election district. You still would vote in the State as a whole for the presidential candidates, so there could not be any gerrymandering of districts for the purpose of, in certain States, let us say, insuring the election of two or three electors by having presidential districts weighted so as to throw the vote in a certain direction.

I think that probably the Senator, coming from Tennessee, can imagine without my going into detail how that might be done.

I think, in Tennessee, for example, it would be possible by a presidential district method to always insure that there would be a certain number of electoral votes for each of the two major parties by gerrymandering the presidential districts. I think that would be true in Massachusetts, and could be true in New York and in certain other States, where you could pick out certain precincts, throw them into a presidential district, and thereby insure a certain number of votes. That could be done by the legislatures in the same way that they give attention to the districting of congressional districts for the purpose of insuring the election of a certain number——

Senator HRUSKA. Would the Senator yield?

Senator CASE of South Dakota. Yes.

Senator HRUSKA. I wonder, however, if that would hold true. Let us take the State of Tennessee, and not because it is the home State of our chairman here, but because there is a situation there, if the Senator from South Dakota would bear with me, where gerrymandering has not been possible to the extent of doing away with the two Republican Congressmen who have represented that State for many, many years. Gerrymandering will do it in marginal situations. Gerrymandering cannot do it in situations that are not marginal. What would your comment be on that?

Senator CASE of South Dakota. My comment would be that that depends upon the complexion of the State legislature when they go to reapportioning districts after each decennial census. The effect of gerrymandering reflects the political control of the State legislature at the time that it takes place.

Then, proceeding, Mr. Chairman:

(3) No "winner take all" of a State's votes by razor-thin margins. A razor-thin margin would decide only the last unit vote in a State.

(4) No burden on candidates or political committees to target their campaign to districts. The ability of special interest or bloc voting to swing a State's entire electoral vote would be eliminated.

It is conceivable that in certain States where you have, let us say, a State dominated by cities, where you have presidential districts reflecting the dominance of the city, that a targeting to those cities might have an undue influence in the result of a State's electoral vote, as it is today. That would be eliminated or reduced by this proposal, and we would also avoid the new threat that would come from having presidential districts.

(5) No burden on voters to learn new "presidential district" lines. The State would continue to be the only presidential district.

You would also avoid at the same time the necessity for having different ballots for the presidential district or separate ballots where the presidential district and the congressional district are not coterminous.

(6) No State would lose its present constitutionally guaranteed voice in presidential selection. The presidential unit votes of any State would continue to be equal to the number of its Senators and Representatives. Under a direct vote the voice of 33 of our 50 States would be diminished, yet 38 would be required to ratify a change in the Constitution—and two-thirds of the Senators voting would have to approve.

I there would raise the same question I did in the colloquy earlier. Is it conceivable that any southern Senator would vote today to reduce his State's voice in a Presidential election, or, if another sensitive issue arose in the West, would these Western States consent to reduce their voice in the electoral college, based upon the number of Senators that they have?

To me, it is inconceivable, and, whatever may be said about the theoretical merits of popular vote, the practical fact is that you will not have a constitutional amendment unless you get two-thirds of the Senators and two-thirds of the Representatives voting to approve it, and then get ratification by three-fourths of the States.

Senator KEFAUVER. Would it not be more likely that a populous Southern State like Florida, or, if we consider Texas a Southern State, might be more apt to approve a reduction in its voice than Delaware, Nevada, Wyoming, or New Hampshire, or Rhode Island, or even South Dakota?

Senator CASE of South Dakota. The populous States, of course, would increase their presidential voice in a direct voting, but if you preserve for 33 of the States the voice they have in presidential voting today, you would only have to get 5 additional States to ratify, and the reaction following the last general election, I think, would insure that you could get 5 additional States.

(7) It should be pointed out that this plan would increase the importance of voting. Each individual voter could be nearly assured that his vote would count in determining the result whether he voted with the majority or minority in his particular State.

This, Mr. Chairman, in my opinion—this resolution would do what you want to be done and, yet, present an amendment which can win ratification.

Mr. Chairman, I have had prepared a little study which takes the presidential elections from 1920 to the present, to 1960, and shows how the votes of the States would have been divided under this plan.

I submit this, and I think it will be helpful if it could appear in the record because I assume that every Senator would want to know how this would work in his State and how it would have worked in the elections in recent years, particularly since 1920. I took 1920 because that was the first year in which we had women's suffrage, in which we had the effect of a larger popular vote.

Senator KEFAUVER. Yes; I think that would be of interest.

Senator CASE of South Dakota. In comment on it only, may I say this, just to illustrate. In the last election, Mr. Kennedy received 303 electoral votes; Mr. Nixon, 219; others, 15.

Had this plan been in operation in the last election, Mr. Kennedy would have received 271 votes, would still have been elected; Mr. Nixon would have received 261 votes. There would have been a margin of 10 electoral votes, which would have been very close in reflection of the popular vote, in which there was a difference of only about 100,000 votes. The five unpledged electors, of course, we would not count, but, had we not had the electors, these votes would have gone to a presidential candidate, one way or the other.

But, in any event, while it would not have changed the result in the Kennedy-Nixon election, the electoral vote would have more closely reflected the popular vote.

Now, it is interesting to note that in each of the elections I have referred to, the final result would not have been changed so far as concerns the President who was elected. But in each case, since 1920, these would have been a closer reflection of the popular vote that was cast.

I submit those for the record.

Senator KEFAUVER. They will be made a part of the record at this point.

(The document referred to follows:)

1960 presidential election

Popular vote:	
Nixon	34,108,474
Kennedy	34,221,531
Electoral college:	
Nixon	219
Kennedy	303
Others	15
Presidential unit vote (as computed by this system):	
Nixon	261
Kennedy	271
(5 unpledged electors not counted.)	
Alabama	11
Nixon	5
Kennedy	6
Alaska	3
Nixon	2
Kennedy	1
Arizona	4
Nixon	3
Kennedy	1
Arkansas	8
Nixon	3
Kennedy	5
California	32
Nixon	17
Kennedy	15
Colorado	6
Nixon	4
Kennedy	2
Connecticut	8
Nixon	3
Kennedy	5
Delaware	3
Nixon	1
Kennedy	2
Florida	10
Nixon	6
Kennedy	4
Georgia	12
Nixon	4
Kennedy	8

Presidential unit vote (as computed by this system)—Con.	
Hawaii	3
Nixon	1
Kennedy	2
Idaho	4
Nixon	3
Kennedy	1
Illinois	27
Nixon	13
Kennedy	14
Indiana	13
Nixon	7
Kennedy	6
Iowa	10
Nixon	6
Kennedy	4
Kansas	8
Nixon	5
Kennedy	3
Kentucky	10
Nixon	6
Kennedy	4
Louisiana	10
Nixon	0
Kennedy	10
Maine	5
Nixon	3
Kennedy	2
Maryland	9
Nixon	4
Kennedy	5
Massachusetts	16
Nixon	6
Kennedy	10
Michigan	20
Nixon	9
Kennedy	11

1960 presidential election—Continued

Presidential unit vote (as computed by this system)—Con.

Minnesota	11
Nixon	5
Kennedy	6
Mississippi	8
Nixon	0
Kennedy	3
Unpledged	5

(The unpledged electors are not applicable to this system.)

Missouri	13
Nixon	6
Kennedy	7
Montana	4
Nixon	3
Kennedy	1
Nebraska	6
Nixon	4
Kennedy	2
Nevada	3
Nixon	1
Kennedy	2
New Hampsire	4
Nixon	3
Kennedy	1
New Jersey	16
Nixon	7
Kennedy	9
New Mexico	4
Nixon	1
Kennedy	3
New York	45
Nixon	21
Kennedy	24
North Carolina	14
Nixon	6
Kennedy	8

Presidential unit vote (as computed by this system)—Con.

North Dakota	4
Nixon	3
Kennedy	1
Ohio	25
Nixon	13
Kennedy	12
Oklahoma	8
Nixon	5
Kennedy	3
Oregon	6
Nixon	4
Kennedy	2
Pennsylvania	32
Nixon	15
Kennedy	17
Rhode Island	4
Nixon	1
Kennedy	3
South Carolina	8
Nixon	3
Kennedy	5
South Dakota	4
Nixon	3
Kennedy	1
Tennessee	11
Nixon	6
Kennedy	5
Texas	24
Nixon	11
Kennedy	13
Utah	4
Nixon	3
Kennedy	1

1960 presidential election—Continued

Presidential unit vote (as computed by this system)—Con.	
Vermont	3
Nixon	2
Kennedy	1
Virginia	12
Nixon	7
Kennedy	5
Washington	9
Nixon	5
Kennedy	4

Presidential unit vote (as computed by this system)—Con.	
West Virginia	8
Nixon	3
Kennedy	5
Wisconsin	12
Nixon	7
Kennedy	5
Wyoming	3
Nixon	2
Kennedy	1

Election of 1956

[The 3 sets of figures in each column for each candidate are: Percent of popular vote; percent of unit vote; and unit vote]

State	Total unit votes	Eisenhower			Stevenson		
Alabama	11	41.06	4.52	5	58.93	6.48	6
Alaska							
Arizona	4	61.06	2.44	3	38.94	1.56	1
Arkansas	8	46.62	3.73	3	53.38	4.27	5
California	32	55.58	17.79	18	44.42	14.21	14
Colorado	6	59.91	3.60	4	40.09	2.40	2
Connecticut	8	63.73	5.10	5	36.27	2.90	3
Delaware	3	55.25	1.66	2	44.75	1.34	1
Florida	10	57.27	5.73	6	42.73	4.27	4
Georgia	12	33.39	4.01	4	66.61	7.99	8
Hawaii							
Idaho	4	61.20	2.45	3	38.80	1.55	1
Illinois	27	59.63	16.10	16	40.37	10.90	11
Indiana	13	60.14	7.82	8	39.86	5.18	5
Iowa	10	59.23	5.92	6	40.77	4.08	4
Kansas	8	65.67	5.25	5	34.33	2.75	3
Kentucky	10	54.56	5.46	6	45.44	4.54	4
Louisiana	10	57.42	5.74	6	42.58	4.26	4
Maine [1]	5			5			0
Maryland	9	60.04	5.40	5	39.96	3.60	4
Massachusetts	16	59.50	9.52	10	40.50	6.48	6
Michigan	20	55.75	11.2	11	44.25	8.8	9
Minnesota	11	53.81	5.92	6	46.19	5.08	5
Mississippi [1]	8			0			8
Missouri	13	49.89	6.49	6	50.11	6.51	7
Montana	4	57.13	2.29	3	42.87	1.71	1
Nebraska	6	65.51	3.93	4	34.49	2.07	2
Nevada	3	57.97	1.74	2	42.03	1.26	1
New Hampshire	4	66.14	2.65	3	33.86	1.35	1
New Jersey	16	65.40	10.46	10	34.60	5.54	6
New Mexico	4	58.05	2.32	3	41.95	1.68	1
New York	45	63.84	28.73	29	36.16	16.27	16
North Carolina	14	49.34	6.91	6	50.66	7.09	8
North Dakota	4	61.84	2.47	3	38.16	1.53	1
Ohio	25	61.11	15.28	15	38.89	9.72	10
Oklahoma	8	55.13	4.41	5	44.87	3.59	3
Oregon	6	55.25	3.32	4	44.75	2.68	2
Pennsylvania	32	56.61	18.12	18	43.39	13.88	14
Rhode Island	4	58.26	2.33	3	41.74	1.67	1
South Carolina [1]	8			0			8
South Dakota	4	58.39	2.34	3	41.61	1.66	1
Tennessee	11	50.31	5.53	6	49.69	5.47	5
Texas	24	55.69	13.37	13	44.31	10.63	11
Utah	4	64.56	2.58	3	35.44	1.42	1
Vermont [1]	3			3			0
Virginia	12	59.07	7.09	7	40.93	4.91	5
Washington	9	54.26	4.88	5	45.74	4.12	4
West Virginia	8	54.08	4.33	5	45.92	3.67	3
Wisconsin	12	61.94	7.43	7	38.06	4.57	5
Wyoming	3	60.08	1.80	2	39.92	1.20	1

[1] Indicates States in which only 1 candidate received more than *1/3* of the popular vote. Therefore, all unit votes go to him.

Candidates	Popular votes	Electoral votes	Unit votes
Eisenhower-Nixon	35,581,003	457	304
Stevenson-Kefauver	25,738,765	73	227
		*1	
Total	61,319,768	531	531

*Jones of Alabama.

Basic source: Statistics of the Presidential and Congressional Election 1956. Compiled by the Clerk of the House of Representatives.

Election of 1952

[Percentage of popular vote shown where needed to determine unit vote]

	Total unit votes	Eisenhower	Unit votes	Stevenson	Unit votes
Alabama	11		4		7
Alaska					
Arizona	4	58.35	3	41.65	1
Arkansas	8		3		5
California	32	56.87	18	43.13	14
Colorado	6		4		2
Connecticut	8		5		3
Delaware	3		2		1
Florida	10	55.01	6	44.99	4
Georgia [1]	12				12
Hawaii					
Idaho	4		3		1
Illinois	27		15		12
Indiana	13	58.64	8	41.36	5
Iowa	10	64.18	6	35.82	4
Kansas [1]	8		8		
Kentucky	10		4		6
Louisiana	10	47.08	4	52.92	6
Maine	5		3		2
Maryland	9	55.82	5	44.18	4
Massachusetts	16	54.39	9	45.61	7
Michigan	20	55.77	11	44.23	9
Minnesota	11	55.64	6	44.36	5
Mississippi	8	39.56	3	60.44	5
Missouri	13		7		6
Montana	4		3		1
Nebraska [1]	6		6		
Nevada	3		2		1
New Hampshire	4		3		1
New Jersey	16	57.50	9	42.50	7
New Mexico	4		3		1
New York	45	56.01	25	43.99	20
North Carolina	14	46.09	6	53.91	8
North Dakota [1]	4		4		
Ohio	25	56.76	14	43.24	11
Oklahoma	8	54.59	5	45.41	3
Oregon	6		4		2
Pennsylvania	32	52.95	17	47.05	15
Rhode Island	4		3		1
South Carolina	8	49.28	3	50.72	5
South Dakota [1]	4		4		
Tennessee	11		6		5
Texas	24	53.22	13	46.78	11
Utah	4	58.93	3	41.07	1
Vermont [1]	3		3		
Virginia	12	56.50	7	43.50	5
Washington	9		5		4
West Virginia		48.08	3	51.92	5
Wisconsin	12	61.16	7	38.84	5
Wyoming	3		2		1

[1] States in which only 1 candidate received ⅓ or more of popular vote.

	Popular vote	Electoral vote	Unit vote
Eisenhower	33,937,252	442	297
Stevenson	27,314,992	89	234
Total	61,252,244	531	531

Source: Petersen, Svend, "A Statistical History of Our Presidential Elections." Library of Congress microfilm, 1955.

Election of 1948

[Percentage of popular vote shown only where needed to determine unit vote]

	Total unit votes	Truman	Unit votes	Dewey	Unit votes	Thurmond	Unit votes
Alabama [1]	11						11
Alaska							
Arizona	4		3		1		
Arkansas [1]	9		9				
California	25		13		12		
Colorado	6		4		2		
Connecticut	8		3		5		
Delaware	3		1		2		
Florida	8	59.21	5	40.79	3		
Georgia [1]	12		12				
Hawaii							
Idaho	4		3		1		
Illinois	28		15		13		
Indiana	13		6		7		
Iowa	10		6		4		
Kansas	8		3		5		
Kentucky	11	57.77	6	42.23	5		
Louisiana [1]	10						10
Maine	5	42.69	2	57.31	3		
Maryland	8		3		5		
Massachusetts	16	55.88	9	44.12	7		
Michigan	19		9		10		
Minnesota	11	58.90	6	41.10	5		
Mississippi [1]	9						9
Missouri	15	58.34	9	41.66	6		
Montana	4		3		1		
Nebraska	6		2		4		
Nevada	3		2		1		
New Hampshire	4		1		3		
New Jersey	16	47.72	7	52.28	9		
New Mexico	4		3		1		
New York	47	49.46	23	50.54	24		
North Carolina [1]	14		14				
North Dakota	4		1		3		
Ohio	25		13		12		
Oklahoma	10	63.75	6	37.25	4		
Oregon	6		2		4		
Pennsylvania	35	47.95	17	52.05	18		
Rhode Island	4		3		1		
South Carolina [1]	8						8
South Dakota	4		1		3		
Tennessee	12		7		5		
Texas [1]	23		23				
Utah	4		3		1		
Vermont	3		1		2		
Virginia	11	53.85	6	46.15	5		
Washington	8	55.21	5	44.79	3		
West Virginia	8	57.58	5	42.42	3		
Wisconsin	12	52.28	7	47.72	5		
Wyoming	3		2		1		

[1] States where only 1 candidate received ⅓ or more of popular vote.

	Popular vote	Electoral vote	Unit vote
Truman	24,104,030	303	284
Dewey	21,971,004	189	209
Thurmond	1,169,032	39	38
Total	47,244,066	531	531

Source: Petersen, Svend, "A Statistical History of Our Presidential Elections." Library of Congress microfilm, 1955.

Election of 1944 (showing unit votes only)

Popular vote:	
Dewey (Republican)	22,014,745
Roosevelt (Democrat)	25,606,585
Electoral vote:	
Dewey (Republican)	99
Roosevelt (Democrat)	432
Total	531
Presidential unit vote:	
Dewey (Republican)	198
Roosevelt (Democrat)	333
Total	531
Alabama	11
Dewey	0
Roosevelt	11
Arizona	4
Dewey	1
Roosevelt	3
Arkansas	9
Dewey	0
Roosevelt	9
California	25
Dewey	11
Roosevelt	14
Colorado	6
Dewey	4
Roosevelt	2
Connecticut	8
Dewey	3
Roosevelt	5
Delaware	3
Dewey	1
Roosevelt	2
Florida	8
Dewey	0
Roosevelt	8
Georgia	12
Dewey	0
Roosevelt	12

Presidential unit vote—Con.	
Idaho	4
Dewey	1
Roosevelt	3
Illinois	28
Dewey	13
Roosevelt	15
Indiana	13
Dewey	7
Roosevelt	6
Iowa	10
Dewey	6
Roosevelt	4
Kansas	8
Dewey	5
Roosevelt	3
Kentucky	11
Dewey	5
Roosevelt	6
Louisiana	10
Dewey	0
Roosevelt	10
Maine	5
Dewey	3
Roosevelt	2
Maryland	8
Dewey	3
Roosevelt	5
Massachusetts	16
Dewey	7
Roosevelt	9
Michigan	19
Dewey	9
Roosevelt	10
Minnesota	11
Dewey	5
Roosevelt	6

Election of 1944 (showing unit votes only)—Continued

Presidential unit vote—Con.

Mississippi	9
Dewey	0
Roosevelt	9
Missouri	15
Dewey	7
Roosevelt	8
Montana	4
Dewey	1
Roosevelt	3
Nebraska	6
Dewey	4
Roosevelt	2
Nevada	3
Dewey	1
Roosevelt	2
New Hampshire	4
Dewey	1
Roosevelt	3
New Jersey	16
Dewey	7
Roosevelt	9
New Mexico	4
Dewey	1
Roosevelt	3
New York	47
Dewey	22
Roosevelt	25
North Carolina	14
Dewey	0
Roosevelt	14
North Dakota	4
Dewey	3
Roosevelt	1
Ohio	25
Dewey	13
Roosevelt	12

Presidential unit vote—Con.

Oklahoma	10
Dewey	4
Roosevelt	6
Oregon	6
Dewey	2
Roosevelt	4
Pennsylvania	35
Dewey	17
Roosevelt	18
Rhode Island	4
Dewey	1
Roosevelt	3
South Carolina	8
Dewey	0
Roosevelt	8
South Dakota	4
Dewey	3
Roosevelt	1
Tennessee	12
Dewey	5
Roosevelt	7
Texas	23
Dewey	0
Roosevelt	23
Utah	4
Dewey	1
Roosevelt	3
Vermont	3
Dewey	2
Roosevelt	1
Virginia	11
Dewey	4
Roosevelt	7

Election of 1944 (showing unit votes only)—Continued

Presidential unit vote—Con.	
Washington	8
Dewey	3
Roosevelt	5
West Virginia	8
Dewey	3
Roosevelt	5
Presidential unit vote—Con.	
Wisconsin	12
Dewey	7
Roosevelt	5
Wyoming	3
Dewey	2
Roosevelt	1

Election of 1940 (unit votes only)

Popular vote:	
Willkie (Republican)	22,321,018
Roosevelt (Democrat)	27,307,819
Electoral vote:	
Willkie (Republican)	82
Roosevelt (Democrat)	449
Total	531
Presidential unit vote:	
Willkie (Republican)	189
Roosevelt (Democrat)	342
Total	531
Alabama	11
Willkie	0
Roosevelt	11
Arizona	3
Willkie	1
Roosevelt	2
Arkansas	9
Willkie	0
Roosevelt	9
California	22
Willkie	9
Roosevelt	13
Colorado	6
Willkie	4
Roosevelt	2
Connecticut	8
Willkie	3
Roosevelt	5
Delaware	3
Willkie	1
Roosevelt	2
Presidential unit vote—Con.	
Florida	7
Willkie	0
Roosevelt	7
Georgia	12
Willkie	0
Roosevelt	12
Idaho	4
Willkie	1
Roosevelt	3
Illinois	29
Willkie	14
Roosevelt	15
Indiana	14
Willkie	8
Roosevelt	6
Iowa	11
Willkie	6
Roosevelt	5
Kansas	9
Willkie	5
Roosevelt	4
Kentucky	11
Willkie	5
Roosevelt	6
Louisiana	10
Willkie	0
Roosevelt	10
Maine	5
Willkie	3
Roosevelt	2

Election of 1940 (unit votes only)—Continued

Presidential unit vote—Con.	
Maryland	8
Willkie	3
Roosevelt	5
Massachusetts	17
Willkie	8
Roosevelt	9
Michigan	19
Willkie	10
Roosevelt	9
Minnesota	11
Willkie	5
Roosevelt	6
Mississippi	9
Willkie	0
Roosevelt	9
Missouri	15
Willkie	7
Roosevelt	8
Montana	4
Willkie	1
Roosevelt	3
Nebraska	7
Willkie	4
Roosevelt	3
Nevada	3
Willkie	1
Roosevelt	2
New Hampshire	4
Willkie	1
Roosevelt	3
New Jersey	16
Willkie	7
Roosevelt	9
New Mexico	3
Willkie	1
Roosevelt	2

Presidential unit vote—Con.	
New York	47
Willkie	23
Roosevelt	24
North Carolina	13
Willkie	0
Roosevelt	13
North Dakota	4
Willkie	3
Roosevelt	1
Ohio	26
Willkie	12
Roosevelt	14
Oklahoma	11
Willkie	5
Roosevelt	6
Oregon	5
Willkie	2
Roosevelt	3
Pennsylvania	36
Willkie	17
Roosevelt	19
Rhode Island	4
Willkie	1
Roosevelt	3
South Carolina	8
Willkie	0
Roosevelt	8
South Dakota	4
Willkie	3
Roosevelt	1
Tennessee	11
Willkie	0
Roosevelt	11

Election of 1940 (unit votes only)—Continued

Presidential unit vote—Con.

Texas	23
Willkie	0
Roosevelt	23
Utah	4
Willkie	1
Roosevelt	3
Vermont	3
Willkie	2
Roosevelt	1
Virginia	11
Willkie	0
Roosevelt	11

Presidential unit vote—Con.

Washington	8
Willkie	3
Roosevelt	5
West Virginia	8
Willkie	3
Roosevelt	5
Wisconsin	12
Willkie	5
Roosevelt	7
Wyoming	3
Willkie	1
Roosevelt	2

Election of 1936

[Percentage of popular vote shown only where needed to determine unit vote]

	Total unit votes	F. D. Roosevelt	Unit votes	Landon	Unit votes
Alabama [1]	11		11		
Alaska					
Arizona [1]	3		3		
Arkansas [1]	9		9		
California [1]	22		22		
Colorado	6		4		2
Connecticut	8	57.83	5	42.17	3
Delaware	3		2		1
Flroida [1]	7		7		
Georgia [1]	12		12		
Hawaii					
Idaho [1]	4		4		
Illinois	29	59.25	17	40.75	12
Indiana	14	57.48	8	42.52	6
Iowa	11	56.03	6	43.97	5
Kansas	9	53.87	5	46.13	4
Kentucky	11	59.45	7	40.55	4
Louisiana [1]	10		10		
Maine	5		2		3
Maryland	8	62.73	5	37.27	3
Massachusetts	17	55.09	9	44.91	8
Michigan	19	59.24	11	40.76	8
Minnesota [1]	11		11		
Mississippi [1]	9		9		
Missouri	15	61.42	9	38.58	6
Montana [1]	4		4		
Nebraska	7	58.38	4	41.62	3
Nevada [1]	3		3		
New Hampshire	4		3		1
New Jersey	16	60.07	10	39.93	6
New Mexico	3		2		1
New York	47	60.16	28	39.84	19
North Carolina [1]	13		13		
North Dakota [1]	4		4		
Ohio	26	60.77	16	39.23	10
Oklahoma [1]	11		11		
Oregon [1]	5		5		
Pennsylvania	36	58.20	21	41.8	15
Rhode Island	4		3		1
South Carolina [1]	8		8		
South Dakota	4		3		1
Tennessee [1]	11		11		
Texas [1]	23		23		
Utah [1]	4		4		
Vermont	3		1		2
Virginia [1]	11		11		
Washington [1]	8		8		
West Virginia	8	60.70	5	39.30	3
Wisconsin [1]	12		12		
Wyoming	3		2		1

[1] Only 1 candidate received ⅓ or more of popular vote.

	Popular vote	Electoral vote	Unit vote
F. D. Roosevelt	27,751,841	523	403
Landon	16,679,491	8	128
Total	44,431,332	531	531

Source: Petersen, Svend. "A Statistical History of Our Presidential Elections." Library of Congress microfilm, 1955.

Election of 1932 (unit votes only)

Popular vote:	
Hoover (Republican)	15,758,901
Roosevelt (Democrat)	22,809,638
Electoral vote:	
Hoover (Republican)	59
Roosevelt (Democrat)	472
Total	531
Presidential unit vote:	
Hoover (Republican)	164
Roosevelt (Democrat)	367
Total	531
Alabama	11
Hoover	0
Roosevelt	11
Arizona	3
Hoover	0
Roosevelt	3
Arkansas	9
Hoover	0
Roosevelt	9
California	22
Hoover	9
Roosevelt	13
Colorado	6
Hoover	2
Roosevelt	4
Connecticut	8
Hoover	5
Roosevelt	3
Delaware	3
Hoover	2
Roosevelt	1
Florida	7
Hoover	0
Roosevelt	7
Georgia	12
Hoover	0
Roosevelt	12
Presidential unit vote—Continued	
Idaho	4
Hoover	1
Roosevelt	3
Illinois	29
Hoover	13
Roosevelt	16
Indiana	14
Hoover	6
Roosevelt	8
Iowa	11
Hoover	4
Roosevelt	7
Kansas	9
Hoover	4
Roosevelt	5
Kentucky	11
Hoover	4
Roosevelt	7
Louisiana	10
Hoover	0
Roosevelt	10
Maine	5
Hoover	3
Roosevelt	2
Maryland	8
Hoover	3
Roosevelt	5
Massachusetts	17
Hoover	8
Roosevelt	9
Michigan	19
Hoover	9
Roosevelt	10
Minnesota	11
Hoover	4
Roosevelt	7

Election of 1932 (unit votes only)—Continued

Presidential unit vote—Con.	
Mississippi	9
Hoover	0
Roosevelt	9
Missouri	15
Hoover	5
Roosevelt	10
Montana	4
Hoover	1
Roosevelt	3
Nebraska	7
Hoover	3
Roosevelt	4
Nevada	3
Hoover	0
Roosevelt	3
New Hampshire	4
Hoover	3
Roosevelt	1
New Jersey	16
Hoover	7
Roosevelt	9
New Mexico	3
Hoover	1
Roosevelt	2
New York	47
Hoover	20
Roosevelt	27
North Carolina	13
Hoover	0
Roosevelt	13
North Dakota	4
Hoover	0
Roosevelt	4
Ohio	26
Hoover	12
Roosevelt	14

Presidential unit vote—Con.	
Oklahoma	11
Hoover	0
Roosevelt	11
Oregon	5
Hoover	2
Roosevelt	3
Pennsylvania	36
Hoover	19
Roosevelt	17
Rhode Island	4
Hoover	3
Roosevelt	1
South Carolina	8
Hoover	0
Roosevelt	8
South Dakota	4
Hoover	1
Roosevelt	3
Tennessee	11
Hoover	0
Roosevelt	11
Texas	23
Hoover	0
Roosevelt	23
Utah	4
Hoover	1
Roosevelt	3
Vermont	3
Hoover	2
Roosevelt	1
Virginia	11
Hoover	0
Roosevelt	11
Washington	8
Hoover	3
Roosevelt	5

Election of 1932 (unit votes only)—Continued

Presidential unit vote—Con.	
West Virginia	8
Hoover	3
Roosevelt	5
Wisconsin	12
Hoover	0
Roosevelt	12

Presidential unit vote—Con.	
Wyoming	3
Hoover	1
Roosevelt	2

Election of 1928 (unit votes only)

Popular vote:	
Hoover (Republican)	21,391,993
Smith (Democrat)	15,016,169
Electoral vote:	
Hoover (Republican)	444
Smith (Democrat)	87
Total	531
Presidential unit vote:	
Hoover (Republican)	303
Smith (Democrat)	228
Total	531
Alabama	12
Hoover	5
Smith	7
Arizona	3
Hoover	2
Smith	1
Arkansas	9
Hoover	3
Smith	6
California	13
Hoover	9
Smith	4
Colorado	6
Hoover	4
Smith	2
Connecticut	7
Hoover	4
Smith	3
Delaware	3
Hoover	2
Smith	1

Presidential unit vote—Con.	
Florida	6
Hoover	4
Smith	2
Georgia	14
Hoover	0
Smith	14
Idaho	4
Hoover	3
Smith	1
Illinois	29
Hoover	17
Smith	12
Indiana	15
Hoover	9
Smith	6
Iowa	13
Hoover	8
Smith	5
Kansas	10
Hoover	10
Smith	0
Kentucky	13
Hoover	8
Smith	5
Louisiana	10
Hoover	0
Smith	10
Maine	6
Hoover	6
Smith	0

Election of 1928 (unit votes only)—Continued

Presidential unit vote—Con.

Maryland	8
Hoover	5
Smith	3
Massachusetts	18
Hoover	8
Smith	10
Michigan	15
Hoover	15
Smith	0
Minnesota	12
Hoover	7
Smith	5
Mississippi	10
Hoover	0
Smith	10
Missouri	18
Hoover	10
Smith	8
Montana	4
Hoover	3
Smith	1
Nebraska	8
Hoover	5
Smith	3
Nevada	3
Hoover	2
Smith	1
New Hampshire	4
Hoover	3
Smith	1
New Jersey	14
Hoover	8
Smith	6
New Mexico	3
Hoover	2
Smith	1

Presidential unit vote—Con.

New York	45
Hoover	23
Smith	22
North Carolina	12
Hoover	7
Smith	5
North Dakota	5
Hoover	3
Smith	2
Ohio	24
Hoover	16
Smith	8
Oklahoma	10
Hoover	6
Smith	4
Oregon	5
Hoover	3
Smith	2
Pennsylvania	38
Hoover	25
Smith	13
Rhode Island	5
Hoover	2
Smith	3
South Carolina	9
Hoover	0
Smith	9
South Dakota	5
Hoover	3
Smith	2
Tennessee	12
Hoover	7
Smith	5

Election of 1928 (unit votes only)—Continued

Presidential unit vote—Con.	
Texas	20
Hoover	11
Smith	9
Utah	4
Hoover	3
Smith	1
Vermont	4
Hoover	4
Smith	0
Virginia	12
Hoover	7
Smith	5

Presidential unit vote—Con.	
Washington	7
Hoover	7
Smith	0
West Virginia	8
Hoover	5
Smith	3
Wisconsin	13
Hoover	7
Smith	6
Wyoming	3
Hoover	2
Smith	1

Election of 1924

[Percentage of popular vote shown only where necessary to determine unit vote]

	Total unit votes	Coolidge	Unit votes	Davis	Unit votes	La Follette	Unit votes
Alabama [1]	12				12		
Alaska							
Arizona	3		2		1		
Arkansas [1]	9				9		
California [1]	13		13				
Colorado [1]	6		6				
Connecticut [1]	7		7				
Delaware	3		2		1		
Florida [1]	6				6		
Georgia [1]	14				14		
Hawaii							
Idaho	4		3				1
Illinois [1]	29		29				
Indiana	15	58.82	9	41.18	6		
Iowa [1]	13		13				
Kansas [1]	10		10				
Kentucky	13	51.36	7	48.44	6		
Louisiana [1]	10				10		
Maine [1]	6		6				
Maryland	8		5		3		
Massachusetts [1]	18		18				
Michigan [1]	15		15				
Minnesota	12		7				5
Mississippi [1]	10				10		
Missouri	18	53.10	10	46.90	8		
Montana	4		3				1
Nebraska [1]	8		8				
Nevada	3		2				1
New Hampshire	4		3		1		
New Jersey [1]	14		14				
New Mexico	3		2		1		
New York [1]	45		45				
North Carolina	12	40.28	5	59.72	7		
North Dakota	5		3				2
Ohio [1]	24		24				
Oklahoma	10		4		6		
Oregon [1]	5		5				
Pennsylvania [1]	38		38				
Rhode Island	5		3		2		
South Carolina [1]	9				9		
South Dakota	5		3				2
Tennessee	12	45.22	5	54.78	7		
Texas [1]	20				20		
Utah [1]	4		4				
Vermont [1]	4		4				
Virginia [1]	12				12		
Washington	7	59.37	4			40.63	3
West Virginia	8		5		3		
Wisconsin	13	40.72	5			59.28	8
Wyoming [1]	3		3				

[1] Indicates States in which only 1 candidate received more than ½ of popular vote.

	Popular vote	Electoral vote	Unit vote
Coolidge	15,725,016	382	354
Davis	8,386,503	136	154
La Follette	4,822,856	13	23
Total	28,934,375	531	531

Source: "Statistics of the Congressional and Presidential Election of 1924." Compiled from official sources by the Clerk of the House.

Election of 1920

Popular vote:	
Harding (Republican)	16,143,407
Cox (Democrat)	9,130,328
Electoral vote:	
Harding (Republican)	404
Cox (Democrat)	127
Total	531
Presidential unit vote:	
Harding (Republican)	374
Cox (Democrat)	157
Total	531
Alabama	12
Harding	0
Cox	12
Arizona	3
Harding	2
Cox	1
Arkansas	9
Harding	4
Cox	5
California	13
Harding	13
Cox	0
Colorado	6
Harding	4
Cox	2
Connecticut	7
Harding	7
Cox	0
Delaware	3
Harding	2
Cox	1
Florida	6
Harding	0
Cox	6
Georgia	14
Harding	0
Cox	14

Presidential unit vote—Con.	
Idaho	4
Harding	3
Cox	1
Illinois	29
Harding	29
Cox	0
Indiana	15
Harding	9
Cox	6
Iowa	13
Harding	13
Cox	0
Kansas	10
Harding	10
Cox	0
Kentucky	13
Harding	6
Cox	7
Louisiana	10
Harding	0
Cox	10
Maine	6
Harding	6
Cox	0
Maryland	8
Harding	5
Cox	3
Massachusetts	18
Harding	18
Cox	0
Michigan	15
Harding	15
Cox	0
Minnesota	12
Harding	12
Cox	0

Election of 1920—Continued

Presidential unit vote—Con.

Mississippi	10
Harding	10
Cox	0
Missouri	18
Harding	18
Cox	8
Montana	4
Harding	4
Cox	0
Nebraska	8
Harding	8
Cox	0
Nevada	3
Harding	2
Cox	1
New Hampshire	4
Harding	3
Cox	1
New Jersey	14
Harding	14
Cox	0
New Mexico	3
Harding	2
Cox	1
New York	45
Harding	45
Cox	0
North Carolina	12
Harding	5
Cox	7
North Dakota	5
Harding	5
Cox	0
Ohio	24
Harding	14
Cox	10

Presidential unit vote—Con.

Oklahoma	10
Harding	6
Cox	4
Oregon	5
Harding	3
Cox	2
Pennsylvania	38
Harding	38
Cox	0
Rhode Island	5
Harding	5
Cox	0
South Carolina	9
Harding	0
Cox	9
South Dakota	5
Harding	5
Cox	0
Tennessee	12
Harding	7
Cox	5
Texas	20
Harding	0
Cox	20
Utah	4
Harding	3
Cox	1
Vermont	4
Harding	4
Cox	0
Virgina	12
Harding	5
Cox	7

Election of 1920—Continued

Presidential unit vote—Con.	
Washington	7
Harding	7
Cox	0
West Virginia	8
Harding	5
Cox	3

Presidential unit vote—Con.	
Wisconsin	13
Harding	13
Cox	0
Wyoming	3
Harding	3
Cox	0

Senator KEFAUVER. Anything else?

Senator CASE of South Dakota. That is all.

Senator KEFAUVER. This has been a very interesting presentation, Senator Case, and I commend you upon coming up with a new plan which you have persuasively explained.

Mr. Kirby, do you wish to ask Senator Case a question?

Mr. KIRBY. Senator Case, your proposal, I believe, preserves the present system of deciding the elections in the House of Representatives where the electoral vote is not decisive?

Senator CASE of South Dakota. Yes; if it came to that.

Mr. KIRBY. You choose to retain the unit delegation vote in the House in selecting the President?

Senator CASE of South Dakota. I think, Mr. Kirby, that the paragraph that relates to that is at the top of page 5:

> The person having the greatest number of presidential unit votes shall be the President, if such number is the majority of the whole number of such votes, and if no person has such majority, then from the persons having the highest number, not exceeding three, on the list of those receiving presidential unit votes, the House of Representatives shall choose immediately by ballot the President.

That is essentially the present system.

Senator KEFAUVER. Senator Case, there would be fractional votes under your system?

Senator CASE of South Dakota. Only the last fraction; only in the case of a tie, would there actually be a fractional vote. That would apply only to the last unit vote, in the case of a State which had an odd number of electors, and to the last two where the number of electors accorded a State is an even number.

Senator KEFAUVER. Now, suppose the vote were, let us say, 47.5 to 52.5 percent, in the statewide vote. Then would each candidate receive elector votes with a fraction like that in it, or how would that be decided?

Senator CASE of South Dakota. You first would take the number of votes that would be settled by an even distribution proportionately between the number of electors and the total vote.

You would have left the number of electors—to make the thing fairly simple——

Senator KEFAUVER. Let me state it hypothetically. Suppose in South Dakota one candidate got 47.5 percent; the other candidate got 52.5 percent. Would you take 47.5 percent of 4, which is the number of votes you are allowed?

Senator CASE of South Dakota. No. It would work out in that case 3 to 1. We have four electoral votes. In that case it would work out 3 to 1.

You see, you could not divide two and two. You would have a stalement there, so that the advantage would go to the candidate that carried the State, that had the margin. But today in a situation like that, the candidate that got 52 percent of the vote would get all four votes, and the other candidate would be washed out.

Senator KEFAUVER. In other words, you would not take the percentage of the popular vote in the State and multiply it by the number of electoral votes that you were entitled to?

Senator CASE of South Dakota. No. This would retain whole numbers. Roughly it would mirror the percentage division, computed to the nearest whole number.

Senator KEFAUVER. Except that in your case, in your bill, the resolution, if you receive less than 33⅓ percent, you would not get any?

Senator CASE of South Dakota. That is correct, and that, it was suggested, would get away from the splinter party problem of the complete proportional system.

This is based, of course, primarily on the idea of proportional voting; that is, it is more nearly like proportional voting, except that it takes care of the splinter party argument against proportional voting by using this one-third factor. The one-third factor was selected because that is the lowest number of electoral votes that any State can be entitled to. It makes it possible for the States with only three electoral votes to have some reflection in their presidential vote of the popular vote.

Senator KEFAUVER. Thank you very much, Senator Case.

Senator CASE of South Dakota. Thank you very much, Mr. Chairman.

(A further statement submitted by Senator Case of South Dakota follows:)

MAY 26, 1961.

Hon. ESTES KEFAUVER,
Chairman, Subcommittee on Constitutional Amendments, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR KEFAUVER: This is to notify you that, were Senate Joint Resolution 48 to be reported for Senate action by your committee, I would have no objection to changing that part of the proposal relating to selection of the President by the House of Representatives in the case that no candidate for President received a majority of the presidential unit votes cast by the States

I would, in fact, join in sponsoring an amendment to the proposal in order to change the provision that, in such a case, the representatives of each State as separate bodies have equal voting power in selecting the President.

Equity would dictate that larger States have greater voice in the selection. I would prefer that each Member of Congress, sitting in joint session, have one vote in this selection, thereby accurately reflecting the relative strength possessed by the various States in the general presidential electoral process. This would apply to the selection of both President and Vice President. Final judgment, however, should be left to the wisdom of the committee.

I do not consider this particular section of the proposal to be of central importance; and, in fact, this particular section was one of the provisions of the Constitution to which I did not address this proposal, hence it remained as originally provided.

Sincerely yours,

FRANCIS CASE, *U.S. Senator.*

Senator KEFAUVER. The committee is delighted to have Senator Yarborough, of Texas, with us. The chairman has a great deal of admiration and respect for the Senator.

Senator Yarborough is cosponsor of Senate Joint Resolution 58, which he will discuss at this time.

STATEMENT OF HON. RALPH YARBOROUGH, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator YARBOROUGH. Mr. Chairman, and members of this distinguished subcommittee, I am very grateful for this distinguished chairman's kind remarks about me. I well remember the first time I ever had the privilege of seeing the chairman of this subcommittee. I attended the American Bar Association convention in the city of New York in 1951, the home State of the distinguished Senator from New York, who is here. And the distinguished Senator from Tennessee addressed a session of the American Bar Association at that time on the need for public defenders of people who were accused of an offense and have no money to hire a lawyer to defend themselves.

I had been greatly impressed with his record for years before hearing him there in New York City in 1951. I was impressed then, and I have been increasingly impressed with and appreciative of his great services to the public in the succeeding 10 years. It is a privilege to appear before a subcommittee of which he is a chairman.

Senator KEFAUVER. The Senator from Texas is very generous. I well remember the meeting he refers to. It has been my great pleasure to be associated with the Senator from Texas since that time.

Senator YARBOROUGH. Mr. Chairman, with appreciation for the kind remarks of the distinguished chairman, I will continue.

Senator KEFAUVER. Before you go on, we are delighted to have Senator Hruska with us. We welcome him to join with us in questioning the witnesses. And he will also testify later. Senator Hruska is an able member of the full Judiciary Committee, who does not have the privilege of being a member of this committee, I am sorry to say.

Senator HRUSKA. A privilege which I miss very much, Mr. Chairman.

Senator YARBOROUGH. Mr. Chairman, as cosponsor of Senate Joint Resolution 58, the joint resolution proposing a constitutional amendment to abolish the poll tax in Federal elections, I genuinely appreciate this opportunity to appear and the kindness you have shown in permitting me to come back this afternoon when I couldn't be heard this morning.

A number of extremely important election reform proposals are under consideration here, but it is my firm belief that Senate Joint Resolution 58 is among the most important. It is aimed at striking down a financial barrier which stops or discourages a very substantial number of Americans in five States from voting.

It is no mere coincidence that in the 1960 presidential election that five of the seven States which had the lowest percentage of citizens voting are States which still require purchase of a poll tax as a ticket to the voting booth.

The "1960 Election Score Board," a highly informative booklet prepared by the American Heritage Foundation, shows that my own home State of Texas ranked down in 44th place among the States

with only 43.3 percent of civilians of voting age casting a ballot in the 1960 election, despite the fact that it was the most strenuously contested presidential election in the history of my State, with each major party presidential candidate spending several days in the State. And of course Texas had a native son as a vice presidential candidate on the Democratic ticket. All of those factors caused a high voter interest in my State. But despite that fact only 43.3 percent of people of voting age cast a ballot.

Other States where payment of a poll tax is a prerequiste for qualifying to vote ranked low also.

This is not to say that the poll tax is by any means entirely responsible for the lamentable failure of many to participate in our incomparable system of government by consent of the governed. But it is to point out the undeniable fact that the poll tax is one of the several barriers to voting, and it should be removed.

There are those who scoff at the idea that having to pay $1.50 is a barrier to voting. That is the price in my State, Mr. Chairman; some counties are authorized to charge a 25-cent fee to pay the expenses of collection of it. So it varies from $1.50 to $1.75 in my State. There are those that scoff at the idea that having to pay that $1.50 or $1.75 for a poll tax in January keeps people from the polls in July or November. But let us consider this matter. If you were head of one of the thousands of low-income families in Texas, with weekly pay of $30 or $40 or less, what week would you feel like you could spend $1.75, or $3.50 for yourself and your wife, for poll taxes? You know, $3.50 will buy meat and potatoes and beans for several meals for a family that's barely getting along. Right now we have too many families in Texas and America who can't find the jobs they need even to earn the necessities of life.

Those who contend the poll tax is no barrier to voting generally, admit that it may keep a few people from the polls, but they say it is no serious deterrent. I disagree. Like most Americans, I consider the privilege of voting to be our most precious heritage. The fact that a poll tax keeps even a small percentage of people from participation in their free government is sufficient grounds for its abolition, so far as I'm concerned.

And in my State, at least, the timing of the poll tax payment is almost as big a deterrent as the tax itself. Surely we are all familiar with the Christmas bills that always come due in January. Christmas comes, the spirit of giving takes hold of us, and often the desire is really bigger than the pocketbook can really afford. But with modern credit, the mother and father buy that little something extra—then comes January when there is rarely enough money to cover the new indebtedness.

The poll tax in my State must be paid by January 31 if a person is to vote that year. If they are to vote in May or June or July or August primaries, or April municipal elections or April school board elections or November general elections or any of the bond issues, anything for the whole calendar year, they must pay the poll tax by January 31.

Senator KEATING. That doesn't apply to primaries too, does it?

Senator YARBOROUGH. It applies to all elections—primaries, general elections, local elections, State elections, all types of elections in

my State, from the local school district or local water control district, of any local precinct race right on up through the presidential elections.

Senator KEATING. Does it ever happen that poll tax is paid by anyone other than the voter?

Senator YARBOROUGH. It is not legal. So if it happens, they don't advertise that.

Senator KEATING. Is it illegal?

Senator YARBOROUGH. It is illegal. Except a husband can pay his wife's.

Senator KEATING. Can a wife pay a husband's?

Senator YARBOROUGH. Yes.

Senator HRUSKA. Can they prepay it in the previous calendar year?

Senator YARBOROUGH. Yes, they can prepay it in the fall before. Our taxes for 1961—the State taxes—become due October 1, 1960. If you pay your taxes in October, you get a discount, not on the poll tax, but on your real estate tax, of 3 percent. Pay them in November, you get a discount of 2 percent. Pay them in December, you get a discount of 1 percent. Pay them in January, no discount. Wait until February and you start paying interest on them—it goes up 1 percent.

Now, the poll tax constitutes a lien on the real estate, if you own real estate, or a home. So it is rendered along with that. Consequently, you have higher poll tax payments for people who own real estate.

Senator KEATING. In order to vote for Senator from Texas, a fellow this year would have to pay $3.50. You would have had to pay $1.75 to vote for Lyndon last fall——

Senator YARBOROUGH. And another $1.75 to vote in this election.

Senator KEATING. So the $1.75 he paid to vote for Senator Johnson just would be out the window so far as electing a Senator from Texas is concerned.

Senator YARBOROUGH. There were much higher poll tax payments in 1960 than 1961, because you had many State and county elections, and you had the presidential election.

Senator KEATING. But he didn't have to pay $1.75 twice to vote for Johnson twice in the last election.

Senator YARBOROUGH. When you pay a poll tax for a calendar year, you vote in all elections in that year, all types of elections. One $1.75 covers everything. And many people pay that as much for bond issues as anything else. We have many local school bond issues, local county and city bond issues. Many taxpayers pay this poll tax to be certain that they get a chance to vote on these bond issues, because a far smaller percentage of people vote in the bond issue elections than in any other.

Senator KEATING. Are government officials exempt from paying that tax?

Senator YARBOROUGH. No, there are no exemptions except on age, blindness, total physical disability, there are certain exemptions like that.

Senator KEATING. You can take a pauper's oath or something like that and get out of it, can't you?

Senator YARBOROUGH. No—it is on age or physical disability, or blindness.

Senator KEFAUVER. While you are interrupted, Senator Yarborough, when we used to have a poll tax in Tennessee, as we did before we amended our constitution in 1952, the evil, as you say, was not only in requiring a person to pay a tax for voting, but that you had to pay the tax at some time many weeks or months prior to the time you might vote. In January there might not be any interest in an election, or you might not be thinking about elections, and just let the time slide by. And then after that you can do all the talking you want to and express all the interest, but you cannot vote.

Senator YARBOROUGH. Yes. The Senator from Tennessee has put his finger right on one trouble with our poll tax in my State, in that it is required to be paid by the 31st of January. Our primaries, up until last year, were held in July and August. The candidates had not announced. Interest wouldn't be very high in January. Then as interest mounted in the late spring and summer, they could no longer pay the poll tax and qualify to vote. Now, that wasn't true this year, though. There was a special election, and in January they knew who the candidates were. I am speaking now of the U.S. Senate race now underway. The candidates were in the field campaigning, and there was a higher January interest than you would normally have in Texas this year.

Senator KEFAUVER. And then another trouble is, isn't it, that in January, the average man and woman who are not in politics except as they vote and take part as interested citizens, may not think about paying the poll tax, but the political boss, or the fellow who is head of a ward, he thinks about it. He probably gets his people to pay their poll tax by reminding them of it, but a lot of other good people are not reminded of it.

Senator YARBOROUGH. That is one drawback to the early deadline that we have. To offset that in our State, the League of Women Voters and the Junior Chamber of Commerce for years have carried on expensive campaigns to alert people. There are many voluntary organizations. Except for that, John Q. Public, the average citizen, would probably largely overlook it. And except for these other external aids—the newspapers mention it a lot, the League of Women Voters, and certain other groups try to get people interested each January. But the intense emotional interest that comes with the appeal of one candidate to one voter is generally absent in January. And you have January, the month after Christmas, when there is rarely enough money to cover the new indebtedness for Christmas. Then somebody comes along and asks from a husband and wife $3.50 for their two poll taxes.

Senator KEATING. Is it illegal to loan them the money to pay this poll tax?

Senator YARBOROUGH. It wouldn't be illegal for a bank to lend people money to pay their taxes, including poll taxes.

Senator KEATING. Would it be illegal for an individual to loan them money?

Senator YARBOROUGH. I don't have the Texas Code before me. If they said it was a loan, but it was a subterfuge, being used as a subterfuge to really give them the money for the poll tax, it would be illegal.

Senator KEATING. If they loaned them the money, would they be able to charge that off as a bad debt, if it was not paid?

Senator YARBOROUGH. Senator, bad debts are chargeable off, but at $3.50, I don't know of anybody lending money——

Senator KEATING. It is conceivable that some group of men might loan more than $3.50. They might loan 2 or 3 families, or possibly 2,000 or 3,000 enough to pay the poll tax.

Senator YARBOROUGH. If it were done on that proportion, it would be found out.

Senator KEATING. Has anybody ever been prosecuted for that?

Senator YARBOROUGH. For payment of other people's poll taxes, oh yes. There have been a number of prosecutions for payment of other people's taxes. That is not—in the past that was not too infrequent.

Senator KEATING. Has there ever been a conviction?

Senator YARBOROUGH. There have been convictions for election law violation of this type, dealing with poll taxes. I cannot now, after a lapse of years—I have read of them in the papers—state right off hand that they did specifically convict one man for payment of one poll tax. But I do remember reading of prosecutions and jury trials in the papers and grand jury investigations for paying other people's poll taxes. We had an investigation 3 or 4 years ago. It was contended in a certain county that county officials, the incumbents, paid poll taxes for 200 or 300 people.

Senator KEATING. Candidates for reelection?

Senator YARBOROUGH. Yes, that is where they have had the most difficulty with it. At the local level, in a small population county, a candidate for relection would make money available to the people.

Senator HRUSKA. Suppose a nonprofit corporation having no greed or selfishness is organized for the purpose of financing people who cannot afford to pay a poll tax. That is a very laudable objective. It helps them out in their civic duties. Suppose it was a subsidiary of the League of Women Voters. Do you think under those circumstances there would be prosecutions of such an effort?

Senator YARBOROUGH. I think the people interested in that are putting in their time trying to get the poll tax lifted, rather than lend money to perpetuate it.

Senator HRUSKA. Of course, if they could get the law repealed, they could dispense with such a nonprofit corporation, and that would be added incentive, wouldn't it?

Senator YARBOROUGH. Yes. I don't think you would find anybody in so vast an area with 5,329,000 prospective voters.

Senator HRUSKA. No. But a couple of lit candles is better than a lot of curses in all that darkness.

Senator YARBOROUGH. 5,329,000—I don't believe you will find any foundation being formed to lend money to people to pay poll taxes. The foundation should fight the payment of poll taxes, and try to help get the laws changed in that respect.

And then of course if a person misses a payment by the 31st of January deadline, he is disenfranchised for the year. Now, some voters do go ahead and pay those poll taxes after the deadline if they have real estate, because then it is a lien on the real estate. But they don't pay it to vote. And the poll taxes are not cumulative in Texas from year to year. Each year stands on its own bottom. And

a man can miss for 20 years, and if he wants to vote for a certain year, he can pay his poll tax.

This statement about missing the entire year is not a rare case in my home State, nor is this "nonpayment" citizen necessarily a member of any specific minority group—rather, this yearly budgetary pinch cuts across many economic and social lines. The result is low voter participation. A very long step toward a cure of this low participation would be the abolition of the poll tax. Mr. Chairman, I want to repeat that.

This nonpaying person is not necessarily a member of some specific minority group. In my State, the poll tax was not adopted to prevent Negroes from voting. It was adopted back before the turn of the century, during the great agrarian revolution that took place in the Midwest in this country. The Negroes were not being allowed to vote then anyway. That was so close to the Civil War, the Negroes just didn't vote in the primaries. This was enacted in Texas to keep poor white tenant farmers from voting, who couldn't raise that money. And I think in Texas now the figures show in recent years as high a percentage of the Negroes pay their poll taxes as of the Anglo-whites.

As members of this distinguished committee well understand, the joint resolution under consideration would abolish the poll tax in Federal elections by sound constitutional process. The matter would be submitted to each of the 50 States for ratification. It is the consensus that once Congress acts in this field, that the State legislatures soon will move to eliminate the poll tax in State elections.

In a democracy, it is the exercise of choice of those who are to govern which distinguishes the citizens from the noncitizen. Repeal of the poll tax will help realize the principle that every American of voting age be a citizen in the full sense of the word.

Thank you very much for this kindness.

Further, I will say this.

In my State, where the aged are permitted to vote without payment of poll taxes, in a year in which a sudden hot campaign develops, where there had been previously low interest and low poll tax payment, the elderly citizens, since they can all vote without payment of the poll tax, are very much sought out by the candidates in that type of a year.

Senator HRUSKA. What is the age?

Senator YARBOROUGH. Sixty-five.

Senator KEFAUVER. The poll tax in Texas is a part of the constitution?

Senator YARBOROUGH. It is in the constitution of the State. It would have to be taken out of the constitution.

Senator KEFAUVER. That makes it more difficult to eliminate.

Senator YARBOROUGH. Yes; very much more, because of the difficulty of amending the State constitution, requiring two-thirds vote of the constitutional numbers of the members elected to the house and senate before submission to the people. You cannot submit a proposed constitutional amendment to the people for rejection or ratification at the polls by a simple majority or by a majority of the members present. It must be submitted only on a constitutional two-thirds of the members of each house of the elected number. And that makes it more difficult to eliminate it in my State.

Now, the poll tax, as I stated, was enacted for the purpose of keeping the white tenant farmers from voting back during the agrarian reforms, when the Populists had control of the State governments of Kansas and a number of other States, and were striking at the doors of the State government of Texas, and threatening to get control of the State government there. That was one purpose.

A second purpose was the support of public schools.

Texas at that time had virtually no revenue except from its agrarian civilization. And that income was low. The support of public schools was poor. And of this $1.50 tax, the major portion of it is dedicated to the support of the public schools.

Senator KEATING. That is practically all that you dedicate to education in Texas, isn't it?

Senator YARBOROUGH. Oh, no. We pay quite a bit of our revenue—we put more money on schools than any other one thing. While our average per capita income in Texas is about $1,943 per year, making Texas 32 among the States, where the distinguished Senator from New York represents one of the five richest States in the Union—I think the per capita income in New York is third only to the District of Columbia and Delaware—while Texas is 32 among the States in per capita income, in proportion of educational expenditures to income, we are 24 among the States. We spend more money on public education per capita in proportion than the average American State. Our effort, compared to the comparative wealth of the people, is not low. And we spend more of the State's tax dollar—about 40 percent goes for public education, and about 40 percent on our roads. We don't spend enough. But we do spend a very heavy percentage of the State's income.

In fact, on our gas line tax, we dedicate one-fourth of that to the public schools. The users of highways protest that very vigorously and have over the years. They say all that ought to be put in on roads. But that is used as one method of supporting our public school system in the State.

Senator KEFAUVER. We thank you very much, Senator Yarborough.

Senator YARBOROUGH. I thank the committee for their patience.

Senator KEATING. I thoroughly agree, and am a cosponsor of the resolution to eliminate the poll tax—although I have a strong feeling that perhaps it can be done by law, and does not require constitutional amendment. Have you given thought to that?

Senator YARBOROUGH. I have given it some thought, and I have heard it debated on the floor, and I have heard it discussed and debated when this proposed amendment passed the Senate in the 86th Congress—it didn't pass the House. I am of the opinion that a constitutional amendment is required to change the electoral qualifications of the citizens in any group of States in the Union, just as the 15th amendment prohibited disqualification of voters because of slavery, and as the later amendment prohibited the disqualification of electors because of their sex.

Senator KEATING. You may be right. We don't want to get into a discussion of that here.

Senator KEFAUVER. I believe, Senator Yarborough, that in the last Congress the then Senator Johnson, now Vice President Johnson, was a cosponsor of this amendment, was he not?

Senator YARBOROUGH. Yes; he was. Vice President Lyndon Johnson was a cosponsor and a very active worker for this proposed constitutional reform.

I want to say this to the distinguished Senator from New York. I think this is the proper way to do it. I think it would be a dangerous thing for the Congress to begin to change voter qualifications over the country by a simple act of Congress—even though in a Federal election. I realize that this is limited to a Federal election. And there is a basis for sound argument, as the distinguished Senator said—that since this is limited to Federal elections, there is a strong argument that it can be done by law—that a constitutional amendment is only required if it is to go into State elections. But as we all know, those of us that run for elective office, when you start changing the qualifications of electors, you get something pretty close to a politician's heart. And he is reluctant to see that fluctuate without very careful consideration.

Senator KEATING. The Senator is a political realist.

Senator YARBOROUGH. Thank you for the compliment. I wonder sometimes.

Senator KEFAUVER. Thank you very much, Senator Yarborough, for your contribution to our hearing.

We are glad to have the Senator from Nebraska with us to discuss Senate Joint Resolution 12, and any other matters he wishes to cover.

STATEMENT OF HON. ROMAN L. HRUSKA, A U.S. SENATOR FROM THE STATE OF NEBRASKA

Senator HRUSKA. The chairman is very gracious. I must say at the beginning, Mr. Chairman, we have no poll tax problem in the State of Nebraska, so we won't run in to the ramifications of this type of testimony.

Senator KEATING. You only have one branch of the legislature.

Senator HRUSKA. Yes. We go by the merit system there. We pick out the best legislators we can find on the State level, and figure one house is enough.

Senator KEATING. And the best on a national, may I add.

Senator HRUSKA. Thank you, sir. Present company excepted, perhaps.

Mr. Chairman, last year's presidential election, because it was so close, has accentuated the need for a change in our presidential election system so as to reflect a more accurate expression of the will of the voters.

I believe that our method of electing Presidents can be improved, and it is for this reason that I have joined with Senators Mundt, Morton, McClellan, Thurmond, and Blakeley as a cosponsor of Senate Joing Resolution 12. This proposed constitutional amendment, in my opinion, affords the best way of improving our electoral system.

Under the present system, based on the electoral college plan devised by our Founding Fathers, each State is allotted as many electors as it has Members of Congress, Senators and Representatives.

The problem with our present system is that over the years, in every State since 1892, it has become the custom to choose a State's electors in

a bloc under the general ticket system. This quite naturally gives greater power to decide an election to the statewide majority in each of those States with large populations. Under the Constitution, the legislature of each State has authority to decide how its electors shall be chosen; but as a practical matter, no State will abandon the general ticket system unless all the rest do so as the same time. Only an amendment such as the one proposed in Senate Joint Resolution 12 can change this.

This situation affects our whole presidential election procedure. Only residents of States having a large population can aspire to the Presidency in either major party because the claim is made, and accepted, that only such candidates can carry their pivotal States, with their large blocs of electoral votes. Party platforms are drafted so as to appeal to the special-interest groups in these States, and much of the campaign appeals of presidential candidates are directed at these groups.

I believe the amendment we have proposed will tend to correct this situation and that it will do so without changing our form of government. By this I mean, it will leave control of the election machinery with the States, where it has always been and where it should remain. There are other changes in the election procedure which have been proposed, but these proposals, in my opinion, would put control of presidential elections in the hands of Congress. This I oppose.

Senate Joint Resolution 12 would bring about the necessary reform with a minimum of change, and it would put every citizen of every State on the same basis in voting to elect a President. It provides that in every State a voter would cast his votes for three, and only three electors, two of them corresponding to his two U.S. Senators, to be elected at large, and one, corresponding to his Representative in the House, to be chosen from his district.

This amendment further provides that special elector districts shall be set up by the State legislature in each State, composed of compact and contiguous territory and containing, as nearly as practicable, equal population. This provision is included to make sure that the elector districts are established in the fairest way possible.

Under this amendment, there would no longer be a bloc electoral vote in the more heavily populated States. For example, in Illinois, where there is usually about the same number of Democrats and Republicans, the electoral vote would be split almost evenly. The Democrats would carry their normal areas and be credited with the district electors they elected. But, downstate Illinois, normally Republican, would choose Republican electors in its districts. The two electors at large, corresponding to Senators, would go to whichever party cast the larger statewide vote. Illinois might well split its vote 13 to 12 or 14 to 11.

With this system in effect, candidates could more nearly be chosen on the basis of merit rather than geography. No longer would party platforms have to be slanted to try to gain the favor of special-interest groups concentrated in big-city States. Campaigns would be directed at the whole country, not at a small group of large pivotal States.

It is also more likely that the President and the party in control of Congress would be chosen by the same majority, which would make for less conflict between the executive and legislative branches of our

Government. Under our present system, the President and the Congress are, in a sense, elected by two different constituencies.

Senate Joint Resolution 12 would also change the procedure under which the President and Vice President are elected by Congress if no major party candidate receives a majority of the electoral vote. At present, in such a contingency, the President is elected by the House of Representatives with each State entitled to one vote from among the presidential candidates with the three highest numbers of electoral votes. If a State's House delegation is evenly split between the two major parties, its vote does not count. This procedure is obviously unfair to the larger States.

Senate Joint Resolution 12 corrects this situation. It provides that, in the event no candidate receives a majority of the electoral votes, Congress shall meet in joint session and elect a President and Vice President. In this joint session, each Senator and Representative would have one vote.

I hope that this amendment will receive the earnest consideration of this subcommittee; that any refining amendments that are necessary to establish its intendment will be adopted; and that it will be reported to the Senate.

Now, Mr. Chairman, I was present earlier in the day when some questions arose with reference to Senate Joint Resolution 12 and other plans. I recall one point of discussion was the difficulty and impracticability which would arise in creating separate presidential elector districts. I don't believe it would impose any such difficulties. I don't think it would be impracticable at all.

In Nebraska we have different election districts for various offices. Perhaps it is more simple, because in the legislature we have only one house. But consider, for example, that we, in a general election, elect representatives for our public power districts. There is a district that is used for no other purpose than for the election of directors to the public power systems.

The supreme court justices are elected from supreme court districts.

The members of the board of education of the State are likewise elected from districts which have different geographical boundaries than any other districts.

Senator KEFAUVER. Senator Hruska, are some of these held on the same day as the national elections?

Senator HRUSKA. Mr. Chairman, these that I have named so far are all elected on the same day.

Senator KEFAUVER. As the Federal election?

Senator HRUSKA. As the Federal election; yes, sir. The same is true of State judges. The same is true of other offices. There may be as many as six or eight different districts that are involved.

In some of those instances, counties are cut up into several districts. And it has imposed no hardship. It has imposed no confusion.

Senator KEATING. Would the Senator yield?

I consider that a minor point. It would add another district, or another voting unit, on top of all those that you have named—unless the congressional and the electoral districts were made the same. But I concede it is not an insuperable obstacle. It would mean the printing of many additional different ballots from the ones that are printed now.

Senator HRUSKA. I doubt very much that in most States there would be a division of a county except in the bigger cities.

Senator KEATING. That is probably so. I am thinking more in my State there are so many bigger cities.

Now, let me ask you this: Don't you feel that such a plan would add pressure upon the States to make their congressional districts the same as their electoral districts?

Senator HRUSKA. It might tend to do that. Theoretically, in the creation of congressional districts, the legislatures are supposed to create districts from contiguous territory, with the population of each district being substantially equal.

Now, to the extent that this is prescribed in Senate Joint Resolution 12, I imagine we would have the same troubles in getting this type of district for that purpose as is sometimes experienced in forming congressional districts—with this exception. In creating presidential districts for the sole purpose of having either the Democratic or the Republican presidential candidate voted upon, you don't have that personal factor of an incumbent Congressman and a rival candidate.

Senator KEATING. Well, now, there is nothing in the Constitution which prescribes language like this, is there—that there shall be compact and contiguous territory for all congressional districts?

Senator HRUSKA. No.

Senator KEATING. This is the amendment which Congressman Celler has campaigned for for years. That is why I referred to this earlier as the Celler-Morton approach. We can now call it the Celler-Morton-Hruska approach to the problem—of forcing the States to have compact and contiguous districts.

Now, I have always, throughout my service on the House Judiciary Committee, opposed imposing upon the States such a provision, although I recognize there are abuses in some of our States. But I have felt that we should leave it to the State legislatures to set up their own districts, congressional districts. I tend to feel the same way about the electoral districts. And at least I feel if we put this in the Constitution with regard to electoral districts, it would be followed by similar language with regard to congressional districts.

Senator HRUSKA. Of course, as I remember, this point has not yet been decided by the Supreme Court, where there is such a flagrant inequality of districts that it would be considered a noncompliance with the Constitution. Have they accepted jurisdiction in this latest case? There is a case like that pending on the calendar, I believe.

Senator KEATING. There is a case pending in New York on that, but I don't know how far that case has gone.

Senator KEFAUVER. There is a reapportionment case before the Supreme Court now which has to do with the districts in the various States for election of members of the State legislature.

Senator HRUSKA. You are right. And in that instance it would perhaps involve a construction of the State constitution rather than the Federal Constitution, and the language there may be different. I don't know.

Senator KEATING. Would you address yourself to a question I have raised with Senator Morton, and apparently Senator Case of South Dakota, in his presentation, shared my view, and indeed cited in-

stances with regard to it. That is, whether one objection to this plan is not that the popularity of the individual elector might become a factor when it properly should not be. Somebody would say "Well, I like Kennedy, but Roman Hruska is an elector on the Nixon slate, and I cannot vote against old Roman. And so I am going to vote for Roman as an individual." I have the impression, in thinking of my own old congressional district—of course, they would elect three electors. Two of them would be statewide, and one local. Now, the two statewide people I would expect would be as popular individuals as the two parties confined in the State. And the single elector there would be, I would think both parties would strive to find a very popular man. And a popularity contest might develop as between the electors, rather than a decision on the merits of issues presented by the two presidential candidates.

Senator HRUSKA. Well, of course, in our State we don't have the names of the electors on the ballot. I don't know whether that is true in New York or not.

Senator KEATING. That is true. It says "electors for so and so."

Senator HRUSKA. We simply vote for President and Vice President. The electors are then selected by the party organizations which have legally described powers. And they name the individual electors, who then cast their votes at the State capital at the prescribed place, and so on.

A similar arrangement might be made in order to obviate the objection that is in the mind of the Senator. The electors could be designated in some other way, either before or after the election, as serving on behalf of the one party or the other. And thereby the voter would be choosing between either Kennedy or Nixon in 1960, or somebody else in 1964.

Senator KEATING. If they were designated after the election, I think that would take care of it. And if you are just voting for electors for Nixon or Kennedy, that would be a solution. But if they were named individuals, named prior to the election, I would fear that their popularity as individuals might be one factor in the consideration of the voter.

Senator HRUSKA. I don't see how, as a practical matter, any of my neighbors would get too excited if John Jones at one end of the city or somebody else outside the county would be the one who would cast the ballot for one presidential candidate or another. There is enough competition in trying to get the attention of the voter among those whose names appear on the ballot. Without their names appearing on the ballot, I don't see how, as a practical matter, you could get the voters steamed up about who is going to be the errand boy in casting the vote for the presidential candidate.

Senator KEATING. I have had letters saying "I am a Republican, and I will never vote for you again for anything," when I did something they didn't like. Nearly every Senator has had that experience.

Now, if I happened to be elector for Nixon or some other Republican, if those Republicans mean what they say, they just would not vote for me for that elector. They would either not vote, or vote for some other person. And I realize it might be a relatively small factor. But I think an outstandingly popular man would get an inordinate number of votes, whichever ticket he was on, and a very

unpopular man would militate against the man that he was representing as an elector.

I can conceive of men so popular in some areas that they could run as an elector on either ticket, and get elected.

Senator HRUSKA. However, if that was decided to be a factor, it would not be a substantial one. The alternative could be restored to designate the elector after the election.

Senator KEFAUVER. I wonder, Senator Hruska, what is the thinking of Senator Mundt and you and other cosponsors who want to keep the electoral college anyway?

Senator HRUSKA. You see, this would retain the federated system of government which we have and disturb the present process of government as little as possible. That would be the thinking on my part. The major objective of this bill, insofar as my thinking would be concerned, is simply to get away from those winner-take-all situations on paper-thin margins. For example, in Illinois there was a margin of 8,000 votes out of several million, as I remember. That is the main purpose of this amendment to give representation to substantial majorities, and along the lines of the logical division that is created by presidential elector districts or congressional districts. That is the basis of our federated system of government.

Senator KEFAUVER. Well, the objection, as we all know, to voting for electors, rather than just having presidential and vice presidential votes to which the candidates are entitled according to some formula is, first, that the electors might not vote according to the intention of the people voting for them, as has been the case from time to time. And second, the objection discussed by Senator Keating, that the personality of the elector might have something to do with it.

In Senate Joint Resolution 17, while a different formula is presented for the purpose of deciding who gets how many votes, it simply sets up that candidates get presidential and vice presidential votes, without having to go through the electoral system.

Senator HRUSKA. I don't know that I would object to that too much—if the same results would be obtained.

After all, we do have an instance like that which happened in Oklahoma in 1960. And yet those situations are quite rare. If this is an important factor, or even if it is not, it would allay any misgivings, I don't know that I would object to discarding the mechanics of presidential electors as a personality. I don't think that is important to this system. I don't think that is an integral part of it.

Senator KEFAUVER. Mr. Kirby, do you have any questions?

Mr. KIRBY. Just on that last point. It could be worked then to your satisfaction, Senator Hruska, if each district were allocated one electoral vote, and that were automatically allocated to the winner of the popular vote within the district?

Senator HRUSKA. That would satisfy me.

Mr. KIRBY. And two at large in the State could be credited to the winner in the same way?

Senator HRUSKA. That is right.

Mr. KIRBY. One further question touched upon this morning, sir. How do you feel that these antigerrymandering provisions can be enforced as a practical matter if the States do violate them?

Senator HRUSKA. Well, that is a difficult question, because we know of the reluctance of the courts to inject themselves into what they regard as political matters.

I don't know of any way you can insure this by compulsion or sanction if the courts persist in their attitude on it. But that is not the only area in which there is a fault in our Government, as we all know. I don't know of any way. Unless, as I say, the Supreme Court would undertake to take jurisdiction of cases that they would consider to be a flagrant abuse so as to deprive some people of representation under the plan that is considered. In that event, they would have to take jurisdiction of flagrant abuses in congressional districts as well. And maybe there would be some justice to that. I certainly can see that. Certainly where one district has twice as many as another and one has one Congressman and the other has one Congressman, it obviously is not a fair situation.

Senator KEFAUVER. This morning, before you came in, Senator Morton was asked that question. And he said he thought that if there were flagrant abuses by the legislature of a particular State, Congress might very well review the matter and do something about it.

Senator HRUSKA. It could. I think it might be competent for Congress to do that.

Senator KEATING. I have always opposed that, as a States rights advocate. I have always said that the Congress should not interfere with the decision of the States.

Senator HRUSKA. The competency of Congress to do it is separate and apart from the merits of such a proposal. I can see Congress being a political body, essentially a political body. There would be a greater possibility for Congress to become political and proceed on a purely political basis to a greater degree than the Supreme Court. There may be people who disagree with me.

Senator KEFAUVER. Well, we thank you for a very interesting and well-thought-out presentation.

Senator KEATING. I want to say to the Senator from Nebraska, as always, when he appears before any committee, he has been very helpful. He has an incisive and analytical mind which when directed to any problem helps those that have that problem under their immediate charge.

Senator HRUSKA. I thank the Senator from New York.

Senator KEFAUVER. The chairman would like to make a statement.

STATEMENT OF HON. ESTES KEFAUVER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator KEFAUVER. Senate Joint Resolution 17 proposes to abolish the electoral college and the office of independent elector. It retains the present electoral votes of the States allocating to each State one electoral vote for each Member of the House of Representatives and one for each Senator. It eliminates the present winner-take-all system of awarding all a State's electoral votes to the winner of the popular vote by providing for proportional division of the electoral vote according to the candidates' shares of the popular vote.

This plan has been before the Congress in various forms for a number of years. It was first proposed in 1848 by Representative Law-

rence of New York. In recent years, it has been before the Congress and has been generally referred to as the Lodge-Gossett-Daniel-Kefauver plans. I was one of its sponsors in the House before I became a Member of the Senate. In 1950 it passed the Senate but failed to receive House approval. It was reported favorably in the Senate in 1951 and 1955.

HISTORICAL BACKGROUND

The delegates to the Constitutional Convention who adopted our present system, were, for the most part, definitely opposed to electing the President by direct popular vote. The delegates distrusted the ability of the average citizen of that day to decide questions of such great gravity. Also, the delegates did not believe that it was possible for a voter in one State to know anything about the ability or character of public men in the other States scattered along our 1,500-mile shoreline. Those representing the smaller States would not consent to direct popular election because it would favor the more heavily populated States.

In theory, the electoral college was an excellent solution to the problem as it was then envisioned. As James Bryce said, "It was expected to secure the choice by the best citizens of each State, in a tranquil and deliberate way, of the man whom they in their unfettered discretion should deem fittest to be the Chief Magistrate of the Union."

The experience of more than a century and a half has proved the electoral college to be sadly lacking. The original plan worked well enough during the first two elections when Washington was first both in the hearts and votes of his countrymen. But with the development of political parties, the system became a rubberstamp for the candidates of the parties and it soon became a fundamental premise that an elector would never exercise his constitutional right to vote independently.

I wish to mention four principal developments down through the years since 1789 concerning the system of presidential selection:

The first resulted from the 12th amendment, which required electors to vote separately for President and Vice President instead of for two persons for President. This greatly reduced the importance and prestige of the Vice Presidency. It was the theory of the original scheme that the electors would vote for the two best men, not knowing which of them might become President, and thus the second best man would be Vice President and both would be of presidential caliber.

The Vice President soon came to be regarded as "his superfluous majesty," as Franklin called him. Leading statesmen seldom sought the office and the choice was usually left to the presidential nominee on the basis of calculations of party advantage, with little consideration of qualifications as a possible President. In recent years, we have seen the beginnings of a reversal of this trend because of the great demands upon the office of the Presidency and we now find in both parties a concern that able, qualified men be placed in the second place on the ticket.

In the second place, there has been a continuous trend toward more popular control in the selection of the President. Since 1864 the presidential electors have been chosen in all the States by the method of

popular election. South Carolina, I believe, was the last State to abandon the selection of electors by the legislature.

Meanwhile, various refinements of the presidential ballot—requiring electors to be voted for as a party group, placing the names of presidential nominees on the ballot with the electors, and the presidential short ballot—have facilitated popular participation in presidential elections.

In the third place, the so-called general ticket system for choosing presidential electors has been uniformly adopted in all the States. The effect of this system has been to give all the presidential electors of a State to that political party which carries the State, either overwhelmingly or by a mere plurality.

The general ticket system has also had the effects of preserving the one-party system in States where one party predominates, of concentrating campaign efforts in the doubtful States, and frequently of electing "minority" Presidents. Candidates with a minority of the popular vote have been elected President 14 times in American history—on 2 occasions without even a plurality of the popular vote.

My proposed division of the electoral vote in a State in proportion to the popular vote would come nearer reflecting the popular will and would make each State just as important as any other. It would bring about a substantial two-party system all over the United States. It would eliminate the evil that has grown up in the past of each party selecting the pivotal States and concentrating the election there.

Also, it would bring to the people of all the States the educational process or advantage that comes from having a vigorous election contest for the Presidency. It would reduce sectionalism in that in the selection of the Presidency, one State would be as important as the other. Issues would become more national than just local. It would assure a fair division of the emoluments of the office and power of the Presidency in benefits and also in the selection of personnel.

The fourth historical development in respect to presidential selection has been the gradual democratization of the nominating process. This trend is seen in the early growth of political parties and the resulting change in the operation of the electoral college which I have already mentioned. It is also seen in the early development of the congressional caucus method of choosing presidential candidates (1796–1824), followed by the national convention system (1831–1912), followed by the convention system as modified by the presidential primary (1912 to the present).

EVILS OF ELECTORAL COLLEGE SYSTEM

I need not dwell long upon the principal evils of the present system. They are briefly: (1) The evils arising from the office of presidential elector; (2) the unfair unit-rule method of crediting all a State's electoral votes to the plurality candidate, and (3) the method of selecting a President when no candidate commands a majority of the electoral votes.

(1) Retention of the office of elector: Constitutionally, the elector still stands where the framers of the Constitution placed him. He is only morally bound to vote for candidates of his party or to abide

by any pledge he has made. Court decisions demonstrate that there is no way that a State can constitutionally impose an enforceable obligation on an elector to cast his vote for his party's candidate. In 1960 when an Oklahoma elector failed to vote for Mr. Nixon, we saw an example of this. The same thing happened with a Tennessee elector in 1948. In 1960 we saw in Louisiana an abortive but serious move to withhold that State's electoral votes from President Kennedy despite his popular victory in the State unless he bargained for them and made concessions concerning the local school desegregation crisis.

It developed that this action in only one State would have been fruitless and the attempt was withdrawn but it is an alarm signal to the dangers of our system.

The retention of electors causes unnecessary confusion by the various manners in which ballots are made up within the States, and frequently causes the puzzled voter to invalidate his ballot and disfranchise himsef. Many States still print the long and meaningless list of all the candidates for the office of elector.

These are only some of the hazards of the office of independent elector. Others have been widely discussed by legislators and scholars and I need not touch upon them.

(2) The evils of the unit-rule method of counting electoral votes: This practice, which is not required by the Constitution but which is established in every State, completely disfranchises millions of voters who do not vote for the winner of the plurality within their State and deprives their votes of any effect in the electoral college. It is completely illogical, undemocratic, and unfair that the candidate who wins the popular vote should receive all the electoral votes of a State. This feature credits the loser's popular votes to the winner in the State. It also overemphasizes the political importance of the large pivotal States and causes the campaigns to be directed toward them. By the same token, one-party States are virtually ignored because there is no incentive to capture less than a plurality of the popular vote.

(3) The evil of elections in the House of Representatives: Under the present constitutional provisions, if no candidate wins a majority of the electoral votes, the House of Representatives is the final umpire. There each State has one vote.

The unfairness and absurdity are evident. The sole member of the House of Representatives from Alaska, Vermont, or Nevada has the same voice as the entire delegations from New York, California, or Pennsylvania. If a State's delegation is divided equally, it has no votes because the vote is determined by the majority of its delegation. In 1948, it was the declared purpose of the States Rights Party movement to throw the election into the House of Representatives where it was hoped to deadlock the choice and obtain concessions. Nothing could be further from our democratic principles of elective government.

This is perhaps the provision of the present system which has fewest defenders. However, Presidents have been elected in the House of Representatives on two occasions and the nightmarish possibility lurks in the wings of every election.

The resolution which I propose requires only 40 percent of the total number of electoral votes for election in the first instance. If no

candidate obtains this percentage, the election is then by the House of Representatives and Senate assembled together, with each member voting individually.

There is general agreement that the electoral college is outmoded and dangerous. However, opinions vary widely on the best method to deal with this problem. The principal alternatives to the proportional system I propose are direct election and the single district-elector system.

The direct election system at first glance has much to commend it. There is merit to the argument that the President is the representative of all the people of the United States and should be elected by a system where the vote of every individual has the same weight. However, direct popular vote would necessitate complete national control of elections and would lower voting within the States to the lowest common denominator. Sectionalism might well be aggravated rather than ameliorated because campaigns would be directed to the areas having the greatest number of votes. Furthermore, as a practical matter, it is most unlikely that any such amendment could ever secure ratification by three-fourths of the States. Relatively small States far outnumber the more populous States and cannot be expected to give up the slight advantage which they now have through the number of electoral votes accorded to them. Also, I doubt that our Federal system should be completely disregarded in the election of the President.

The other alternative is proposed at this Congress by Senator Mundt in Senate Joint Resolution 12, which has been known previously as the Mundt-Coudert plan. I wish to discuss only one objection to this plan, but one which I strongly regard as fatal to it.

In past Congresses, proposals of the district plan provided for electoral districts which would be identical with congressional districts. The actual and potential gerrymandering of congressional districts was regarded as a great hazard by critics of the plan. An antigerrymandering provision is now contained in Senate Joint Resolution 12. It requires presidential electoral districts which are "contiguous and compact territory" and which contain "as nearly as practicable the number of persons entitling the State to one representative in the Congress." This envisions either that the States will set up two systems of electoral districts, one for Congressmen and one for presidential electors, or that congressional districts will be reformed to meet these standards so that one set of districts will serve both purposes.

There seems to be general agreement that two sets of electoral districts, one for Congressmen and one for presidential electors, is not desirable. The confusion to voters from such an arrangement is evident.

For this and other reasons, it cannot be expected that the States will set up additional districts for the sole purpose of presidential elections. This would admit that their congressional districts do not meet the accepted tests of fair and equal representation contained in the district-plan amendment.

Senator Mundt, the distinguished sponsor of this plan, believes that its districting requirements will be an impetus to the States to eliminate gerrymandering of congressional districts and that these

districts will be brought into compliance with the standards set for presidential elector districts.

But, instead of re-forming congressional districts, I fear that State legislatures are more likely to merely adopt these districts—in their present forms—as presidential elector districts, thus carrying over into presidential elections the harmful effects of gerrymandering. The same political pressures and opportunity for partisan advantage would operate on the legislatures in this presidential electoral districting as now influence congressional redistricting.

If political considerations cause disproportionate or unfair districting, it is doubtful if the antigerrymandering provision will be enforced as a practical matter. For many years we had Federal statutes against gerrymandering in congressional districts (containing these same standards), but our history shows an absence of enforcement by effective sanctions. The current redistricting disputes which are going on in various State legislatures as the result of the 1960 reapportionment point up the political pressures and temptations which influence redistricting. According to the Congressional Quarterly of April 21, 1961, legislative stalemates threaten to cause at-large election of House Members in several States.

The redistricting plans which have been adopted illustrate the dangerous potentials of presidential electoral districts. The redistricting bill approved by New Jersey on May 15, 1961, showed population variances ranging from 255,165 in its 14th Congressional District, to 585,586 in the 1st District.

In the Kansas redistricting legislation, the Republican-dominated State legislature split strongly Democratic Wyandotte County (Kansas City) between two strongly Republican districts. This sort of abuse can happen under districting which meets the tests of compactness, contiguous territory, and equal population.

Another current example is Iowa, which lost one seat in the House and which combined the only two districts represented by Democrats into one district.

The Nebraska redistricting, which produced one district of 404,695 population, and another of 530,507, was described by Gov. Frank Morrison as "disproportionate representation."

In at least two States, Maryland and Arkansas, referendum petitions may upset redistricting legislation by popular vote. Presumably, State laws setting up presidential election districts would be subject to referendum in the 21 States having such procedures.

The courts have consistently refused to compel State legislatures to comply with statutory or constitutional provisions requiring redistricting and reapportionment, viewing this as a "political question" and inappropriate for judicial remedies. (See *Colgrove* v. *Green*, 328 U.S. 549.) The present litigation pending in the U.S. Supreme Court from Tennessee, concerning reapportionment of seats in the State legislature, may bring some change in the law in this area, but it will be a long time before we can be sure that there are available effective judicial sanctions against gerrymandering.

The proportional division plan retains the State as the basic elector district. These are boundaries which are fixed and cannot be changed. The State's relative voting strengths are the same under both the district and proportional plans. I feel compelled to accept the cer-

tainty of 50 States' boundaries rather than the uncertainty and potential abuse of 437 additional elector districts with each of them subject to the evils of gerrymandering.

Mr. Kirby, what is our future plan?

Mr. KIRBY. We have three statements submitted for the record by sponsors who could not appear in person.

Senator KEFAUVER. If you will state what they are, we will admit them in the record.

Mr. KIRBY. First the statement of Senator Chavez in support of Senate Joint Resolution 1, than the statement of Senator Johnston in support of Senate Joint Resolution 2, and finally the statement of Senator Smathers in support of Senate Joint Resolution 9.

(The documents referred to follow:)

STATEMENT SUBMITTED BY HON. DENNIS N. CHAVEZ, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

I am happy to join with my distinguished colleague, Senator Margaret Chase Smith, in cosponsoring Senate Joint Resolution 1, "Proposing an amendment to the Constitution of the United States providing for nomination of candidates for President and Vice President, and the election of such candidates by popular vote."

The intense interest in reform of the electoral college generated by the recent presidential election has directed popular attention, once more, to a problem which has periodically plagued the American people. Three times in our history the present system has permitted the election of minority candidates to the Presidency. In 1824, Jackson lost to John Quincy Adams, despite the fact that Jackson's popular vote exceeded that of Adams by some 40,000. In 1876, Samuel J. Tilden, the Democratic candidate, received a majority of the popular vote but failed to receive a majority electoral vote. In 1888, Benjamin Harrison was elected in spite of the fact that his popular vote was less than that of Grover Cleveland.

Proposals for abolition or alteration of the electoral college system have been made over a period of several decades by many members of both parties. Basically, the intent of these proposals has been directed toward simplifying the process of electing the President. All States now choose their electors by popular vote, but voters usually think of themselves as voting directly for the President or Vice President when they go to the polls. However, there is no provision in the Constitution which compels an elector to vote for the candidate of his political party. Actually, in American political practice, electors are chosen by their respective parties in State conventions. Political history discloses that this practice permits manipulation of the electoral process contrary to the public interest and the popular mandate.

In my opinion, the presidential elections no longer conform in practice to the system contemplated when the Constitution was adopted, and the operation of the electoral system has not conformed to its original object and purpose in view of the practical working of the system. It is alarming that a Government whose executive head and legislative body are both elective, elected by the people directly, has no power to secure an election from the influence of violence, corruption, or fraud.

In a democratic Government like ours, when political power rests with the representatives of the people chosen at frequent intervals by popular elections, the temptation to control elections or political conventions by violence or corruption is a constant source of danger.

Consequently, I believe that the election of the President and the Vice President by popular vote would reduce the possibility of manipulated elections and would more accurately reflect the will of the people. In my 29 years in Congress I have participated in many primaries, many conventions, and many elections. My considered opinion, based on my own political experience at every level of government, is that direct election of candidates by popular vote is the most democratic method of election and the least susceptible to fraud.

* * * * * * *

70784—61—pt. 1——12

STATEMENT SUBMITTED BY HON. OLIN D. JOHNSTON, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Mr. Chairman, may I first thank you for the opportunity of presenting this statement to the subcommittee so that the official record will carry my reasons for sponsoring this proposed amendment to the Constitution of the United States.

This joint resolution is similar to Senate Joint Resolution 200 of the 80th Congress, which was reintroduced during the 81st Congress and subsequently favorably acted upon by the Senate. A volume of hearings has been held on this subject, and similar proposals have been introduced in the Congress since as early as 1797, when Representative William L. Smith of South Carolina offered to the Congress the first constitutional amendment proposing reform of our procedure for electing the President.

My personal opinion is that our present system of electing President and Vice President is antiquated and in great need of overhauling by means of a constitutional amendment similar to that which I am proposing. Despite the mass of hearings that have been held in the past on this subject, I feel it is necessary that hearings again be held on this matter, and for this I commend the subcommittee. Times have changed, and conditions may have changed which would result in the bringing out of new facts at such hearings.

Last Congress when I introduced this same amendment I fully realized no action could be forthcoming without hearings, which could not be held during that session. However, by offering it then, the carry-over Members of the Senate were given an opportunity to scrutinize the proposal.

Briefly, the reforms which this proposed constitutional amendment seeks to effect are threefold in nature:

First. It abolishes entirely the office of presidential elector. The electoral vote per State—equal to the total number of Representatives and Senators, as under the existing system—is retained, but purely as an automatic counting device.

Second. It eliminates any possibility of an election being thrown into the House of Representatives.

Third. It does away with the so-called unit-rule system of counting electoral votes. Under the existing system, the candidate receiving a plurality of the popular vote in any given State is credited with all the electoral votes of that State, regardless of how infinitesimal the plurality. Under the proposed system, the electoral votes in each State are automatically divided among the candidates in direct proportion to the popular vote.

For example, a State has 12 electoral votes. Of the 2.4 million popular votes cast in that State, "R," the Republican, received 1.6 million. "D," the Democrat, received 600,000. "T," the third-party candidate, received 200,000. Under the present system, all of the State's 12 electoral votes would go to "R," the Republican. Under the proposed system, the electoral vote would be divided in proportion to the popular vote as follows: Eight electoral votes for "R."; three electoral votes for "D"; and one electoral vote for "T."

The electoral votes are computed to three decimal places. In the very remote, but mathematically possible, event of a tie, it is provided that the candidate receiving the greatest number of popular votes wins the election.

The electoral votes which each candidate receives, therefore, represent his proportional strength in the State. These votes are then taken and added to the electoral votes received in all the other States. The candidate having the greatest number of electoral votes wins the Presidency. Votes for Vice President are counted in precisely the same manner.

Since 1797, when the first constitutional amendment proposing reform of our procedure for electing the President was offered, hardly a session of Congress has passed without the introduction of one or more resolutions of this character. All these proposals recognized, as does the reform embodied in this Senate joint resolution which I offer, that the so-called electoral college system has never functioned as contemplated by the framers of the Constitution.

The delegates of the constitutional convention were, for the most part, definitely opposed to electing the President by direct popular vote, agreeing with George Mason of Virginia that "it were as unnatural to refer the choice of a proper character for Chief Magistrate to the people, as it would be to refer a trial of colors to a blind man." The delegates distrusted the ability of the average citizen of that day to decide questions of such great gravity. Moreover, the discussions of the convention reveal that the delegates did not believe

that it was possible for a voter in one State to know anything about the ability or character of public men in the other States scattered along our 1,500-mile shoreline. In addition, those representing the smaller States believed that popular election would somehow increase the power and prestige of the more heavily populated States.

These considerations, after probably the most prolonged debate of the convention, led to adoption of the indirect method of electing the President. Under this plan, the States were to select well-informed public men who were to look the field over and elect a President and Vice President. In selecting these electors, each State was left free to use any procedure it might see fit to adopt—direct popular election of the electors on a general, blanket ticket—the procedure used in all States today—or by single member districts; or by the vote of the legislature itself—a procedure which all the States had abandoned by 1860.

The electors so selected by each State should meet, it was decided, on a given date at a designated place within the State and vote by ballot for two persons. They were required to send a list of all persons voted for and the number of votes for each, to the President of the Senate, where, on a date fixed by law, they were to be opened in the presence of the two Houses, and the vote counted.

The person having the largest number of votes was to be declared President if such number were a majority of all the votes cast. The runner-up should be declared Vice President whether he had a majority or not—later modified by the 12th amendment.

This is the system which, modified by the 12th amendment, has continued in effect up to the present time. It has retained the original form even though all reason for this form has long since disappeared. The historian, Arthur M. Schlesinger, recently wrote in his book, "Paths to the Present":

"What demoted the electoral college from a deliberative body to a puppet show was the rise of political parties. As people began taking sides on public questions, they were unwilling to leave the crucial choice of the Chief Executive to a sort of lottery. Instead, each party publicly announced its slate of electors and the candidate they would support. This usurpation of the electors' functions, though peaceably achieved, amounted to a coup d'etat. It was an amendment of the written Constitution by the unwritten constitution. The electors, while retaining the legal status of independence, became henceforth hardly more than men in livery taking orders from their parties."

Individual Members of Congress, of course, have always been mindful of the fact that this indirect method of electing the President stood in need of modernization. As stated before, the first legislative proposal for reform came in 1767, only 10 years after the Constitutional Convention itself. In the 70-year period between 1889 and 1960, more than 125 amendment proposals relating to the election of the President have been introduced in Congress. Prior to that time, proponents of the 12th amendment were successful in their efforts to correct the situation created by the Jefferson-Burr electoral vote tie in 1800. Senator Thomas Hart Benton, of Missouri, with the strong support of President Andrew Jackson, made this a prime object of his concern over a period of 20 years in the 1820's and 1830's. Senator Oliver H. P. Morton, of Indiana, led the fight in the 1880's. The late Senator George W. Norris was the principal proponent of reform in more recent times; his proposal for direct popular election of the President failed to command the necessary two-thirds of the Senate in 1934. In both the 72d and 73d Congresses, House committees unanimously reported resolutions calling for abolition of the electoral college.

In the 80th Congress another unanimous House Judiciary Committee report was submitted.

A side effect or advantage of this type of election reformation would be to reduce the emphasis now placed by candidates of various parties for public office on the solicitation of minority-group votes. Nothing would do more to remove race, creed, and color from our national elections than for this election reformation to be approved.

As it has been pointed out, under the present system, one vote can deliver all the electoral votes of a large State into the hands of one candidate, these in turn being sufficient to swing the election of the whole country. Under the reformation I offer, this misrepresentation of the people's will would be eliminated. The one-vote vantage from a minority group would no longer exist, and the petty politics now played by politicians who prey on differences of men's race and religion would no longer enter the political arena.

I also believe the system outlined in the amendment offered will certainly create for us a more democratic method of electing our President and Vice President, for under this system every man's vote will be counted in the selection of President and Vice President.

It is my earnest hope that this matter will receive serious consideration, for I certainly believe the day for reformation in this field is long overdue.

I want no one to think that my advocacy of this measure is prompted by, or in any way influenced by, the 1960 election.

I have proposed and supported such a change in our electoral college system ever since I became a Member of the U.S. Senate. It is only that the closeness of the recent election has stimulated thought in this direction and focused editorial and public opinion on the matter.

* * * * * * *

STATEMENT SUBMITTED BY HON. GEORGE A. SMATHERS, A U.S. SENATOR FROM THE STATE OF FLORIDA

Mr. Chairman, I am very grateful to you and the members of your subcommittee for affording me the opportunity of submitting a statement in behalf of Senate Joint Resolution 9, introduced by me, proposing an amendment to the Constitution relating to the nomination and election of candidates for President and Vice President, and to succession to the office of President in the event of the death or inability of the President.

Because of pressing official duties, I regret it is not possible for me to personally appear before you, but I am confident that you and your subcommittee will give every consideration to my proposal.

The proposed resolution is aimed at modernizing the national election procedures. It is predicated upon a continued widespread interest on the part of the American people to revise the present archaic convention system of nominating candidates for the offices of President and Vice President. This is the seventh time that I have urged the Congress to take action in bringing about election reforms. Many of us fervently believe in these reforms and feel no discouragement over previous failures. It is my hope that in this Congress we will finally meet with success.

Radio and television have awakened the voting public to the undemocratic methods used by both political parties in selecting candidates for the highest offices of the land. They are shocked, to say the least, and demand that corrective action be initiated through their representatives in the Congress to do away with the selection of candidates for these high offices by machinations of party leaders and backroom political bosses.

Popular polls have demonstrated that over 73 percent of the American people are anxious to have the archaic practice of selecting presidential and vice-presidential candidates at a smoke-shrouded, politically controlled, national convention laid to rest. Within both major political parties the average voter is irritably conscious of the fact that he has little, if any, voice, choice, or influence in determining who is to be his candidate for President. He is sick and tired of having his party's candidate thrust upon him, and of being forced to vote for handpicked candidates. There is no doubt in my mind that the methods now used have demonstrated themselves to be nothing short of a national disgrace. It is up to us, the duly elected representatives of the American people, to answer their demands by enacting appropriate legislation which will allow them to more actively participate in the selection and election of public officials. My resolution is designed to accomplish this objective.

Efforts to revise and reform the outmoded election machinery of this Nation should be nonpartisan and both major political parties should care the responsibility and be vitally interested in achieving changes in the direction to which my resolution points, for in so doing we will make a substantial contribution toward creating a stronger democracy.

The first proposal contained in my resolution would establish a nationwide primary to nominate party candidates for the office of President. This is not a new proposal. It was previously advocated by former President Woodrow Wilson in his first annual message to the Congress in 1913. Similar proposals were advocated by the late Senator George Norris, of Nebraska, one of the most able and distinguished Members ever to occupy a seat in this great body, and by the able and distinguished Senator from Illinois, Senator Douglas. Numerous other distinguished leaders in political life also recognized that the selection of

a candidate for the high office of President of the United States is all too important to leave solely in the hands of a few ambitious and professional politicians.

The second change which the proposed resolution would accomplish would be to abolish the electoral college system and establish a system under which the electoral votes of each of the States would be divided among the candidates on the basis of the percentage of popular votes received by each candidate in the States. This proposal is identical to that advocated by the former able Senator from Massachusetts, Mr. Lodge, and the former distinguished Congressman from Texas, Mr. Ed Gossett. A similar proposal previously passed the Senate in 1950 but failed to pass in the House of Representatives.

From the very beginning of this Republic, it has been apparent to more critical observers that the electoral college was not functioning as the framers of our Constitution had intended. No other provision of the Constitution of the United States has produced more dissatisfaction and inspired more demands for improvement than that of the provisions of the 12th amendment. This change is long overdue.

The third proposal embodied in the proposed resolution provides for the election of a President and Vice President to be held at the next succeeding regular congressional elections whenever a President dies or is removed and who has still more than 2 years and 90 days remaining of his uncompleted term. Numerous editorials, letters, and polls disclose that the people are firmly of the belief that, when the Vice President assumes the office of President under such circumstances, he, the Vice President, should get the endorsement of the people before serving as President for a period of more than 2 years. The proposal has popular support and merits the most serious consideration.

The foregoing is, generally, what my proposed resolution provides. I have not gone into details on these proposals. I have on numerous occasions in the past done so and, for this reason, do not want to unduly take up the time of this subcommittee.

We cannot long continue the further use of the outmoded election procedures which have on several occasions in the past permitted a man to become President of these United States even though he did not receive the largest popular vote, and which permit political leaders and backroom cigar-smoking barons to nominate and elect candidates for the highest offices in this land without regard for the wishes of the American people.

I claim no proprietorship of any of these proposals. All of them have previously been discussed on forums, in debate, and even in the Congress. The task of undertaking the much-needed election reform belongs to all of us, regardless of party affiliation. The voting public of your State and mine are anxious that we cease declaring the issue academically and take positive action in the Congress to make these reforms a reality. Good government demands the support of Democrats and Republicans alike to bring about these much-needed changes. They are a matter of vital concern to the strength and well-being of our entire democracy. It is up to us in the Congress to go about our labor in the vineyard and diligently work toward accomplishing that which will carry out the wishes and best serve the interest of the American people.

It is my genuine hope that prompt, efficient, and favorable action will be taken on this proposal by your committee. It is in the national interest.

Mr. KIRBY. There are several Senators who have not yet been able to appear but who want to be heard, including Senator Thurmond, Senator Saltonstall, and Senator Randolph. Senator Mundt is to return for further discussion. I believe the schedule of the chairman calls for another meeting on June 8.

Senator KEFAUVER. We will stand in recess until June 8.

NOMINATION AND ELECTION OF PRESIDENT AND VICE PRESIDENT AND QUALIFICATIONS FOR VOTING

THURSDAY, JUNE 8, 1961

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m. in room 357, Old Senate Office Building, Senator Estes Kefauver (chairman of the subcommittee) presiding.

Present: Senator Kefauver.

Also present: James C. Kirby, Jr., counsel to the subcommittee, and Angelina T. Gomez, clerk.

Senator KEFAUVER. The committee is delighted to have with us this morning Senator Jennings Randolph, of West Virginia. Senator Randolph has had distinguished service for many years in the House of Representatives, where it was the chairman's pleasure to serve with him and become well acquainted with his interest in progressive measures. It has since been my pleasure to serve with him in the Senate.

Senator Randolph has been interested in improving our Constitution in a number of ways, particularly in the matter of extending the franchise to more people and protecting the rights of the people.

Senator Randolph, you are here to testify in connection with your resolution, Senate Joint Resolution 71?

Senator RANDOLPH. That is correct, Mr. Chairman.

Senator KEFAUVER. We will be glad to hear from you at this time.

STATEMENT OF HON. JENNINGS RANDOLPH, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. Mr. Chairman, I am grateful for your gracious comment in reference to my interest in the general subject matter which has been a matter of concern of your Subcommittee on Constitutional Amendments.

I reciprocate, not in pleasantry, but in fact, in saying that I have enjoyed and profited by my association with you, both in the House of Representatives and the Senate of the United States, have valued your counsel, and this morning I trust that you and the members of the subcommittee will, in degree, value some of the recommendations which I make specifically on what I believe to be an important proposal.

Senator KEFAUVER. Your recommendations carry much weight with the chairman of this committee and, I am sure, with the other members.

Senator RANDOLPH. Thank you, Mr. Chairman. You made reference to Senate Joint Resolution 71. This is, of course, not the only resolution that goes generally to the subject matter, but it does propose an amendment to the Constitution extending the right to vote to citizens of the United States of 18 years of age or older. I shall not impose upon this subcommittee to present the detailed arguments which have been offered from time to time for or against the lowering of the age for voting.

In almost 100 years, since the issue was first raised in the United States, there still remains little factual evidence to support the positions of either side regarding the specific effects which such an amendment would have upon our democratic processes. Even in the States of Georgia and Kentucky, which have had experience with the minimum age of 18, assertions regarding the concrete voting behavior of this age group are inconclusive and speculative.

This applies with equal force to the view that the more recent schooling of such persons would be conducive to political enlightenment and independence of judgment, and the opposing view that the younger voters would tend to vote the opinion of their parents.

Though I, myself, adhere with conviction to the former position, I recognize that neither of these assertions is presently capable of being factually validated. But, acknowledging this, one does not thereby deny the rational appeal of such statements, nor the validity of all arguments in support of the pending resolution.

As you well know, having long been advocate of such measures yourself, I have for many years been an active proponent of a constitutional amendment granting the right to vote to 18-year-olds. As a member of the U.S. House of Representatives, I first introduced a resolution to this effect in 1942 in the 77th Congress at a time when the late Senator Arthur Vandenberg was also pleading the affirmative case in the U.S. Senate on this proposition.

I introduced the resolution again in the 78th Congress, at which time Subcommittee No. 1 of the House Judiciary Committee held hearings with Gov. Ellis Arnall, of the State of Georgia, appearing in support of that measure.

As the Governor stated at that time, an amendment extending the franchise to 18-year-olds would, and I quote, "bring to our electorate a high degree of intelligence and courage and candor and enthusiasm badly needed today."

Let me ask you: Do you think it would be appropriate to have that portion of the hearing made part of the record, the printed record, or just to be filed with the subcommittee? It is not too long a hearing.

Senator KEFAUVER. When Ellis Arnall testified? About how long is it? I remember the occasion.

Senator RANDOLPH. Yes. I will check that.

Mr. KIRBY. That portion is very short.

Senator KEFAUVER. We will make that portion of the House hearing in the 78th Congress dealing with the resolution to amend the Constitution to permit 18-year-old voting a part of the record at this point.

STATEMENT OF HON. ELLIS ARNALL, GOVERNOR OF THE STATE OF GEORGIA

Mr. ARNALL. Mr. Chairman and gentlemen of the subcommittee, I am very glad to be here this afternoon at which I conceive to be some inconvenience to yourselves. Being in Washington, I was anxious to register my enthusiastic support of this resolution.

Quite frankly, I am a believer in governmental changes. Changes in government have had this Nation great today, and while the people have given their Government, Federal, State and local, many rights, I do not conceive they ever gave the Government the right to remain static. We are living in fast-moving times. Little did we think, 5 years ago, that we would be calling on these young people to save us from destruction.

I would not question any Member of the Congress in any official action that might be taken by him, but I, for the life of me, cannot understand how any person in public office, by official conduct, or any person in his private thinking, could require young people to go out and die for our land and yet deny them the simple right to participate in saying what kind of Government it is that they want.

Now, there may be people who are so suspicious of youth, who so question their moral fitness and intellectual ability, as to say they are not worthy to cast the ballot.

In determining whether or not a person is to assume the right of the ballot in this land, the fundamental principles and issues involved, it seems to me, are primarily two. The first is, Does the person undertaking to vote understand the issues presented? And the second principle is, Does that person have an interest in the result of the issue which is to be determined?

You may paraphrase that by saying we should require a voter to be a good citizen; that he should have an interest in his Government, and likewise that he should have the ability to understand that issue upon which he may vote.

Now, it seems to me that no one could deny, logically, that these young people do have an interest in public decisions. No one can tell me that a young man lying in a foxhole in New Guinea or landing under a hail of white-hot metal at Salerno's beachhead or piloting a Liberator or Mustang over occupied Europe does not have and interest in public affairs such as to justify his participation in our Government through elections.

Do young men in PT boats harrying the Jap fleet and young men in submarines today have an interest in public affairs?

Do young men in the mines and in the factories and on the farms of America have an interest in what kind of Government this is going to be?

And I say, likewise, that young women in our munitions factories, in our airplane factories, in the auxiliary services, all must have an interest in our Government.

Do young people today have the intelligence with which and upon which they may formulate correct judgment on public issues? I have heard much said about the lack of intelligence in some of our young people. I don't know about that. When you consider the plight to which the world has come, certainly no one justly can blame the condition now existing on young people. We older people have been prone to create the circumstances and the situations bringing about wars and conflicts, and then we call upon these young people to give their blood that we may remain freemen and freewomen.

I tell you, gentlemen of this subcommittee, that we have made great progress in this country in the processes of education. Any man or woman who reads newspapers, listens to the radio, reads magazines, periodicals, and books, whether they go to school or not, is bound to have a conception of what is going on roundabouts.

Not only that. We have gone to great pains and great efforts to give the young people of our land educational advantages. I may surprise some of my friends when I tell you that I believe in young people. And I want to tell you gentlemen of this subcommittee that any nation that is distrustful of its youth is headed for destruction and ruin.

Unless you, and unless I, can have finer children than we were, children who shall have more opportunities than we had, who will avail themselves of those opportunities as they are now doing, then civilization goes backward and our progress is regressive instead of progressive. No one can convince me that a young man or young woman of 18 today does not have a power of understanding that transcends that of a 21-year-old man or woman of a generation ago.

I think there are two important reasons why the franchise should be given to these young men and young women. First of all, I believe that youth is idealistic. I am going to tell you something else. In my judgment, American youth believes in the American form of government and the American way of life.

It amuses me when some people say young people are addicted to taking up foreign subversive ideas. As far as I am concerned, I have never seen an 18-year-old American boy who did not believe that someday he was going to own his business, someday he was going to be a millionaire, and someday he was going to be President of the United States. I believe in American youth.

If you allow the people, through their State legislatures, to put into effect a system that will permit youth voting in this Nation, you will bring to our electorate a high degree of intelligence and courage and candor and enthusiasm badly needed today.

I am not one of those who condemns modern youth as transgressing all rules of morality. I believe our sons and daughters are courageous and honorable and that they have been educated in a way that makes of them good citizens. If that is not true, the mothers and fathers in America have faltered in their duty to the Nation.

In addition to the idealism that youth voting will bring to our overall electorate, I believe that participation in Government by young men and young women between the ages of 18 and 21 will be a fine training and experience for them in public affairs. There are many of our young people who finish school at the age of 18 and who go into business for themselves. The Federal Government says that after a young man or young woman becomes 18 years of age, no further deduction shall be allowed in income tax returns for his or her dependence. The Government cuts them loose. And yet they have 3 years to wait before they can vote.

In the schools we interest our young people in Government, but when they finish school we say, "You must wait 3 years to exercise what you have learned." We set them up in business and say, "You have no right to vote in your Government, although you do operate your business."

It is my firm belief, and I sincerely subscribe to the idea, that youth is entitled, by every right and every reason, to participate in our elections. The training in Government thus afforded them will be invaluable.

We have a progressive series of ages provided for holding public office. For instance, under our present system a man cannot be a State representative in my State until he is 21. I believe he cannot be a Member of the Federal Congress until he is 25. He cannot be a Senator, I believe, until he is 30. Isn't that correct?

Mr. CELLER. That is correct.

Mr. ARNALL. And he can't be President of the United States until he is 35.

In other words, we recognize progressive stages in citizenship, and I believe the training and experience which we would give young people at the ages of 18, 19, and 20 would be invaluable to them.

Mr. Chairman and gentlemen of the subcommittee, we had an interesting experience in Georgia last August. On August 3 we submitted a proposed constitutional amendment to our electorate, at which time they voted on whether they desired to reduce the voting age in our State to 18. There had been much talk of reducing the voting age, but that was the first instance where a direct vote on that particular issue was submitted to the people. By a vote of more than 2 to 1, the people approved the lowering of the voting age.

If there had ever been a State in the Union where I, offhand, would have believed the people would have been slow to reduce the voting age, I would have picked my own, the State of Georgia.

Mr. KEFAUVER. Governor, why is that?

Mr. ARNALL. Because we have such conservative people, and yet they ratified this amendment.

Mr. SUMNERS. If these people whom you know as conservative have ratified your amendment by a 2-to-1 vote, why do you think it is necessary for the State Governors to come here—if they do come—and ask that this limitation be put on the governmental discretion of the people of their own States or that the States be compelled to have 18 years as the voting age whether it is their judgment or not?

Mr. ARNALL. I do not view the amendment as such. I view it as a vehicle to bring before our various legislatures in a uniform way this important item, an item of public interest. All I think, and all I hope for, is that this issue may

through proper channels, through an amendment, be submitted to the State legislatures.

Mr. SUMNERS. May I read this provision of House Joint Resolution 39 for the purpose of the record:

"The right of citizens of the United States, who are 18 years of age or older to vote shall not be denied or abridged by the United States or by any State on account of age," shall be forced to permit 18-year-old persons to vote.

Why isn't that a limitation on the governmental discretion of the States?

Mr. ARNALL. To some extent, it is. But when we amended our Georgia constitution by providing for 18-year-old voting, we were amazed to find that our constitution provided that only male citizens of Georgia could participate in elections. Yet Congress not many years ago submitted an amendment giving women suffrage. Since that time we all agree that while woman suffrage might not be the panacea we hoped for, and might not have been the one grace to save politics, yet we admit that women should have the right to vote, and when I am a candidate for public office I know I am happy to have them vote for me.

Mr. SUMNERS. I ask the question in all seriousness. It is something that bothers a good many of us up here.

Mr. ARNALL. You were in Congress when the woman suffrage amendment was up, were you not?

Mr. SUMNERS. Yes.

Mr. ARNALL. Did it worry the Congress then as to whether they should go in that field?

Mr. SUMNERS. Not to the same extent. After all, the men and women who constitute the mothers and fathers have a vote in the States. It presents itself as a different proposition. The question was that of putting men and women of the same age on the same basis.

Mr. ARNALL. Perhaps it does, but I can't see the distinction. In both instances you brought in new voters.

Mr. SUMNERS. Since women have been enfranchised the voters in the States include the mothers and fathers in the Nation whose children this proposed amendment would affect. The attitude with reference to this sort of proposition would be a little different.

Mr. ARNALL. As I remember it, one of the arguments against woman suffrage was that women had no place in public affairs, that they knew nothing about it, and that therefore we would bring in a group who knew nothing about public affairs.

Mr. SUMNERS. I understood you to make this statement, Governer—and I want you to understand I am asking these questions because we are copartners in governmental responsibility——

Mr. ARNALL. You need offer no apology for any questions you wish to ask me. I shall be glad to answer them.

Mr. SUMNERS. Here is your State—a great State, I know your people—and it is interesting to me that from this State, its fine Governor who has done a wonderful job on this suffrage matter, according to his views, would want the Federal Government to take over this power with reference to which Georgia has done this job; take it away from the States notwithstanding each of the other States has as complete power to act as Georgia.

Mr. ARNALL. I don't know if you understand me or not. I have some very peculiar ideas.

Mr. SUMNERS. Yes. I do, too.

Mr. ARNALL. One of my ideas is that we have talked too much about State rights and not enough about State responsibilities.

Mr. SUMNERS. I think that is right. I understood from your statement you let 18-year-old boys conduct a business. Do they make deeds?

Mr. ARNALL. Not unless given legal emancipation.

Mr. CELLER. Can a boy who was under 21 disavow a contract?

Mr. ARNALL. Twenty-one is the legal age.

Mr. KEFAUVER. The amendment only went to the matter of franchise?

Mr. ARNALL. Yes. We have lowered the age for a driver's license in Georgia to 15 because there was a pressing need for manpower, and to that extent young people are in business.

Mr. CELLER. But you feel that the boy and girl in Georgia do not have sufficient wisdom that they could still disavow a contract under 21?

Mr. ARNALL. We have some contracts in our State, important contracts, that young people of 18 can enter into and that are valid, such as the marriage contract.

Mr. KEFAUVER. Isn't it also true in your State—you know I live about a half mile from your State line?

Mr. ARNALL. Yes.

Mr. KEFAUVER. Isn't it true that in your State boys 18 years of age can make contracts where they have been turned out on their own responsibility?

Mr. ARNALL. Where they have been given legal emancipation.

Mr. KEFAUVER. And they don't have to have a court emancipation, but merely parental recognition of a separate status.

Mr. ARNALL. Yes.

Mr. SUMNERS. You folks worked that out down in Georgia your own selves, didn't you?

Mr. ARNALL. Yes, but we are like you Texans; when we have a good thing we like to share it with our neighbors.

Mr. SUMNERS. But you don't like to force it on them?

Mr. ARNALL. No, indeed.

Mr. RUSSELL. You speak of the age of 18, and you say that a boy of 18 is doing his bit and rendering service as a soldier. Why don't you make the voting age 17? Aren't you discriminating against the 17-year-old boys? There are thousands of boys of 17 in the service, and some of 16, and some of 15, and I saw in the paper there was one of 12, I think.

Mr. ARNALL. I believe that military service, while an important consideration, is not the sole consideration. I believe we must have some arbitrary period of age in writing a law.

Mr. RUSSELL. But you are discriminating against the 17-year-old boy. Is that being fair to them?

Mr. ARNALL. If you considered only military service, it would not be fair, but there are other considerations. There has got to be an arbitrary period of citizenship. We have an arbitrary period today of 21. Are we not discriminating against the 20-year-old boy fighting in Italy beside a 21-year-old boy, and the 20-year-old boy gets an arm shot off? Government is never perfect.

Mr. RUSSELL. Don't you think as he grows older he becomes more judicially minded, between 18 and 21, and is in better condition, mentally, judicially, and otherwise, to pass on what are the best interests of the country? "As we say by the ballot, so shall we have."

Mr. ARNALL. Assuming that to be true, by the same reasoning we could say that a man from 21 to 25 will grow more mature and be better qualified to vote.

Mr. KEFAUVER. Aside from the question of who is to do the job, whether it is the State's duty or the Federal Government's responsibility, isn't the strongest argument you have that boys and girls ordinarily finish high school when about 18 years of age, and at that time civics, political science, and matters of responsibilities in government are very much in their minds, and if they don't exercise those responsibilities immediately, in 3 years they may lose interest?

Mr. ARNALL. I believe that is true.

Mr. KEFAUVER. Isn't that the real reason why you in Georgia selected the age of 18 rather than 17?

Mr. ARNALL. That is right. That is the age at which a marriage contract can be made. It is the time when boys and girls finish school. It is the age at which the Federal Government says they are out on their own.

Mr. CELLER. Is that an accurate recitation of what happened in your State? I have seen pamphlets distributed in Georgia, and the slogan was: "If a boy is old enough to fight, he is old enough to vote."

Particularly since you emphasize fighting in foxholes, in the sky, and on the sea, I take it you are impressed with the fact that if a boy is old enough to fight he is old enough to vote.

Mr. ARNALL. I am very much impressed by that.

Mr. CELLER. Is there any connection between being old enough to fight and being old enough to vote? In this sense, it would take some time to get this resolution ratified; you could not possibly get this ratified before 1945 or 1946. By that time we hope the war will be over, so you will not be endowing 18-year-old soldiers with the right to vote. So there is no connection between being old enough to fight and being old enough to vote.

Mr. ARNALL. I think that the fact these young people are fighting has served to rivet our attention on our duty to them.

Mr. CELLER. As soldiers they would not have the right to vote.

Mr. ARNALL. That is true.

Mr. CELLER. Is it fair to offer that as an argument, that if a boy is old enough to fight he is old enough to vote?

Mr. ARNALL. I do not desire, first of all, for the eminent chairman of this subcommittee to allow my argument to be drawn into one line only. You will recall I have submitted a number of reasons, such as participation in government being fine training in citizenship, and the ardor and candor of youth will bring to the ballot box, and other reasons. But another reason is that if a young man risks his life for his Government, he is entitled to vote.

May I tell you a story, please?

I used two little stories in Georgia when campaigning for this amendment. One of them—it is a true story—related to S2c. James Cranford, of Marietta, Ga. Although still under 21, he has been discharged from the Navy because of severe wounds sustained in defense of this country. He secured employment in a bomber factory, and was injured there.

He won a 50-word essay contest on why young people should be allowed to vote. Here is about what he said. He said: "I was at Pearl Harbor. I participated in the Battle of the Coral Sea. I was wounded 22 times fighting for my country. I am not yet 21. Do you not think I have won the right to vote?"

The other story was this. A young man came to see me who had been at Guadalcanal. For 9 months he was at an outpost in jungle land, separated from his comrades.

I said, "What did you think about when you were out there?"

He said, "I had reconciled myself to the fact I was going to be killed. I thought about my life and what I had done. I thought about my family, my mother, and my father. And I thought about my sweetheart. I thought about my country, for which I was going to die. And I thought about God."

Can anyone stand up and tell me that such a young patriot is not entitled to the simple right to register his feeling about governmental policies? I say it is not fair and it is not right.

Let me say this: Any government that requires a young man to go out and die for it should give him the right to participate in elections.

Mr. TOLAN. I think you have a point in the fact that the citizens 21 years and older have made a lamentable showing. Twenty-five percent is a large turnout at local elections 57 percent at national elections. So that these young people don't have a hard record to shoot at.

Mr. ARNALL. No.

Mr. RANDOLPH. May I ask the committee's indulgence to make an observation on Mr. Tolan's comment. In the presidential election of 1940, 67 percent of the eligible voters cast their ballots. We realize that of the 33 percent who did not use their franchise, some were ill, and others could not, for various reasons, participate. It is fair to say that 25 out of 100 were either not interested or derelict in their duty. But of those in the low age brackets, 85 to 90 percent did participate. So we do find that, progressively, as we come to the lower age brackets, there is greater realization of the responsibility of using the ballot.

Mr. ARNALL. Unless the subcommittee has something further to ask me, I believe I have concluded what I have to say.

Mr. KEFAUVER. May I ask you one more question, Governor? The amendment to the constitution of Georgia was finally passed in August, I believe.

Mr. ARNALL. August 3.

Mr. KEFAUVER. Have you had any elections at which these young people have voted?

Mr. ARNALL. No State elections. We have had bond elections.

Mr. KEFAUVER. I think it would be interesting if you would tell the committee the response you have had from young people at these elections, and what the young people tell you as to whether their interest in voting has increased.

Mr. ARNALL. Of course, I would hardly be the one to make those statements. I think almost everyone knows the young people were very much interested in the election in which I won the governorship. Therefore, I would be prejudiced as to what they think. They couldn't vote at the time, but they did a great deal in the election.

Mr. KEFAUVER. We have great confidence in your being modest.

Mr. ARNALL. I don't think you can take a young man or a young woman between the ages of 18 and 21 and lead them by the nose. I think they will be frank. Many of our young people are out of the State and can't participate now, but we are pleased with the amendment. I hear no criticism of it, and we think we have done a worthy thing. I hope our experience will prove it has been worthy.

Let me make one final statement, if I may. I would not for a moment be placed in the position of coming before this great legislative branch of the Government and suggesting to you what you should do or possibly, properly, should do about this matter.

I come here merely to tell you of my tremendous interest in the proposal, and to tell you that the people in my State believe in youth voting.

I would not undertake to outline the process or procedure for it. Personally, I can see nothing wrong in submitting a constitutional amendment. I believe in submitting constitutional amendments. After all, you only submit it to the people, and I believe in the democratic processes.

Mr. KEFAUVER. I think it should be pointed out that not only a majority, but three-fourths of the States, would have to ratify the amendment.

Mr. ARNALL. Yes. There are adequate safeguards.

Mr. RUSSELL. What age are they required to be in your State to be qualified for jury service?

Mr. ARNALL. Twenty-one. So greatly do I feel that this is a matter of great public moment that it is my purpose, if I should be a member of the Democratic delegation to the convention, to undertake to have that measure written into the party platform of my party as one of the planks of the platform, that we believe in exending to these young people the right to participate in elections.

Mr. CELLER. We are very grateful to you for your contribution, and I want to say that we, Members of Congress from various States, are very proud, and you should be proud, of the splendid congressional delegation from the State of Georgia, and we hope you will tell the people back home that they should let those Members remain in Congress as long as they wish.

Mr. ARNALL. Thank you, Mr. Chairman. We think we have a fine delegation.

Mr. KEFAUVER. I think it should also be pointed out that Georgia has a fine Governor, as indicated by the fact that several members of your good delegation have come to hear you.

Mr. RUSSELL. I believe I have a right to question you, because I am a grandson of your State. My mother was a native of Georgia. I will say that if the voting age were lowered to 18 in my district, I would be 100 percent better off politically, because I know I would have most of their votes.

Senator RANDOLPH. I thought it might be good to have it. There are some questions and colloquy that I think are of interest.

Though there appears not to have been any great tide of popular support for such an amendment in recent years, it is helpful to refer to a poll conducted by the New York Times among those who might be considered to have some claim to authority and experience in this field.

Shortly after former President Eisenhower advocated a constitutional amendment in his 1954 state-of-the-Union message, a New York Times poll revealed that 29 Governors favored lowering the age, 7 opposed it, and 12 had not reached a decision.

Among U.S. Senators, 45 favored the change, 11 opposed it, 2 refrained from committing, 8 could not be reached, and 30 remained undecided. I shall not editorialize on those 30 members who remain unmoved by the swirl of contesting opinions in our deliberative body.

More recently, we, who are the proponents of the measure, have been heartened by President Kennedy's statement advocating an 18-year-old voting law for the District of Columbia. It cannot be said, therefore, that the proposed resolution does not have strong support among those who might be presumed to have given it serious and careful consideration.

I stated at the outset that I would not explore the arguments relating to the effect that such an amendment might have upon the behavior of the electorate. Though many eloquent claims have been advanced by men of much reason and experience, I do not know, for example, whether such an amendment would, as as been claimed for it, infuse the democratic process with new enthusiasm, nor do I be-

lieve that anyone else has certain knowledge of this. I do not know whether 18-to-20-year-olds would preponderantly vote their parents' convictions or in this age of unrest rebel against them, or, if they did, by what proportion or what difference it would make.

Nor am I convinced that the argument, if they are old enough to fight they are old enough to vote, is the strongest or most relevant position that can be advanced. There are, however, two lines of reasoning, predicated not on immediately factual grounds but on historical and philosophic foundations, which argue strongly in favor of the proposed resolution.

First, within the great tradition of the Anglo-American democracy, we have slowly but steadily departed from the conception of voting as a privilege of property and advance toward the realization of voting as the right of a person. Thus, the enfranchisement which was first granted to but a handful of the greatest barons by the Magna Carta was gradually extended to the landed aristocracy of England, then to property owners in general, and to the rising commercial middle class.

The restrictions of English law still prevailed at the time of our own Revolution and in the years immediately following, and though property qualifications gave way under the rising tide of Jacksonian democracy, as had religious restrictions before them, voting was still considered a privilege of the properly qualified.

With the 15th amendment, we abolished the restrictions of race, color, and previous condition of servitude, as with the 19th amendment we abolished the restriction of sex. There remains but one medieval vestige, Mr. Chairman, that which defines the estate of manhood as the age of 21.

This criterion, originally predicated upon the age of attainment of the requisite skills of strength for personal combat, is an anomaly in the 20th century. Its retention implies that the tremendous progress in communication and our great national investment in universal public education during the past 100 years have had little or no effect in contributing to the citizenship qualifications of those between the ages of 18 and 21.

I cannot accept this assumption. I have no doubt that the average 18-year-old today is more alert to the problems of government and more informed on public affairs than were his parents or grandparents at 21 years of age. But for this last remnant of the past, we have traveled a long road from the belief in voting as a privilege of the few to the conviction that voting is a right of all persons on whom we impose the responsibilities of citizenship. It is time, I believe, to give the American electorate the opportunity, Mr. Chairman, to complete the journey.

My second argument is but an extension of the first, that is, the proposed resolution would implement the traditional prerogative of a people in a democracy to determine their own qualifications for the central democratic right to vote.

We have long since dispensed with the tenet of rule by—and I quote—"the wise, the just, and the well born."

With such exceptions as felons and specifically determined cases, or incompetency, we are prepared to hazard the experiment in democracy on the ultimate good judgment of all classes and conditions of citizens.

One most frequently encounters the argument that since those in the age groups of 21 to 24 and 25 to 29 utilize the franchise proportionately less than do people in their thirties and forties, why encourage more voting abstinence by extending the right to vote to 18-year-olds. The first and most obvious reply is that we should not continue to penalize the majority of alert and qualified young people who desire to vote because some persons do not prize this right. In any age group, we will always have a certain portion of those who do not value the rights or have care for the responsibilities of citizenship in a republic, but this fact is not a basis for appraising the individuals within that group.

Secondly, it is not at all unlikely that by lowering the voting age we might stimulate a greater awareness of the meaning of the ballot, not only among 18- to 20-year-olds, but also among young people in their twenties.

The issue addressed by the pending resolution will never be settled by polls and studies, nor by speculations concerning the probable political judgments of certain age groups. It is, therefore, a matter to be decided by the American voters themselves.

It is my conviction, Mr. Chairman, regardless of the ultimate decision of the electorate, that exercising its prerogative in this area will strengthen the resolve of American democracy. It is my hope, therefore, that this pending resolution will receive a favorable report from this subcommittee and from the parent Committee on the Judiciary and then affirmative action by the Congress.

Senator KEFAUVER. Senator Randolph, I want to commend you on a very fair and, at the same time, persuasive statement in favor of this resolution. You have made some excellent points as to why voting rights should be extended to 18-year-olds.

I wonder what you think of this argument also, that with the development of better medicine and physical care we know that the life expectancy of people, particularly in more advanced countries, and certainly in the United States, has increased greatly.

I don't have the figures right before me, but there has been a substantial increase in the life expectancy since 1920 or 1930, so that the average age of the voter now is considerably older than it was 20 or 30 years ago. More people are living longer and more elderly people are voting, of course. Is it not a good thing to keep the average voting age at a reasonable place, where the enthusiasm of youth and the vigor of younger people will offset the conservatism we usually get from our elderly citizens?

Senator RANDOLPH. Mr. Chairman, I believe that the point you make is a valid one. We do know of the increased longevity of our citizenship. We have found in our study of the problem by special subcommittee of the Senate that our population continues to mushroom but that the population of older people continues at an even more rapid rate.

So what you have said about building up an older segment of the population to a greater extent than ever before in this country, that certainly is a matter of record.

Now, the matter of infusing, as it were, the electorate, with this newer, younger, blood, is worthy of consideration. I know that you have thought the matter through and I can see that it has validity.

Senator KEFAUVER. Then I have always been impressed with the idea that a young person graduating from high school, which usually comes at 18, sometimes 17, is enthused with the desire to participate in government and exercise right of voting, and having recently studied civics and American history and political science, if they have to wait for 3 years before they can actively participate, sometimes they may lose interest.

Senator RANDOLPH. I thoroughly agree with you, Mr. Chairman, that there certainly is at the present time a void between the actual completion of high school where these studies have been current, where an enthusiasm has been engendered in the young man or the young woman, and the application of this knowledge and desire in the exercise of the ballot. It is more than just a ballot; it is a franchise of freedom, and I feel that the mistakes of this group, if we call them mistakes, will not be a greater percentage of mistakes than in the use of the ballot by the older group.

Senator KEFAUVER. We have a very able and young counsel, Mr. Kirby, and he has had the experience of going through this period between 18 and 21 more recently than you and I have, Senator Randolph. Perhaps he would like to ask some questions.

Mr. KIRBY. I wonder, Senator Randolph, if you think it might not be true that with the increasing rate of literacy and the number of people attending college, the group from 18 to 21 might not be better educated in public affairs than is the group from 48 to 51, which probably represents their parents?

Senator RANDOLPH. Yes, Mr. Kirby; I certainly feel that that is true and, as my statement indicates, I set forth that thinking. I think it is true that these are strengths which have been built into our body politic now and I feel that these younger folks are equipped, much better equipped than we were a quarter of a century ago or 50 years ago, to use the ballot intelligently.

Senator KEFAUVER. Senator Randolph, I remember quite well your active work in support of this resolution or a similar one in the House of Representatives. I don't believe we ever got into a vote in the House, did we?

Senator RANDOLPH. No; we did not, sir. The time occasioned by the visit to the Capitol by Governor Arnall seemed to be a propitious period for moving forward, and we felt we were making real progress at that time, but there was this stoppage, this hiatus, and we didn't move forward as we should.

I think it is important to remember that our two newest States, Alaska and Hawaii, have grown to statehood at a time when we have had this increased exchange of ideas between people and the faster methods of travel and better communication, and in both these States, I think it is significant, the age has been lowered beyond the traditional 21 voting age.

Senator KEFAUVER. What is the age requirement?

Senator RANDOLPH. Twenty and nineteen.

Senator KEFAUVER. Twenty in Hawaii?

Senator RANDOLPH. And in Alaska 19.

I think it is significant.

Senator KEFAUVER. Yes; I think it is significant.

70784 O—61—pt. 1——13

Senator RANDOLPH. These younger States are more vibrant, in a degree; I think they are pioneering in this field of thought and in the expression of responsibility of conviction.

Senator KEFAUVER. Of course, we voted in the Senate on this proposition back about 10 years ago. I have forgotten the vote, but it failed to obtain a two-thirds majority. I don't think that is conclusive now because I don't know that the Senators are any more wise or any more thoughtful about extending the rights of people, but the average age of the Senate is quite younger now than it was when we voted on this subject, and that might make a difference.

Senator RANDOLPH. And the Senate is more liberal now because of that aspect of its membership. Do you not believe that is a fact, Mr. Chairman?

Senator KEFAUVER. Yes; I think that is true. I think the times are changing quite rapidly, too.

Senator RANDOLPH. I know we used to think, and this is not an attempt to draw comparison between the House and the Senate—the people thought generally the House was the more liberal and the Senate the more conservative body of our legislative process, but I think most observers and students of government would say today that the Senate is more liberal and the House is more conservative. In other words, there has been this transposition.

Senator KEFAUVER. Anyway, there has been a great change in the world which has been reflected in the Senate in the last few years.

Senator RANDOLPH. Could I ask a question?

Senator KEFAUVER. Yes, indeed.

Senator RANDOLPH. I know your positive feeling on the subcommittee, your long espousal of this cause. How would you feel this subcommittee might determine this problem?

Senator KEFAUVER. Well, I am always reluctant about guessing what any committee might do, but Senator Keating has a resolution and Senator Dirksen has a resolution, and of course, I have one, all similar to yours.

Senator RANDOLPH. Yes, sir.

Senator KEFAUVER. So that is three on the subcommittee, and, as I look around, I see five names.

Senator RANDOLPH. Yes.

Senator KEFAUVER. So I should think that a majority of the subcommittee might be favorable—would be favorable.

Senator RANDOLPH. Relying on that look at your subcommittee, I hope the subcommittee will act promptly and report such a resolution to the parent committee.

Senator KEFAUVER. Thank you very much, Senator Randolph.

The subcommittee is honored to have with us this morning Senator Joseph Clark of Pennsylvania, for whom the chairman and, I am sure, all members of the committee, have great respect and appreciation of his work in connection with extending the right of participation in our democratic process to people who are qualified, and he is here this morning to speak in support of his resolution, Senate Joint Resolution 81, which he has filed on behalf of himself; the Senator from Michigan, Mr. Hart; the Senator from New Jersey, Mr. Williams; from Missouri, Mr. Long; from Minnesota, Mr. Humphrey; from Alaska, Mr. Gruening; and from Missouri, Mr. Symington. The resolution has been made part of the record.

STATEMENT OF HON. JOSEPH S. CLARK, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator CLARK. Thank you very much, Mr. Chairman, for those kind words.

I have a short statement here, accompanied by two memorandums on the subject of the history of anti-poll-tax legislation in Congress and preferential presidential primaries prepared for me by the legislative reference service of the Library of Congress.

I would ask your permission to have my statement and the memorandums inserted in the record.

Senator KEFAUVER. Senator Clark's statement will be inserted at this point in the record, and the memorandums will be inserted following Senator Clark's entire statement.

(The statement submitted by Senator Clark follows:)

Mr. Chairman, I support passage of a constitutional amendment to eliminate poll tax payment as a requirement for voting in Federal elections. This curb on the most fundamental of all democratic rights has been permitted to survive too long.

Last September 1, President, then Senator, Kennedy asked Congressman Celler of New York and myself to prepare legislative proposals carrying out the civil rights pledges in the 1960 Democratic Party platform for introduction in the 87th Congress.

One of those pledges, as you well know, is as follows:

"We will support whatever action is necessary to eliminate * * * the payment of poll taxes as (a) requirement * * * for voting."

In carrying out this portion of our assignment, Congressman Celler and I reviewed the long history of efforts to repeal the poll tax requirement in Congress in recent years. I asked the Legislative Reference Service to chronicle this history for me, which was done in the attached memo.

It was our view that there was sufficient doubt about the authority of Congress to eliminate this requirement by legislation to make it appear advisable to recommend adoption of a constitutional amendment to achieve this end. Accordingly we introduced identical constitutional amendments in the House and the Senate on May 8, 1961 (S.J. Res. 81; H.J. Res. 404).

As you will readily see from an examination of the resolution I have submitted, it is modeled, with one exception, word for word on the Holland amendment which was approved by the Senate by a 72–16 vote on February 2, 1960.

The exception attempts to cover the situation in which States permit voters in presidential primaries to vote directly for the candidates for President and Vice President, not for a slate of electors pledged to such candidates.

I have not examined personally the laws of the five poll tax States (Alabama, Arkansas, Mississippi, Texas, and Virginia), but another memorandum I have received from the Library of Congress indicates that none of these States presently permits primary votes directly for presidential candidates. It would seem a pity to permit avoidance of a constitutional amendment by mere passage of a State law setting up such a direct primary system, however, and I urge the committee to cover this contingency in the poll tax resolution it recommends to the full committee and to the Senate.

Senator CLARK. Mr. Chairman, there is only one difference in the wording of Senate Joint Resolution 81 and Senate Joint Resolution 58, which has been sponsored and cosponsored by a very much larger number of Senators than the one which I have sponsored. Such change appears in lines 3 and 4 on page 2 of Senate Joint Resolution 81, where the words "for President or Vice President" are inserted in my resolution, but do not appear in Senate Joint Resolution 58.

The reason for the additional language is because if we were attempting in Senate Joint Resolution 81 to cover a situation in which States might permit voters in presidential primaries to vote directly

for the candidates for President and Vice President and not just for a slate of electors pledged to such candidates.

It so happens that none of the five States which presently have poll taxes are in that category, but they might pass laws to permit direct votes for primary candidates at any time, and if they did, in my opinion, the wording of Senate Joint Resolution 58 would not apply and the amendment would be meaningless in that particular State.

I suggest, therefore, it would be a wise precaution to insert these words in the resolution, which I have no doubt will be reported to the full committee in due course by your subcommittee.

That, I think, Mr. Chairman, is all that I care to say. My statement makes clear why I did put this resolution in and my interest in it.

Senator KEFAUVER. Let's see if I understand clearly what your reasoning is.

In Senate Joint Resolution 58 by Senator Holland and others, the language is "in any primary or other election for electors for President or Vice President, or for Senator or Representative in Congress." In your resolution, Senate Joint Resolution 81, the language is "in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress." Are you saying in some places they do not vote for electors?

Senator CLARK. That is right. My State is one.

In the general election, we vote for electors. But I am referring to the States where, in the primaries, the voter marks his ballot for the candidate, not for the elector.

Senator KEFAUVER. Yes; that is true in quite a number of States.

Senator CLARK. Well, I stated it this way in my statement:

> The exception attempts to cover the situation in which States permit voters in presidential primaries to vote directly for the candidates for President and Vice President, not for a slate of electors pledged to such candidates.

Now, you will recall that when you ran in the Pennsylvania primary, we voted for you, we didn't vote for any slate of electors pledged to you.

Senator KEFAUVER. That is true, and that is true in quite a number of States.

Senator CLARK. Hence this precaution.

It is particularly important in Southern States where the primary is equivalent to the general election.

Senator KEFAUVER. Well now, does Senator Holland's resolution really mean that in a primary you would be voting for electors?

Senator CLARK. I think it is susceptible of that interpretation; don't you?

Let's read that clause of Senate Joint Resolution 58 together:

> to vote in any primary or other election for electors for President or Vice President.

Senator KEFAUVER. Mr. Kirby, you are our counsel, what do you think?

Mr. KIRBY. I have discussed this question with Senator Holland's staff, and it is his interpretation that his amendment would apply to a primary only if electors themselves were the candidates in the primary, which has been true in Florida, apparently. But in a State where delegates to the national convention were on the ballot

in the primary, his amendment would not apply; or where the names of the candidates were on the ballot in the primary, his amendment would not apply.

Senator CLARK. I think it should apply.

Now, it is true that none of the five States which presently have poll taxes permit direct votes for presidential primary candidates, but they could change the law tomorrow, and another State which does not have a poll tax could adopt one and have a direct presidential primary, in which case I submit that Senator Holland's joint resolution would not cover that situation, and I submit that it should.

Senator KEFAUVER. Well, Senator Clark, when you are running in a primary in a State like Wisconsin, you don't vote for the candidates. You vote for the delegates, and they are not electors.

Senator CLARK. I am just pointing out that there are some States where that is not true, and there could be more States tomorrow.

Senator KEFAUVER. You mean you think under Senator Holland's resolution that it would not apply to primaries unless in that particular State they voted for electors who, in turn, would vote in the electoral college?

Senator CLARK. Yes. In other words, here is a loophole that is easy to close. I assume that it was an inadvertent loophole. It could be closed by an amendment adopted by the subcommittee.

Senator KEFAUVER. Well, we certainly are glad to have your analysis and explanation of this difference, Senator.

Thank you very much for coming and being with us.

Senator CLARK. Thank you sir.

(The memorandums submitted by Senator Clark follow:)

NOVEMBER 17, 1960.

To: Hon. Joseph S. Clark.
From: American Law Division.
Subject: Anti-poll-tax legislation.

Reference is made to your recent inquiry concerning the above subject.

We have considered the history of this legislation by Congress since the 77th Congress commencing in 1941.

Attached, is a copy of Senate Joint Resolution 39, 86th Congress, the most recent congressional action on the proposal, together with the House Report 1698 which resulted in deletion of the anti-poll-tax provisions of that resolution. Attached also are copies of bills introduced in the 86th Congress which are illustrative of the various forms anti-poll-tax bills have taken generally over the years.

The Senate report to Senate Joint Resolution 39, 86th Congress, does not consider the anti-poll-tax amendment, since that matter was resultant from a floor amendment.

The subject of anti-poll-tax legislation has been continually before the U.S. Congress at least since the 77th Congress commencing in 1941. With the exceptions of the 82d–85th Congresses, a bill was passed in each Congress by the House of Representatives. The matter was passed by the Senate during the 86th Congress as a proposed constitutional amendment. Each of these bills followed a slightly different course toward passage. There were also differences in language. The history of each of these bills is discussed individually in an attachment.

The anti-poll-tax bills which have been introduced (an average of 15-odd in each Congress) may be classified in 4 general types:

(1) Prohibition of poll taxes as a prerequisite to voting in national elections.

(2) Prohibition of poll taxes together with a provision for application for injunctive relief available to either the United States or to an aggrieved party to protect against violations or threatened violations.

(3) Various forms of (1) and (2) above included as a separate title in omnibus civil rights bills.

(4) Proposed constitutional amendments to abolish poll taxes with respect to primary and general elections for national offices.

A copy of each of these types of bills introduced during the 86th Congress is attached.

The language differences among the various bills introduced stem for the most part from enlargements or refinements of the details of the legislation. Seven of these differences which appear of some significance, and which might influence the language to be used in a proposed bill follow.

(1) Inclusion of primary elections and registration of voters with general elections under the prohibition. Such language would prevent a mere substitution of poll taxes from thwarting the intent of the act (Congressional Record 95, p. 10224 et seq., July 26, 1949).

(2) Application of the prohibition to "any person" in addition to any "State, municipality, or other political subdivision," thus reducing the possibility of avoidance of the intent of the law by broadening the prohibition.

(3) Prohibition of a tax levied "in consequence" of voting or registering as well as prohibition of a poll tax as a "prerequisite" to voting. This refinement has been included in some of the more recent bills; S. 2000, 86th Congress, as one instance.

(4) Definition of "poll tax." On at least one occasion (H.R. 3199, 81st Cong.) a committee amendment was added to the bill, and was included on House passage, the committee and the House finding that—

"The need for this section is evident from numerous refinements in the use of the poll tax as a clog on the ballot. In some States tax receipts must be presented for more than one successive year, or be dated anterior to certain months long prior to the election" (H. Rept. 912, 81st Cong.).

That amendment reads as follows:

"For purposes of this act, the payment, levying or requirement of a poll tax shall be construed to include any charge of any kind upon the right to vote or to register for voting, and any form or evidence of liability to a poll tax or to any other charge upon the right to vote or to register for voting" (H. Rept. 912, 81st Cong.).

(5) Provision for application by either the United States or an aggrieved person for injunctive relief against a violation or threat of violation of the provision of the act. This provision has been included in many of the more recent proposals though it is absent from the earlier ones (77th–81st Congresses). It appears to be used in conjunction with a prohibition against collection of a poll tax, the combination acting as a substitute for a declaration of illegality or unconstitutionality of a State poll tax statute.

(6) Some anti-poll-tax bills (S.2359, 86th Cong., for example) have sought to extend the legislative prohibition to other requirements in addition to the poll tax. These often include "any property tax, property ownership qualification, or literacy test or intelligence test."

(7) Two provisions have at various times been included in anti-poll-tax proposals which seek to anticipate constitutional objections to such legislation. One (see H.R. 711, 86th Cong.) recites that poll taxes are deemed not to be a "qualification" of voters and, therefore, not determinable by the States (U.S. Constitution art. I, sec. 2), but are deemed to be an interference with the "manner of holding elections," and therefore regulatable by the Congress (U.S. Constitution art. I, sec. 4).

The other provision, included in H.R. 3199, 81st Congress, declared the poll tax to be "[and] an impairment of the republican form of government" which is required by article IV, sec. 4, U.S. Constitution, to be guaranteed to the States by the United States. H. Rept. 912, 81st Congress, says of this provision in H.R. 3199:

"This is a statement of one of the Constitutional bases of authority, which appears in some of the other bills introduced in this House. It incorporates, in the bill itself, what has been said about it in previous reports of Congressional Committees."

In addition to the details of the language of anti-poll-tax legislation, the larger question of the constitutionality of statutory treatment in lieu of constitutional amendment has caused the greatest difficulty in the floor debates throughout its history.

Two Supreme Court decisions are often cited by the proponents and the opponents of the statute-amendment controversy. *Ex parte Yarborough*, 110 U.S. 651 (1884), is relied upon by adherents to statutory treatment.

"* * * it is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States.

"The office, if it properly be called an office, is created by that Constitution and by that alone.

"It is not true, therefore, that electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State.

"The exercise of the right in both instances is guaranteed by the Constitution, and shall be kept free and pure by Congressional enactments whenever that is necessary."

See also *U.S.* v. *Classic* (313 U.S. 299).

On the other hand, the adherents to the necessity of constitutional amendment cite *Breedlove* v. *Suttles*, 302 U.S. 277 (1937):

"To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the 14th Amendment. Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the 15th and 19th Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate."

The arguments with respect to constitutionality of a poll tax and with respect to the constitutionality of Federal legislation to outlaw the poll tax rather than to abolish it through the process of constitutional amendment are treated in detail in the debates on H.R. 7, 87th Congress (Congressional Record, vol. 89, pp. 4843–4889); the debates on Senate Joint Resolution 39, 86th Congress (Congressional Record, Jan. 27–Feb. 2, 1960), and in H. Rept. 912, 81st Congress, on H.R. 3199.

There have also been, over the years, bills introduced which seek to permit an income tax deduction to all those persons voting in national elections. (See S. 82 and H.R. 3382, 81st Cong.) None of these bills appear to have received action in either House.

SUMMARY

Anti-poll-tax legislation, since 1942, was passed by the House of Representatives in each of the following Congresses: 77th, 78th, 79th, 80th, 81st. Although it was debated in the Senate during each of these Congresses, it was passed by the Senate only during the 86th Congress.

Although bills were introduced in all intervening Congresses, it does not appear that the matter was passed by either House from the 82d through the 85th Congresses.

In each instance, the bill as passed by the House contemplated Federal legislation to prevent a poll-tax prerequisite to voting in Federal elections. No such bill was found to have been passed by the Senate, and at least one, H.R. 7, 78th Congress, was prevented from coming to a vote through filibuster. The only time the matter was found to have been passed by the Senate was during the 86th Congress, and that took the form of a proposed constitutional amendment.

The question of constitutionality, although debated at length in the House, has not seemed to be a great deterrent to passage of anti-poll-tax legislation. The same does not appear to be true of the Senate where the matter has been passed only in the form of a constitutional amendment. That amendment was rejected by the House Judiciary Committee and was not reinstated on the House floor.

86th Congress (S.J. Res. 39)

Anti-poll-tax legislation was passed by the Senate on February 2, 1960, as a proposed constitutional amendment. On the motion of Senator Holland, it was adopted as an amendment to Senate Joint Resolution 39, a proposal to amend the Constitution with respect to vacancies in the House of Representatives, by a vote of 72 yeas to 16 nays (Congressional Record 1593, Feb. 2, 1960). The anti-poll-tax amendment was debated on the Senate floor from January 27, 1960, through February 2, 1960.

An amendment in the nature of a substitute, offered by Senator Javits, recognizing poll taxes to be an interference with the manner of holding elections rather than a qualification of electors, was defeated by a vote of 50 yeas to 37 nays supporting Senator Holland's motion to lay Senator Javits' amendment on the table (Congressional Record 1598, Feb. 2, 1960).

The House of Representatives Judiciary Committee reported Senate Joint Resolution 39 on May 31, 1960. It had deleted the anti-poll-tax portion prior to reporting and the resolution was passed by the House absent this provision on

June 14, 1960. The committee report (H. Rept. 1698, 86th Cong.) makes no reference to this deletion. The Senate agreed to the House amendments on June 16, 1960.

81st Congress, 1st session

H.R. 3199, 81st Congress, was reported from the House Judiciary Committee on June 24, 1949 (H. Rept. 912, 81st Cong.). That bill was debated on the House floor on July 26, 1949, and was passed by the House on that date by a vote of 273 yeas to 116 nays.

The constitutional questions involved were discussed at great length and in detail both in the committee report and on the floor (Congressional Record, vol. 95, pp. 10220–10248).

80th Congress, 1st session

The anti-poll-tax bill, H.R. 29, was debated in the House on July 21, 1947 (Congressional Record, vol. 93, pp. 9524–9551). It was passed by the House under a motion for suspension of the rules (requiring a two-thirds vote of the House) by a vote of 290 yeas, 112 nays (Congressional Record, vol. 93, p. 9551). It was reported in the Senate (S. Rept. 1225) and was debated in the Senate (Congressional Record 9480–9710, intermittently).

79th Congress, 1st session

The anti-poll-tax bill, H.R. 7, was debated in the House on June 11, 1945 (Congressional Record, vol. 91, pp. 5892–5895; 5974–6003). A motion to discharge the Committee on Rules from further consideration of the bill, supported by a petition of 218 members, was adopted by a vote of 224 yeas to 95 nays (Congressional Record, vol 91, p. 5895).

The bill, H.R. 7, was passed by the House on June 12, 1945, by a vote of 251 yeas to 105 nays (Congressional Record, vol. 91, p. 6003). It was debated in the Senate (Congressional Record, vol. 92, pp. 10383–10387).

78th Congress, 1st session

The bill, H.R. 7, was debated in the House on May 25, 1943 (Congressional Record, vol. 89, pp. 4843–4889). It was passed on that date by a vote of 265 yeas to 110 nays.

H.R. 7 was brought to debate on the floor of the Senate in May 1944. The matter evolved into a filibuster. A motion to conclude debate under Senate Rule XXII was defeated by a vote of 36 yeas to 44 nays (Congressional Record, vol. 90, p. 4470). Other legislation then replaced H.R. 7 as unfinished business of the Senate.

77th Congress, 2d session

The bill, H.R. 1024, was debated in the House on October 13, 1942 (Congressional Record, vol. 88, pp. 8120–8174). It was passed by the House on that date by a vote of 254 yeas to 84 nays (Congressional Record, vol. 88, p. 8174). It was reported in the Senate (S. Rept. 1662) and was debated in the Senate (Congressional Record, vol. 88, pp. 9043–9059).

EUGENE A. JENKINS, Jr., *Legislative Attorney.*

* * * * * * *

THE LIBRARY OF CONGRESS LEGISLATIVE REFERENCE SERVICE

PREFERENTIAL PRESIDENTIAL PRIMARIES

By Mollie Z. Margolin, legislative attorney, American Law Division, June 1, 1961

Contents

State Legislation
Alabama
Arkansas
California
Florida
Illinois
Indiana
Maryland
Massachusetts
Nebraska
New Hampshire
New Jersey
Ohio
Oregon;
Pennsylvania
South Dakota
West Virginia
Wisconsin

Table I -- Preferential Presidential Primaries by date in 1960

Table II -- States Having Preferential Presidential Primaries

STATE LEGISLATION

ALABAMA

(Unless otherwise designated, section numbers refer to Code of Alabama, 1940, Recompiled 1958, Title 17, and 1959 Supplement thereto.)

Preferential Presidential Primary

No presidential preference is expressed in a primary, but a political party which at the last preceding general election polled more than 20 percent of the entire vote cast in the state may, by its state executive committee, elect whether or not to hold a primary. Such primaries have been held for the selection of delegates to the national convention (§§ 336, 337, 346).

When held — If held, it shall be held on the first Tuesday in May in presidential election years (§ 340).

Date in 1960 — The Democratic Party held such a primary on May 3, 1960.

Ballot

Names of candidates for delegate to the national conventions are placed on the ballot only if there is a contest (§ 344).

According to party custom (§§ 347, 394), a candidate for delegate can either make a public commitment to support a specific presidential candidate or he can remain uncommitted. There is no provision for expression of such commitment on the ballot. In 1960 the Democratic Party held a primary and elected unpledged delegates

among whom were some who favored Johnson and some Russell (AP 6/1/60).

Are Delegates bound by their pledge

There is no statutory provision requiring the delegates to the national convention to be bound by any public commitment which they may have made.

ARKANSAS

(Unless otherwise designated, section numbers refer to Arkansas Statutes, 1947, Annotated, 1956 Replacement, and to 1959 Supplement thereto.)

Preferential Presidential Primary

It shall be the duty of the State Committee of any political party to order a preferential presidential primary when such committee is petitioned to do so by any candidate for such nomination (§ 3-301).

Petition to require primary - Any citizen of the United States, who is otherwise qualified to occupy the office of President of the United States, shall have the right to petition the State Committee of the political party to which he belongs to conduct such an election.

Such petition shall be signed personally by said candidate and shall be filed with the State Committee of his party not less than 6 months prior to the date of such party's national convention (§ 3-302).

Ballot fees - Before said petition is accepted, ballot fees prescribed by said committee shall be paid to said committee (§ 3-302).

Expenses of primary - The state, counties, or other subdivisions of government shall never be subject to any expense in connection with the calling, holding, and certifying of preferential presidential primary elections. The political State Committee of the party shall arrange for such expenses (§ 3-305).

Date of primary, if held - The State Committee shall order the holding of such primary, if petitioned to do so, by giving not less than 60 nor more than 90 days public notice of the date which they select. Such primary shall be held not less than 2 months prior to that party's national convention (§ 3-303). The tentative dates for the national convention in 1960 were July 11, 1960 for the Democrats and July 25, 1960 for the Republicans. Thus, if Arkansas had desired to hold preferential presidential primaries in 1960, the latest permissible date for such would have been May 11, 1960 for the Democrats and May 25, 1960 for the Republicans.

Remarks

Since the expenses of the primary are to be borne by the party and since the party may prescribe the ballot fee to be paid by the candidate, it is not impossible that the candidate might be expected to pay the entire cost of the primary.

Whether for this reason or not, the fact remains that the preferential presidential primary is not resorted to in Arkansas.

Selection of delegates to national convention

Not later than 2 weeks before the National Convention, the State Committee of a political party shall select delegates to such national convention.

Are delegates bound by results of primary

If a preferential presidential primary has been held said delegates are bound by results of such primary and shall so cast their votes as a unit unless in the best judgment of two-thirds of the delegates after arrival at the convention, their candidate is so lacking in other support that his nomination is impossible. If no preferential primary has been held, delegates shall vote as may be directed by State committee (§ 3-304).

CALIFORNIA

(Unless otherwise designated, section numbers refer to California Elections Code, West's, Annotated, 1955, and to 1960 Supplement thereto)

Preferential Presidential Primary

This primary is held to express a presidential preference and to elect delegates to the national conventions of each political party (§2050).

When held - First Tuesday after the first Monday in June of each year when delegations to national party conventions are to be chosen. (Supp. §953).

Are delegates bound by results of primary

On May 30, 1961, "California cast off its long-standing requirement that its delegates to national party conventions must be pledged to presidential candidates. Governor Brown signed into law a bill allowing election of unpledged delegates." Evening Star, Washington, D. C. May 31, 1961. This law is not yet available to us.

FLORIDA

(Unless otherwise designated, section numbers refer to Florida Statutes, 1960 Annotated and to the 1960 Supplement.)

Preferential Presidential Primary

Each political party which had cast for its candidate for governor in the last election more than 10 percent of the total vote cast for governor, or with which 10 percent of the total registered electors have registered by the first of February of 1960 shall hold a primary for the purpose of directly electing delegates to the national convention, who may be pledged to a specific candidate for presidential nominee or who may not be pledged at all (§ 103.101).

When held - Fourth Tuesday in May in 1956 and every 4 years thereafter (§ 103.101(1)).

Date in 1960 - May 24, 1960

Ballot

The names of all the candidates for delegates, in the number to which the state is entitled, shall appear in a column for each group, headed by the name of the person whom they prefer for presidential nominee. If a group has no preference, that column shall be headed "Candidates expressing no preference" § 103.101(2)(6), § 101.180).

Nomination Papers, Petitions, Etc.

Petitions of delegates accompanied by individual qualification papers, filing fees and receipts for party assessments may be filed with Secretary of State at any time after noon on the 77th day and before noon of the 63d day before the first primary (§ 103.101(1), § 99.061(2), § 99.102).

Dates in 1960 - February 16 to March 1, 1960.

Endorsement by candidate

If 2 or more groups file petitions indicating a preference for the same candidate for President, he may choose the group that shall appear on the ballot. If he does not choose one group, only the first group to file shall appear on the ballot (§ 103.061(2)).

The consent of the candidate for whom a preference is indicated in the petition of any group, is not required; and, except for choosing a group where more than 1 group has expressed a preference for him, the name of a candidate for presidential nominee may appear on the primary ballot at the head of the column of delegate candidates who have expressed a preference for him, without any action on his part.

Are delegates bound by results of primary

In their nominating petitions, a slate of candidates for delegates shall be grouped on a single petition which shall contain a statement indicating their collective preference choice for President, if any, or that they have no preference. No pledge is included to vote for such choice at the national convention (§ 103.101(2)).

There are no statutory instructions as to how they must vote at the convention.

70784 O—61—pt. 1——14

ILLINOIS

(Unless otherwise designated, section numbers refer to Smith-Hurd Illinois Annotated Statutes, 1960 Supplement, Chapter 46.)

Preferential Presidential Primary

This primary election is held for the purpose of electing district delegates to the national conventions, who do not have to indicate their presidential preference on the ballot, and for the purpose of securing an expression of the sentiment and will of the party voters with respect to candidates for nomination for the office of President of the United States (§ 7-5). The vote for presidential candidate shall be advisory to the delegates of the national conventions (§ 7-11). Delegates at large are elected by State Convention which meets on April 29, 1960.

When held - Second Tuesday in April in every year in which a President of the United States is to be elected (§ 7-5).

Date in 1960 - April 12, 1960.

Ballot

Any candidate for President of the United States may have his name printed upon the primary ballot by filing with the Secretary of State not more than 85 nor less than 78 days prior to the April primary, a petition signed by not less than 3000 nor more than 5000 members of his party who will vote at the primary election (§ 7-11).

Nomination Papers, Petitions, Etc.

See under Ballot, supra.

Date for filing in 1960 - Between January 18 and January 25, 1960.

Are Delegates bound by results of primary

No - Vote of primary shall be advisory to delegates (§ 7-11).

INDIANA

(Unless otherwise designated, section numbers refer to Burns Annotated Indiana Statutes, 1960 Supplement.)

Preferential Presidential Primary

This primary election is held for the purpose of enabling every voter to express his choice for the nomination of a candidate for President of the United States and to elect delegates to the state conventions of the political parties. It shall be the duty of the delegates (selected by the state convention) to the national convention to vote, on the first ballot only, for the presidential candidate who received the highest number of preference votes in the party's primary (§ 29-3619, § 29-3703; 1949 Replacement Volume § 29-3604).

When held - First Tuesday after the first Monday in May in the year in which a President of the United States is to be elected (§ 29-3619; 1949 Replacement Volume § 29-3604).

Date in 1960 - May 3, 1960.

Ballot

Any candidate for the office of President of the United States may have his name printed on the primary ballot by filing with the Secretary of State, either personally or through his representative, a written request that his name be placed upon the primary ballot or voting machine under his party label (§ 29-3619).

Nomination Papers, Petitions, Etc.

Such request shall be accompanied by a petition signed by at least 500 legal voters of the state requesting that such name be placed on the primary ballot or voting machine (§ 29-3619).

When filed - Such request and petition shall be filed with the Secretary of State at least 40 and not more than 70 days before the primary (§ 29-3619).

Date in 1960 - Between February 23 and March 24, 1960.

Are delegates bound by results of primary

Yes, but only on first ballot at convention (§ 29-3619).

MARYLAND

(Unless otherwise designated, section numbers refer to Annotated Code of Maryland, 1957, Article 33, - and to 1959 Supplement thereto).

Preferential Presidential Primary

This primary election is held for the purpose of permitting the party voters to express their preference for a presidential candidate or for an uninstructed delegation to the national convention, and for the purpose of electing delegates to the state convention of each political party (§§ 76, 77, 61).

Political parties which polled 10 percent or more of the entire vote cast in the State in the last preceding general election shall nominate by primary election (§ 54(b), § 61).

The State convention elects the delegates to the national convention (§83(a)).

When held - The primary elections shall be held on the third Tuesday in May in presidential election years (§ 62).

Date in 1960 - May 17, 1960.

Ballot

A candidate for president who may desire to obtain the vote of his party delegates from Maryland at the national convention may become a candidate for such nomination in the presidential preference primary. He shall have his name printed on the ballot by making the required payment and by filing a certificate of candidacy (§76).

Nomination Papers, Petitions, Etc.

The certificate of candidacy shall be filed with the Secretary of State not later than on the Monday which is 9 weeks or 63 days prior to the primary (§ 76(a)).

Filing date in 1960 - The last day for filing was Monday, March 14, 1960.

Certificate of candidacy - Such certificate of candidacy shall specify the party to which he belongs and the national convention whose nomination for President he seeks, and shall be in form and in substance like the certificate of candidacy required of candidates for nomination for office of Governor by § 55 of Article 33 (Form and substance is not set out in § 55) (76(a)).

Filing fee - Law reads "by making the payment required" (76(a)). The payment required of a candidate for Governor is $290 (§ 57(b)).

Unit Vote in State Conventions for Presidential Nominations

The State convention of each political party, composed of delegates elected in the presidential primary shall select the delegates to the national convention (§ 83(a)).

Instructed delegations - The candidate for presidential nominee who shall receive the highest number of votes in the primary in any county or legislative district of Baltimore city, shall be entitled to have cast for him in the state convention all the votes

of the delegates from said counties and legislative districts in units, as long as the choice is voted for by the delegates of any 9 counties of Maryland in said convention. For such purpose a legislative district of Baltimore City is to be considered the equivalent of a county (§ 83(b)).

Uninstructed delegates - If, in any county or legislative district of Baltimore City, a greater number of votes were cast for an uninstructed delegation than for any candidate in the primary for the nomination for President, the delegation from such county or district shall vote, as a unit, for an uninstructed delegation to the national convention, as long as in their conscientious judgment, it shall appear to them that there is any possibility of a majority of the members of such State convention voting for an uninstructed delegation, and if it shall appear that there is no such possibility, they shall vote for such person for the candidate of their party for President as they may deem wisest (§ 83(c)).

Are delegates bound by results of primary

All the delegates selected by the State convention to the national convention shall be instructed and bound to vote as a unit on the first ballot for President in the national convention if so instructed by their State convention. They shall continue to vote for the choice of the State of Maryland for President as long as in their conscientious judgment there is any possibility of his being nominated (§ 85(c)).

MASSACHUSETTS

(Unless otherwise designated, section numbers refer to Massachusetts General Laws Annotated, 1958, Chapter 53 and the 1960 Supplement thereto).

Preferential Presidential Primary

At this primary election there is a direct election of delegates to the national convention, each of whom may indicate his presidential preference by a statement after his name on the ballot, or may run unpledged. The voters may express their presidential preference for a candidate by inserting the name of such candidate in a space provided on the ballot (§ 70E). There is no provision binding delegates to vote for presidential candidate whom they indicated preference for.

When held - Last Tuesday in April in any year in which presidential electors are to be elected (§ 28).

Date in 1960 - April 26, 1960.

Ballot

Although, without such candidates' consent, the voters may insert the name of any candidate whom they prefer for presidential nominee, in the space provided for same on the ballot (§ 70E), a statement of preference by a candidate for delegate to the national convention, may appear on the ballot only if such statement appears in his nomination papers, and provided that such candidate for presidential nominee has consented to this (§ 70E).

Assent of candidate

A candidate for presidential nominee may consent to having his name thus appear upon the ballot in a candidate's (for delegate) statement of preference, by filing his written assent thereto with the state secretary on or before 5 o'clock in the afternoon of the last day for filing nomination papers (§ 70E).

Last filing date in 1960 - Seventh Tuesday preceding the primary (§ 48) - March 8, 1960.

Are delegates bound by results of primary

No. If Presidential candidate consents, a candidate for delegate may have a statement of preference after his name on the primary ballot. No pledge is included to vote for such candidate at the Convention. There are no further statutory instructions as to how delegates shall vote at Convention (§ 70E).

NEBRASKA

(Unless otherwise designated, section numbers refer to the 1960 Reissue of the Revised Statutes of Nebraska of 1943.)

Preferential Presidential Primary

This primary election is held to express a presidential preference, and to elect delegates to the national convention. The pledge of a candidate "to abide by results of the primary" does not apply to delegates to the national convention of a political party. (Op. of Deputy Sect'y of State, Oct. 11, 1955.) Thus, the results of the primary are merely advisory.

When held - First Tuesday after second Monday in May in each presidential election year (§ 32-506).

Date in 1960 - May 10, 1960.

Ballot

The names of the candidates for presidential nominee appear on the primary ballot and a voter can either make a cross opposite the printed name of the person of his choice or write in a name in the blank space to be left on the ballot for such purpose (§ 32-509).

Nominating Papers, Petitions, Etc.

The name of a candidate for presidential nominee shall be printed on the primary ballot only on a petition bearing the names of 100 of his political supporters in each congressional district (without his own signature) (§ 32-510).

Consent of Candidate

The name of any person to be voted for President shall be placed upon the ballot only when written consent of the individual involved has been filed with the Secretary of State not less than 60 days before the primary (§ 32-510).

Last date in 1960 for filing consent - March 11, 1960.

Are delegates bound by results of primary

The expression of a preference for a President by those voting at a primary election is only morally binding on delegates to the national party conventions. State v. Wait, 138 N. W. 159.

NEW HAMPSHIRE

(Unless otherwise designated, section numbers refer to New Hampshire Revised Statutes, Annotated, 1955, and to 1959 Supplement thereto.)

Preferential Presidential Primary

This primary election is held to express presidential and vice presidential preference by direct vote, and to elect delegates to the national convention (§§ 57:1, 58:1). The results of the primary shall be advisory in nature for such delegates (§ 58.6).

When held - On the second Tuesday in March each year when a president of the United States is to be elected (§§ 57:1, 58:1).

Date in 1960 - March 8, 1960.

Ballot

The names of the candidates for presidential and vice presidential nominee appear on the primary ballot and a voter can either make a cross opposite the printed name of the person of his choice or write in a name in the blank space to be left on the ballot for such purpose (§ 58:2).

If candidate for delegate so requests in his petition and if candidate for presidential nominee files consent with Secretary of State between January 8 and January 28, 1960, delegate's preference of a presidential candidate will appear on the ballot, or a statement may appear that candidate for delegate pledges to support such presidential candidate at national convention (§ 57:6). Candidate for delegate must file from 60 to 30 days before primary (§ 57:5).

Date in 1960 - Filing date was from January 8 to February 6.

Nominating Papers, Petitions, Etc.

The name of a candidate for presidential nominee, shall be printed on the primary ballot solely on the petition of New Hampshire voters of his own political party, to be filed with the Secretary of State not more than 60 nor less than 40 days before the primary. Such petition must be signed by at least 50 qualified voters of each congressional district (§ 58:3).

Filing date in 1960 - Between January 8 to January 27, 1960.

Consent of Candidate

The consent of the candidate for presidential nominee is not necessary and his name may be placed on the primary ballot without any action on his part.

However, a candidate may withdraw his name within 10 days after he has been officially informed by the Secretary of State that his name has been submitted by petititon as a candidate (§ 58:4).

See also under Ballot.

Are delegates bound by results of primary

Yes, if delegate has pledged in his declaration of candidacy that if elected he would vote in said convention for the Presidential candidate for whom he has expressed a preference "so long as he will be a candidate before said convention." (§ 57:6).

NEW JERSEY

(Unless otherwise designated, section numbers refer to New Jersey Statutes Annotated, 1940, Title 19, and to 1960 Supplement thereto).

Preferential Presidential Primary

This primary election is held to express a presidential preference and to elect delegates to the national convention; but there is no provision to bind the delegates to the results of the primary (Supp. § 19:3-3, § 19:25-3).

When held -- Third Tuesday in April in presidential election years (Supp. § 19:3-3, § 19:25-3).

Date in 1960 -- April 19, 1960.

Ballot

Candidates for delegates to the national convention may run unpledged, or may have the name of the candidate for President whom they favor placed opposite their individual names or opposite their group of names, if they so request in their petitions and if the written consent of such candidate for President is endorsed upon their petitions under the caption "choice for President" (Supp. § 19:24-5). Such petitions should be filed by not less than 100 members of his political party, with the Secretary of State at least 40 days prior to the primary, in order to qualify a person as candidate for delegate (Supp. § 19:24-4). Thus a

candidate for presidential nominee should endorse his written consent on such petition any time before the last filing date, which in 1960, was March 10, 1960.

Presidential candidates -- Names of candidates for presidential nominee may be placed directly upon the primary ballot by petition of 1000 party voters, filed with the Secretary of State on or before the 40th day before the primary. In 1960, this had to be filed on or before March 10, 1960 (Supp. § 19:25-3).

Consent of the presidential candidate is not required (Supp. § 19:25-3). However, such candidate may decline in writing, filed in the office of the Secretary of State on or before the 34th day before such primary (Supp. § 19:25-4). In 1960, he would have to file such writing on or before March 16, 1960.

Are delegates bound by results of primary

No. There is no statutory provision binding the delegates to results of the primary (See Supp. §§ 19:3-3, 19:25-3).

OHIO

(Unless otherwise designated, section numbers refer to Page's Ohio Revised Code, Annotated, 1960 Replacement).

Preferential Presidential Primary

There is no direct expression of presidential preference by the voter; but there is a direct election of delegates to the national convention, who must be pledged to a specific presidential candidate for first and second choice (§ 3513.12). However, a delegate is bound by the results of the primary only if he filed a pledge to be so bound (§3513.12).

When held - First Tuesday after first Monday in May in presidential election years (§ 3513.12).

Date in 1960 - May 3, 1960.

Ballot

The names of such first and second choice for nomination as candidate for the presidency, of each candidate for election as delegate to the national convention, shall be printed and shall appear immediately below the name of such candidate in such a way as to clearly disclose the preference of each candidate (§ 3513.12).

Nominating Papers, Petitions, Etc.

Each person seeking to be elected as delegate to the national convention, shall file with his declaration of candidacy and certificate

a statement in writing signed by him, stating his first and second choice for nomination as candidate of his party for the presidency of the United States. The name of no candidate for the presidency shall be so used without his written consent (§ 3513.12).

Such declaration of candidacy shall be filed with the Secretary of State or with the Board of Elections not later than 4 p.m. of the 90th day before the primary (§§ 3513.12, 3513.05).

Date in 1960 - Last filing date in 1960 was February 3, 1960.

Consent of Candidate

Since consent of candidate for presidential nominee is necessary, as explained above, such candidate should either file his written consent with the Secretary of State before February 3, 1960, or submit it to the candidate for delegate (whose choice he is) to accompany his declaration of candidacy. The latter method would seem preferable since a candidate for delegate-at-large would file his declaration of candidacy with the Secretary of State, while a candidate for district delegate would file with the Board of Elections of the most populous county of his district (§ 3513.05).

Are delegates bound by results of primary

A candidate for delegate may file with his declaration of candidacy, a pledge to support at the National Convention, the Presidential candidate selected at the primary, "to the best of my judgment and ability." (§ 3513.12).

OREGON

(Unless otherwise designated, section numbers refer to the Oregon Revised Statutes).

Preferential Presidential Primary

This primary election is held for the purpose of expressing presidential and vice presidential preference, and for electing delegates to the national convention, pledged to abide by the results of the primary for two ballots at the national convention (§§ 248.310, 249.221(2), 249.368). For details of pledge, see § 249.221(2).

When held - Third Friday in May in presidential election years (§ 249.340).

Date in 1960 - May 20, 1960.

Ballot

The names of the candidates for presidential and vice-presidential nominee appear on the primary ballot, and a voter can either make a cross opposite the printed name of the person of his choice or write in a name in the blank space to be left on the ballot for such purpose (§ 249.368(1), as amended by Laws of 1959, Ch. 390).

Nominating Papers, Petitions, Etc.

The name of any candidate for a major political party nomination for President of the United States or for Vice President of the United States shall be printed on the primary ballots only:

(a) By direction of the Secretary of State who shall place the name of such candidate upon the ballot when he shall have determined in his sole discretion that such candidate's candidacy is generally advocated or recognized in national news media throughout the United States, unless such candidate shall execute and file with the Secretary of State an affidavit stating without qualification that he is not now and does not intend to become a candidate for said office at the forthcoming presidential election.

(b) Upon the petition of 1,000 registered electors of the major political party of the candidate (§ 249.368(2), as amended by Laws of 1959, Ch. 390). This petition should be filed not later than the 70th day prior to the primary (§ 249.060). In 1960, the last filing date was March 11, 1960.

Consent of Candidate

Apparently the consent of the candidate for President or Vice-President is not required. If he has not notified the Secretary of State, by affidavit, that he does not intend to become a candidate, his name may be placed on the primary ballot in accordance with either of the two methods outlined above (§ 249.368(2) as amended by Laws of 1959, Ch. 390).

Candidate for Delegate to National Party Convention

A registered elector may have his name placed on the primary ballot as a candidate for delegate to the national convention, either by

(a) a petition, signed by himself, and by registered electors affiliated with his political party, equal in number to 2 percent of the vote cast in the State for the candidates for presidential electors, of his party, at the last general election, or at least 1,000, whichever number is the lesser, or (b) a declaration of candidacy together with a filing fee[1] of $15. The petition or the declaration of candidacy must be filed with the Secretary of State not later than the 70th day before the primary, and must contain a pledge that such candidate if elected, will support his party's candidate at the convention until such candidate for President receives less than 35 percent of the convention votes or releases the delegate from such pledge or until two convention ballots have been taken (§§ 249.020 to 249.271). Last filing date in 1960 - March 11, 1960.

Are delegates bound by results of primary

Yes. A candidate for delegate must file with his declaration of candidacy, a pledge to support his party's candidate for President chosen at the primary until such Presidential candidate receives less than 35 % of the convention votes, or releases the delegates from his pledge, or for 2 ballots (§ 249.221(2)).

KANSAS STATE UNIVERSITY REFERENCE LIBRARY DEPARTMENT MANHATTAN, KANSAS

PENNSYLVANIA

(Unless otherwise designated, section numbers refer to Purdon's Pennsylvania Statutes Annotated, 1938, Title 25, and to 1960 Supplement thereto).

Preferential Presidential Primary

This primary election is held for the purpose of expressing a presidential preference and of electing district delegates and delegates at large to the national conventions, who may or may not promise to support the presidential candidate who wins the primary (§ 2871; Supp. §§ 2753, 2838, 2862, 2962).

When held -- Fourth Tuesday in April in Presidential election years (Supp. § 2753).

Date in 1960 -- April 26, 1960.

Ballot

The names of the candidates for presidential nominee appear on the primary ballot, and a voter can either make a cross opposite the printed name of the person of his choice or write in a name in the blank space to be left on the ballot for such purpose (§ 2962). After the name of the candidate for delegate on primary ballot shall be marked either "Promises to support popular choice of party" or "Does not promise to support popular choice of party (§ 2871).

Nominating Papers, Petitions, Etc.

The name of a candidate for nomination as president of the United States shall be printed on the primary ballots of his political party upon the filing of a separate nomination petition on his behalf, in form prescribed by the Secretary of the Commonwealth, signed by at least 100 registered and enrolled members of his party in each of at least 10 counties of the State. This petition should be filed with the Secretary of the Commonwealth at least 64 days prior to the primary, and should be accompanied by a filing fee of $50. — (§§ 2867, 2872, 2873(a); Supp. § 2873(b)(1), (d)). In 1960, the last filing date was February 23, 1960.

The name of a candidate for delegate at large shall be printed on the primary ballot on petition signed by at least 100 registered and enrolled members of his party in each of at least 5 counties in the State (§ 2872(b)), and the name of a candidate for district delegate, on petition of at least 200 registered and enrolled members of his party (Supp. § 2872(c)). Filing time is the same as for candidate for president as set out above.

Consent of Candidate

The consent of the candidate for presidential nominee is not required. His name can be placed on the primary ballot without any action on his part; but in 1960 action had to be taken in his behalf not later than February 23, 1960.

Are delegates bound by results of primary

Yes, if candidate for delegate has filed with his nominating petition a "Delegate's Statement" declaring that "I shall, with all fidelity, to the best of my judgment and ability" support the party Presidential candidate selected in the primary (§ 2871).

SOUTH DAKOTA

(Unless otherwise designated, section numbers refer to the South Dakota Code of 1939, and to the 1960 Supplement thereto.)

Preferential Presidential Primary

At this primary there is no direct preference vote for a presidential candidate but there is a direct election of a slate of delegates to the national convention, who may express a collective preference for a presidential candidate, or who may run in the primary without expressing any preference (§ 16.0211). There is no provision binding the delegates to vote at the national convention according to results of primary.

When held -- First Tuesday in June in presidential election years (Supp. § 16.0202).

Date in 1960 -- June 7, 1960.

Ballot

The column on the primary ballot, containing the slate of candidates for a specific presidential candidate is headed by the caption "Candidates Preferring John Doe for President". A circle appears at the top of each column and when a voter places an (X) in said circle, he votes for the entire slate endorsing John Doe for presidential nominee (§ 16.0211, § 16.0215).

Nominating Papers, Petitions, Etc.

In order to have their names appear on the primary ballot a slate of candidates for delegate to the national convention must have a petition filed in their behalf, containing a statement of their collective preference choice for a presidential candidate, and including an indorsement by said presidential candidate or by someone acting under his authority for him, or containing a statement that they have no preference (§ 16.0211).

This petition should be filed with the Secretary of State at least 30 and not more than 60 days prior to the primary (§ 16.0210). In 1960 this had to be filed between April 8 and May 8, 1960.

Consent of Candidate

As noted above, the presidential candidate or someone under his authority must endorse the petition filed in behalf of his slate of delegates. This endorsement must be included with the petition and should therefore be submitted to the group which is filing the petition in behalf of such slate, in time for them to file same between April 8 and May 8, 1960.

Are delegates bound by results of primary

No. A slate of candidates may run in the primary as preferring a certain Presidential candidate; but they are not pledged to vote for him at the National Convention (§ 16.0211).

WEST VIRGINIA

(Unless otherwise designated, section numbers refer to West Virginia Code of 1955, Annotated, as amended through 1960.)

Preferential Presidential Primary

This primary is held for a direct presidential preference vote and for direct election of delegates to the national convention. Since the delegates are not required to pledge that at the national convention they will vote according to the results of the preference primary, said preference vote is merely advisory (§§ 64, 67; 1958 Supp. § 66).

When held -- Second Tuesday in May in presidential election years (§ 64).

Date in 1960 -- May 10, 1960.

Ballots

The names of candidates for President of the United States are printed in the first column of candidates on the primary ballot. Writein of a candidate's name is not permitted (§ 75). Names of candidates for delegate to national convention, who filed, are printed on the primary ballots with no indication as to which presidential candidate they favor (§ 75).

Nominating Papers, Petitions, Etc.

The name of a candidate for presidential nominee shall

KANSAS STATE UNIVERSITY REFERENCE LIBRARY DEPARTMENT MANHATTAN, KANSAS

be placed on the primary ballot only if he has filed with the Secretary of State an "announcement of candidacy", which is a certificate, signed by said candidate and acknowledged before some officer qualified to administer oaths, in which he declares himself a candidate for the nomination for such office. While soldier voting is in effect, such certificate should be filed with the Secretary of State on or before the 14th Saturday preceding the primary, accompanied by a filing fee equivalent to 1 percent of the annual salary of the office of President of the United States ($1,000) (§§ 67, 69, 149(2), 69(1)). In 1960, the last filing date was February 6, 1960.

Consent of Candidate

As noted above, candidate for presidential nominee in 1960, had to file and pay filing fee not later than February 6, 1960.

Are delegates bound by results of primary

No. They are not pledged to vote in accordance with results of primary (See §§ 64, 67, 75; 1958 Supp. § 66).

WISCONSIN

(Unless otherwise designated, section numbers refer to West's Wisconsin Statutes, Annotated, 1957, and to 1961 Supplement thereto).

Preferential Presidential Primary

At this primary election there is no direct presidential preference vote, but there is a direct election of delegates to the national convention who may be pledged to a specific presidential candidate or who may be uninstructed (§§ 5.37, 5.38).

When held -- First Tuesday in April in presidential election years (§ 5.37).

Date in 1960 -- April 5, 1960.

Ballot

When a group of candidates for delegate to the national convention favors a specific candidate for presidential nominee, the proposed presidential candidate's name shall be printed on top of the column of such group of candidates for delegate on the primary ballot only if on or before the last day for filing nomination papers, such proposed presidential candidate shall file a certificate of consent permitting the use of his name on the ballot. Such certificate shall be filed with the Secretary of State on a form prescribed by him (§ 5.38(1)). The last day

for filing such nomination papers is 32 days prior to the primary. In 1960, the last filing date was March 4, 1960 (§ 5.38(2)).

Any proposed presidential candidate who certifies and files a full list of delegates with the Secretary of State not later than 6 p.m., 32 days prior to the primary (March 4, 1960) shall have the names of such delegates printed on the ballot in the same manner as candidates filing nomination papers and such certification shall take preference over any candidate filing nomination papers in behalf of such presidential candidate (§ 5.38(1)(b)).

Consent of Candidate

The name of a presidential candidate would not appear on the primary ballot in 1960 without some action on his part on or before March 4, 1960, consisting of either filing a list of candidates for delegates or filing a certificate of consent to candidates for delegates who have filed in his behalf.

Are delegates bound by results of primary

Yes, if pledged. Candidates for delegate can run in the primary, either pledged to a specific Presidential candidate or as not favoring any specific candidate. Delegates, if pledged, must support, at the National Convention, the Presidential candidate selected at the primary. Such pledge "shall be binding unless

after the first ballot at the convention a two-thirds majority of the delegates vote to withdraw and be released from same." (§ 5.38; Supp. § 5.38(3)(e)).

TABLE I

Preferential Presidential Primaries by Dates in 1960

March	8	New Hampshire
April	5	Wisconsin
	12	Illinois
	19	New Jersey
	26	Pennsylvania
May	3	Alabama (if held)
	3	Indiana
	3	Ohio
	10	Nebraska
	10	West Virginia
	17	Maryland
	20	Oregon
	24	Florida
June	7	California
	7	South Dakota
Not less than 2 months before national convention		Arkansas (if held)

TABLE II

STATES HAVING PRESIDENTIAL PREFERENCE PRIMARIES

State	Presidential Preference Primary								Delegates to National Convention Elected at State Convention	
	Direct Presidential Preference Vote	Direct Election of Delegates to the National Convention			Is Action Required of Presidential Candidate?					
		Direct Election	Does Presidential Candidate Appear on Ballot with Delegates?	Are Delegates Bound by Results of Primary	Endorsement of Slate of Delegates	Personal Declaration of Candidacy	Filing Payment of Fee			Are they bound by results of Preference Primary?
Alabama	No, but optional	Yes, if Contest	No	No	No					
Arkansas	No, but optional*	No[1]		Yes, if held	To hold primary					
California	Yes	Yes		No (amended in 1961)						
Florida	No	Yes	Yes	No	No*					
Illinois	Yes	Yes[2]	No	No	Yes		Yes			
Indiana	Yes	No			Yes		Yes		Yes	Yes
Maryland	Yes	No			Yes		Yes	Yes*	Yes	Yes
Massachusetts	Yes	Yes	Yes*	No	Yes*	Yes				
Nebraska	Yes	Yes	No	No	Yes		Yes*			
New Hampshire	Yes	Yes	No*	Yes, if pledged	No*					
New Jersey	Yes	Yes	Yes*	No	Yes	Yes*	No[3]			

70784

70784 O—61—pt. 1——16

State	Direct Presidential Preference Vote	Presidential Preference Primary							Delegates to National Convention Elected at State Convention
		Direct Election of Delegates to the National Convention			Is Action Required of Presidential Candidate				
		Direct Election	Does Presidential Candidate Appear on Ballot with Delegates?	Are Delegates Bound by Results of Primary	Endorsement of Slate of Delegates	Personal Declaration of Candidacy			Are they bound by results of Preference Primary?
						Filing	Payment of Fee		
Ohio	No	Yes	Yes	Only if he filed such pledge	Yes	Yes			
Oregon	Yes	Yes	No	Yes	No*				
Pennsylvania	Yes	Yes	No	Only if he filed such pledge	No[3/]		No[3/]	$50	
South Dakota	No	Yes	Yes*	No	Yes	Yes			
West Virginia	Yes	Yes	No	No	Yes		Yes	$1000	
Wisconsin	No	Yes	Yes*	Yes	Yes	Yes*			

* See body of report for details.

1/ Selected by State Committee.

2/ Delegates at large are elected in State Convention in Illinois.

New York has been omitted from this tabulation because it does not hold a presidential preference primary. At its spring primary delegates are elected to the national convention without any indication of presidential preference. Delegates at large are elected at the State Convention, or by State Committee, according to party rules.

3/ Something must be done in his behalf by others.

Senator KEFAUVER. The committee will now hear from Mr. Jonathan Moore, the legislative assistant to Senator Saltonstall of Massachusetts.

We have a letter from Senator Saltonstall in which he says that he expected to appear, but that he has to be present for a hearing on military procurement and the nomination of General LeMay to be Air Force Chief of Staff. He therefore cannot come here today, which we regret. Senator Saltonstall is the sponsor of Senate Joint Resolution 28. Mr. Moore you have his statement in support of Senate Joint Resolution 28; is that correct?

Mr. MOORE. Yes; I do, Mr. Chairman.

Senator KEFAUVER. Will you proceed, Mr. Moore.

Mr. MOORE. Yes, sir.

STATEMENT OF HON. LEVERETT SALTONSTALL, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS, PRESENTED BY JONATHAN MOORE, LEGISLATIVE ASSISTANT TO SENATOR SALTONSTALL

Mr. MOORE. Thank you, sir.

Mr. Chairman, I am grateful to have this opportunity to offer testimony before this subcommittee on Sent Joint Resolution 28, a proposal to reform the presidential electoral college.

Since its inception, the method of electing the President has been a subject of debate and discussion. In the 71-year period between 1889 and 1960, 208 amendments have been introduced in Congress concerning the presidential election.

Three Presidents have been elected since 1824 who received a smaller number of popular votes than their opponents, as well as 11 Presidents who failed to obtain a majority of the popular vote but did receive a plurality.

When the electoral college was originally devised, it was designed to give the small States some protection against domination by the large States. It was felt if we were to preserve our Federal system of government, this was an important provision in any voting plan.

However, due to the complexity of our society and the vast population growth, this electoral mechanism has proven to be antiquated and unrepresentative of the will of the people.

My proposal is virtually identical to Senate Joint Resolution 4 introduced by Senator Dodd and Senate Joint Resolution 17 filed by Senator Kefauver, who have given persuasive testimony before this subcommittee on the plan. Our scheme is not a new approach. A similar measure, which was know as the Lodge-Gossett plan, passed the Senate in the 81st Congress. Unfortunately it failed to pass in the House of Representatives.

Senate Joint Resolution 28 would amend the Constitution to abolish the electoral college, but would retain the electoral vote for electing the President and Vice President. Each State would be allocated the number of electoral votes which equals the numbers of Senators and Representatives to which it is entitled in Congress.

Each candidate would be credited with the same proportion of the electoral votes of each State as the proportion of the total popular vote he receives within that State. In case no candidate received

at least 40 percent of the electoral vote for President, the two Houses of Congress would choose the President by ballot.

In my opinion, this recommendation is a practical approach we can take to our current outdated and inequitable electoral system. I will briefly comment on some of the measure's more salient features.

First, this bill would tend to reflect more accurately the popular strength of the various candidates and would give the voters a more direct vote than they now have in the choice of the President. The current system distorts the popular will by crediting all of a State's electoral votes to the plurality candidate regardless of how small the plurality may be. This places a tremendous premium on political activity in the few large States.

Second, it protects the smaller States by allowing them to retain their allocation of two senatorial electoral votes regardless of population. Preservation of this right for the small States is an important feature of the bill and is one of the key aspects of our Federal system upon which our form of government was founded.

Third, it would enhance, strengthen, and invigorate the two-party system in the United States. Under the presetn system, a party has little incentive to spend time and effort in areas where returns will be of little or doubtful value. However, under the proportional plan, it would make all areas of our country a fighting ground for both parties, thus encouraging political parties to extend the scope of their campaigns to all 50 States.

This amendment would also help reduce excessive concessions the major political parties make to minorities and splinter groups, and could assist these major political organizations in developing separate and distinct programs. I think it unjust that certain minorities can, under the present system, unduly sway the electoral votes of key States by virtue of their unrepresentative bargaining power.

Finally, it would reduce the possibility of election of a candidate receiving a minority of the popular vote which, in effect, negates the popular will of the majority of voting citizens. John Quincy Adams, in 1824; Rutherford B. Hayes, in 1876; and Benjamin Harrison, in 1888, all received a minority of the popular vote, but were elected because they received more electoral votes than their opponents.

As you can see, this amendment if adopted confers no partisan or sectional advantage, but it does help eliminate the difficulties and dangers that lie in the existing electoral system. It accomplishes this while preserving for the States their present prerogative to regulate suffrage qualifications in the way they deem proper and without disturbing the existing distribution of elective strength among the several States.

I am sure the subcommittee is aware of the need for reform in this area. Since the November election, both Democrats and Republicans have submitted various recommendations to rectify our outmoded electoral system. The volume of mail I have received in my office is also indicative of the sincere concern of the American voters.

You have heard many views concerning this electoral reform and the many ramifications which would emanate from this constitutional change. I am convinced now, as I was when the Lodge-Gossett bill passed the Senate, that the proportional principle embodied in Senate Joint Resolution 28 constitutes a realistic, fair, and yet simple solution to this problem.

I appreciate having this opportunity to express my views on this important national issue.

Senator KEFAUVER. Thank you, Mr. Moore. You tell Senator Saltonstall we appreciate his good statement.

Mr. MOORE. I will, sir, and thank you very much for letting me present the statement.

(At this point Senator Mundt was present in the hearing room after appearing for further discussion of his statement.)

Senator KEFAUVER. The committee is very glad to have Senator Thurmond here with us. He has been interested in this problem for a long time and is an effective advocate of a reform of the electoral college system.

Senator Thurmond, you have been good enough to prepare an imposing looking statement. We will be very glad to hear from you now.

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Thank you very much, sir.

Mr. Chairman, I wish to thank you for permitting me to testify at this time, and it is an honor to appear before this subcommittee and you as chairman.

It is a pleasure to be here at the same time that the able and distinguished Senator from South Dakota, Senator Mundt, who has done so much work on the problem of electoral college reform.

Surely there can be no doubt that there exists a need for a change in the constitutional provision which provides the method and process whereby a President of the United States is elected. There are those who are of the opinion that the defects in the electoral college system have existed from the very time of the adoption of the Constitution, and there also exists a substantial difference of opinion as to the manner in which the drafters of the Constitution intended that the electoral college system operate.

During the consideration of the Constitution by the various States, there is no evidence to indicate that any controversy of substance centered around the operation of the electoral college and the manner prescribed for the election of the Chief Executive of the National Government.

Hamilton stated in the 68th Federalist:

> The mode of appointment of the Chief Magistrate of the United States is almost the only part of the system, of any consequence, which has escaped without severe censor, or which has received the slightest mark of approbation from its opponents.

History does not reveal to us whether this initial lack of criticism of the electoral college system stemmed primarily from general public approval of the prescribed method of election of a Chief Executive, or from widespread inability to perceive, with any substantial degree of clarity, the consequences of its implementation.

Defects in the system did become apparent within a very short time after the Constitution was adopted. As early as the election of 1797, it became apparent that the system was so designed as to insure a high probability that the President and Vice President would be of conflicting political philosophies.

Further complications became apparent in the election of 1800 when the House of Representatives took 35 votes to decide the election between Jefferson and Burr, who had an equal number of electoral votes and each a majority of electoral votes.

The difficulties we are experiencing with the electoral college in contemporary times are not identical, however, to the difficulties experienced in those early elections. The difficulties in the early days of the Republic with the electoral college were largely eliminated by the 12th amendment adopted in 1804, which provided that the electors would designate on their ballots which candidate for whom they were voting for President and for whom they were voting for Vice President.

The weaknesses of the electoral college system with which we are confronted today are of a different nature and derive neither from an error in design of the electoral college process, nor yet from any departure from the intent of those who drafted it. The inequities and miscarriages possible today under the electoral college system are attributable to the changed circumstances to which the constitutional provision is applicable.

These changed circumstances have themselves existed in substantial degree from an early date, beginning with the development of national political parties as an extra legal institution; for although the electoral college system may have been devised in full contemplation that either a formal or informal polarization of political philosophy might well result in a more or less evenly divided electorate, it is impossible to believe that the drafters of the Constitution anticipated the development of a two-party system which functions as de facto nominating machinery by which eligibility to election to the office of President is limited to two men.

The problem, then, does not arise from a basic defect in the electoral college system, nor do the weaknesses now apparent mitigate against the usefulness of the electoral college. The defects exist because we have failed to reform the process to the degree necessary to implement in practice the principles incorporated, not only in the provision of the Constitution which relates to the election of a President but which are also incorporated in the whole cloth of the document.

The changes must, therefore, take into account the practical operation of circumstances as we know them to exist, while maintaining an approach consistent with the fundamental concepts of the Constitution.

I am a cosponsor, with Senators Mundt, McClellan, Hruska, Morton, and Blakley, of Senate Joint Resolution 12. This is a proposed amendment to the Constitution of the United States which would make two simple and desirable changes regarding the election of the President and Vice President:

1. Instead of allowing the legislatures of the States a free hand in the manner of appointing presidential electors, as is now the case, Senate Joint Resolution 12 prescribes that those presidential electors in each State who correspond to members of the House of Representatives be elected by the people in single-elector districts, established by the legislatures; and requires that these districts be composed of compact and contiguous territory containing as nearly as practicable

the number of persons which entitles the State to one Representative in Congress.

The two presidential electors who correspond to each State's two U.S. Senators would continue to be elected statewide.

2. Instead of allowing the House of Representatives, voting by States, to choose the President in the event no one has a majority of the electoral vote, it requires that he be chosen by a joint session of the House and Senate with each Member having one vote.

Both of these changes are limited to the forms and principles of representation of the people of the United States in choosing the President and Vice President—the forms and principles of representation which are the foundation on which rests the Executive power of the National Government.

The first change completes the use in presidential elections of the same principles of representation of the States long established for the Senate and House of Representatives—the Federal principle of the Senate and the national principle of the House. The second change extends these same principles to the contingent election of a President and a Vice President by Congress, should that become necessary.

It is the Federal principle of the Constitution that gives the States, as coequal political societies, equal representation in the Senate; and it is the national principle which gives the States unequal representation in the House of Representatives according to their inequalities in population.

By retaining the office and person of the elector as a State officer performing the single Federal function of voting for President and Vice President—the two elective national officers of the United States—Senate Joint Resolution 12 does not transfer control of elections from the States to the National Government.

Abolition of the person of the presidential elector necessarily will require the establishment of some substitute for the performance of his vital function. His function, with his fellow electors, is the formal, constitutional nomination and election of the President and Vice President by a majority vote, or, if there is no majority, merely the nominations for these offices to the House and Senate, respectively. In performing his function, the elector acts in a representative capacity—an agent of the people who appointed him or elected him.

Today in each State, slates of electors are nominated under State law by political parties organized under that law. What is often overlooked is that national parties and their presidential conventions are extralegal, being merely voluntary associations of State parties.

Party nominees for President and Vice President have no legal status as candidates for office under the Constitution or any laws of the United States. It is the office and person of presidential elector which permits the functioning of national parties without any constitutional provision. Without the elector, some constitutional provision would have to be made if the Constitution is to provide a certain means for filling the offices of President and Vice President.

The elector's elimination would create a constitutional vacuum unless some substitute is provided. Former Representative Frederic R. Coudert, Jr., of New York, has stated this problem. He was writing about a proposed amendment in 1955 that would abolish the electoral

college, retain the electoral votes, and permit their proportional division among presidential candidates. He wrote:

> Most important is the constitutional vacuum in the election of the President created by the abolition of the State offices of presidential elector. For, any organic instrument of government is incomplete that fails to provide for the filling of its own offices by established and competent authority.
>
> The Constitution now provides imperatively that each State "shall" appoint electors, that the electors "shall" meet and vote and "shall" sign and certify and transmit certificates to the President of the Senate who "shall" open them and a person "shall" be President. These imperative provisions will produce a President without the agency of a party nominating convention. This permits conventions to be extralegal, and to continue so.
>
> Senate Joint Resolution 31 says: "The President and Vice President shall be elected by the people of the several States," and speaks of "persons for whom votes were cast for President." But Senate Joint Resolution 31 is silent on the vital first step of who, where, when, and how shall be legally selected "persons for whom" votes can be cast for President and Vice President. Presumably, candidates are to be named by the extralegal, but lawful, "national" convenings of the legal State parties. If this power is implied in Senate Joint Resolution 31, doesn't the "national" convention become an instrument of the Constitution?
>
> Should an attempt be made to fill this constitutional vacuum by an addition to the proposed amendment, the foremost question is: Can nominees of national party conventions be given constitutional status without making the party conventions themselves instruments of the Constitution under the authority of Congress? If this is not possible, a whole body of Federal law would be necessary to supplant present State laws and self-made convention rules with respect to the nominating process.
>
> The presidential elector, a so-called "rubber stamp," unknown and unsung, has a constitutional importance as great as his anonymity. Senate Joint Resolution 3, by Senator Mundt, by maintaining the office of presidential elector, avoids this and other major criticism.
>
> I suspect—

Congressman Coudert concluded—

> that few of the friends of Senate Joint Resolution 31 have looked at it in terms of a part of the Constitution, and some of its ultimate consequences on our Federal system. I fear that its immediate positive political effect has dominated most of the thought about it.

Senator KEFAUVER. For the record, Senate Joint Resolution 3, referred to by Congressman Coudert in the quoted statement, is Senate Joint Resolution 12 now before us, with changes, and Senate Joint Resolution 31, referred to by Congressman Coudert, is the same as Senate Joint Resolutions 4, 17, and 28 with changes. Proceed.

Senator THURMOND. Mr. Chairman, the abolition of the elector, it seems to me, raises a whole series of questions that have not even been considered by those who advocate it.

Since the last election, some highly placed people have urged that presidential electors be bound by the Constitution to vote for the presidential candidate of his party. Any attempt to do this will necessarily require constitutional status for political parties and their candidates for President and Vice President.

More important, this proposal to bind the elector by the Constitution is pure trivia. As Senator Mundt has pointed out in his testimony, more than 14,000 presidential electors have served since 1820, and not more than 8 are alleged to have voted contrary to the wishes of their constituents. In no instance did any of these alleged vote changes affect the result.

In 1948, in Tennessee, one elector voted for me, even though he was on the regular Democratic slate of electors, but he was also on the

States' Rights ticket and had announced before his election that he would vote for me. To seize on such infrequent and more often meaningless occurrences as a pretext for abolition of the entire electoral college system and the fundamental concepts of representation incorporated is unthinkable.

In trying to improve the Constitution, we must be most careful that we do not, knowingly, or unknowingly, upset the balance of our constitutional structure. We should always remember that ours is a limited Constitution of Government—limited to the objects for which its powers were granted.

The Constitution of the United States rests on two fundamental principles: (1) The limited dual sovereignty of State and Nation—each has the soverign power to declare the law as to certain things, and not as to other things; and (2) the division and separation of legislative, executive, and judicial powers, according to function. On these foundation principles are erected our system of "checks and balances."

In our Federal Union of States, the proper objects of government are divided between the National Government and the governments of the several States. This is the limited dual sovereignty of Nation and State, and is the source of our dual citizenship. We are, at the same time, citizens of the United States and of our own States.

It is the principle of separation of powers in the National Government which brought about the establishment of the electoral college as the election link between the States—in a Federal Union—and the National Government.

For example, were the British to introduce a separation of powers into their unitary Government, they would have to establish an elective body counterpart to the House of Commons to choose the Executive. As it is, the Commons—without the separation of powers—performs the function of the electoral college when it chooses the Prime Minister.

I submit, therefore, that no amendment to the Constitution with respect to the election of the President and Vice President should go further than to the manner of electing presidential electors. For to do so will necessarily violate the basic principles on which this Nation was established.

Senate Joint Resolution 12 is carefully designed to accomplish the limited purpose of establishing for the election of the President and Vice President the same principle of representation that has been long established for the election of Members of Congress—Senators and Representatives.

Each of us, as citizens of our States and of the United States, is represented in Congress by two U.S. Senators and by one Representative. Thus, a citizens' representation in Congress is two parts Federal and one part National.

Under Senate Joint Resolution 12 a citizen would be represented in the electoral college on exactly the same principles. We would vote for two Federal electors, corresponding to our Senators, and for one National elector who would correspond to our own Representative in Congress. In so voting each of us would be two parts Federal and one part National.

Senate Joint Resolution 12 would give the President and the Congress similar and parallel roots into the electorate. This is the proper foundation for both the executive and legislative branches of our National Government.

In our Federal Union of States, we cannot correctly speak of "a majority of the American people," for we are reckoned in presidential elections on both the Federal and National principles. Nor should the Chief Executive be described as "President of all the people" or "President of the American people."

He is "President of the United States," the title of the office established by the Constitution, a title which comprehends the Federal and National principles of representation of our political society.

For my part, I wish to see our Federal Union of States maintained. It is, I believe, our greatest contribution to the knowledge and art of government for the protection of liberty. May I urge the committee to report Senate Joint Resolution 12 with the recommendation that it be passed.

Senator KEFAUVER. Thank you very much, Senator Thurmond, for your comprehensive and well-prepared statement and for coming here and being with us.

Senator THURMOND. I wish to thank the able and distinguished chairman for the hearing accorded me at this time and the consideration that he gives to the proposed resolution.

Senator KEFAUVER. May I ask one question: You advocate and give your reasons for keeping the electoral college. What would you feel about keeping the electoral college, but requiring the electors to agree to vote for the party on which ticket they ran?

Senator THURMOND. Well, as I stated I think there have been only eight instances in history where they have not voted for the particular party, and I cited the one in Tennessee where he was on both the regular Democratic Party and States Rights tickets.

Senator KEFAUVER. Yes; I know Mr. Parks very well. He is a well-known citizen of my State. But we had another case in the last election in Oklahoma where he voted for Senator Byrd, although he ran for Mr. Nixon's ticket.

Senator THURMOND. That has occurred in the few instances which I mentioned. I believe there have been only eight instances in history. However, of course, if it came to the question of abolishing the electoral college or retaining the electoral college and requiring the electors representing a particular party to vote that way, I would favor retaining the electoral college and providing for the elector to be purely agents of the particular party that an elector represents.

Senator KEFAUVER. Thank you very much.

Senator MUNDT. May I just interpolate? What it actually would be is not so much agents of the party but agents of the electoral district from which they were selected. They would be compelled faithfully to carry out the mandate which they secured from their electoral district. Is that not true?

Senator KEFAUVER. Yes; that is more accurately stated.

Senator THURMOND. I mentioned on page 5 of my statement that party nominees for President and Vice President have no legal status as candidates for office under the Constitution or any laws of the United States; that it is the office and person of presidential elector

which permits the functioning of national parties without any constitutional provision, and without the elector some constitutional provision would have to be made if the Constitution is to provide certain means for filling the office of President and Vice President.

So there would have to be an amendment to the Constitution to make provision along this line, to which the chairman and the distinguished Senator from South Dakota have referred.

Senator KEFAUVER. Yes; I agree with you. There is no doubt about that.

Well, we thank you very much, Senator Thurmond.

Senator THURMOND. Again I wish to thank you, Mr. Chairman.

(A supplemental statement submitted by Senator Thurmond follows:)

STATEMENT BY SENATOR STROM THURMOND, DEMOCRAT, OF SOUTH CAROLINA

Upon the occasion of my appearance before the Subcommittee on Constitutional Amendments on behalf of Senate Joint Resolution 12, a question was raised concerning the advisability of providing in the Constitution that each elector should be bound to support the nominees indorsed by the party on whose ticket he offered for office. When the question was raised, I stated that I thought it would be inadvisable and unnecessary, but perhaps the lesser of the evils if we should be reduced to a choice between binding the electors or abolishing the electoral college altogether.

Because of the far-reaching consequences which would flow from binding the electors to support party nominees by constitutional mandate, I would like to elaborate further and review some of the many effects that would follow such a step.

As I stated in my first appearance before the subcommittee, we must approach the question of electoral college reform in the light of existing practice, while adhering to the basic concept of the Constitution. Existing practice clearly demonstrates that there is no need to bind the electors to support nominees of a party by constitutional provision. Out of the more than 14,000 electors who have served since 1820, not more than eight are alleged to have voted contrary to the wishes of their constituents, and in no instances did any of these alleged vote changes affect the results.

Since no miscarriage has occurred, it is proper next to examine the circumstances to determine if there is any logical reason to expect an increase in such occurrences, and whether any check exists by which their frequency can be controlled.

As a matter of practice, the candidates for elector are nominated in 47 of the 50 States by the State political parties. As of 1961, the laws of 35 States require the nomination of electors to be made by a convention of the State political party. In 10 other States, the laws provide that the electors be nominated by either the State executive committee of the political party, or some other link in the party machinery. Alabama is one of those States where candidates for elector are nominated by the State party organization. Normally, the State party officers in Alabama follow the advice of a referendum in which the voters express themselves on the nomination of electors. This referendum is merely advisory, however, as is indicated by the fact that in 1952, the court upheld the right of the executive committee to refuse to certify as an elector one nominee who refused to pledge his electoral vote for the party's presidential indorsee, although the individual involved had been successful in the primary referendum. In one State—Florida—the Governor selects the candidates for presidential elector for all parties, but in practice he names those recommended by the State political parties. In Pennsylvania, which my research has revealed as the only State in which the nominee of a national political convention is accorded statutory recognition, the electors are nominated by the presidential nominee of the national convention. In practice, of course, the State political party makes the choice. In the other three States, the electors are nominated by a primary election.

In practical operation, therefore, the State political parties in 47 of the 50 States nominate the electors for their own tickets. It is inconceivable that

except in the rare and infrequent instances when the State party makes a gross misjudgment in its selection of nominees for elector, that the elector would, if elected, cast his electoral vote for other than the presidential and vice presidential nominees indorsed by the State party which nominated the elector. Each of the infrequent departures by an elector from the normal procedure would have the natural effect of making the State parties more cautious in the selection of nominees for elector.

In the other three States—Arizona, Kansas, and Oklahoma—the elector candidates are nominated by primary election. In these States, it is the majority of the people within the particular political party who select those in whom to repose their trust. No peculiar factors exist which would make the misplacement of a trust more likely in this selection of a person to act in a representative capacity than in any other type of election.

The laws of the great majority of States do provide means other than those above characterized for the nomination of candidates for elector by what are usually called minority parties. In most such instances, the nominations are left even more within the discretion of the parties which initiate a separate candidacy than in the case of the major parties.

It should be obvious, then, that there is no prospect of any greater frequency, if indeed as much, of an elector voting for other than the presidential and vice presidential nominees indorsed by the political organization under whose banner the elector runs in the election than in the past. The prospect of a miscarriage between the expression of a preference by the voters who elect the presidential elector, and its reflection in the electoral vote cast by the elector, is remote to the extent that it has no practical significance.

There is indeed even another assurance that it is unnecessary to include in the Constitution a provision binding the electors to cast their ballots for the nominees indorsed by the party under whose auspices the elector-nominees were placed on the ballot. The States now have the authority to require an oath from a nominee for elector to support the presidential and vice presidential nominees supported by the party which certifies his name on the ballot. Some States—Florida, for example—now require such an oath. The States, therefore, now have the power to deal with the situation in the remote possibility that it should become a problem.

To provide in the Constitution that the electors should be bound to support a particular nominee would be useless. I feel it is necessary, however, to go further and point out several of the many very dangerous potentials of such a step in view of the fact that when considering any particular proposal for new legislation, many persons adopt an attitude that the proposal might be useless and if it can do no harm, it might as well be passed to be doubly sure.

If nominees for elector are to be bound by constitutional mandate to support some particular nominee for President and Vice President in the electoral college, some specification must be written into the provision with respect to which nominee they will be bound. At this point the first and major stumbling block is reached. Nominees for President and Vice President selected by the conventions of national parties have no official status as candidates, either under the laws of the United States nor the laws of the 50 States, with the possible exception of Pennsylvania. The national parties themselves are but unofficial, cooperative efforts of various State parties which have a legally recognized status individually and a quasi-official function in the political structure under the laws of their own States. It is important to recognize and acknowledge the fact that the nominees for President and Vice President are not nominated by the State parties themselves, but by the national conventions. With the exception of infrequent variances, there is no reconvening of State political parties subsequent to the nomination of national candidates at the national convention of the major political parties, and no formal action taken to ratify the nominations made at the national conventions.

In order to bind a nominee for elector to cast his vote in the electoral college for a particular nominee of a national political convention, the Constitution would have to be so modified as to include within the electoral machinery, and give legal status to, the national political parties. Such a step would inevitably give rise to both uncertainties, and to changes in our political structure to which the rare deviations of electors from normal custom would pale in significance by comparison.

The control and regulation of elections by the several States comprises the undergirding and strength of our entire political structure. Under our existing

system, the political parties of each State are regulated by State laws and are, therefore, an integral part of the election process. The national political parties must now operate through the State parties in each State in order to fulfill any goal of political activities. By this means, the several States retain almost exclusive control of the electoral process.

Were the national political parties and their conventions to be given legal recognition by the U.S. Constitution, and thereby to become an integral part of the election process by virtue of a constitutional provision binding nominees for elector in the several States to cast their votes for the nominees for President and Vice President of the national parties' conventions, control of elections would necessarily pass from the several States to the National Government. It should be quite obvious that no one State could assert jurisdiction over a national political party; and since the national party, as a part of the official electoral process, would necessarily have to be subjected to governmental control—as does any portion of the electoral process—the National Government would be the only level of government capable of performing the requisite regulation.

This would not involve a mere change in theory, but would occasion a very serious departure in practice from the traditional operation of the electoral process. That such a departure could not be avoided is easy to demonstrate. Were the vote in the electoral college of a particular elector to be challenged as being contrary to the requirement that the vote of the elector be cast for the nominees of the national convention of a particular political party, an essential question of fact before the court, in which the challenge was made, would be the sufficiency of the nomination by the national party convention of the presidential or vice-presidential nominee in question. This would open the door in the judicial inquiry to reviews of question ranging from the sufficiency of determinations by the credentials committee of the convention down to and including the tabulation of delegate votes. Having brought the national parties and their nominating conventions within the jurisdiction of the courts by a constitutional provision giving official status to their deliberations and actions in the nomination of presidential and vice-presidential candidates, the Congress would find itself facing the alternative of either leaving the regulation of national political conventions to the discretion of the courts, or undertaking, itself, to legislate guidelines and minimum requirements and safeguards for the conduct of both the parties and their conventions.

I cannot believe that the Congress is yet willing to propose either to transfer the power to control elections from the States to the National Government, nor to have the National Government interfere in the operation of national political parties and their conventions. Such a step would not only be an unthinkable stride toward centralization of power in the National Government, but would also insure a degree of rigidity in our national political activities which would contradict the principles of political liberty on which our country was founded.

As I stated in my previous testimony before the committee, it might well be that to bind electors to particular presidential and vice-presidential nominees is a lesser evil than an outright abolition of the electoral college and the office of elector. Upon reflection, it would be difficult for me to make a choice between these evils. Fortunately, there is no need to make such a choice, or neither has there been any ill effects from the discretion allowed under the Constitution to the presidential electors, nor is there any prospect that such discretion may create a problem in the future. As I have pointed out, occasions where electors deviated from the normal course of procedure in casting their electoral votes have been extremely rare; and each such infrequent occasion lessens the likelihood of its recurrence. Additionally, each State itself has the power to bind the elector, and some States have seen fit to exercise this power. If such a power is to exist, it should by all means be left to the States.

There is one other matter upon which I would like to comment briefly. It has been suggested to the subcommittee that under the district plan, proposed by Senate Joint Resolution 12, the personality and popularity of individual presidential elector-nominees might become a factor in the presidential election to an extent that it is not under our present system. Such a suggestion, I submit, is illogical and is refuted by practical experience under our existing presidential electoral system.

A number of States now require that all but two of the nominees for elector reside each in a particular congressional district. This requirement prevails in

Louisiana, for instance, and is practiced in my own State of South Carolina. The fact that an influential and popular person is a nominee for elector has, under the existing system, no more influence than an active and vigorous participation in the campaign by the same individual would have, even were he not an elector.

I would also call to the attention of the subcommittee the fact that in no less than 30 of the 50 States, the names of the presidential electors do not even appear on the ballot. There is nothing in the plan proposed by Senate Joint Resolution 12 which would require a change in the laws of the several States which prescribe that the names of the nominees for elector not be on the ballot.

In addition to the 30 States which do not now place the names of the electors on the ballot, there is another State which does not print the names of the electors on the ballots which are used in voting machines. This State, incidentally, is New York, from the Senator of which came the suggestion that the personality and popularity of the electors might, under the district plan, influence the electorate.

Senator KEFAUVER. Now, the committee is honored to have with us Senator Sam J. Ervin, Jr., of North Carolina, known to be a great constitutional lawyer and distinguished member of the Judiciary Committee.

Senator Ervin is here to speak in support of Senate Joint Resolution 96, which has not been put in the record. We will place it in the record and it will be printed at the beginning with the other resolutions.

Senator Ervin, we will be glad to hear from you now.

STATEMENT OF HON. SAM J. ERVIN, JR., A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator ERVIN. I am very grateful to the able and distinguished chairman for his complimentary remarks. Sometimes I feel, however, that our Constitution has been pretty largely dissipated. I wish to urge the subcommittee to make a favorable report upon my resolution. I can state its fundamental provisions very briefly. It is somewhat like the amendment introduced by the distinguished chairman of the subcommittee, and also somewhat like the resolution introduced by Senator Dodd, of Connecticut.

Senator KEFAUVER. And Senator Saltonstall, of Massachusetts.

Senator ERVIN. My resolution would simply divide the electoral vote. It would retain the present method of computing electoral votes and would then divide the electoral votes of each State among the candidates for President in direct proportion to their popular vote within the State.

It would retain in effect the compromise which made the Constitution possible, which was the allotment of two Senators to each State, and would thus continue the protection which the smaller States had by virtue of their equal representation in the Senate. It would obviate any dangers of gerrymandering by dividing the electoral vote on the basis of the entire vote of the State, rather than upon the vote of districts, and I think that that is an advantage.

It provides that, if no candidate for President or Vice President receives as much as 40 percent of the electoral vote, the election of the President or Vice President, as the case may be, will be thrown into the House of Representatives as provided in the Constitution at pres-

ent. And that the selection of the President or Vice President, as the case may be, will be made by the House on the basis of one vote for each State.

I think that a constitutional amendment of this type, which is, as I say, similar to the other constitutional amendments, introduced by the chairman, Senator Dodd, and Senator Saltonstall, has two great advantages. In the first place, it will rid the country of the detriment which I think now arises out of the capacity of relatively small blocs of votes to control in certain instances the entire electoral vote of a State, and in that way will restore power to the majority of the American people, rather than continue the inordinate power which a small bloc in one State may have to throw the entire electoral vote of such State one way or the other.

Then, I think it would have an additional advantage. It would encourage citizens of States to participate more largely in elections. In a great many States, where one party has a preponderant power, the members of a minority party do not have the same incentive to go out and vote for presidential and vice-presidential electors because they realize that their vote will not be counted for anything, and, if an amendment of this type were made in the Constitution, those that might be members of the party having 20 or 30 percent of the vote of the State would have an incentive to go out and vote because their vote would count for its proportionate part. I think that is another good result which would flow from the adoption of my resolution or from the adoption of one of these other resolutions which are similar to it.

That, in brief, is a synopsis of my resolution and of the reasons why I think either it or some similar resolution should be reported.

Senator KEFAUVER. Thank you, Senator Ervin. While you are here and while Senator Mundt is here, his resolution, Senate Joint Resolution 12, adopting the electoral district system, would also have the advantage of carrying interest in the election into so-called one-party States, would it not?

Senator ERVIN. Yes; I think that is true.

Senator KEFAUVER. Well, what do you think about his proposal?

Senator ERVIN. My objection to his proposal is that through a gerrymandering process you can give inordinate power to certain districts. I am conscious of this now because in North Carolina we are losing one Congressman as a result of the last census. It appears likely that we are going to have some districts set up which may have substantially more population than others. Under Senator Mundt's proposal, if you set up a district that has 500,000 residents in it and another district that has 250,000, you are giving these 250,000 people a disproportionate voice in the selection of the President and the Vice President. That is my objection to Senator Mundt's proposal.

Senator KEFAUVER. Senator Mundt has improved his resolution in an effort to meet that argument by providing in the second paragraph of section 1 that electoral districts shall be set up which shall be "composed of compact and contiguous territory containing as nearly as practicable the number of persons which entitle the State to one Representative in Congress." So, that is an effort to meet that argument.

Senator ERVIN. Who is to set up those districts under his bill?

Senator KEFAUVER. Well, Senator Mundt is here.

Senator MUNDT. The States would set them up in conformity with the constitutional criteria. We believe that should be done by the States rather than by the Federal Government.

Senator ERVIN. I think it is now implied that that course would be followed in reference to setting up congressional districts.

Senator MUNDT. No; there is nothing in the Constitution.

Senator ERVIN. The implication is there, clearly, and I think, since it has not been followed by the States since 1789, it is not likely that the States will have any greater desire to make equal allotments to these election districts than they have had in respect to congressional districts.

Senator KEFAUVER. Senator Mundt.

Senator MUNDT. May I point out to my friend, Senator Ervin, that the implication may be there, but there is no constitutional provision, no enforcible legislation of any kind, to require States to avoid gerrymandering. Gerrymandering has been an accepted American practice almost, well, since Congressman Gerry, or Governor Gerry, I guess, had the thing attached to his name. There is quite a difference, I think, about the enforcibility of a constitutional provision, and evading implication which does not exist either in statutory or constitutional language.

Senator ERVIN. Of course, up to the present time, the Supreme Court has held that setting aside congressional districts is a political and not a legal question. I do not know what the present Supreme Court may hold today, but I do not believe there is any practical way to force the adoption of legislation to set up equally populated districts for the purpose of selecting electors.

Senator KEFAUVER. Senator Mundt has just testified that, if a legislature did not do it, this proposed amendment would give the ultimate power to handle the matter to the Congress meeting in joint session when they count the electoral votes. In other words, if some State had flagrantly refused to follow the mandate of paragraph 2 of his resolution, the electoral votes for that district might be thrown out.

Senator ERVIN. Well, knowing from the study of history, which is the only light we have to guide our feet, that one presidential election was stolen from the duly elected candidate by a commission set up by Congress, I don't have too much faith in the righteous course being pursued.

Senator KEFAUVER. You think it might lead to confusion?

Senator ERVIN. There can be no question of the fact that the Congress set up an electoral commission strictly along party lines which took enough electoral votes from Samuel J. Tilden and gave them to Rutherford B. Hayes to defeat the duly elected candidate for the Presidency of the United States.

I think that is conceded to be true by everybody who has studied history. Personally, I don't like to see more power given to the Federal Government in this field.

Senator Mundt's provision, it is true, does have the one advantage which the bills to establish election by popular vote do not have. It does retain the protection given to the smaller States by virtue of their equal representation in the Senate.

Senator KEFAUVER. Senator Mundt.

Senator MUNDT. Could I raise a question to you about Senate Joint Resolution 96?

Senator KEFAUVER. Yes; surely.

Senator MUNDT. We are, of course, aiming at the same exact goal, trying to eliminate the same precise evils, but there are two elements about your proposed resolution which have disturbed me ever since it has first crossed the congressional horizon, I believe, several years ago, and in the main this follows the provisions of the Lodge-Gossett amendment which at one time did pass the Senate.

The two factors injected in the electoral situation here which disturb me are (1) it eliminates the old concept of majority rule when it specifically provides that the candidate who gets between only 40 and 50 percent is duly elected. We have always held to the majority rule concept as one of the great guide lights of our democratic processes.

The other one that disturbs me even more is that it brings over to our American soil a concept which, I think, has contributed to the loss of freedom in Europe, and that is proportionate voting, proportionate representation.

I think that the parliaments, chambers of deputies in Europe and other places where it has been tried around the world have always failed because proportionate voting has tended to create coalition governments which are notoriously weak, and, by having proportional voting injected into our most important election in America, the election for President, I am afraid it is likely to lead to proportionate representation in our congressional elections. I think this would be a serious detriment.

Senator ERVIN. With respect to the last point, I disagree with you. I realize we have an example in France of inability of government to function because of splinter parties, but I think the explanation of that is the difference between political parties in France and the political parties we have known in the United States.

Some years ago, after the close of the Second World War, I read a very interesting book called "Fire in the Ashes," which said every Frenchman loved France but disliked every other Frenchman and, consequently, French political parties don't allow anybody to join them unless he agrees with everything the political party advocates.

There has been a very interesting book written by Herbert Agar, formerly editor of the Louisville Courier-Journal, called "The Price of Union," in which he points out that the thing which has saved the Union and made it work has been the fact that we have had two major political parties and that each political party has been composed of people of diverse opinions; that each political party has had conservatives and progressives or liberals in it; that the liberals or progressives have kept the conservatives in the party from becoming reactionary; and the conservatives in the party have kept the progressives and liberals from becoming radical.

I do not think there is any danger of us changing the political system as far as political parties are concerned, which has existed from the foundation of our Government. I think we will continue to have two major political parties; that there will be great differences of opinion in each of those political parties; and, as a result of these differences that there is no danger of our going off into a lot of splinter parties because, after all, most Americans like to be on the winning

side, and I think they will continue to vote for the major political parties.

Senator MUNDT. Will the Senator agree with the Senator from South Dakota that one of the reasons why we have been able to maintain our two-party system is the fact that we have faithfully stayed away from the vice of proportional voting and insisted upon the concept of majority rule?

Is not the Senator impressed, as I am, by the fact that wherever you have maintained, wherever you have permitted, proportional voting, you have failed to develop and maintain a two-party system; whereas, wherever proportional voting has not been utilized, you have veered in the direction of a two-party system?

It is not just France that disturbs us. It is Italy. It is Belgium. It is the whole series of legislative bodies around the world where they have developed these splinter parties, and proportional voting encourages them because, of course, if you can get just a few votes in your direction, you get a few members of your little party elected to the legislative assembly.

Senator ERVIN. I disagree with the Senator on that, because I think that our present system tends to encourage splinter parties. Take, for example, in the State of New York, where a party called the Liberal Party has several hundred thousand votes. It is an insignificant party as compared with the total membership of the Republican Party or the total membership of the Democratic Party, but, by reason of our present electoral system and the winner by one vote taking all, both of the two major parties have to cater to such parties as the Liberal Party, and the result of it is that we are getting more minority rule by our present system than we would get under Senate Joint Resolution 96. A splinter party that controls 100,000 votes in a State as populous as New York may have it within its power to control the entire electoral vote of all the millions of people there. I don't think Americans are going off into splinter parties if the Constitution is amended to conform to Senate Joint Resolution 96.

Senator KEFAUVER. Didn't Cleveland get elected in one election by virtue of 2,500 votes in the State of New York? I mean the shift of 2,500 would have determined the whole election, not only in New York, but throughout the Nation.

Senator ERVIN. My proposal would get rid of the power of a small group like that.

We have had Presidents who have been minority Presidents in the sense that they received a minority of the popular vote, and I don't think there is too much difference between a man being elected President by receiving less than a majority of the electoral vote as under the 40 percent provision of Senate Joint Resolution 96 and our present system of having a man elected President by a minority of the popular vote.

Senator KEFAUVER. Another argument, Senator Ervin, against the plan set forth in Senate Joint Resolution 96—and I am being the devil's advocate now because I sponsored something similar to it or joined in sponsoring something similar to it for a long, long time—is that some State might have a very popular Governor and, just to show his popularity, or the people to compliment him, might run him in a particular State. This would give him national attention, would it not?

Senator ERVIN. I think that same objection can be made to the present system. In my State, we had, and perhaps still have, a statute providing that 10,000 people can create a new party by signing a petition and get their vice-presidential electors on the official ballot. So, I think that objection goes to the present system as well as to Senate Joint Resolution 96.

Senator KEFAUVER. Would it go to Senator Mundt's system?

Senator ERVIN. Yes, because a fellow could run in one congressional district under Senator Mundt's bill.

Senator MUNDT. It would at least minimize the problem, if it is a problem today; would it not?

Senator ERVIN. It would make it possible in a State like mine where you have 11 congressional districts to have 11 or more sets of men running as presidential electors. So I think the confusion would be more confounded under this bill than under mine.

Senator MUNDT. Two of the three electors you vote for are statewide.

Senator ERVIN. Just two are elected statewide, and the others run in the congressional districts. I think that would make more splinter parties because you could have a candidate for President in each one of the 435 congressional districts.

Senator KEFAUVER. Of course, he would get only one electoral vote.

Senator ERVIN. Yes; but he could figure maybe trading for a majority of the other 434.

Senator MUNDT. He would have to be a colossal optimist to believe that.

Senator KEFAUVER. Senator Ervin, in Senate Joint Resolution 96, why do you leave the decision in the case where no candidate receives a majority of the electors to the House of Representatives?

Senator ERVIN. I leave it like it is now; that is, in the House.

Senator KEFAUVER. Well, that always has struck me as being unrepresentative and undemocratic.

Senator ERVIN. That may be a valid position. But it might be contended that it is not, because the House is based on population and the Senate is not.

Senator KEFAUVER. I know, but I mean with each State having one vote——

Senator ERVIN. Oh, I see your point.

Well, the only reason I put it that way is that is the way it has always been, and the fewer changes you make the better chance you have to get a resolution adopted. That is purely a question of policy.

Senator KEFAUVER. Would you have any great objection to placing a decision in the whole Congress?

Senator ERWIN. Yes, I would, because I think you would lose votes by so doing. I think Senators and Congressmen from smaller States would be more inclined to vote against the resolution.

Senator KEFAUVER. Well, they would still have the same proportionate voting strength that they have under our Federal system.

Senator ERVIN. Yes, but still——

Senator KEFAUVER. That is, the smaller States would still have some advantage by virtue of their two Senators.

Senator ERVIN. I have no fundamental objection to that except this: I think the more changes you make in a resolution amending the

Constitution, the more votes you get in opposition to it. In other words, Senators and Representatives of a small State with three electoral votes would be more inclined to vote for a proposal which retains the present system. For example, they would say that my State which now has equal power with New York in the event the election goes to the House would have only about one-fifteenth of that power if both Houses of Congress had a voice in the matter. I think that is a question of getting enough votes to get the resolution adopted.

Senator KEFAUVER. Well, the other side of the coin, of course, is that the Congressmen from the more popular States might vote against the resolution because they feel that their voice is being diminished and, furthermore, it has got to be submitted to the legislatures.

Senator ERVIN. There is another point that I think sustains my position. The legislature of a small State has the same voice in ratifying an amendment as that of the biggest State. Moreover, the Senators and Representatives of the bigger States do not lose any power they now have under the Constitution under Senate Joint Resolution 96. They just would retain their present power only.

Senator KEFAUVER. But, as a matter of fundamental justice, you have no particular philosophical objection.

Senator ERVIN. No. With me it is a question of getting votes, and I think that that is the practical thing. The fewer changes you make, the more votes you get. That is a question of policy and a practical matter.

Senator KEFAUVER. Tell us, Senator Ervin, in your thinking you arrived at throwing the election into the House, if the amendment we have been talking about were accepted, where nobody receives as much as 40 percent of the whole number of electoral votes: How did you ever get 40 percent?

Senator ERVIN. Well, 40 percent is very substantial. You pluck it out of the air. There is no reason for you to say 40 rather than 39 or 47 or any other definite figure. The only purpose of that is to prevent the occurrence of what Senator Mundt feared, the election of a President who is in effect a member of a splinter party. Forty percent, I think, is a rather substantial percentage. That is an arbitrary figure but that is the object of it.

Senator KEFAUVER. Well, that is the same figure that has been carried in most of these resolutions.

Senator ERVIN. Yes.

Senator KEFAUVER. Does not this have something to do with it: while we have had minority Presidents, that is, where the person elected did not receive a majority of the popular vote, on 14 occasions I believe, but they have always received more than 40 percent of the popular vote except in the so-called corrupt bargain of 1824 when Adams defeated Jackson in the House.

Senator ERVIN. Oh, yes. They have always received a majority of the electoral vote in times past, except in the cases of Jefferson and Burr and the one you mentioned.

Senator KEFAUVER. Senator Ervin, this or something similar to it; what do you think the chance of passing is?

Senator ERVIN. The thing that worries me most about the chance of passage is that maybe too many cooks may spoil the broth or too many doctors may kill the patient. All of us have the same fundamental objects in view.

Senator KEFAUVER. Too many ideas floating around and too many people for their ideas?

Senator ERVIN. I do not think there are any great fundamental differences between the several resolutions which are fundamentally based on what we call the Lodge-Gossett concept. They are all based on the fundamental principle of dividing the electoral vote of each State in proportion to the popular vote.

Senator KEFAUVER. Well, there are three basic suggested reforms or changes before the committee. One is the idea you have presented here today. The other is Senator Mundt's resolution with his cosponsors. The third is Senator Mansfield's resolution and Mrs. Smith's resolution along the same line with quite a number of cosponsors, to have the election by direct popular vote. Whether the popular-vote people would vote for your resolution or whether they would vote for the Mundt resolution is a matter which we will have to see about.

Senator ERVIN. Yes.

Senator KEFAUVER. Thank you very much, Senator Ervin. It has been a very enlightening discussion.

Senator ERVIN. I have enjoyed and appreciated the opportunity to come before the committee. I want to commend the work the chairman has done over the several years to get some reform in this field.

Senator KEFAUVER. Thank you, Senator Ervin.

We are pleased to have Senator Gale W. McGee, the distinguished senior Senator from Wyoming, who is also a distinguished political scientist, having been a college professor of American history. Senator McGee has introduced Senate Joint Resolution 26, relating to the election of the President and Vice President, and is here to make a statement in support of this resolution.

STATEMENT OF SENATOR GALE W. McGEE, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator MCGEE. I want to thank the chairman and the members of this committee for their patience in indulging my brief remarks on Senate Joint Resolution 26, which has to do with the electoral college system.

Let me suggest, first, that the weighted vote as reflected in the electoral college system at the present time is proper and should be preserved. The existing system, which allows each State a number of votes for President equal to its total congressional representation, reflects a compromise—probably the basic compromise—in our constitutional system. As all students of our Government well know, the so-called great compromise at Philadelphia in 1787 sought to balance the contrasting and conflicting power positions of the large States and the small ones. It did so by representing all States equally in the Senate; thus, New York State with 12 million people has 2 Senators, as does my own State of Wyoming with only 300,000. And in the lower House of the Congress, each State's representation was to be proportioned according to population; thus, New York State would have 43 Congressmen, while my own State of Wyoming receives only its minimal guarantee of 1.

To a great extent, the Constitution drawn at Philadelphia surpassed even the expectations of the Founding Fathers themselves because of the success of this compromise. James Madison, sometimes described as the "Father of the Constitution," thought that, even with the formula arrived at, 19 out of 20 presidential elections would end up in the House of Representatives. Thomas Jefferson, who did not participate in the Constitutional Convention, on the other hand, thought that, due to the forces of change which sweep each succeeding new generation, perhaps a new constitution might be required every 20 to 40 years. The early judgments of both men were not borne out by the subsequent experiences of the new Republic, however. A part of the reason why is that the compromise tended to satisfy the expectations of young and active new States at the same time that it gratified the jealous prerogatives of the larger, old States. Within this framework, thus, a growing nation was able to expand westward from one ocean to the other, and has since multiplied the stars in the political constellation from the original 13 to the present 50.

What at the beginning of the Republic tended to balance the rivalries between large and small States has, through the years, also tended to balance the larger regional differences between East and Midwest and Far West, or South and North. It has emerged as the spine of an intricate political balance system which has held up so successfully thus far the American Federal experience.

To tamper with this one aspect of our national political balance would in my judgment, threaten the total balance in other parts of the system. The temptation would arise, in fact, to tamper with some of those other segments of our political structure.

One additional factor accounts not only for the success of the balance system but for the stability of the constitutional structure in general, and that was the emergence of the two-party system. Both Jefferson and Madison projected their earlier views in the context of a political climate devoid of parties. With the emergence of two dominant groups throughout our history, however, the operation of the electoral college system was materially affected. Whereas at the beginning the individual electors themselves, it was thought, would play a determining role in the selection of the President of the United States, the two-party system has, in fact, reduced the role of the individual electors to a mere formality.

Not only have the electors themselves lost their meaningful role in the electoral process, but their continued presence, in fact, can jeopardize or threaten the stability of our successful balance system. There is nothing under present procedures in most States that requires the individual electors to vote as the State itself votes in the popular expression of the public will. Thus, at best, the individual electors become mere rubberstamps in a nonsensical operation, or, more seriously, they acquire nuisance value by assuming their own course of action, as a few did in the most recent election. Or, worse still, with sufficient collusion they could even overthrow the intent of the popular will on a nationwide scale. Therefore, all factors considered, it would seem desirable to keep that portion of the system which is still valid and which continues to contribute to our political stability; namely, the proportioning of representation among the States as now provided in the Constitution and at the same time elimi-

nating what has become useless in the body politic—a sort of political appendix—or what could, in fact, open up a dangerous possibility for political irresponsibility disruptive of the otherwise stable structure of our election system.

My proposal then, Senate Joint Resolution 26, discards that which is useless, and perhaps even dangerous, in the electoral college system, and preserves that which has contributed so much to our political stability; namely, the great compromise among the diverse States and regions of the country.

Mr. Chairman, I ask that following my remarks there be included an article by Anthony Lewis which appeared in the Reporter for December 8, 1960, and a very penetrating letter on the same question written by Mr. James Michener and carried in the Washington Post for January 12, 1961.

Again, may I thank the chairman and the members of the committee for their patience in indulging these reflections on this very important consideration.

Senator KEFAUVER. Thank you, Senator McGee, for your very fine statement. The documents which you have submitted will be included in the record at this point.

(The documents referred to follow:)

[From the Reporter, Dec. 8, 1960]

THE CASE AGAINST ELECTORAL REFORM

(By Anthony Lewis)

Of the many might-have-beens that can be constructed about the 1960 election, none is more intriguing than this: If a first-term Senator named John F. Kennedy had not, in March of 1956, led the fight against an electoral-reform proposal first made by his Senate predecessor, Henry Cabot Lodge, Jr., the proposal might have become part of the Constitution. And if it had, John F. Kennedy might well not be President-elect today.

The story offers more than a nice bit of historical irony. For the closeness of the 1960 election has brought a flurry of interest in the perennial topic of electoral reform. An urgent cry for change in our method of choosing a President has come from such interesting bedfellows as Senators Mike Mansfield, Sam J. Ervin, Karl Mundt, and Jacob K. Javits, columnist Roscoe Drummond, and the editors of the Washington Post.

The suggestion most frequently discussed is known as the Lodge-Gossett amendment because it was first sponsored by Senator Lodge and Representative Ed Gossett, a Texas Democrat. Its basic idea is that the electoral vote of each State, instead of being awarded as a bloc to the winner of the popular vote in that State, should be divided proportionally according to the popular vote.

This year, for example, Senator Kennedy won 50.1 percent of the vote in Illinois and got all of its 27 electoral votes. Under the Lodge-Gossett amendment he would have had 13.527 electoral votes from Illinois against Vice President Nixon's 13.473. (The amendment specified that the apportionment should be carried to three decimal places.)

The pros and cons of this kind of change in our Presidential electoral system can be set out most fairly and completely by referring to what was said in the two great Senate debates on the question in 1950 and 1956. The most articulate spokesmen on opposite sides—surely an accident of history, but one almost too perfect to believe—were Senators Lodge and Kennedy.

LODGE'S LOGIC

Opening the debate in 1950, Senator Lodge listed what he termed the "defects, unhealthy practices and potential evils" of the unit-rule system of giving all a State's electoral votes to the popular vote victor. One was the possibility that the winner of the popular vote nationally would lose in the electoral college. A second was the thesis that the hopelessness of upsetting the majority in one-

party States discouraged minority voters from bothering to turn out on election day; if they knew that every vote would count in the electoral total, it was reasoned, more would care and one-party rule would be threatened. Third was the argument that under the unit rule all votes cast for the losing candidate in a state are "wasted."

But the main attack made by Senator Lodge on the existing unit-rule system was that it "strongly tends to overemphasize the political importance of the large, politically doubtful States." The system, said Mr. Lodge, encourages the selection of Presidential nominees from the large States and encourages the candidates to do most of their campaigning there. Even more important, he said, "It not only permits but actually invites the domination of Presidential campaigns by small, organized, well-disciplined minority or pressure groups within the large so-called pivotal States."

Senator Lodge's logic was apparently persuasive. The only effective opposition during a one-sided debate in 1950 was put up by Senator Robert A. Taft, who was blunt enough to say that his Ohio would not have as much influence in a presidential election if its electoral vote were divided instead of going as a lump.

The Lodge-Gossett amendment passed the Senate by 64 to 27, more than the necessary two-thirds. The majority included most of the Senate's noted liberals—Douglas of Illinois, Humphrey of Minnesota, Kefauver of Tennessee, Lehman of New York, Morse of Oregon—as well as such right wing Democrats as McCarran of Nevada and Eastland of Mississippi. Most of the negative votes came from conservative Republicans.

But the amendment died in the House in 1950. It was held in the Rules Committee, then chaired by Adolph Sabath of Illinois, and an effort to bring it to the floor by suspending the rules failed.

As it came to the Senate floor in 1956, the electoral-reform proposal was a hybrid. Attached to the Lodge-Gossett plan, now sponsored in chief by Senator Price Daniel of Texas, was a wholly different alternative bearing the name of Mundt of South Dakota. The Mundt idea was to choose electors in each State by districts—one for each Representative and two at large for the Senators. The Lodge-Gossett approach would prevail under the combined proposal, unless any State itself chose to vote for President by districts.

The 1956 amendment had what appeared to be overwhelming support. It was introduced jointly by 54 Senators. The fact that as junior a Member as Mr. Kennedy (then in his fourth year as a Senator) was floor leader of the opposition indicates how thin the troops were on that side.

All those who think the John F. Kennedy who finished the 1960 presidential campaign was a wholly new man, one whose mind and style could not have been forecast from past performance, should read the week's debate on the Daniel-Mundt amendment. Senator Kennedy held the floor himself for the better part of 2 days, and he was there almost continuously with questions for the other side. And through it all flashed the sharpness, the candor, the fascination with the Presidency, the love of history, the taste for quotation that characterized him as a presidential candidate.

"These are crucial times . . .," Senator Kennedy said. "Nevertheless, it is proposed to change this system—under which we have, on the whole, obtained able Presidents capable of meeting the increased demands upon our Executive—for an unknown, untried but obviously precarious system which was abandoned in this country long ago, which previous Congresses have rejected and which has been thoroughly discredited in Europe. . . .

"No urgent necessity for immediate change has been proven. . . . It seems to me that Falkland's definition of conservatism is quite appropriate—'When it is not necessary to change, it is necessary not to change'."

Although he did not refer to his predecessor, Senator Kennedy in time answered each of the Lodge arguments against the existing unit-rule system. To the first, that it may give the election to a loser in the popular vote, Senator Kennedy replied by pointing out that the system had, in effect, done so only once, in the Harrison-Cleveland election of 1888. Moreover, he said, an analysis of past elections indicated that under the Lodge-Gossett arrangement two Democrats would have been elected with fewer popular votes than their opponents: Hancock over Garfield in 1880, and Bryan over McKinley in 1896 and 1900.

In short, what the committee report calls the "minority President evil" occurs at a rate of once every 175 years—hardly cause for an immediate and drastic change which the proponents admit will not even do away with it.

Senator Kennedy doubted that the amendment would have the effect Senator Lodge forecast of evening up one-party states. (By 1960 they seem to be evening up without the amendment.) He dismissed as semantics the idea that votes for the losing candidate in a State under the unit rule were "wasted." The same can be said of any district system of elections, such as Britain's or Canada's or our congressional elections or the Mundt proposal for the Presidency. In all these instances, only one man can win a district.

WHERE THE PLUMS ARE

But the heart of the Kennedy attack was against the thesis that the present electoral system gives too much power to the large doubtful States and their "minority" and "pressure" groups. He did not deny that the large States gain power from the unit rule. When the prize is 45 electoral votes, any national party is going to look to New York when it is drafting a platform or nominating a candidate or running a campaign. But Senator Kennedy argued that the urban interests ought to have this power—that it has been built into our political system as a compensation for other ways in which these interests are at a disadvantage.

He noted that each State, regardless of size, has two Senators: "New York is the largest State in the Union. It has only 2 Senators but it has 43 Representatives. One of New York's great hopes of recapturing its relative loss of influence in the legislative branch is to have an effective influence on the presidency." And the senatorial distortion is reflected in the fact that even the smallest State has three electoral votes to match its one Congressman and two Senators.

Moreover, rural and conservative interests have maintained a grip on most of the State legislatures in the country through gerrymandering. The legislatures in turn work their will on congressional districts, so that even in the House, urban areas are sharply underrepresented.

The Mundt proposal, Senator Kennedy said, would invite gerrymandering on a grandiose scale, with Republican legislatures choosing the option of election by districts to cut Democratic electoral votes. And the Lodge formula would have its own drastic effect on the influence of urban interests. The point Senator Kennedy made was that presidential elections are usually so close in the large urban States that neither side could hope for a margin of more than a few electoral votes under the Lodge proposal. The big plums would be in the one-party States.

As a sample, Senator Kennedy supposed that the 1948 election had been held in just seven states: Connecticut, New York, New Jersey, Michigan, Indiana, Pennsylvania, and Georgia. Mr. Dewey won the first 6 industrial States, getting 138 electoral votes, while losing Georgia's 12. But his popular-vote margins were so small in the six that under the Lodge plan they would have given him a net electoral-vote edge of only three, while one-party Georgia would have given Mr. Truman a margin of five electoral votes. Georgia, in effect, would have outweighed the other six.

"It is not only the unit vote for the Presidency we are talking about," Senator Kennedy concluded, "but a whole solar system of governmental power. If it is proposed to change the balance of power of one of the elements of the solar system, it is necessary to consider the others."

The impression should not be left that Senator Kennedy was alone in 1956. Since 1950 more and more liberals had come to see that the "small, organized, well-disciplined minority or pressure groups within the large so-called pivotal states," as Mr. Lodge had put it, meant the NAACP and the AFL–CIO, the Negroes and Catholics and Jews. To end their influence in presidential elections, as Mr. Lodge candidly proposed to do, was to end their political influence altogether.

Senators Lehman and Douglas, notably, recanted their 1950 support of Lodge-Gossett and spoke effectively against the new amendment. In 1950, Senator Douglas said, he had been "somewhat unwary and * * * believed that if the big States made sacrifices it might induce some reciprocal yielding on the part of other States. Since then the Senator from Illinois has become wiser and more acquainted with the realities. He now understands that there are certain sections of the country which will yield nothing, and which are seeking constantly to diminish the power of the large States and of the large cities and to hold them in bondage. The Senator from Illinois is a wiser man now than he was in 1950. His hair is whiter, but his wisdom is greater."

On a test vote the Daniel-Mundt amendment carried by only 48 to 37, far less than the two-thirds required for constitutional amendments. Eight sponsors, including Senator Morse, voted against it. Several sponsors, including Senator Kefauver, were not recorded. Neither was Senator Humphrey, although this time he was announced as being against. With that test, the sponsors gave up and agreed to send the proposal back to committee.

A CRYSTAL BALL?

Some future writer of fictional biography will doubtless speculate that Senator Kennedy did what he did in March 1956 because he had a good idea he was going to be running for President 4 years later—with Mr. Lodge on the other ticket. If one were to accept that fantasy, certainly, Senator Kennedy would get a remarkable score for prescience.

If the Lodge plan for a proportional division of electoral votes had been in effect in 1960, the latest returns indicate that Senator Kennedy would have 268.871 and Vice President Nixon 265.036 electoral votes. That assumes a division of Mississippi among the 3 tickets that actually were on the ballot, giving the idependent slate there 3.093 electoral votes.

The Kennedy total would be enough to win, since under the final 1956 version of the electoral reform plan the leading candidate would need only 45 percent of the electoral votes instead of an absolute majority as at present. But the tabulation does not reflect the probability that third-party tickets would have been put forward in many Southern States if the Lodge plan had been in effect, and that they would have drawn votes from Senator Kennedy in States other than Mississippi-Alabama, for example, whose six unpledged electors have all been awarded to Senator Kennedy in this tabulation because they ran on the Democratic slate.

Since under the Lodge plan third parties could hope to win at least a small part of a State's electoral vote, they would be encouraged to try, and therefore the results in 1960 would have depended on the strength of a southern third-party ticket and Kennedy might well have lost; in any case the outcome would have been decided by a few fractional electoral votes—or thrown into the House of Representatives for decision. Incidentally, the intricacies of the computations (as the writer can testify) and closeness of the result are persuasive practical arguments themselves against proportional division of State electoral votes. The country might drift in torment and indecision for weeks while handfuls of votes were counted and recounted and the electoral vote then recomputed.

By prevailing against the establishment of a proportional division of State electoral votes in 1956, Senator Kennedy certainly served his own purposes in 1960 well. But it is clear from reading the debate that Senator Kennedy acted as he did not because he had a crystal ball focused on 1960 but because he was a realist who knew something about history and about political theory. He knew that government is not an abstract entity such as "the popular will." It is a system of power—of conflicting forces that have worked out their balance over a long history. To weaken one element, such as urban influence on the Presidency, without weakening another, such as rural control of the legislatures, is to change the whole system.

All of which might be worth keeping in mind as a new campaign begins for "electoral reform."

[From the Washington Post, Jan. 12, 1961]

OPPOSITION TO ELECTORAL CHANGE

I am disturbed by recurring proposals to abolish the electoral college and to elect the President by popular vote.

The nexus of struggle in the Constitutional Convention was the difficult assignment of adequate power to large States while affording protection to the small.

Large States were given power in the House according to representation, small States power in the Senate by fiat, and small States a disproportionate amount of power in electing the President. Most advocates of change overlook this final point.

This obvious injustice is offset by the fact that it is the swing of the large States that tends to determine the final result, so that the original balance between large and small is sustained.

I would deplore seeing this intricate system tampered with, for it permits large and small units to coexist, and many other world governing units have not yet discovered how this can be done.

Our system also provides a balance between rural and urban, between scattered conservative areas and concentrated liberal ones, and between various other contending factions. In the last election it operated most efficiently in neutralizing to a large extent the contest between Catholics and those who opposed them.

And to those who protest because a majority of 1 popular vote can now swing the entire 45 electoral votes of New York to 1 candidate or another I can only say that having lived in several countries where proportional representation led to splinter parties and the inevitable evils of coalition government, I could not wish such a procedure upon any nation I loved.

To destroy this admirable system of balances and to throw the election into an uncategorized general scramble would, in my opinion, be dangerous. But to introduce additional innovations which would require a rerun election in the event no candidate won a clear majority would be an invitation to disaster.

One of the proposed changes, however, does merit serious support. The electoral votes of each State should be cast automatically by the secretary of that State without the interposition of individual electors. Faceless electors whom no one knows must not be permitted to gamble with our Nation, and the temptation to do so should be removed.

I am not so sure about another proposal which has gained considerable support. This would permit the election of a President by a mere plurality of the electoral votes rather than a majority. On the credit side, this change would prevent elections from being thrown into the House of Representatives, where Members would be subjected to extreme pressures.

It is, however, a marked deviation from the intention of the framers and might result in a President whose credentials could be questioned. In a republic, legitimacy of tenure is even more important than in a monarchy and no system should be sponsored which would encourage doubt.

The heart of our democracy is the election of a President by means which establish him as President of all factions of the Nation. The present system accomplishes this rather well.

JAMES A. MICHENER.

TINICUM, PA.

(On June 29, 1961, Senator McGee again appeared before the subcommittee. His statement on that date follows:)

Senator KEFAUVER. Our first witness this morning will be the Honorable Gale W. McGee, U.S. Senator from Wyoming. Senator McGee, you have previously given the subcommittee a statement on Senate Joint Resolution 26, but were unable to stay for discussion and questions. We appreciate your coming back today for further discussion. Senator McGee is not only a very able and thoughtful Senator from Wyoming; he is a Ph. D. and formerly professor of history and political science at a number of universities including the University of Wyoming. He has long been a student of problems of the electoral college and matters that are before this subcommittee at the present time. We welcome your counsel and advice and the wisdom that you will contribute to this hearing, Senator McGee.

Senator MCGEE. Mr. Chairman, may I say that I am grateful for the opportunity to come back.

What procedure would you prefer today? I have given an extended statement. I think I have studied most of the statements that have been submitted on the various plans. If you would prefer, I can do a 1½-minute recap in terms of my judgment.

Senator KEFAUVER. I think it would be well if you would take a little more time than 1½ minutes. But give us a summary of your bill, Senate Joint Resolution 26, and why you think this is the best remedy. We will have several questions to ask.

Senator McGEE. Senate Joint Resolution 26 is very simple, perhaps the simplest of all of the proposals pending on the question of presidential election. What it would do would be to eliminate the electoral college members, but would keep the electoral college formula so that in terms of an amendment to the Constitution it would simply pull out the personalities involved in the college, but would retain the two Senators plus the congressional delegation as measuring the total electoral vote from each of the States.

Everything else would remain intact so far as this proposal is concerned.

Its chief advantage, in my judgment, is its simplicity. It is something that the people would understand, and thus it would have a chance of being understood for ratification purposes. At the same time it addresses itself to one, and probably two, conditions that are not too desirable in the electoral procedure at the present time. It eliminates what has now come to be a substantially worthless segment of our original constitutional provision. This situation has arisen largely because the Founding Fathers in projecting this never had in mind political parties. Secondly, it would head off a possible bit of mischief and maybe serious ill-doing which now exists when the individual electors have the opportunity of digressing from whatever the popular vote may have been in their particular State. This is something that has become in effect a political appendix like the human appendix and still retains its nuisance value. This would cut it off. We would still retain its one key contribution to our system; and that is, the formula for adapting a State vote for President.

I say "key contribution" because, in my judgment, one of the benefits of our Federal system derives from the internal balance which the Founding Fathers built into the Constitution at Philadelphia to resolve the rivalries and the conflicts and the jealousies between the large States and the small States and the various economic regions.

And it is that formula substantially that has permitted the growth of the country from 13 to 50 States across a vast continent without any serious disruption of the original constitutional framework. The elements of this formula should not be tampered with recklessly. This would retain the formula and do away with the nuisance aspect. That is the burden of Senate Joint Resolution 26.

Senator KEFAUVER. You would abolish the electoral college, but you say that each State shall be entitled to a number of electoral votes, equal to the whole number of Senators and Representatives?

Senator McGEE. That is correct.

Senator KEFAUVER. The same formula that you have for electors at the present time?

Senator McGEE. Yes.

Senator KEFAUVER. And you do retain, however, the decision that in case no candidate gets a majority, it shall go to the House of Representatives, with each State having one vote?

Senator McGEE. Yes; I feel very strongly about that. That was another part of the original compromise in the Constitution. As you may recall from your history, Madison felt that 19 out of 20 elections would go to the House of Representatives because of the absence of political parties. But given the essential two-party structure that we now have, and which this proposal would tend to continue and

strengthen, I think it is very unlikely that there would be the necessity of worrying about the need for change.

Senator KEFAUVER. May I take this opportunity of asking you briefly about your thoughts on some of the other plans that are proposed here—first, the popular election proposal by Senators Mansfield, Smith, Keating, and others?

Senator MCGEE. Yes, it would affect proportionally the vote——

Senator KEFAUVER. No, no; the straight popular vote.

Senator MCGEE. That will miss what I think is still an essential key in our Federal balance system, and that is to represent States and regions as well as people. I think there is still a place for diversity in our system and that there should be something in addition to straight popular calculation.

Senator KEFAUVER. Do you think that a State like Wyoming, and even Tennessee, which gained some little weight or some substantial weight by virtue of the two senatorial electoral votes, would be likely to give up that advantage?

Senator MCGEE. I do not think that the States themselves would welcome the chance of ratifying that kind of an amendment but I am less concerned about their disposition than I am about the political balance that I think the present formula preserves as an institutional function under the Constitution.

Senator KEFAUVER. This is also a republic, not just a democracy?

Senator MCGEE. Yes; that is correct.

Senator KEFAUVER. Now, as to the proportional plan?

Senator MCGEE. The proportional plan, in my judgment, contributes to the real possibility of instability. The proportional plan would encourage the fragmentation of political groups, and cause even more uncertainty than the present system. The outcome of the elections, the representations of the majority will, thus the stability of our system is at stake.

I think there is less enthusiasm today among students of political science for this principle of proportional representation than when it first hit the public marketplace as an exciting new idea.

Senator KEFAUVER. Senator Case of South Dakota attempts to alleviate that in the proportional plan, by providing in his resolution that no candidate will receive any of a State's electoral votes unless he receives one-third of its popular votes.

Senator MCGEE. Yes; it seems to me that while this is addressing itself to one of the complications of straight proportional representation, it is still, in itself, a complication in the election process; that it still would permit a minority President.

At the same time it is a complication that does not add or contribute any substantive gain over what I think our experience has established up until now.

And the complication, I think, would tend to be confusing to people that were asked to ratify this kind of a change in the Constitution. That is why I think there is merit in keeping this as simple as possible as long as we address ourselves to the problem existing.

Senator KEFAUVER. The other plan, as you know, is the so-called district plan, which is contained in Senate Joint Resolution 12 filed by Senator Mundt and others.

Senator McGee. That plan, it seems to me, while having many merits is fraught with some serious possibilities that I think we ought to weigh carefully. These include the voting by districts and regions. I think that it overly weights the formula in the direction of the less settled areas. I think that it would permit a more confusing pattern of election because of the individual election in each district for a candidate as an elector for the Presidency in addition to the voting for the President and Vice President.

In other words, I think it is only a confusion rather than a simplification that goes directly to the need of the system.

Senator Kefauver. Senator Mundt has attempted to meet the imbalance of congressional districts, that is, the gerrymandering situation that we have at the present, by requiring compact and contiguous districts of approximately the same population, which he would call electoral districts. Do you think that is feasible?

Senator McGee. I think it is feasible because we are in effect doing it now in a rough way in congressional elections. I think it is an unnecessary, extra addition. The extra length of ballot, the increased numbers of names on ballots, will only add to the confusion. The chances of a clearcut decision on the part of the voters themselves is confused enough on some of these questions. What it would contribute in other ways I think would be more than met by the confusion that it unnecessarily adds.

Senator Kefauver. Senator Humphrey introduced a resolution in the last Congress—and in order that the committee would have all of the thinking on this subject, we are going to suggest that he reintroduce it. It would leave each State with two Senate electors or votes, but would proportion the rest on a nationwide basis. That is, Wyoming would still have its two electoral votes representing the two Senators, but the rest of its electoral votes would be proportioned nationwide according to the popular vote.

Senator McGee. That is only a refinement of the basic approach. In my judgment, it would lend itself only to a slightly lesser degree to the same objection. There is no real harm and there is some demonstrable good that has come from the operation of the present formula, minus the people in the electoral college. And therefore, it would seem to me that the petition to change the formula is not a very deep one or very severe one at the present time.

Senator Kefauver. As a distinguished professor, as well as a political scientist, I know you have had a lot of contact with students under 21 years of age. I think you would be well qualified to talk about the qualifications of 18-year-old people to vote.

Senator McGee. I do want to talk about it; I might even orate about it. I happen to feel very strongly on the question. I think that the 18-year-old is eminently well qualified for the ballot.

In terms of taking time to try to be as responsible and informed voters on the issues of the day, the 18-year-olds, in my judgment work harder at it, are less inhibited by habit, have a more open mind, and thus are more knowledgeable and intelligent than some other voter groups.

I find some few cases where there seems to be a lack of political sophistication or an indifference among 18-year-olds, but I think we would find it embarrassing to compare that proportion with the

proportion of our elder citizens—I do not mean old people—I mean citizens over 21, who are guilty of the same thing. And in my judgment, I would hazard the guess right across the board it would raise the quality of our political participation in this country if we could lower the voting age to 18.

I worry less about the younger generation, may I say, than I do about my own.

Senator KEFAUVER. Do you think it would, also, give us a better age average? What I mean by that is that with modern medicine and sanitation and health, people are living longer, so that the average age of the voters is very much more than it used to be. If we had some younger people voting, would there be any merit to the argument that it would give a better average age?

Senator MCGEE. I think that would be one of the very constructive consequences. Not only would it produce a better average, I think it would add a more youthful spirit and contribute to a slightly younger profile at the very moment in the history of the world when most of the world is groping for just that kind of profile and would like to see it in us. This comes at a time when our national profile agewise is the oldest it has ever been.

In other words, I think this would tend to strike a balance back toward the youthful spirit and the youthful face that has traditionally been associated with America. And it would only be another one of the good reasons, in my judgment, to consider an 18-year-old amendment right now.

Senator KEFAUVER. Mr. Kirby calls my attention to the fact that you are co-sponsor of S.J. Res. 58 by Senator Holland and many others, to eliminate by constitutional amendment the poll tax.

Senator MCGEE. Yes. The purpose of the poll tax, in my judgment, is not necessarily a laudable one.

It is a very simple proposal. Whatever purpose others may have, in my own case I think it is an unnecessary discrimination on the part of any government agency that would require, whatever the fee may be, $1, $2, $4, to be paid before the individual can vote. The theory sounds all right at times, but it permits an abuse and misuse, which I do not think we need.

Senator KEFAUVER. What do you think about various proposals of a nationwide primary for the selection of party candidates for President and Vice President?

Senator MCGEE. To be very frank about it, I have not resolved that in my own mind. I do think we can improve the present system, given the advent of new means of communication and the like. And some of the old systems that prevailed have long since lost their usefulness and become rather extreme such as the present convention system.

I am not sure that going as far as the national primary is the answer. I happen to think that presidential primaries on a selected basis have contributed a great deal to the measure of candidates, but I am hardly the one to be addressing myself to that, speaking to the chairman of this subcommittee, who has both practice as well as learned experience in that realm.

Senator KEFAUVER. It would be a matter of time only when you will be thinking of that—you may be seeking a national office. I was trying to find out what conditions you would rather run under.

Senator MCGEE. Most of us would like to be carried in on a sedan chair rather than run at all.

Senator KEFAUVER. We have other matters before the subcommittee. Is there anything you would like to express as to them?

Senator MCGEE. I will not intrude on your time. You have been very generous.

Senator KEFAUVER. We appreciate your coming here.

Senator MCGEE. Thank you very much.

Senator KEFAUVER. I have a statement discussing the other three resolutions of which I am sponsor.

STATEMENT OF SENATOR ESTES KEFAUVER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator KEFAUVER. In addition to Senate Joint Resolution 17, the subject of my previous statement, I have also introduced resolutions dealing with presidential primaries (S.J. Res. 16), residence requirements for voting (S.J. Res. 14), and 18-year-old voting (S.J. Res. 20). These proposals are the subject of my statement.

SENATE JOINT RESOLUTION 16

Senate Joint Resolution 16 provides for an amendment to the Constitution of the United States giving Congress the authority to provide for the nomination of the President and Vice President by primary elections. It proposes a new article in the Constitution, reading as follows:

> SECTION 1. The Congress shall have power to provide for nominations of candidates for President and Vice President by primary elections to be held in each State, the District of Columbia, and the territories, and to make all laws which shall be necessary and proper for carrying into execution this provision.

Thus, it is merely a broad statement of principle. I have no doubt that we will go through a period of trial and error in the working out of laws governing a national primary. Therefore, the mechanics of such a primary have been left for future enactment into statutory law, where they can be more easily adjusted and adapted to meet the needs of the times.

Introduction of the presidential primary in various States in the early years of this century was designed to put the presidential nominations more directly into the hands of the people. First adopted by Wisconsin in 1905, this institution was used in 12 States in 1912, in 20 States in 1916, 23 States in 1924, 17 States in 1948, and in 16 States and the District of Columbia in 1960.

In his book, "American Parties and Elections" (1939), Mr. E. M. Sait said:

> The presidential primary represented an attempt to short-circuit an elaborate system of wiring and to deliver the full load of the current—the full force of the popular will—without the fatal leakages that had occurred along the old defective lines of transmission. It was intended to leave the national convention as little discretion in nominating the presidential candidate as the electoral college has in electing him (at p. 547).

Forty years ago, President Wilson wrote that—

> there ought never to be another presidential nominating convention * * *. The nominations should be made directly by the people at the polls.

In his first annual message to Congress in December 1913, Wilson formally proposed the establishment of a national presidential primary and the retention of the convention only for declaring the results of the primary and formulating the party platform.

I have advocated presidential primaries for a number of years and have introduced proposals similar to this in the past three Congresses. In the 82d Congress, Senator Paul Douglas of Illinois had a proposal for the Federal Government to give assistance to States which would pass a State primary law, which I joined as a sponsor.

Senate Joint Resolution 16 is one of several proposing presidential primaries in the 87th Congress. Both Senator Smathers of Florida and Senator Smith of Maine have introduced constitutional amendments providing for primaries (S.J. Res. 9 and 1). Mrs. Smith is joined by Senators Beall, Chavez, Morse, and Aiken as cosponsors (S.J. Res. 1). I understand that Senator Proximire plans to introduce an amendment along these lines too.

Senator Mansfield has introduced legislation which adopts the general approach of Senator Douglas in the 82d Congress by giving Federal financial assistance to States which conduct primaries (S. 228). Thus the principle of nomination by direct primary elections is supported by distinguished Senators representing both parties and all sections of the country. I believe this shows an increased interest in this subject and I hope that it means some such proposal will be approved by the 87th Congress.

LIMITATIONS OF PRESENT STATE PRIMARIES

While the presidential primary is a more direct and democratic method of nominating presidential candidates than the convention system, it has some serious limitations at present, the principal one being that it has been adopted by so few States. It is limited, therefore, by the extent of its use. In less than one-third of the States last year did the voters have a choice in the selection of delegates to the national conventions.

Of these 16 States, only 3—California, Ohio, and Oregon—require, effectively, that delegates be pledged to a certain candidate. Indiana's delegates are pledged for the first ballot only. Five States—New Hampshire, Wisconsin, Massachusetts, Florida, and South Dakota—provide that delegates may be pledged to specific candidates or may indicate a preference, but neither is mandatory.

Seven other States—Florida, Nebraska, Illinois, New Jersey, Pennsylvania, Maryland, and West Virginia—and the District of Columbia—provide merely for the election of unpledged delegates. In 34 States the voters have no votes in the selection of their delegates to the national convention. (Alabama and Arkansas have laws permitting primaries, but they usually are not held.)

Thus the presidential primary device, since it is a State and not a national primary system, lacks uniformity in the nature of its methods for carrying out the popular will. Some State primary laws are devoted solely to electing delegates to national conventions. Others

provide for both a presidential preference vote and for the election of delegates.

The laws also vary as to whether the delegates are pledged or unpledged and in the form of instructions to the delegates. No two laws are identical.

In practice, moreover, the presidential primary system, as it is now operated on a State basis, has disclosed certain weaknesses. The proportion of the delegates to the conventions by primary States is too small to be decisive unless almost all of them support the same candidate, and even then the expressed will of the people may be frustrated by the maneuvering in the convention.

Furthermore, not all the primary States afford an opportunity to choose among all leading contenders for the nominations. Some aspirants prefer to keep their hats out of the ring until at least the first few primaries have been held. Many candidates, out of courtesy or prudence, refrain from entering the primary of a State with a strong "favorite son."

Obviously, the results of a primary where voters have no chance to express themselves on all the leading candidates, except through write-in votes, do not necessarily measure sentiment within the State or afford clear guidance to the conventions.

When all candidates do enter a primary under the present situation, its result may have an exaggerated psychological effect. We have seen how the eyes of the Nation and the concentrated efforts of the candidates turn to the primary of one particular State where all the leading contestants have entered.

The winner, as a practical matter, often delivers the deathblow to his opponents merely because of the results in that State. One State's voters, in effect, may have made the choice for the voters in all States. Thus, scattered State primaries, with the leading candidates entered in only a few, may actually lead us away from nomination of the true choice of the voters of the entire country. The primary victory which paved the way to nomination may have been determined by the candidates' views on local issues which are of little importance in other States or by voter appeal in one State which would have worked oppositely in another.

Election of delegates and preferential voting by congressional districts also work to confuse the picture. A classic example was the election by an Illinois district in 1920 of an avowed supporter of Senator Hiram Johnson as its delegate to the Republican convention, while Gen. Leonard Wood was winning the district's presidential preference vote, and Gov. Frank Lowden was winning the preference vote of the State as a whole.

In some States, moreover, delegates at large are chosen by the party organizations. Hence, if the State machine does not favor the candidate who wins the State's preference vote and the largest number of district delegates, it is in a position to send to the convention delegates of contrary opinion who can bring pressure of the elected delegates.

Another feature which may tend to weaken the present presidential primary system as a method of popular control over nominations is the variation of provisions in State laws with regard to the consent of the candidates whose names, or those of their pledged delegates, ap-

pear in the ballot. Most State laws require specific consent by candidates.

But a name may appear without consent in Oregon if enough voters sign petitions, and the unwilling entry is left to file an affidavit that he is not a candidate. In Indiana, specific consent is not required, but a non-Communist affidavit must be filed by any person for whom a petition is filed. The unwilling candidate's only means of staying off the ballot is one which he is not likely to want to use—failure to file a non-Communist affidavit.

Popular control of the nominating process is also affected by the so-called favorite-son game. One feature of this game is the tendency to bring forth favorite sons from the different States who are not really serious contenders for the presidential nomination, but are proposed sometimes merely to honor a leading citizen or politician, or more often with the deliberate purpose of reducing the support of some more important candidate, or of holding large blocs of votes which will produce a deadlock and can later be used in the convention for trading purposes.

Another feature of the favorite-son game is the practice of field against the favorite in which all the favorite sons pool their strength in the convention against one outstanding candidate, on the hope that he will be defeated and the lightning will strike one of them. In view of this practice, writes Prof. Clarence Berdahl:

> It is nothing short of amazing that the people's choice ever wins, and, in fact, leading statesmen are discouraged from entering the primaries at all ("Presidential Selection and Democratic Government", Journal of Politics, 1949).

In view of all these limitations of the existing convention and primary systems, there is no asurance that the convention results reflect the real desires of the party rank and file and present primaries contribute little toward this assurance. As Berdahl concluded in 1949:

> It is only possible to assert that there is in the presidential primary, especially with some method of instructions, an opportunity for popular participation and influence in respect to presidential nominations that can easily be developed more fully, if such development is desired.

ADVANTAGES OF PRIMARIES

In the light of our historical development toward the democratization of the present presidential nominating and election process, and of these weaknesses of the present presidential primary system, I suggest that the time has come to take the next step toward extending popular control of presidential nominations.

The primary method of nomination works well in selecting Governors and Members of Congress in many States. It should be extended to the choice of candidates for President and Vice President and thus continue the evolution toward more democratic methods of choosing our presidential and vice-presidential candidates. The more the people have a chance to speak their minds, the closer we get to grassroots opinion and desires, the better our democracy works.

Presidential primary elections in all the States would require candidates to discuss the issues publicly. Such public debate will help to inform and enlighten public opinion via press, radio, and television,

and it would pave the way for broadening and strengthing the democratic process.

It will also result, I believe, in better government and government more resopnsible to the people. A candidate for President who has been nominated by the people instead of the conventions will be, if elected, more responsive to the will of the people and more obligated to the people than to politicians.

Experience shows that presidential primaries arouse public interest and stimulate discussions of public issues, as well as of the character, convictions, and abilities of those who aspire to the highest offices in the land. They also increase the participation of eligible voters in presidential elections and overcome the apathy induced by the feeling that the people have little real choice in the selection of their candidates for President and Vice President.

In this period of struggle between the democracies and the dictatorships, the method of choosing the men who lead our Nation should leave no room for doubt, at home or abroad, that our leaders have been elected after the fullest possible freedom of choice by our people. The archaic convention system does not necessarily register the preferences of the people.

Television has revealed to the American people the inefficient and undemocratic aspects of the convention system. Its weaknesses and defects have been observed at home and abroad. Public opinion polls show that the people overwhelmingly favor abolition of the convention system and substitution of primary elections.

PROPOSED REFORMS

I feel that the details of primary elections should not be given inflexibility by inclusion in a constitutional amendment. However, Congress cannot require nomination by primaries by legislation without an enabling constitutional amendment because the Constitution leaves to the States the manner of appointment of electors in the electoral college, which constitutionally is still the body which selects the President and Vice President.

I believe, too, that the proposal for a national presidential primary has a greater chance for success if we advance it first as a general principle, then work out the details after the reform has been approved by constitutional referendum. For this reason I purposely kept my resolution simple and nonspecific as to details.

In the January 31, 1953, issue of Collier's magazine, I wrote an article which included a pattern for nationwide presidential primaries and nominating conventions. I still believe that its basic outlines are sound, and I will work for adoption of a bill along its general lines if the idea is adopted as a constitutional amendment. The plan which I then suggested, with a discussion of each step, is as follows:

Step 1: There shall be a primary in every State, provided for by Federal law, to determine the popular choice of the people for President. In each primary, delegates shall be elected to cast their votes at a streamlined national convention for the choice of their State's voters.

These delegates, presumably, will also approve the platform upon which the party's nominees will campaign. This will help to insure

that the candidate and platform are fully compatible with each other and that both represent the choice of the voters in the party.

Discussion: There have been presidential primaries in various States since Wisconsin passed the first such State law in 1903. Currently, 18 States have primary laws of one sort or another. The laws, however, are not uniform, and in some States are not even binding on the delegates; the lack of uniformity, plus the fact that most of the States do not have primaries, leads to a helter-skelter pattern which lessens the significance of primaries. With a uniform and binding law applicable to every State, presidential primaries would become meaningful.

Step 2: No candidate shall be placed on the ballot in any State primary without his consent, and he must file a qualifying petition signed by not less than 1 percent of the total number of voters who voted for the presidential candidate of his party in the last election.

Discussion: This provision would make it necessary for a man to be a willing candidate and to work for his nomination. It follows the wholesome example of President Kennedy in 1960, who openly declared his candidacy and gave opposing candidates and the voters every possible chance for expression in primary elections. I believe it is a good principle, and a democratic one, for "the man to seek the job"—particularly under the proposed new system where the voters really would have something to say about selection of candidates. It also will eliminate many of the nonserious candidates—favorite sons and others.

Step 3: A uniform nationwide system of choosing delegates, based, in part at least, on the vote of the political party of each State in the last previous presidential election. There should be provisions to limit the number of delegates so as to avoid the present unwieldly size of national conventions, and there shall be no spilt votes—such as one-half and one-third votes.

Discussion: It would be politically healthy to peg a State's delegates to the total votes mustered by the party in the last election. This would encourage all segments of the party to get out the vote in every elecion. More importantly, it will apply the principle of democratic representation within the party according to its effective membership —the number of voters.

I suggest that, instead of the present 1,400-odd votes at a convention, with some of them split between 2 or 3 persons, the total be limited to no more than 600, with no split votes. It is impossible to conduct an orderly convention with almost 3,000 delegates (counting the split votes)—not to mention their alternates—milling about.

Step 4: Delegates shall be firmly pledged to cast their votes on a proportional basis geared to the State vote received by the candidate. As a simple illustration, if a State has 10 delegates and candidate A receives approximately 60 percent of the vote, he will receive 6 votes at a convention. (To avoid undesirable fractional ballots, machinery can be set up where the division of delegates is calculated by round numbers, rather than by exact fractions.)

The delegates will continue to vote for the candidate to whom they are pledged as long as he receives as many as 10 percent of the total vote cast at the convention (with certain provisions in case of deadlock).

Discussion: I have given thought to the alternate possibility of having the candidate who receives a plurality of the State vote capture all the State delegates. I believe, however, that proportional division is fairer, and would reflect the wishes of the voters more accurately. Such a division is more in line with my belief that the electoral college vote should be divided proportionately, rather than letting the candidate who gets the most popular votes in a State take all of the State's electoral votes.

Another possible alternative, which might be considered as an interim measure pending reform of the electoral college machinery, would be a Federal primary law patterned after the excellent Wisconsin State law. In Wisconsin, the candidate receiving the largest statewide vote wins a certain number of delegates running as the State delegates at large, while winners in various congressional districts get the votes of delegates for those districts.

As a means of breaking an early deadlock, a candidate should be given discretionary authority to release his delegates when he feels he cannot win. The law should be written to indicate strongly that the delegates, once released, are free agents, at liberty to exercise their best judgment as to preference among the remaining eligible candidates; the practice of trading delegates to accomplish private political deals should be discouraged.

The Wisconsin primary law is again a good example. It binds a pledged delegate to vote for his candidate until he is released or the candidate receives less than 10 percent of the total vote on any ballot. The delegate is then free to exercise his own judgment.

Step 5: Nomination for President shall be by a simple majority of the total number of votes cast by delegates at the convention. If no candidate has a majority, and has not released his delegates, after 10 ballots the delegates shall be considered free of their obligation to vote for the winner of their State primary, but must vote for one of the candidates receiving the top three total number of votes in the national primary.

Discussion: This step provides a key which makes the proposed system practical. In combination with step 4, it would mitigate the nuisance value of any surviving favorite son, who could not hope to hang on for 10 ballots, but would try to trade delegates for favors.

The provision for picking the presidential nominee from the aspirants who placed first, second, and third in the nationwide primary popular vote is a means of respecting the will of the voters. It also has constitutional precedent, for the 12th amendment provides that, in the case of a deadlock in the electoral college, the House of Representatives shall select a President from among the top three candidates.

Step 6: Finally, after the presidential nominee is chosen, the vice-presidential nominee shall be chosen by a vote of the delegates from the three candidates who polled the next highest number of votes in the nationwide primaries.

Discussion: This is the procedure followed by the Democratic convention in 1956 when I was nominated for Vice President. It respects the wishes of the electorate and insures that the office of Vice President is not an object of political barter.

It would mean that the Vice President post would go to a man sufficiently interested in public service to get out and work for his nomination in a primary, and that the post would be filled by a man whom the people know, and who was of sufficient stature to have placed at least fourth in the national presidential primary.

It can be said of too few vice-presidential nominees that they were the choice of the people. Under the system I propose, there would be an opportunity for any political skeletons hiding in the closets of the eventual presidential and vice-presidential candidates to be brought into the open—before, not after, the nomination.

We must remember that a Vice President always is a "serious candidate" for President, for seven times in our history Presidents have died in office. The office of Vice President always should be filled by mature, capable individuals of whom the voters have full knowledge.

Senate Joint Resolution 9, introduced by Senator Smathers, of Florida, combines with presidential primaries and electoral college reform a provision that if a Vice President succeeds to the Presidency by reason of death there shall be a special presidential election at the next general election to choose a new President. This procedure, in my opinion, would be cumbersome. The system by which one of the top four choices of the victorious party would become Vice President would eliminate the necessity for such a special election.

Another healthy reform desired by many evolves naturally from this plan. It is a shorter general election campaign period for the men finally chosen by the major parties as presidential nominees. The party candidates would already have fought out the primaries, which would be held simultaneously throughout the country on a fixed date in August.

The national convention then could be held in September. Assuming that the successful candidates would take the usual amount of time to map out their campaign, the actual campaigning could be limited pretty much to the month of October. That plan would be good life insurance for our Chief Executive.

I would like to see all campaigning elevated to a less strenuous, more intellectual level, with less wear and tear on the candidates. I have never seen any sense in practically killing off our Presidents before we elect them, and I am sure that the American people do not want that.

In conclusion, the longrun trend has been toward the gradual democratization of our electoral system. Discretionary voting in the electoral college was early removed. Property qualifications for voting disappeared more than a century ago. The 14th and 15th amendments were adopted after the War Between the States. The direct election of Senators and woman suffrage continued the evolution on this direction. Enfranchisement of the District of Columbia this year is another milestone. It remains now to democratize our methods of nominating and electing the President and Vice President.

Senate Joint Resolution 14

In Senate Joint Resolution 14, I propose an amendment to the Constitution which will deal with the serious problem of disfranchisement of our mobile population. The American Heritage Founda-

tion, which is doing very fine work in this field, estimates that 8 million adult American citizens were unable to meet State, county, or precinct resident requirements in the 1960 elections.

The mobility of our population and its free movement from one State to another is a desirable and necessary feature of 20th-century America, and indications are that this trend will increase. But State residence requirements have not kept pace with this fact of modern life. Thirty-five States still require 1 year of residence in the State; 3 demand 2 years; and 12 call for 6 months.

Three States even require that the voter shall have resided in the county of his residence for 1 year before voting. Also, precinct residence requirements vary widely, ranging from 30 days or a few months to 1 year. These factors obviously have no logical relation to the voter's qualifications to help select the President of the United States.

The victims of these outmoded residence requirements include many of our better educated and more responsible citizens, such as educators, lawyers, clergymen, and executives of interstate businesses. A General Electric Co. spokesman reported that 6 percent of its executive personnel were disfranchised in 1960 because of being shifted from one State to another.

In a very fine article by Eugene Burdick entitled "The Iron Curtain Around the Ballot Box," which appeared in the July 1960 issue of Good Housekeeping magazine, Mr. Burdick states:

> Who are the people hurt by the invisible wall around the ballot box? In general, they are precisely the people who act in the best American tradition: they have the gumption to pull up stakes and move to take advantage of new opportunities. William H. White, Jr., author of "The Organization Man," the study of the business executive, has proved that the person who moves most often is usually in the higher income brackets. The authors of "They Went to College," Ernest Havemann and Patricia Salter West, have discovered that the higher the educational level of an individual, the more he will move about the country, seeking the best opportunities.

We frequently hear the complaint that too many eligible citizens who are able to vote do not exercise their precious privilege at the ballot box. It is shameless at the same time to continue a system of arbitrary restrictions which puts barriers between the ballot box and millions of our best citizens. Apart from the effect of this upon the results of elections, it is bound to produce apathy and bitterness in such people toward their Government. Mr. Burdick's article also states:

> It is not, however, the final result of the elections which causes sociologists and psychologists to be concerned. They are much more worried about the psychological damage to a citizen who is, time after time, denied the right to vote. Part of the American promise, a glowing part of our tradition driven home to us from childhood, is that each of us can share in the shaping of our political life by casting a ballot. But, for utterly trivial reasons, we now find millions of citizens deprived of the right to vote.

I recognize that qualifications for voting and the administration of elections should ordinarily be handled at the local level, and amendment to our Federal Constitution is not the ideal solution to this problem. But it may be the only practical means available. State governments are making very little progress in this area.

In 1952, the General Assembly of the States passed a resolution calling attention to the desirability of State legislation in this area.

In 1953, the National Association of Secretaries of State adopted a resolution to the same effect. The Committee of State Officials on Suggested State Legislation approved as a part of its program for 1955 a draft act which provided that qualified voters moving from a State might vote there by special absentee ballot in presidential elections until they could meet residence requirements for voting in the State in which they moved.

However, only six States have taken action during the 9-year period since these efforts began. These are California, Connecticut, Missouri, Ohio, Vermont, and Wisconsin. The New Jersey Legislature passed an act in 1960 similar to the recommended draft act, but the Governor vetoed it upon advice that it violated the New Jersey State constitution.

A recent memorandum issued by the Council of State Governments indicates that in virtually all States residence requirements for voting are contained in their constitutions. Amendments to State constitutions are generally slow, cumbersome, and expensive procedures, and this probably explains the inertia in the majority of the States.

Thus, amendment to the U.S. Constitution may be the only means of dealing with this serious problem. This I have proposed in Senate Joint Resolution 14. It applies only to presidential elections. It limits residence requirements to a maximum of 1 year, which is the period now utilized in the great majority of States.

Perhaps more importantly, it takes the approach of the suggested State law mentioned above by preserving the right to vote by absentee ballot for 2 years if the moving voter does not become qualified in another State. The additional year in the absentee-ballot provision is for the benefit of the voter who may move more than once during a 2-year period.

Unless the States can demonstrate new and substantial progress toward meeting this situation at the local level, I strongly urge the adoption of this amendment as the only means of removing a serious obstacle to the proper functioning of our elective process. We cannot continue to isolate millions of our best citizens from the choice of our leaders.

Senate Joint Resolution 20

This is one of four resolutions now pending which would extend voting rights to our 18-year-old population. Two States have already done this at their own initiative. They are Georgia and Kentucky. Alaska's age requirement is 19 years, and Hawaii has 20 years. In all other States a voter must be 21 years of age.

Our citizens between the ages of 18 and 21 are probably the most literate segment of our population at this time. They are allowed to marry, begin homes, and assume the responsibilities of adults. They are above the age at which they are permitted to enter military service, and in time of national peril share what is probably the most serious responsibility which comes to a citizen.

The stake of these young people in election results is great. They are at an age where they are beginning to shape their lives and their future, and participation in the political process should be a part of this. At this age they are, in many instances, more idealistic and better informed on public affairs than most of their elders. The ever-

increasing numbers of American youth who attend college has given most of them better educations than their parents.

We hear a great deal about young people going astray in seeking ways to express themselves. If we give them a chance to have a voice in our political life, I believe we will channel much of their valuable energy and intelligence into worthwhile channels. If they become active in politics at this age, they are more apt to continue their interest in public affairs. Allowing the vote at 18 will introduce an element of responsibility into the public thinking of young men and women.

It has been my good fortune to have active youth and student groups working in my campaigns. They are not only energetic and idealistic, but are keenly interested in the affairs of government and alive to the real issues. They are free from corrupt influences, and approach questions in terms of the public good.

In 1952, Mr. Ellis Arnall, who was Governor of Georgia when it lowered the voting age to 18, testified before this subcommittee in support of this proposal. He stated that "if the older citizens voted with the same degree of intelligence and freedom and idealism as the young voters, we would have a better country and a better world."

The increasing span of life due to scientific and medical advances is giving us an older average age in the voting population. Inclusion of citizens between the ages of 18 and 21 in this group will better balance our voting base and expose politically active older people to the wholesome approach of youth to civic problems.

It was once fashionable to argue, especially among young men, that women had no place in public affairs; that they did not know enough about political issues; and that, therefore, the franchise should not be accorded to such a group which was incapable of making intelligent choices and decisions. Experience has demonstrated that these fears were unfounded, and the participation of women in American political life in the 20th century has been a wholesome development. I am confident that several years from now we will see that similar fears were equally unfounded with regard to the voting ability of 18-year-olds.

I strongly urge the approval of Senate Joint Resolution 20.

(At the hearings of the subcommittee on July 13, 1961, Senator Kefauver made the following statement:)

STATEMENT OF HON. ESTES KEFAUVER

Senator KEFAUVER. I have recently introduced Senate Joint Resolution 113, which proposes an amendment to the Constitution providing for the election of the President and Vice President. I did this as a result of the testimony of Mr. Nicholas deB. Katzenbach, Assistant Attorney General, before the subcommittee on June 28, 1961.[1] At that time, Mr. Katzenbach spoke in favor of the proposal which had been introduced by President Kennedy when he was a Member of the Senate in 1956. This was Senate Joint Resolution 132 of the 85th Congress. Senate Joint Resolution 113, which I have now introduced, is identical to Senate Joint Resolution 132 as introduced by then Senator Kennedy in the 85th Congress.

[1] Mr. Katzenbach's statement is in pt. II of the hearings.

This proposed amendment would retain the present electoral votes of the States but it would eliminate the office of presidential elector and abolish the college of electors. It does not change the present system, which is not now contained in the Constitution but is based upon custom, of counting all the electoral votes of a State for the candidate who receives the greatest number of popular votes in the State. In fact, this amendment would write into the Constitution the so-called unit-rule system.

Senate Joint Resolution 113 changes the present method of elections in the House of Representatives when no candidate receives a majority of the electoral vote. It provides, as does Senate Joint Resolution 17 and many other pending proposals, for election by a majority of the House of Representatives and Senate meeting in joint assembly with each Member having one vote.

I still favor the amendment which I have introduced in Senate Joint Resolution 17, which provides for the proportional division of each State's electoral votes. However, I felt that the proposal favored by the Department of Justice, and presumably by the President, should be before the subcommittee at these hearings. I also feel that this proposal would be a great improvement over the present system and I would urge its adoption as an alternative to the present constitutional provisions.

(At the hearings of the subcommittee on June 28, 1961, Senator William Proxmire made the following statement:)

STATEMENT OF HON. WILLIAM PROXMIRE, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator PROXMIRE. Thank you, Mr. Chairman.

Mr. Chairman, first let me thank you for giving me the opportunity to come before your subcommittee today. I speak now in support of a constitutional amendment, which I have proposed, to establish a national presidential nominating primary.

The plain voter has no real chance to say who will be the only two men in the Nation with any chance to win the most powerful office in the free world—that is, the nominees of the Democratic and Republican parties in the presidential election campaigns. Without that chance, what does democracy really mean?

Far less than it should.

In a democratic form of government such as ours it is the plain voter—and by this I mean all of the plain voters—who should have the right to say who should be their governing officials.

Surely in the choosing of the most important official in our Government, the President, the fullest possible participation by all voters should be at least legally possible. And this idea should apply particularly to the primary which narrows the selection process to the final choice of two.

Is it not a far better thing to choose our presidential nominees in a national primary, where the candidates and their ideas are on display and are contending openly, than it is to choose them in the narrow, emotional, cynical, rumor-filled, bandwagon rolling, shouting, no one listening climate of a party convention?

Senator KEFAUVER. You should include the "smoke-filled room."

Senator PROXMIRE. I will throw that one in too, and contrast the smoke-filled room and the noise and shouting and the emotional situation that we have at a convention with the quietness of the voting booth, in the voting places all over America where every voter has an opportunity, if only for a minute or so, to think quietly as to the candidate who, in his judgment, is best qualified, and to do so without any pressure.

Are we not far better served, at this time in world history when our system is on trial, by placing our trust in all of the people, rather than in a partisan few. We now rely on a microscopic ratio of 1 unrepresentative, nonresponsible delegate to 20,000 potential voters to select the men who will contend for our most important office? What a vast increase in public interest and education in public issues would flow from these exciting contests. And how urgently that public interest and education is needed today in our democracy.

A great American President answered these questions in the affirmative nearly half a century ago. Woodrow Wilson came out strongly for a national primary in 1913, and support for the idea has been growing ever since. The idea for a national primary is not a new one.

As already has been indicated in his statement by the Assistant Attorney General, Robert La Follette, one of the greatest Senators who ever lived and perhaps the finest statesman that was ever developed in our State, was a real champion of grassroots democracy. And one of the principal methods of achieving grassroots democracy, in his judgment, was to have a presidential primary.

Senator KEFAUVER. Then he was joined by Senator Norris at that time.

Senator PROXMIRE. As I understand it, yes.

Since the advent of national television coverage of the conventions, public opinion polls have reflected consistently the fact that the vast majority of the American electorate wants a more direct voice in the choice of its presidential candidates.

In 1956, 58 percent of a national public opinion poll favored a national primary. National primary bills have been introduced in the past by the distinguished chairman of this subcommittee, and by Senators Smathers of Florida and Smith of Maine.

There are compelling reasons for the adoption of this amendment.

The key weakness lies in the fact that the rank and file of the parties' membership do not have a meaningful voice in the selection of the presidential candidate.

Theoretically, the national convention is a democratic institution, but, in fact, it is not representative of the wishes of the rank and file of party members.

In the majority of our States, the delegates to the national conventions are chosen either by State conventions or by State party committees. A handful of political leaders can, and often does, dominate these conventions and committees.

Some kind of presidential primary does exist in 15 of our States, but in most cases these primaries are not responsive instruments for carrying out the wishes of the mass of the party membership.

In a few of these States, the delegates are named by conventions and the presidential poll is only advisory. In some other States, dele-

gates are elected by the people, but are not pledged to support any particular candidate. In a third group of States, delegates are pledged, but are allowed, under State law, to switch to other candidates at the convention, according to their own estimate of the chances of the various contenders.

My own State of Wisconsin is one of only a few where the delegates are bound to support the candidates who won the primary vote. There is no assurance, even in such States as these, that the names of all of the leading contenders will appear on the ballot.

The result of all this is a national convention which is guided mainly by a small group of political leaders who are motivated by what they conceive as being good for their party organizations, either at local, State, or National levels. I can't emphasize this enough. What nominee would give the party the biggest boost in Wisconsin or Tennessee or Arizona becomes the criterion—not who is the best qualified candidate.

I want to take a minute to refer to the presentation just made by Assistant Attorney General Katzenbach a few minutes ago when he talked about the expense of conducting a national primary campaign. I think the expense would be less in a national primary, not more. It is necessary now under the present system for candidates to go into virtually every State, one way or another, in order to secure support. On the other hand, in a national primary held on the same day in the whole Nation, national media which are far more efficient throughout the country could be utilized in all States at once. The campaign could be conducted far more efficiently than a campaign in which candidates have to go into State after State and use different methods and systems.

For this reason I think the expense might well be less. But I am disappointed there has not been a study to support the charge as made by the Assistant Attorney General that this would cost more.

I think that on the basis of the experience which the chairman has had, certainly as much as anyone active in public life today, the present system is enormously expensive.

Senator KEFAUVER. I want to say that I thoroughly agree with Senator Proxmire about the expense. As a matter of fact, a candidate without financial means would have a much better opoprtunity to get his message to the people in a nationwide primary held on the same day than under the present system.

Under the present system, as you say, you have to go to all of the States. And I think, as I said a few minutes ago, the cost in non-primary States of trying to get delegates is much larger than where you have the opportunity of appealing directly to the people in the States.

I think this national primary system would encourage candidates who might be qualified but who do not have a lot of financial backing to participate. And I think it would be a good thing.

Senator PROXMIRE. I agree with you. The fact is that when a man has built up an outstanding reputation as a Senator, as a Governor, as a fine administrator at the Cabinet level, or as an outstanding businessman in private life, that this is a reputation that becomes a national reputation; and the national primary would enable people to run on the basis of their record and what they have established,

rather than on their skill at manipulating the particular kind of political situation which existed in either a primary State or a convention State or a party committee State.

And I think it would minimize—there is no question about this—it would minimize the importance of partisan connections and associations with people who happen to be in power in particularly important States.

The second point made by Mr. Katzenbach was one in which he referred to Governor Stevenson and said that it would take too much time from their duties for candidates occupying important office. Anybody who looked at the record of candidates in the past—Senator Taft, who was, certainly, a brilliant and fine Senator; Senator Kennedy, who was also a splendid Senator—all of the candidates went all out to win this nomination and they served a wonderful purpose in doing so. They were absent a great deal in the past from their duties. They brought their message to the people. And I think the most important function that a man in public life can perform is to go out to the people and argue his position and try to persuade them to follow wise and thoughtful national and international positions.

I am sure it takes time away from important duties, but I think that this is the most important time that a man can spend. So I think to say that it would take time and detract from their duties is not a persuasive argument for two reasons: In the first place, the present system is extremely time consuming; and in the second place, I think that the time that would be taken under the new system would be time extremely well spent.

Senator KEFAUVER. Let me say that I think that the time argument is facetious. It seems to assume that under the present system you do not have to go into the nonprimary States to campaign. I can speak by experience that you have to go there in any event to do any good. You not only have to go once but you have to go several times..

And in the nonprimary States you visit the States, certainly, before the delegates are elected, and after the delegates are elected you go back to talk to the delegates. Whereas, under a primary system you make your appeal to the people and the primary election would be held.

So I think that nationwide primaries will take really less time than is consumed by the present system. That is, assuming that you go out and campaign.

Senator PROXMIRE. The point just made by the chairman seems to me is the crux of this whole thing: The time would be spent differently. Instead of the distinguished public servant spending his time arguing with individual delegates and talking to delegates or appealing to delegates on some basis, he would spend his time making a broad appeal to all of the people; he would spend his time trying to inform the people and persuade the people to his viewpoint.

And it seems to me this is the most essential role in a democracy.

The final objection made by Mr. Katzenbach was that it would be divisive to have this kind of a national primary, that there would be the danger of fomenting long-lasting division within the party. I think this is absolutely the opposite of what happens.

We have had experience in both Oregon and Wisconsin with a primary system, and I say this prevents a lot of divisiveness. If we

leave the nominating decision to the party convention or committee, it is most divisive. On the other hand, if you leave it up to the people, there is no basis on which factions in the State can dispute the voice of the people. The sovereign electorate has spoken in the primary, as one man or the other has won. It is clear then that the people prefer candidate "A" to candidate "B." And therefore, all people can properly unite behind him.

But when this is decided in a convention, by a very few people, there is bound to be bitterness and divisiveness. And I think this is one of the elements that would be avoided by having a national primary instead of having the kind of system we have now.

Senator KEFAUVER. You are quite right. As a part of our American system, when the people have spoken on issues, everybody feels that it is fairly and honestly and properly settled—and only when they have done so. Then they get behind whoever the majority voted for.

Senator PROXMIRE. I believe that my proposal for a national primary would go a long way toward rectifying such abuses in the nominating system. Here is what my amendment would do:

(1) Under the provisions of the amendment, any candidate who wished to seek his party's presidential nomination would file a petition with the Secretary of State bearing a number of signatures equal to at least 1 percent of the votes cast in the previous presidential election. The votes would come from a cross section of our States, representing those of large, medium, and small populations.

(2) The national presidential nominating primary would be held on the first Tuesday after the first Monday in August of presidential election years. Each State would be entitled to as many votes as it has in the electoral college. Whichever candidate won a majority of the votes in a given State would receive that State's full electoral vote. The candidate who had a majority of his party's electorial votes in the primary would thus be designated as its presidential nominee. If none of the aspirants won a majority of electoral votes, a runoff primary would be held in September between the two candidates who made the best showing in the August primary.

(3) There would still be an important function for national conventions to perform in each party. They would be entrusted with the nomination of the vice presidential candidates and the writing of the party platforms. In the past, with the great spotlight of public interest focused on the selection of presidential candidates at these hectic national gatherings, it has all too often been the case that vice presidential candidates have been named as an afterthought. And the important task of hammering out a meaningful party platform has been performed in relative obscurity. With the nomination of the presidential candidates accomplished before the convention, it might now be possible to give weighty and proper consideration to the naming of the vice presidential candidates and the construction of the party platforms. This should also mean a shorter and less windy national convention, which should be a delight to the vast television audience that has, in the past, been alternately bored and disgusted by long, drawn out conventions. What could be more in keeping with the educational function of a national election than a full-scale debate over its platform by each of our major parties at its national convention?

Much has been said in criticism of the American voter in recent years, and, regrettably, the voter's record is not all that we might wish it to be. But I think, in the long run, the voter is still the best judge of his own interests, and the most appropriate vehicle for the choice of a presidential candidate.

I might say before I conclude, it is my understanding that the President has indicated that he favors State primaries as they are now but has not committed himself in favor of a national primary. And as the Senator from Wisconsin, as one who is very conscious of our own system, I might say that the national primary might, indeed, become the only alternative, because there is every prospect the State primary in Wisconsin may be abolished.

There is strong support in our State for its abolition, including the most powerful paper in our State. Some of the leading figures in both parties have spoken in favor of abolishing it. The number of States with primaries has been diminishing in numbers throughout the country.

It seems to me that if we are going to have any opportunity for the people throughout America to speak their mind, except in public-opinion polls, this kind of proposal should get the most serious consideration from the Congress.

Mr. Chairman, let me thank you again for the privilege of coming before you and your subcommittee today.

Senator KEFAUVER. I want to say that while your statement is brief, it is one of the most forceful statements I have heard in favor of the national primary. I think you have rendered a great service in proposing your amendment which has much merit and in presenting your very thoughtful arguments in favor of some kind of nation-wide primary for the leading political parties. There are two advantages and benefits which accrue that you did not discuss specifically.

One, I think it is an educational process for candidates in the primary to get out among the people, with the people and have a chance of meeting them and letting them meet you, hear what you have to say, what your proposal is, what you stand for. I think that would make for better understanding of national issues and more participation in elections, all of which is to the good.

And second, that when somebody has campaigned in a national primary and has won, the issues he presented should be meaningful to the delegates to the national convention in writing their platforms, as shown by the American people who will have spoken.

Senator PROXMIRE. May I just say that I think the first point of the educational process would be served, and deserves a great deal of emphasis in view of the feeling that many people have that the public has become too apathetic, and, indeed, they have. One way of getting away from that apathy, exciting the interest of the people, getting them involved, is to give them an opportunity to vote in an election of this kind, where it would be the most colorful kind of campaign, the most important and significant kind of election opportunity.

And there is no question when people have the chance to vote, they give far more consideration to what is at issue.

And then the second point I think we can go a little bit further and say this: that where ideas have been hammered out in primary

campaigns and have been put to the test of the primary election and then you have a followthrough in the general election, you would have, as the chairman has pointed out, platforms that would reflect these ideas. And you would also have a far better chance of writing these ideas into the law when Congress convenes in the following January because the American people, as well as the Members of Congress, would be so far better informed on the attitude toward these proposals.

Senator KEFAUVER. I think that is a very good observation. Another thing is, do you not feel, Senator Proxmire, that the rank and file party members would be more likely to support the candidate who is finally nominated if they had participated in his nomination in the first place?

Senator PROXMIRE. I think there is no question about it. Also, I think that the candidates—if they supported candidate "B" and candidate "A" had won, I think that the feeling which you often get, no question about it, in both parties, the feeling that you get that they have been somehow beaten out of it by sharp dealings at a convention, would be overcome because, as you have said before, the voice of the people has been heard. And I think that the people recognize this kind of decision, where they refuse to accept the decision of the convention which often seems to be and sometimes is unfair.

Senator KEFAUVER. Thank you very much, Senator.

Senator PROXMIRE. Thank you.

(At the hearings of the subcommittee on July 13, 1961, Senator Clifford P. Case made the following statement:)

STATEMENT OF HON. CLIFFORD P. CASE, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator KEFAUVER. Senator Case, we appreciate your interest and your appearance here today.

Senator CASE. Thank you, Mr. Chairman. I am grateful to the subcommittee and to you, as its chairman, for letting me appear before you in support of my particular proposal for dealing with the matter of the election of the President and Vice President.

My resolution is Senate Joint Resolution 114.

Senator KEFAUVER. Your resolution will be printed in full at the beginning of the record with the other resolutions.

Senator CASE. I wonder also, in order to save the time of the subcommittee, if it might be in order to include in full in the record the statement that I have prepared for this purpose today.

Senator KEFAUVER. It will be printed in full in the record at this point.

(The prepared statement submitted by Senator Case follows:)

STATEMENT BY SENATOR CLIFFORD P. CASE OF NEW JERSEY

Since the adoption of the 12th amendment in 1804, the constitutional provisions governing the election of the President and Vice President have remained substantially unchanged. In fact, however, there have been other important departures from the original plan of the Founding Fathers.

Periodically, the Congress has discussed changes in the system. In 1951, and again in 1955, Congress debated the matter at length. The closeness of

the recent election has again stimulated interest in the presidential electoral process. This time I hope the Congress will act—and act so as to strengthen, not weaken, this key element in our political structure.

In the earlier debates, the main controversy revolved about the issue of a proportional allocation of votes within a State versus the present tally on a State-by-State basis. Logically, one might expect the chief issue would be direct popular vote versus the State-by-State count. But there is good reason, I believe, why even now, shortly after an election won by a whisker, there is relatively little demand for direct popular election of the President. That is our enduring belief—based on practical rather than logical grounds—in the balancing of people and interests which a count by States provides. It is, in short, our basic adherence to the Federal principle which, whatever its theoretical failings, has worked so well for this Nation.

There are shortcomings in our electoral system which can and should be remedied. But it makes no sense to throw out the baby with the bath water. We would do more harm than good should we, in the effort to improve the electoral process, scrap the Federal principle.

In Senate Joint Resolution 114, I have put forward those suggestions for changes which I believe are desirable to protect the right of the people to elect, in the context of our unique Federal system.

First of all, Senate Joint Resolution 114 would assure all voters of a direct vote for President and Vice President. Doing away with the electoral college as such, it would require that the names of the candidates actually appear on the ballot. Thus it would avoid the anomalous situation which has prevailed in some States where voters have had a choice only among electors whose preference was not known.

Every voter has the right to know for whom he is casting his ballot. By assuring that he will, my resolution would eliminate the possibility of unpledged or possibly "renegade" electors who could determine the outcome—a possibility that came uncomfortably close to reality when for a time last fall it seemed the choice for the President might lie in the hands of a few unpledged electors.

At the same time my resolution would continue to give all of the electoral votes of a State to the candidate who won the majority or plurality of votes within the State. Thus while there would be no electoral college as such, the electoral votes of each State would be cast as a unit.

A number of proposals have been made to apportion the electoral vote of each State according to the percentage of votes for each candidate. They contemplate calculations carried out to the third decimal place. These proposals would mean, I am convinced, a setback to the effort to widen and strengthen the franchise.

Individual votes in the so-called safe States have on the average approximately three times as great a voice in presidential elections as individual votes in larger States. This imbalance is now compensated for in a rough way, by the unit rule. The proportional division of electoral votes would eliminate this compensating factor and the relative importance of the safe States would become even greater.

The late Senator Robert A. Taft made a thorough study of the whole matter and demonstrated conclusively that far from fostering the growth of the two-party system, proportional division would only "strengthen the grip of the predominant party in one-party States" and encourage restriction, rather than liberalization, of the right to vote.

Further, these proposals would foster the formation of splinter groups, ever hopeful of wielding the margin of victory by garnering even a fraction of an electoral vote. One of the distinguishing features of our political life is the two-party system. The necessity under the present electoral procedure for both major parties to consider the importance of minority groups contributes to the strength of that system and to national unity. The creation of a number of special interest groups into splinter political parties from the major racial and religious groups in the country has been successfully avoided. And by and large the members of these groups have been successfully incorporated into the life of the Nation. The distribution of electoral votes on a proportional basis would lead us in the opposite direction.

The defects of proportional distribution become even more glaring in the district electoral plan. This scheme would retain the electoral system but would provide for electors in the same number and from comparable districts as Members of the House of Representatives. Two additional electors, corres-

ponding to the two Senators from each State, would be elected on a statewide basis.

A variation of this proposal was offered in 1955. It would have given each State legislature the opportunity of using this method or proportional division of the vote within a State. As the then Senator Kennedy pointed out, "lumping together of two contradictory, incompatible schemes for counting electoral votes [would enable] the party in control of each State legislature to select every 4 years which device will most benefit their party."

It is difficult, indeed, to look on such schemes as anything but a wide open invitation to gerrymandering and all that that connotes. Practically speaking, such a system would inevitably serve to freeze present inequities and would constitute a real threat to our two-party system.

Secondly, Senate Joint Resolution 114 would change the method of selecting a President and Vice President if neither of the major candidates received at least 35 percent of the whole number of the electoral votes. The choice would, as at present, evolve upon the House of Representatives. There would, however, be this difference. Instead of "one State delegation—one vote," each Member would have a vote. The inequity of the present provision is, I believe, obvious and needs no elucidation.

In 1951, as a member of the House Judiciary Committee, I filed a minority report opposing the division of each State's electoral vote in proportion to the popular vote received by each candidate as proposed in the Lodge-Gossett amendment. Five years later that amendment again came before the Congress and I was glad to join with Senator Kennedy to defeat it and the variations on it then proposed. The grounds for our opposition are as valid today as they were then and with the permission of the committee, I should like to make my earlier report a part of my remarks at this point in the record.

Amending the Constitution is always a serious business. Few of us are wise enough to foresee all the circumstances in which an amendment may have a significant effect. The changes proposed by my resolution are moderate but I put them forward in confidence that they would strengthen our present system without running the risk of great and permanent injury to our society and our form of government contained in more radical proposals.

Senator CASE. And in that connection, Mr. Chairman, if I may, may I also ask that there be included in the record the minority report which in 1951 I submitted as a member of the House Judiciary Committee then opposing the division of each State's electoral votes in proportion to the popular vote as proposed in what was then called the Lodge-Gossett amendment.

Senator KEFAUVER. Do you wish to have that printed in the appendix or at this point in the record?

Senator CASE. Whatever the committee thinks appropriate; just so long as it is referred to in connection with my remarks.

Senator KEFAUVER. Then we will let it follow your remarks.

Senator CASE. Thank you very much.

Mr. Chairman, just to summarize very briefly my proposal, I think that we ought to assure all the voters of a direct vote for President and Vice President, and therefore I think that the electoral college as such ought to be eliminated, and, in place of that, I think we should provide that each State still has the same number of electoral votes computed in the same manner as they are at present.

This is a relatively minor change, and yet I think it is quite important. It will mean that each voter has the right to know for whom he is casting his ballot. The possibilities of unpledged or possibly renegade electors would be eliminated.

This may not be a very great possibility and, yet, I think it is one we ought to guard against. It came pretty close to reality in this last election, or at least it seemed to. It looked as though the choice of President might lie in the hands of a few unpledged electors.

There have been, of course, a number of proposals to apportion the electoral votes of each State in accordance with the percentage of votes for each candidate. The calculation is carried out to the third decimal point. I think this would be a mistake and it would be a setback to the efforts to widen and strengthen the franchise, and, if I may, I would just like to go into that very briefly. It is a familiar argument, I am sure.

Already individual votes of individual citizens in the "safe" States have, on the average, votes which amount to about three times as great a voice in the presidential elections as individual votes in the larger States, and this imbalance is now compensated for in a rough but, I think, effective way by the unit rule.

The porportional division of electoral votes would eliminate this compensating factor and the relative importance of the safe States would become even greater. This was pointed out some years ago by Senator Taft who made a thorough study of it, and he concluded, I think correctly, that the proportional division of electoral votes of each State would only strengthen the grip of the predominant party in the same States and encourage restrictions rather than liberalization of the right to vote, and it would encourage, I think, the formation of splinter groups as I point out at some greater length in my statement.

In the district electoral plan which is proposed by Senator Mundt and others I think the effect of the proportional distribution becomes even more glaring. This scheme would retain the electoral system but would provide for electors in the same number and from comparable districts as Members of the House of Representatives with two additional electors corresponding to the two Senators from each State elected on a statewide basis.

A variation of this proposal was offered in 1955, and that proposal would have given each State legislature the chance or opportunity to choose either its district method or proportional distribution of the votes within each State. The then Senator Kennedy pointed out, and I agree with him and agreed with him then, that lumping together of two contradictory, incompatible schemes for counting electoral votes would enable the party in control of each State legislature to select every 4 years, which device would most benefit their party.

It is difficult, I think, to look on such schemes as anything but a wide-open scheme for gerrymandering and all that it connotes.

I recognize in the language most recently suggested by Senator Mundt and his cosponsors that there are words to attempt to take care of this. I think it would be largely unenforceable, and I don't think that it would be effective, frankly, for that purpose. I think it would freeze present inequities, and would constitute a real threat to our two-party system.

My provision, as I said, would provide for the votes of the States to be cast in a bloc, in each case for the candidate receiving the greatest number of popular votes in that State.

I would make this further change, that if neither of the major candidates received at least 35 percent of the whole number of electoral votes, it would be thrown into the House of Representatives as

it is now, with this difference, that, instead of one State, one vote, each Member would have a vote.

I think that the inequity of the present system needs no developing; it is so clear.

Senator KEFAUVER. Each Member of the House or each Member of the Congress?

Senator CASE. Each Member of the House, I think, Mr. Chairman. At least this seems to me to be a bit sounder and more representative of the country as a whole. And if you include the extra two votes of the Senators, it gives an added weighting, I think, to the smaller States which is not necessary for the election of a President of the whole United States, and is not desirable.

I filed a minority report that I mentioned earlier in regard to the Lodge-Gosset amendment in 1951, and I am grateful to the chairman for allowing me to include that report following my remarks in the record.

Five years ago that again came before the Congress, and I joined with the then Senator Kennedy in the defeat of it and the variations of it which were then proposed. The grounds for our opposition are as valid today as they were then.

Amending the Constitution is always a serious business, and very few of us are wise enough to see all the circumstances in which the amendment might have a significant effect. The changes that I propose are moderate, but I put them forward in confidence that they would strengthen the present system and would not run the risk of great permanent injury to our society and our form of government. This risk, I think, is involved possibly in the more radical proposals which the subcommittee is also considering.

Then there is this further matter, Mr. Chairman: I do think we ought to do something about this. I think it is terribly important we should. And I think that, in order to accomplish the really important objectives, we ought to make our proposals to the Congress, those which have a good chance of acceptance, and I think in my discussions with Members of the Congress over the years, with people concerned about this problem in the field of political science, and with just plain people, the changes I have proposed would meet with general acceptance, and that we could accomplish their incorporation in the Constitution quite readily.

Thank you very much, Mr. Chairman.

Senator KEFAUVER. Senator Case, as I understand the summary, you would abolish the electoral college but have each State entitled to the same number of electoral votes as it is now entitled to.

Senator CASE. That is right; computed in the same way.

Senator KEFAUVER. Computed in the same way. Then, you have a 35 percent requirement.

Senator CASE. For election of President, 35 percent of the electoral votes would have to be received. That is right. There are certain other refinements, of course.

If the number of popular votes in the State happen to be the same, it would be divided equally between the two candidates.

Senator KEFAUVER. If no one has 35 percent, then it would be thrown into the House of Representatives, and then every Member of the House would have a vote rather than on the unit basis?

Senator CASE. That is right.

Senator KEFAUVER. We thank you very much, Senator Case.

Senator CASE. Thank you again, Mr. Chairman. I know of your long interest in this, and I know the matter is in good hands in your committee.

(The document submitted by Senator Case of New Jersey follows:)

[H. Rept. 1199, 82d Cong., 1st sess.]

MINORITY VIEWS

The pending resolution (H.J. Res. 19) and its identical counterpart in the Senate (S.J. Res. 52), commonly known as the Lodge-Gossett resolution, proposes several changes in the provisions of the Constitution relating to the election of the President and Vice President of the United States.

With full recognition of the sincerity of its sponsors, it is submitted that the adoption of the resolution in its present form would be a most grievous error.

The resolution would make three relatively minor changes and one major change in our present electoral system. Two of the minor changes are desirable, the third is undesirable in its present form. The major change would have far-reaching and, quite likely, disastrous effects.

THE RELATIVELY MINOR CHANGES

1. The electoral college and the selection of individuals as electors would be abolished, but the assignment of electoral votes to the States on the present basis would be retained.[1] This is wholly desirable.

2. The people would be given, by constitutional right, a direct vote for presidential and vice presidential candidates. This also is wholly desirable.

3. The President and Vice President would be chosen by a simple plurality of electoral votes in place of the present majority requirement, and the present provision for election by the House of Representatives in the absence of an electoral majority would be eliminated.

This change has the desirable objective of avoiding the danger of an election being thrown into the House of Representatives under the present unit-vote rule by which each State has but one vote. But it presents another danger, though one somewhat more remote. If there should be a large field of candidates, persons might be elected President and Vice President who received a very small percentage, though a plurality, of the total electoral votes and only a minor fraction of the total popular votes.

This danger could be obviated by providing that if no candidate for President or Vice President should receive a substantial percentage, say 35 percent, of the total electoral votes the election would go into the House of Representatives, but with one vote for each Member of the House, rather than one vote for each State. An amendment embodying this suggestion will be offered.

THE MAJOR CHANGE

Under the Lodge-Gossett resolution the electoral votes of each State, which now, by State law or custom, are generally given in a block to the candidates receiving the greatest number of popular votes in that State, would be divided among all the candidates—in proportion to their popular votes within the State.

The major arguments urged in support of this change are—

1. That it would increase participation by the people generally in presidential elections, particularly in the "solid" States, and would encourage the effective extension to such States of the two-party system.

2. That it would eliminate the allegedly disproportionate power of minority groups in the so-called pivotal States.

3. That it would reduce the chances for the election as President and Vice President of candidates receiving a smaller number of popular votes than their opponents.

---

[1] Each State has a number of electoral votes equal to the number of Senators and Representatives to which the State is entitled in the Congress.

The first of these objectives is most desirable. But there is no assurance that it would be reached by the proposed amendment. Indeed it is believed that the amendment would be more likely to have the opposite effect, with many unfortunate consequences.

The validity of the second objective depends upon whether, in fact, minority groups in pivotal States now have an undue voice in presidential elections. It is suggested that they do not and that the proposed amendment in this respect would involve grave dangers to the continuance of our two-party system.

The third objective is, on the whole, desirable, though of relatively minor importance as demonstrated by election results under our present system. But the proposed change is at least as likely to enhance the possibility of the election as President and Vice President of persons receiving a smaller popular vote than their opponents as it is to reduce that possibility.

The proposed proportional division of electoral votes would be more likely to result in further restrictions of the franchise than in its liberalization. It would tend to strengthen the grip of the dominant party on the "solid" States.

The sponsors of the Lodge-Gossett resolution urge that in the "solid" or "safe" States there is no inducement for a minority party to campaign or for members of that party to vote in presidential elections since there is at present no possibility that any of the State's electoral votes will be cast for that party's candidates. It is claimed that if the electoral votes of such States were divided in proportion to the popular votes, the possibility of obtaining a part, however small, of the electoral votes of such States would stimulate campaigning by minority parties and participation in presidential elections by the members of such parties.

To the extent that the proposed amendment had this result its effect would be beneficial. But any such beneficial result would be far outweighed by the additional restrictions on the franchise in the "safe" States to which a proportional division of electoral votes would inevitably lead.

Individual voters in the "safe" States have, on the average, approximately three times as great a voice in presidential elections as individual voters in "larger" States. This imbalance is now compensated for, in a rough way, under the unit rule by which the entire electoral vote in the larger States goes to the candidates receiving a majority of the popular votes in those States.

Under the Lodge-Gossett proportional division of electoral votes, this compensating factor would be eliminated. The relative importance of the "safe" States would be greatly enhanced. The incentive to the dominant party in such States to keep them "safe" would be enormous.

It would be naive to suppose that in such States the dominant party would not do everything in its power to preserve its advantage, especially in those States where, by statute and by extralegal practices, the franchise is already severely restricted and great numbers of citizens are now in effect disenfranchised. It is too much to expect that the dominant party would voluntarily lift these restrictions and extend the franchise to those who might use it to threaten the political power of those now in control. On the contrary, there is every reason to expect that the dominant party would use its present power to insure the continuation of its control through legislation further restricting the franchise, and that extralegal restrictive practices would become more rather than less, severe.

Nor would the possibility of increased activity by minority parties be helpful in this situation. It is scarcely conceivable, for example, that the Republican Party could gain any substantial support among those persons who now have the privilege of the franchise in States of the solid South by a campaign urging the liberalization of the franchise and, in general, the extension of civil rights in that area. On the few occasions when the Republican candidates for President have carried one or more Southern States, it was not on the basis of such an appeal. For the foreseeable future, the only possible basis on which any outside party would hope to attract more than a negligible number of votes in the States where the franchise is now restricted would be to support, at least as strongly as the dominant party now supports, such restrictive laws and practices.

The probability that the proposed proportional division of electoral votes would result in further restrictions on the right to vote in presidential elections in the "safe" States could be avoided.

Under the Constitution as it now stands, each State has a number of electoral votes equal to the whole number of Senators and Representatives it is entitled to have in the Congress. Under the Lodge-Gossett resolution, each State would

continue to have that number of electoral votes. Each State has, of course, two Senators and the number of its Representatives is based upon its total population (excluding Indians not taxed).

Congress has never exercised its power, under the 14th amendment to reduce the representation of a State in the House of Representatives because of its denial of the franchise to its citizens and there is no prospect that it will ever do so. Accordingly, no matter how many citizens in a State are prevented, by law or practice, from voting in presidential elections, the State now suffers, and under the Lodge-Gossett resolution would suffer, no reduction in its electoral vote in such elections.

An amendment will be proposed on the floor by which, in any particular election, each State's electoral votes for President and Vice President would be reduced in the proportion that the number of persons actually voting is less than the total number of persons of voting age in that State. This change is desirable in itself, and a reform long overdue. It is an essential change, if the proportional division of electoral votes proposed by the Lodge-Gossett resolution should be adopted, in order to counter the inevitable tendency which would result from that resolution to restrict further the franchise in the "safe" or "solid" States.

It is recognized that the suggested amendment would make the adoption of the Lodge-Gossett resolution more difficult and might prevent the ratification of the proposed constitutional amendment by the necessary number of States. But it would be far better that the resolution should fail than that it should be adopted without that amendment.

Minority groups in pivotal States do not now have an undue influence in presidential elections or on national policy. Under the Lodge-Gossett proposal for proportional division of each State's electoral votes the major parties would tend to give less attention to the legitimate interests of minority groups and a dangerous weakening of the two-party system would result.

The necessity, under present electoral procedures, for both major parties to consider the legitimate interests of minority groups contributes importantly to the strength of the two-party system and to national unity.

It is true, of course, that minority groups, whether in the pivotal States or not, should not have an undue influence on national policy It is equally true that the legitimate interests of such groups should be fairly recognized, both as a matter of simple justice and in order that such groups may effectively be incorporated into the national community.

The importance of minority groups in the pivotal States now makes it necessary for both major parties to recognize the legitimate interests of such groups. Since this is so, most members of such groups feel no need to form special interest blocs or parties for their own protection and their radical elements are forced to moderate their more extreme demands. Thus, the creation of a number of special interest, splinter political parties from the many different racial, religious, and other minority groups in the country has been successfully avoided and the incorporation of the members of those groups into the life of the Nation has been successfully accomplished.

To the claim that undue consideration is given to these minority groups in pivotal States, it is a complete answer that neither major party could do this without losing the broad base of its support throughout the country as a whole.

It seems clear that some of those who advocate the Lodge-Gossett resolution do so, not because they want the major parties freed from the necessity to give undue recognition to minority groups, but because they wish the major parties to give such groups no recognition whatever.

The following excerpts have been taken from the material included in the record of the hearings on the Lodge-Gossett resolution:

From the Wichita Daily Times, November 28, 1948:

"Southerners in Congress, laying plans for quieting the loud voices of racial and labor minorities in the Democratic Party, have high hopes of putting the Gossett-Lodge constitutional amendment through Congress next year. * * * Southerners were the first to rally in large numbers behind the amendment following President Truman's civil rights recommendation. They argued that if the President had not felt he needed the Negro vote of Harlem, Chicago, and Philadelphia to win the huge electoral votes of New York, Illinois, and Pennsylvania, the message would have never been written. * * *"

From the Macon (Ga.) News, March 12, 1948:

"* * * Dividing a State's electoral vote on a basis of its popular vote would take from Walter White his ability to manipulate the votes of the mere 3 million Negroes living outside the South for a boasted control of 17 States and the Presidency."

From the Vernon (Tex.) Times, October 14, 1948:

"TO STOP CIVIL RIGHTS PROGRAM

"If the Republican Party succeeds in having the Gossett-Lodge resolution adopted and a constitutional amendment changing the method of counting electoral votes is ratified by the States, that will put an end to the bipartisan contest for Negro votes in pivotal States and eliminate the so-called civil rights issue from national politics. * * *"

Some persons have urged that the Lodge-Gossett resolution would tend to break down the two-party system because it would give a minor or splinter party the encouragement of actually receiving a few electoral votes for President and of the remote possibility of electing its own candidate if the field were very large. This argument does not seem to have much substance or present any real danger to the two-party system.

But the two-party system will inevitably break down if it ceases to be what it is. The essence of the two-party system is not that our major political parties are only two in number. The essence of the system is that our major political parties do not represent separate economic, social, sectional, religious, racial, or other groups. Neither major party excludes from its adherents any substantial element in the Nation. Both parties recognize and protect the legitimate interests of all such groups and elements. Under our system, the accommodations and adjustments which must be made between the conflicting interests of different groups in any nation if that nation is to remain free are made not between political parties but within the two major parties themselves.

There are only two alternatives to our system: a dictatorship, or a multiple, special-interest party system. There the adjustments are not made within the parties themselves, but those of different interests break away into small special-interest, splinter groups. Neither dictatorship nor the weak and shifting coalition of splinter groups is acceptable to us. We must make our system work.

Up to the present we have made our system work, except on one occasion. Because we have succeeded in this, one party can follow another in power without revolution—the people of the country all know that neither party is a threat to the vital interests of any particular group. The Civil War was the result of our single failure in the past.

We must continue to make our system work. We must avoid any step by which it would be weakened or impaired. And any constitutional change, whether in the letter of that document or in deep-rooted constitutional practices, which would tend to make the two major parties less sensitive to the legitimate interests and needs of any important group would be a long step toward the destruction of that system.

There is no assurance that the proposed amendment would reduce the chances for the election of a President and Vice President receiving fewer popular votes than their opponents: the opposite result is more likely.

In only two presidential elections since 1860 has our present electoral system resulted in the election of a President who received fewer popular votes than his nearest opponent. If the Lodge-Gossett resolution had been in effect during that period the opponents of these two individuals would have been the successful candidates. On the other hand, during the same period the operation of the Lodge-Gossett resolution would have resulted in the election of two other persons who received fewer popular votes than their opponents who, under the present system, were the successful candidates. So that, assuming no change in the voting habits of the people, the result would have been a standoff.

The proponents of the Lodge-Gossett resolution argue, of course, that under different rules we should have had a different result because of the greater activity of minority parties in the so-called safe States, and the greater interest of members of such parties in presidential elections. For the reasons given above, it is submitted that more restrictions, rather than fewer, would be placed upon the franchise in the safe States, that the safe States would be made even safer, and that future elections under the Lodge-Gossett resolution would be far less representative of the popular will than has been the case in the past under our present system.

CONCLUSION

It is most strongly recommended that the Lodge-Gossett resolution be amended so as to limit its effect to the following:

(1) The elimination of the electoral college, retaining the assignment of electoral votes to the States on the present basis.

(2) The granting to the people, as a constitutional right, of a direct vote for presidential and vice presidential candidates.

(3) The provision for the election of the President and Vice President by a simple plurality of electoral votes with the additional proviso that, if no candidate should receive 35 percent of the electoral votes, the election would go into the House of Representatives with one vote for each Member of the House, rather than one vote for each State.

The proposed division of each State's electoral votes in proportion to the popular vote in that State would cut deeply and, it is believed, dangerously into the fabric of our American institutions. It would result in further restriction of the franchise in the "safe" States. It would entrench even more firmly than at present one-party domination in those States. Lessening the necessity for attention by the two major parties to the legitimate interests of minority groups, it would dangerously weaken the two-party system. It would be a body blow to any effective program of civil rights.

It would be far better that this proposed change be not made. But if such a change should be contemplated, it should in no event be approved by the Congress unless there is added to it a provision that in each presidential election a State's electoral votes shall be reduced in the proportion that the popular vote at that election bears to the State's total population of voting age.

CLIFFORD P. CASE.

No responsible person will want to pass final judgment on this proposal without careful reading of two highly important articles:

"The Will of the People," by Carl Becker, appearing in the Yale Review for March 1945, vol. XXXIV, No. 3, reprinted at p. 329 of the transcript of the hearings before Subcommittee No. 1 of the House Committee on the Judiciary 82d Cong., 1st sess., on H.J. Res. 19; and

"Presidential Elections and the Constitution: A Comment on Proposed Amendment," by Herbert Wechsler, appearing in the American Bar Association Journal for March 1949, vol. 35, No. 3, reprinted at p. 319 of the transcript of the hearings before a subcommittee of the Senate Judiciary Committee, 83d Cong., 1st sess., on S.J. Res. 19.

○