

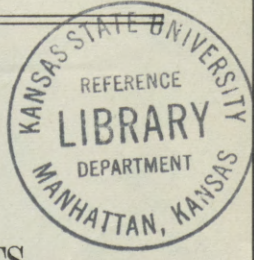
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NOMINATION AND ELECTION OF PRESIDENT
AND VICE PRESIDENT AND QUALIFICATIONS FOR VOTING

GOVERNMENT

Storage



HEARING
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

JULY 13, 1961

PART 3

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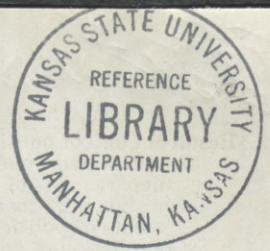
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NOMINATION AND ELECTION OF PRESIDENT AND VICE PRESIDENT AND QUALIFICATIONS FOR VOTING

THURSDAY, JULY 13, 1961

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

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 318, Old Senate Office Building, Senator Estes Kefauver (chairman of the subcommittee) presiding.

Present: Senators Kefauver and Keating.

Also present: Senator Javits.

James C. Kirby, Jr., counsel for the subcommittee.

Senator KEFAUVER. The committee will come to order.

I am glad that Senator Keating, a member of the subcommittee who is interested in a number of these constitutional amendments, and is the sponsor of several resolutions, could be with us. We expect other Senators to be here later.

Our first distinguished witness, Mr. John Bailey, was to be introduced this morning by Senator Dodd. Senator Dodd's administrative assistant, Jim Boyd, says that he is ill this morning and cannot be here. I know that he regrets it very much.

Senator KEATING. If the chairman would like to have me send for Senator Bush, I think he is in town.

Senator KEFAUVER. I am sure Mr. Bailey would be glad to have a complimentary word from Mr. Bush.

Mr. John Bailey, as we all know, is the chairman of the Democratic National Committee, and I feel that Mr. Bailey is very well qualified to give worthwhile views on these various resolutions because he is a distinguished lawyer, has a fine practice at Hartford, Conn., and is highly regarded as a constitutional lawyer.

In addition to that, Mr. Bailey has had practical experience as the national Democratic chairman and as the national committeeman for a number of years from the State of Connecticut where he was very successful as the Democratic leader.

So, with his experience, including personal experience in politics at its best in Connecticut, he would know what would be the effect of a number of these resolutions. I want to say also that I think Mr. Bailey is one of the very fine chairmen of one of our great political parties. He understands organization. He understands the value of clean, forceful politics, and he is one of our great political leaders at this time.

We appreciate your coming and being with us, Mr. Bailey. You may now proceed.

**STATEMENT OF JOHN M. BAILEY, CHAIRMAN, DEMOCRATIC
NATIONAL COMMITTEE**

Mr. BAILEY. Thank you, Mr. Chairman. Thank you, Senator.

I am pleased to have the opportunity to appear before this distinguished subcommittee and give my views on the subject of the ground rules governing our presidential elections. I am particularly appreciative of the kindness of the committee, and especially you, Senator Kefauver, in arranging a special date since I had to be away at the time of your regular hearings when I originally was scheduled.

I also am very much impressed by the fact that you have no less than 20 proposed constitutional amendments under consideration with, as near as I can make out, something like two-thirds of the Members of the Senate as sponsors or cosponsors of one or more of these proposals. This indicates the importance of these proposals and the keen interest in them.

As I see it, the proposed amendments before you fall into two different groups:

The first group deals with eligibility for voting. The second with the specific process by which Presidents are nominated and elected.

I would like to deal with each of these groups separately.

In the first category are proposals to eliminate the poll tax and property qualifications for voting in Federal elections; authorization of 18-year-old voting; prohibition of excessive residence requirements; and simplification of absentee ballot requirements.

First, I would like to go on record as supporting all of the changes designed to reduce restrictions on voting. Without going into details of specific constitutional language, I feel that it is unworthy of our great country that only 64.7 percent of our total population of voting age participated in the 1960 presidential election and that in some States it was as low as 25.6 percent.

I firmly believe that if anything can be done, and everything that can possibly be done, to make it possible for everybody to vote, we should do it.

Now this isn't any one-area question. I mean in my own State of Connecticut it is very difficult for a person to become a voter. We have constitutional requirements, first that they have to read part of the Constitution in the English language; secondly, that they have to be brought to the townhall because voters can only be made by a majority of the members of the board of selectmen in the town, with the result being that you can't have it meeting in various places with one member, or you can't delegate the authority. There has got to be—there are three selectmen. Two of them have got to be present at one place, and the people have to present themselves at that place, whether in a town the size of Union, with 200 voters, or the city of Hartford where there are some 85,000 or 90,000 voters.

Senator KEFAUVER. I didn't understand that, Mr. Bailey. You mean when a voter registers there have to be two selectmen?

Mr. BAILEY. There have to be two selectmen present. They are the ones, in our language, that make him a voter, give him the reading test. They have to be physically present, and he has to be physically present, too.

Senator KEFAUVER. Well, do they actually go through the process of requiring him to read part of the Constitution?

Mr. BAILEY. Yes; they do.

Senator KEFAUVER. In English?

Mr. BAILEY. In English. That is in our constitution, that the Constitution has to be read in English.

Senator KEFAUVER. The State's constitution, you mean, or the U.S. Constitution?

Mr. BAILEY. The State constitution.

Senator KEFAUVER. What if a person speaks Spanish and doesn't speak English?

Mr. BAILEY. They have to read it in English.

Senator KEFAUVER. I believe New York did have some law like that. Has that been changed?

Senator KEATING. We have a State educational requirement which requires an understanding of the English language. The test given does not require any great ability, but it does require a knowledge of the English language.

Mr. BAILEY. And we have another problem, Senator, which we are trying to straighten out up there. At the present time if you live in Hartford and you are made a voter in Hartford and then vote for 25 years in Hartford and then you move to West Hartford, you then have to go through the whole procedure again. Once you move across a town line.

Senator KEATING. Well, that is much more stringent than New York. Once you are a qualified voter, you are always a voter, although you may have to register again if you move into another election district.

Mr. BAILEY. We have to make them again.

So I say these requirements are not only in one section; they are all over the country. Whether or not they can be straightened out federally is another question. I mean the States are very jealous of their prerogative of the making of voters.

Senator KEFAUVER. What is the residence requirement for voting in Connecticut?

Mr. BAILEY. One year.

Senator KEFAUVER. And if you move from one county to another is there any requirement—

Mr. BAILEY. Sixty days. And we have it by towns, Senator. I mean not counties. We have 169 towns, and that is the unit; not counties.

Senator KEFAUVER. So your voting unit is the township?

Mr. BAILEY. It is the township, of which—

Senator KEFAUVER. When you move from one township to another you have to be there 60 days.

Mr. BAILEY. Except for a State election. You can go back and vote. If you haven't moved within 6 months you can go back and vote, but if you live longer than 6 months you have got to be made over again in order to vote in that town.

Senator KEFAUVER. How about a presidential election?

Mr. BAILEY. Same thing. Part of this was simple neglect on the part of voters which no law can cure. But certainly in millions of cases complex and burdensome tax, qualification, residence, and other requirements kept people from voting who otherwise would have done so. These obstacles should be eliminated insofar as possible so

that the United States can at least begin to approach the record of other democratic countries where a far higher percentage of people participate in elections.

On the poll tax issue the position of the Democratic Party is particularly strong. Our 1960 platform pledged us to—

support whatever action is necessary to eliminate * * * the payment of poll taxes as a requirement for voting.

I am convinced that these archaic taxes serve no useful present function. They introduce a minor but irritating barrier to full voter participation in elections, and facilitate undesirable political practices in some areas.

I am convinced that most leaders, even in the States that have them, would be glad to see them disappear, but local action to eliminate them presents real political problems. A constitutional amendment for this purpose would seem to be the best answer all around. The same reasoning applies to other restrictions on voting eligibility.

Senator KEFAUVER. Mr. Bailey, do you want to finish all your statement and then let us then ask some questions, or shall we do it as we go along?

Mr. BAILEY. You can do it either way. You can interrupt me at any time.

Senator KEFAUVER. Well, I understand then that the resolutions we have before us to eliminate the poll tax, one of which is sponsored by Senator Holland of Florida and a large number of cosponsors, the other of which is sponsored by Senator Clark from Pennsylvania with a number of cosponsors, is part of the legislative program of the administration?

Mr. BAILEY. Our party in the conventions—

What I quoted to you is in our 1960 platform. The platform reads: support whatever action is necessary to eliminate * * * the payment of poll taxes as a requirement for voting.

Senator KEATING. Well, the platform went further than that, didn't it?

Mr. BAILEY. I just quoted that part of it.

Senator KEATING. I see.

Senator KEFAUVER. Well, while we are on the subject, Senator Keating has a resolution, and I have one, in connection with eliminating the restrictions on voting by virtue of moving from one State to another. There are so many voters that find they can't vote in that State they have left, and haven't been in the new State long enough to qualify, and you are in favor of doing something about that.

Mr. BAILEY. I am in favor of doing that. I can see some practical problems. I mean that they would have to at least get a certificate and file it with the town clerk or whatever it was from their other State that they were a voter in that State. I just don't think that you can practically work it out that they can just walk down and vote. There have got to be some preliminary steps taken by the voter. In other words, if you moved from Tennessee to Connecticut you would file in the town clerk's office in Hartford a certificate, an affidavit from your voting residence in Tennessee that you were a voter in Tennessee and would be eligible to vote in the presidential election.

Senator KEATING. And also it may be necessary to make separate provision for voting for local officers. I assume that we would be

hesitant to do away with some minimum requirement in the case of strictly local officers.

Mr. BAILEY. And this is my own personal opinion: I think it would be perfectly proper that they could vote for President, but I still say that as for local offices you should have a certain period in the State to know what the issues are and to be part of the State.

Senator KEATING. I think that is a reasonable position.

Mr. BAILEY. But the President runs in every State and—

Senator KEATING. I am told there are upward of 5 million people disenfranchised because they moved from one State to another within a certain period and were not able to establish a residence in the new community to which they were moving. In all, there were 19 million eligible voters that didn't vote, but these 5 million, roughly, wanted to vote and couldn't vote only because they hadn't lived in the new area long enough.

Now, certainly, they were as well equipped to know who they wanted to vote for for President and Vice President after they moved as before they moved.

Mr. BAILEY. And you would have to have a special ballot for them.

Senator KEATING. That is probably so.

Mr. BAILEY. Because with the other candidates, the local candidates, members of the general assembly and the rest, if they were all on the same ballot they wouldn't be eligible to vote for them. So you would have to have a special ballot prepared for them, and I would suggest that they would have to be on a special list and then be given a special ballot.

Now, of course, in our State I think we have to either set up a machine for them, because we do all our voting on machines, or have a separate paper ballot which would then be cast onto the machine as we do in some cases in absentee ballots. But I think it can be worked out.

I agree, Senator, that something should be worked out in a presidential election for these people who are voters—and I think that is the important thing, Senator, that they are a voter somewhere.

Now, if they had failed to become a voter in Tennessee and then came into Connecticut, I don't think they should have voted there if they hadn't been made in Tennessee.

Senator KEFAUVER. It would be some trouble to work it out, but it is certainly worth doing.

Mr. BAILEY. Yes, sir. I mean the mechanical and practical aspects of it would take some working out, but I think it is worthwhile. I don't think it is an insurmountable proposition. You would find objection by those people who are running the election machinery, that it was perhaps more trouble to them, but I think they should be made to go to that trouble.

Senator KEFAUVER. All right, sir.

Mr. BAILEY. Now as regards the 18-year-old vote, it seems to me that young people are showing a growing and intelligent interest in politics. I have noted in going around, as I know you have, Senator, that often when you have press conferences of young people, high school editors and the rest, you find they have a great comprehension of the issues, and they often ask the most piercing questions, and I think that we should give the 18-year-olds the right to vote.

The people who have sense enough to be entrusted with a vote at 21 are just as likely to be able to vote sensibly at age 18.

However, it seems to me that it might be preferable to let this matter continue to rest with the individual States rather than attempt to impose it simultaneously through a constitutional amendment.

I am for it, but I think this is a matter that should be left to the judgement of the State.

Senator KEFAUVER. Mr. Bailey, I know you have had great experience with young people in Connecticut where you were the State Democratic leader for many years, and you are well qualified to give your impression of their capacity for voting. You have also met them throughout the Nation. Is it your feeling that the average young person at 18 knows the issues, has enough judgment to cast a responsible vote?

Mr. BAILEY. Yes; I do. I will tell you one of the reasons why I believe it.

I am a great believer in high school votes. In Connecticut the schools have done quite a job, especially in presidential and State elections, in having high school polls. What they do in many places is a day or two before election they have a regular voting machine in the school, and they have the students vote on the voting machine, and, surprisingly, or not surprisingly, this result follows usually the pattern of election day which takes place a couple of days later.

I am a great believer in analyzing the results of these high school polls.

Senator KEATING. I am, too. They are apt to reflect the views of their parents. As they get a little older they don't so much, but in the elementary or secondary schools, if you have a poll that shows you are in bad shape ahead of the election, you had better start worrying.

Mr. BAILEY. I agree with you, Senator.

Senator KEATING. Because it is a strange thing how closely they come to the actual vote. That has been my experience.

Mr. BAILEY. But I think also, Senator, the fact is that with television having much more prominence than it ever did before, the young men and women of 17 and 18 are more cognizant of the issues and of the personalities and what is going on in a campaign.

I am very frank to say that I would be perfectly willing to see that they had the right, but, as I say, I think it should remain for the State to decide.

Now I am going to leave the question of voting requirements. So, unless you have any other questions you would like to ask me at this time, I am going into methods of nominating and electing the President.

My judgment is that the present system, for all its obvious shortcomings, is probably more satisfactory on the whole than any of the suggested alternatives. It has served us well over many years, and most of the flaws which have been pointed out are, I think, more theoretical than real.

Starting with the nominating process, the idea of finding some alternative to our longstanding convention system has been advocated for many years. Proposals for a direct national primary have been made regularly at least since 1912.

I think Senator Kefauver, who has run along the campaign trail—and I followed it a little bit last year—the fact of a national primary and then a national election following would not only wear out the potential candidates but it would wear out the parties, the individuals who make up the parties, and I think it would be not only tremendously expensive to the political parties but to the taxpayer. I think we have 168,000 voting precincts in this country, and if we had a national primary they would all have to be manned. The towns, States would have to pay the expense. That expense would have to be paid. And unless you could get all the primaries, I mean the State primaries and national primary and everything on the same day, I think things would be much worse off.

In our State again—and here I get personal—our delegates are elected in a State convention. The election of delegates to the national convention is the one thing in which there is no primary at all. Our delegates to our State convention are elected by primary, but the convention, our State convention, assembles and then elects the delegates to the national convention, and I frankly believe that our convention system has come up with good men, and I firmly believe that this we should do.

I don't think it is practical to try a national primary. You know, Senator. You went through—how many States is it that you went through?

Now if you had the 50 States—

Senator KEFAUVER. Well, Mr. Bailey, my impression is that it would be a whole lot easier on the candidate to run in one nationwide primary on the same day than it would be to go from one to the other, one this week and another next week in another State, over a period of 2 or 3 months.

Mr. BAILEY. Wait a minute, Senator.

Senator KEFAUVER. I know in your case Mr. Kennedy ran first in New Hampshire—so there he had to give his all up there, and then he went out to Wisconsin—

Mr. BAILEY. Then West Virginia and Maryland.

Senator KEFAUVER. And Nebraska also.

Mr. BAILEY. Indiana, Oregon.

Senator KEFAUVER. So that having a nationwide primary you just wear yourself out once.

Mr. BAILEY. Wait a minute, Senator. But how long would you be wearing yourself out? You would be in New York, out to California, the bases of large votes. You would be going around. I mean you would get yourself involved in a long campaign for the primary. That was my thought.

Senator KEFAUVER. I believe New Hampshire used to have the first primary. Maybe some other State has the first one now.

Mr. BAILEY. They have the first preferential primary in March.

Senator KEFAUVER. I thought it was in February.

Mr. BAILEY. In March.

Senator KEFAUVER. They have changed the date of it.

Senator KEATING. You wouldn't have to go to New Hampshire. You have got them solid anyway.

Senator KEFAUVER. It was very pleasant going up there. It's a beautiful State.

Anyway, as the matter now stands, primaries run from approximately the 1st of March until about the 10th of June, which is California. So, on the present basis, if you go into a lot of primaries as I have on two occasions you are running very hard over a period of about 3 months, 4 months.

Mr. BAILEY. But, Senator, suppose you had one, only one primary. When would you start?

Senator KEFAUVER. Well—

Mr. BAILEY. Wouldn't you start 4 months before that date?

Senator KEATING. When your opponent started.

Senator KEFAUVER. When did Mr. Kennedy start? His last one?

Mr. BAILEY. 1956.

Senator KEFAUVER. That is right. He did start in 1956. I was there when he started.

Mr. BAILEY. So was I.

Senator KEFAUVER. If you have a nationwide primary, getting on these TV programs, "Meet the Press" and other programs, you have a chance to get your message over to the entire Nation. The operators of these feel that it is hard to justify having to go on a program when you are only entered in three or four primaries. But they would be more interested in giving you time if there were one great national primary on the same day.

Mr. BAILEY. I might ask Senator Keating—I mean in New York State it would be quite an expensive operation to have a national primary in New York State.

Senator KEATING. Yes, it would; no question about it. It would be very expensive.

Mr. BAILEY. And then we would have to do it all over again in 2 or 3 months for election day.

Senator KEATING. For the election. It would involve a very large expense throughout the Nation. I don't favor a presidential primary. That is one of the minor reasons why I don't. I don't think the candidates can go through, as you said, two such grueling efforts in the same year. You would have nobody able to run for President except a prizefighter or prime athlete in top condition.

We place a lot of stress on physical fitness and properly so for our Chief Executive, but we don't want to just elect musclemen to be President of the United States.

Please don't for one moment think I am referring to my distinguished chairman, whose fortitude and endurance are a legend around the Capitol and throughout the Nation, and I am not in any way detracting from his future plans or intending to, because if we are going to have a Democratic President I couldn't think of anyone any better than my colleague on this committee.

But I still think there are many able men that just wouldn't think they could go through it. And I have heard that expressed by other Democratic candidates.

Senator KEFAUVER. Well, Senator Keating, we had the electrical price-fixing hearings here not long ago and we heard a lot about pleas of nolo contendere. That is what I plead now.

Senator KEATING. All right.

Senator KEFAUVER. But talking about the grueling process of primary elections, a convention is a very grueling 7 or 8 days also.

Senator KEATING. It doesn't last so long.

Senator KEFAUVER. From my own experience I think a convention is a rougher ordeal than a State or even nationwide primary. Of course, it depends on how it turns out, I grant you. But for Mr. Bailey, his turned out all right. So maybe it wasn't so grueling.

Mr. BAILEY. Well, turning to the election process itself, it is true that the present system tends to give extraordinary weight in choosing the President to certain groups in the population, specifically large urban areas. Yet this is part of an overall system of checks and balances in which voting for the House and Senate, for example, is weighted in the other direction.

When we have such a delicately balanced mechanism which on the whole has worked well, I don't think we should tinker around with it. I don't think we should just be for change for the sake of change.

One point which strengthens my feeling that the present system is adequate is the fact that it has always been and is today open to any State on its own initiative to shift either to the proportional or district systems of allocating its electoral votes. Yet not since 1892 has any State chosen to do so.

I realize that the change might be easier to make if all States did so at the same time, but if the alternatives had real value, it seems to me that some individual States would have at least tried them somewhere along the line.

One change in the election system I would endorse is the proposal to eliminate the nominal freedom of choice of electors who are chosen on a party ticket. This loophole provides a possibility of deviation from the expressed will of the electorate that might be highly dangerous in a close election. I feel very strongly on this.

Senator KEFAUVER. Just a minute. Senator Javits is now here with us, and we will be glad to have Senator Javits join us at the committee table.

This hearing this morning may be getting out of balance. We need another Democrat here.

Mr. BAILEY. I am sure I will let my fate rest in your hands and I will be well protected.

Senator KEFAUVER. All right, Mr. Bailey.

Mr. BAILEY. I feel that when presidential elections are held and the people vote for A or B, they express their wish that the electors who were chosen in various manners in the various States should be bound to vote for the person for whom the people of the State cast the majority of their ballots. I know in our State we select the presidential electors at a State convention, and they are then nominated, and they are the presidential electors and they get together, and I don't think anybody in our State feels that they should do anything else.

Senator KEFAUVER. Well, when they are selected, are they pledged to any particular candidate?

Mr. BAILEY. No. They are chosen by the Democratic convention.

Senator KEFAUVER. I mean do you attempt to bind them or do you have it in the law that they are bound to vote for—

Mr. BAILEY. No. I think it should be.

Senator KEFAUVER. When President Kennedy was a Senator in the 85th Congress, he was the sponsor of a resolution which would

eliminate the electors and also change the method of selecting a President in the event there were a contest. Instead of each State having one vote in the House of Representatives, let the contest be settled by the House and the Senate in joint session.

Mr. BAILEY. I am in favor of that, too. I have it in my statement that I think they should vote in Congress as the State is represented, that I don't think New York should have one vote and Hawaii or Alaska should have one in the selection of the President. I think they should vote in the same proportion as they are in the college.

In the 1960 election, for example, a shift of less than 18,000 votes in Illinois, Minnesota, and Hawaii, for example, would have produced an electoral vote count of Kennedy, 262; Nixon, 261; unpledged, 14. Imagine the temptations and the pressures on each elector or the confusion that could have followed the death or disability of a few electors.

If it is agreed that the nominal freedom of choice of electors should be eliminated, there is still the question of whether this should be done by abolishing the electoral college entirely or by continuing it in an almost purely ceremonial role. On balance I would prefer the second alternative. The position of elector provides an honorary role for people who devote themselves to making our political system work, and our society has too few such rewards.

Finally, I can conceive of some possible circumstances in which it might be necessary in the national interest to have the electors available to act in their original constitutional capacity—the death or disability of a candidate in circumstances where it was not possible for the party to choose a successor, for example.

Another change I would recommend is in the provision by which each State has only one vote—this is what you mentioned—in the event that a presidential election has to be decided by the House of Representatives. This completely changes the balance of voting power reflected in the basic presidential election process. Alaska, for example, with 60,000 voters would have the same weight as New York with over 7 million. This seems to me to be undemocratic and should be changed so that each Member of Congress would have a vote, perhaps gathered in a joint session.

If this committee can put together a constitutional amendment package containing the changes I have mentioned, it will be doing a great service to our country. Such an amendment would, I am sure, have the overwhelming support of the Democratic Party.

Thank you again for the opportunity to appear before you and express my views.

I deviated in a number of places and answered questions, but I am ready if there are any other questions.

Senator KEFAUVER. Thank you for a very helpful statement, Mr. Bailey, and for your expression on these resolutions that you have referred to.

You have not mentioned in your statement the two types of proposals we have here.

Mr. BAILEY. Which two?

Senator KEFAUVER. One is the so-called proportional allocation of presidential votes under what we used to refer to as the Lodge-

Gosset proposal. The other is the district system which is in Senator Mundt's resolution.

Mr. BAILEY. I very frankly thought when I said I was in favor of the present system that that took care of the situation. I feel very much that the States should vote in the same manner as they do today. In other words, if we carry Connecticut we carry it. If somebody carries New York or Pennsylvania he carries it. I am not in favor of any change, the proportional change where you get so many votes and you get such a proportion that if it is 50-49, you get 50-49 of the electoral college votes. No. I am very much in favor of keeping it exactly as it is.

Senator KEATING. May I ask a question on that, Mr. Chairman.

Senator Mansfield and I are cosponsoring a resolution to abolish the electoral college and bring about the principle of one American, one vote. Would you be opposed to the abolition of the college as well as to a change in it?

Mr. BAILEY. Well, speaking personally again, I feel that the system is good as it is, as we have gone along.

Senator KEATING. Good for whom? The Democratic Party or the people?

Mr. BAILEY. I think it is good for America.

Senator KEFAUVER. Well, that is synonymous.

Senator KEATING. Well, 50 percent of the people might disagree with you.

Mr. BAILEY. 50.3 or 50.2.

Senator KEATING. Was it not up to 50.1?

Mr. BAILEY. But it was over 50.

Senator KEATING. Well, there is a question about that. It depends on how you count these Alabama fellows and the Oklahoma people. I have heard testimony that Mr. Nixon got more votes than Mr. Kennedy.

Anyway, roughly half the people voted one way and half the other. I am not at all sure that I would favor any of these changes if the institution is kept. I don't think any of the changes in the electoral system short of abolition will make much difference.

It is interesting that under this change whereby we would vote by electoral districts, which might or might not be contiguous with the congressional districts, if that had been the system in that last election Mr. Nixon would have been elected. That is the proposal put forth sincerely by several Senators of both parties as the best method of electing a President.

I don't think that a result should be brought about that elects a minority President. The principle behind the proposal of Senator Mansfield and myself is that every American's vote should have equal and direct weight.

Would it be fair to say that as between a change in the electoral college and abolition of the electoral college, you would favor abolition?

Mr. BAILEY. That is right.

Senator KEFAUVER. Well, you don't mean by that that you would favor the nationwide popular election for President?

Mr. BAILEY. No, I do not. I am in favor of the exact situation as of today. Whether the abolition of the electoral college would do

that, you just don't have those individuals cast the vote. When the vote in your State or my State was decided under the present system and that was then certified, say, by the secretary of state to Washington, that would be final. When I said the abolishment I meant of the human beings that make up and gather in your State capital on the 15th of December and go through the ceremony of casting the votes.

Senator KEFAUVER. In other words, what you are in favor would be electoral votes certified by the secretary of state, rather than electors.

Mr. BAILEY. Yes; if there was to be a change.

Senator KEFAUVER. Mr. Bailey, Senator Keating referred to the fact that under the so-called Mundt-Coudert plan that if people voted the same as they did under the present plan, there might have been a different result. But, of course, if some other method had been in operation you wouldn't run your campaign the same way, would you?

Mr. BAILEY. It is an awfully easy—

Senator KEATING. To be fair, before you answer that, the result which I have mentioned presupposes that the electoral districts would be contiguous with the present congressional districts, which, of course, is not provided. But if you do not do that, then you run into terribly complicated problems over how you set up an electoral district different from a congressional district. But, of course, what the Senator says is true. I agree.

Mr. BAILEY. I think it is easy to sit back after an election and figure out various ways of what could have happened, but we were operating under a certain set of rules. The campaign was run with that set of rules. And that was the way it was handled. And, as the Senator said, it could very well be if you had a different set of rules that you were operating under, your modus operandi might well be different.

Senator KEATING. That is true, and I want to point out that I made the point because I don't think in this election that Mr. Nixon should have been elected if a majority of the people didn't vote for him.

What I was pointing out is the fact that those who advocate the so-called Mundt-Coudert plan have not devised a plan which is any better suited to represent the will of the majority of the people than our present system. Under our present system we have had two, I believe, minority Presidents.

It is possible under this system for a President to be elected who does not get a majority vote, but that is the inherent vice, it seems to me, in all of these plans.

I think we might as well leave it as it is than to tinker with any of these other proposed changes.

Senator KEFAUVER. Mr. Bailey, if the proportional system went into effect, a more intense campaign, I expect, would have been put on in the States you felt safe for the Democrats, and in any event, in the States you felt were going to go Republican. Would that be the case? In other words, you wouldn't mark off some States and say there is no use in campaigning here because we can't win the State, anyway.

Senator KEATING. Did you do that last times? If so, I would be interested to know which States those were.

Mr. BAILEY. We were trying in all of them, Senator.

Senator KEFAUVER. Well, as a practical matter, can you tell us, as the very successful chairman of the Democratic Party—and I suppose the same might apply, I am sure the same would apply to the Republican Party—sometime before the election don't you figure where you have a chance and where you have the best chance and devote your major efforts there.

Mr. BAILEY. Well, obviously there were certain States in which we knew we had a better chance than we did in others, and there were also those in which you felt it could go either way and you tried to divide (a) your time and (b) your effort in those States where, with a little more effort, you might win it and those States where you felt it would take an awful lot of effort to win it. And on the other side are those which you felt that you had a better than even chance to win.

Senator KEFAUVER. Well, of course, it hasn't been so true in recent elections, but ordinarily certain southern States were predominantly Democratic so that under the present system there is not much use in putting on an intense campaign in some of them, from the Democratic viewpoint or from the Republican viewpoint either. The same might be true of Vermont—but it is kind of hard to think of a State that we could just concede outright to the Republicans because we have a good fighting chance in all of them.

Senator KEATING. So do we.

Mr. BAILEY. In 1958 we elected a Congressman at large in Vermont. So there is—

Senator KEATING. Except he didn't last long. That was just a temporary mistake.

Mr. BAILEY. Those have happened in many places, Senator, on both sides.

Senator KEATING. Oh, yes.

Senator KEFAUVER. Is there anything else?

Mr. Kirby, do you want to ask Mr. Bailey any questions?

Mr. KIRBY. No, thank you, Mr. Chairman.

Senator KEATING. Let me look over my notes. No, I have nothing else. Thank you, Mr. Chairman.

Senator KEFAUVER. Well, Mr. Bailey, I want to express our appreciation for your coming to be with us today.

Mr. BAILEY. Thank you for inviting me.

Senator KEFAUVER. I want to say on the whole—and I am sure Senator Keating would join me—that it makes us feel better about our country and our Democratic Party to have a man of such high character and good ability and fine outlook for public affairs, as the chairman of the Democratic National Committee.

Mr. BAILEY. Thank you, Senator.

Senator KEATING. Now I want to know just how far the chairman expects me to go with that statement.

I can go along with part of it. I feel that Mr. Bailey is an extremely capable head of the Democratic Party, and he has made a real contribution to our discussions here this morning, and I want to express my gratitude to him for taking time from what I know is his busy life to come and give us the benefit of his views. I think that is probably as far as I ought to be bound by these proceedings, don't you think, Mr. Chairman.

Senator KEFAUVER. Well, that is put very well; better than I expected.

All right, we will proceed now with Congressman Miller.

As chairman of this committee, I wish to express the committee's appreciation to you, Congressman Miller, for coming and being with us today. You are the able chairman of the Republican National Committee. We know that your views will be very beneficial to those who are interested in these resolutions, and I want to wish you the best in everything except success in your project of winning elections.

Senator JAVITS is with us. He has to go to another committee where they are marking up a bill that he is interested in, and he wants to say a word of introduction at this point.

Senator JAVITS. Mr. Chairman, thank you very much.

I want to join my colleague Senator Keating in especially welcoming our new national chairman on a significant occasion when he testifies before a Senate committee on a subject peculiarly within his line as our national chairman.

We are very proud of Bill Miller in New York. I know he is in extremely capable hands here. He will give an excellent account of himself. I just wanted to show my respect by appearing this morning.

Senator KEFAUVER. Thank you very much, Senator Javits.

Senator KEATING. And I am sure you want to join me, Senator Javits, in also welcoming here the Democratic national chairman. I think that both of these respective chairmen are able to contribute a great deal in these hearings. We are delighted to have them here.

Mr. MILLER. Thank you very much.

Senator JAVITS. May I say I don't think I have ever been found lacking in bipartisanship.

Senator KEATING. I would just like to add a word of introduction to what Senator Javits has said.

Congressman Miller, with whom I served in the House, not only has great political acumen, and I am sure will do a fine job for the Republican National Committee, but he also is a distinguished lawyer. He had a fine record as a lawyer prior to coming to Congress. He was for some time a prosecutor, so that he is well aware of how to ferret out and convict those who are guilty of vote fraud in either party and to stamp out any such possibilities in the Republican Party.

He is vigorous, dynamic, tireless. He may not be what would be termed a "muscleman," but he is very wiry and he is one I can think of that could probably go through two election campaigns in one year and still come up smiling and in his usual fine fettle.

I am delighted to have him come over here. I know he and Mr. Bailey are very busy, and I am sure he will be helpful to our committee.

Senator KEFAUVER. Thank you, Senator Keating.

Congressman Miller, do you have a prepared statement?

STATEMENT OF WILLIAM E. MILLER, CHAIRMAN, REPUBLICAN NATIONAL COMMITTEE

Mr. MILLER. Yes, I do, Mr. Chairman; a short one.

First, I want to thank you, Senator Kefauver and the members of your committee, for giving me this opportunity to appear before the committee and express my views on this important matter of electoral

college reforms among other things. And I also, Senator Keating, want to thank you for your very kind remarks.

There is no doubt whatsoever in my mind that existing procedures for electing the President and Vice President of the United States are outmoded and require revision by constitutional amendment.

Among my colleagues in the Congress there is a considerable agreement on this score, but a variety of thoughts about what should be done. The issue here, in my opinion, is not one that calls for anything so drastic as the abandonment of the electoral college itself. Rather, it seems to be one of demanding frank recognition of certain inequities in the system and carefully considered action to eliminate them without disturbing due emphasis on the strength of the two-party system.

As I see it, it is not the use of electors to select a President that is the root of our problem but how they are chosen.

In a nation where self-determination is the theme it seems illogical and unfair representation to select electors on a statewide basis. This creates a disparity of voting power among the citizenry, particularly in the case of small versus large States and rural communities versus big cities.

The major requirement then is to find some workable and generally acceptable means to provide an equality of representation that would make the voter's voice more directly applicable to the final decision. In this task I think there can be a meeting of the minds if we keep our attention focused on the interest of the Nation as a whole.

As we come to grips with the problem I believe we should be keenly aware of the pitfalls to be encountered if we yield to hastily contrived alternatives. One of these would be the proposal to recognize the principle of proportional representation. This not only would destroy the two-party system but undermine the strength of our National Government and encourage splinter parties that have caused so much chaos abroad.

It is not in the spirit of America to embrace proportional representation. May I add that it was tried in New York City with disastrous results. Resistance to this is neither undemocratic nor un-American. It is merely horsensense, if you like—protecting one's self from needless encouragement of undesirables in the body politic.

Studies show us that under proportional arrangement of the electoral college vote the strong possibility exists that we would and could have a succession of minority Presidents.

The question is what then should we do? How can we best meet the valid objections to the present electoral college system?

As a practical politician and as a citizen who believes in a fair shake for all the voters, I am interested in a proposal advanced by Senator Karl Mundt and others. It seems to have possibilities. It seems to promise something far better than what we have now.

As you know, at present we allow the legislatures a free hand in the method of appointing presidential electors. What we have is the so-called general ticket system on a winner-take-all basis. This, I think, is wrong. We can do better than this. We can make the individual voter's voice more directly applicable to the final decision.

Senate Joint Resolution 12, the Mundt bill, or district plan, prescribes that each State shall choose a number of electors of President and Vice President equal to the whole number of Senators and Repre-

sentatives to which the State may be entitled in the Congress. The presidential electors in each State who correspond to Members of the House of Representatives would be elected by the people in a single elector district established by the legislators. These districts as far as possible would be composed of compact and contiguous territory containing approximately the number of persons which entitles the State to one Representative in Congress.

Only the two presidential electors who correspond to each State's two U.S. Senators would continue to be elected statewide.

The other major change proposed would permit a joint session of the House and Senate to choose the President in the event no candidate won a majority of the electoral votes. Currently this function is left to the House.

The simplicity of this plan appeals to me and I think its benefits far outweigh any flaws it may have. It would at once make it possible, for all States to operate in the same manner, discriminating against none. Obviously we cannot expect the separate States to voluntarily abandon the general ticket system. If this is to be done it must be accomplished, I believe, at the Federal level.

It is my firm belief that this question of national electoral reform needs to be answered in the near future. When it is clear that there are flaws in the present system partisan considerations should be forgotten as we work together to find the solution that is best for America.

Now, Senator, I did not include in my prepared statement, but I would like to make a comment on, the other matters which I now understand your committee is considering.

Senator KEFAUVER. Yes, we wish you would.

Mr. MILLER. In the first place, there is the question of 18-year-olds voting. Although it was rather disastrous in the last election when our candidate saw fit to agree too often with the Democratic candidate, I must find myself in agreement with the Democratic National Chairman. I wholeheartedly agree that we should support the proposition of granting the franchise to 18-year-olds. I think in this day and age, in 1961, the level of education in our country has risen considerably, that among 18-year-olds we have a group of Americans well educated, interested in the problems of our country and of free men everywhere.

I think that right now particularly when there is some discussion of the possible calling up of the National Guard and the Ready Reserve, all of these people are the ones most vitally affected, and I certainly think when their Government has such vast control over their actions and their lives and their destinies that they ought to be given the opportunity to select their national leaders.

Senator KEFAUVER. Congressman Miller, do you feel that should be done by constitutional amendment or, as Mr. Bailey prefers, to urge the States to act individually on the matter?

Mr. MILLER. I am not wedded to either approach. I am in favor of that proposition. I am in favor of granting the vote to 18-year-olds.

If you leave it to the States, of course, as there are variances now in the election laws of various States, it could well result, of course, that in some States 18-year-olds could vote, and in others they couldn't.

Just as, of course, there are differences existing today in various States as to voting qualifications.

But I am so enthusiastic about this proposition that I would rather prefer it to be done as a constitutional amendment at the national level because I think then all 18-year-olds in all States would immediately and simultaneously be granted the privilege to vote. I am in favor of it.

On the question of the poll tax—

Senator KEATING. May I just interrupt on the 18-year-olds.

Ever since it was first proposed by President Eisenhower—I offered, first in the House and now in the Senate, a constitutional amendment to give the 18-year-olds the right to vote. I firmly believe in it. At present there are only two States where 18-year-olds vote, one where 19 is the age, and one where it is 20.

Mr. MILLER. I agree, and, of course, in discussing this matter I always refer only—and I believe your amendment does, Senator—to the votes for President and Vice President. I, of course, would not interfere with the right of the States to set their own qualifications for the election of State and local officers.

Senator KEATING. That is my feeling. We have got to come to grips with this problem of moving from one State to another and giving the right to vote to a person who has lived a minimum of 30 or 60 days in a new State and perhaps even less than that, for presidential electors. So we have got to make this differentiation anyway, and while we are doing it I would certainly like to see the privilege given to 18-year-olds to vote for President and Vice President in all the States. I base that primarily, as I believe you have in your testimony, not on the fact that if the young man is old enough to fight he is old enough to vote and elect the leaders that take him into that fight, which I think is an argument and a meritorious one, but it seems to me the strongest argument is that our young people learn more about government now than our forefathers did, than I did when I was going to school, and that they therefore are better equipped to select their leaders than in previous generations.

Mr. MILLER. Now on—

Senator KEFAUVER. May I point out, Senator Keating, just for the record, your Senate Joint Resolution 67, my Resolution 20, Senator Dirksen's Resolution 54 and Senator Randolph's Resolution 71 would all grant the right of 18-year-old citizens to vote for all officials, Federal and State.

Senator KEATING. That is true. However, they were prepared before we had focused so much on this residence problem. That would involve different ballots for those electing the President and Vice President and voting for local officers. I lean to the view that we should not interfere by constitutional amendment with the State's right to determine the qualifications for local officers in that State, and that our action should be limited to the President and Vice President.

I have no strong feelings on that, but I think we would have great difficulty as a practical matter in getting it through Congress, even though we have four one-hundredths—4 percent of the Senate—introducing such resolutions. But I think our chances of getting something through are better if we confine it to the President and Vice President.

Senator KEFAUVER. The other side of the coin is that you would have a lot of confusion in having separate ballots for Federal elections and State elections.

Mr. MILLER. You would have to have the separate ballot when you get into the residence question also, Senator.

Senator KEFAUVER. Yes, that's true.

Mr. MILLER. In other words, under the Keating bill, and I guess the others providing for residence of 90 days to vote for only President and Vice President, this would also require a split ballot if the States, for instance, required a year's residence for other officers in the State. That is the practical difficulty; no question about that, where you have a voting change and where it would rather a cumbersome proposition where you have a person eligible to vote for President and Vice President in the national election and, yet, ineligible to vote for the rest of the local ticket.

On the question of the poll tax, I think my party is in full accord with Chairman Bailey's statement. We are opposed to the poll tax and to any requirement such as that for the privilege of casting a vote in the United States for President or Vice President.

Now on the question of residence—

Senator KEFAUVER. Are you in favor of a constitutional amendment on the subject?

Mr. MILLER. Yes; I would be.

Senator KEFAUVER. And is that in the Republican platform?

Mr. MILLER. It was in the 1956 platform. I can't state for sure whether it was in the 1960 platform or not. I am rather positive it was in the 1956 platform.

Senator KEFAUVER. Mr. Kirby, our counsel, says it was not in the 1960 platform.

Mr. MILLER. That could be.

Senator KEFAUVER. Anyway, that is the position of the Republican Party?

Mr. MILLER. That is my position as chairman of the party.

Senator KEFAUVER. Your platform, I am advised by Mr. Kirby, does say:

We favor a change in the electoral college system to give every voter a voice in the presidential election.

Mr. MILLER. Yes; that is the electoral college provision.

On the question of residence requirements I am fully cognizant of the unfairness and inequity of a person being disfranchised simply because of the fact that, through no fault of his own in many cases, just prior to a national election his residence is moved from one State to another. In other words, I know of many people in the scope of my own acquaintances who have been moved by their companies from South Bend, Ind., to Chicago, Ill., just before a national election, and since they are no longer residents of Indiana that can't vote there, and since they haven't resided in Illinois long enough they can't vote for President and Vice President there, although they have been citizens always and taxpayers always.

This is unfair and inequitable. And, yet, I am concerned about attempting the solution to this problem on the national level by constitutional amendment or by any statute because I feel that there could

be great abuse of this. I feel that certainly the States themselves, as Mr. Bailey indicated that he also felt, the States themselves should be the determining factor as to whether or not a person is in fact a bona fide resident of the State.

If I read the constitutional proposal of Senator Keating, it just says simply that if the person resides within the State for 90 days, I believe it is, that therefore he automatically is entitled under the constitutional amendment to vote for President, vote for the electors for President and Vice President.

Now whether you make it 30 days or 60 days or 90 days, we have had an awful lot of trouble as you well know in our divorce laws, for instance, in connection with this question.

Is the person in the State only to get a divorce or has he actually established a bona fide residence in the State in order to be a proper litigant in the courts of the State?

In other words, if we just have this provision as to duration of stay and no amendment or language in the constitutional amendment which will at least permit the States to make a separate determination as to the bona fide character of the residence, it could well be that parties might attempt to encourage people to cross State borders and remain there temporarily for the purpose of casting a vote in an election in that State. And I think that if you added to this provision of residence requirement, because I do think we ought to try to solve this problem, to make sure that citizens of our country are not disfranchised because they move across State borders and thus have no opportunity to vote anywhere in the United States for President and Vice President, that if we could add something there which would also leave to the States the determination of, as I say, the bona fide nature of their residence so that either a certificate from the employer that in fact he was ordered to be transferred into such and such a State, or a recognition of a lease of an apartment or purchase of a home or some evidence, whatever the States might determine, so that we may reach the bona fide nature of the residence.

Senator KEATING. It was my intention that the voter would have to be a resident of the State to which he moved, and that residence as used there would mean residence in the State where he was seeking to vote.

It says, "If such citizen has resided."

Mr. MILLER. Pardon me, Senator. Is this Senate Joint Resolution 90?

Senator KEATING. Yes. [Reading:]

If such citizen has resided in such State or political subdivision thereof with respect to which the requirement applies for a period of at least 90 days preceding such election * * *

Now I would be inclined to think that in an amendment to the Constitution, that would be as far as we ought to go and ought not to try to specify the mechanics of establishing the way that residence is to be determined.

I recognize the difficulties to which you refer, and those difficulties pertain to cases of citizens within a State who move from one election district to another on election day in order to vote several times. That has occurred, as we all know.

I would think that the evil we are seeking to meet here, the disenfranchisement of our citizens, could be met by this, and we could leave to the individual States to prosecute criminally anyone who sought to vote illegally.

Mr. MILLER. Well, I just have the feeling at this moment that there has been evidence of interest within the various States to correct this situation.

Senator KEATING. Yes; there has been.

Mr. MILLER. And many States have indicated a willingness to amend their State laws to prevent this disenfranchisement.

Senator KEATING. Mr. Bailey's State of Connecticut is in the forefront of this reform.

Mr. MILLER. Yes; and I would rather leave it there.

Senator KEATING. Connecticut and Wisconsin have been the leading States.

Senator KEFAUVER. Mr. Miller, Senate Joint Resolution 14, which I have filed, is similar to Senator Keating's resolution; only it requires that no State should have a residence requirement of more than 1 year, and it provides further that a qualified voter changing his residence shall be entitled to vote for President and Vice President by absentee ballot for a period of 2 years provided the laws of the State where he moves do not entitle him to vote there.

Mr. MILLER. I think there is a lot of merit there.

Senator KEFAUVER. That period of time is long enough to prevent chicanery, I believe.

Mr. MILLER. Yes; I think there is a lot of merit in that proposal.

Senator KEATING. That, however, would not take care of the person who moved from the State that did not have absentee voting laws. There are some States that don't have them, I know.

Mr. MILLER. Unless by constitutional amendment, which we are talking about now, it was so provided that a person would have the right to cast an absentee ballot.

I suppose for national elections that would supersede—

Senator KEATING. I don't think that is what this says.

Senator KEFAUVER. It would make it mandatory that they have to allow absentee voting to this extent, I think.

Senator KEATING. Your interpretation of that is that it would impose upon the States a mandatory requirement for absentee voting. I didn't so interpret it, but that may be so. Congressman Miller knows New York has an absentee voting law which has now been liberalized and goes fairly far, but that there are some States where the Representatives of Congress feel strongly that absentee balloting is undesirable and wouldn't have it at all.

If we tried to impose that on other States we might encounter some difficulty.

Mr. MILLER. Some resistance. But if it was a constitutional amendment they would have to comply, of course. I mean I am in favor of anything that would prevent this situation arising whereby someone loses his right to vote and, yet, we must be careful. If we take it from a Federal approach, I think that we eliminate any possibility, as far as we can, of fraud as a result of the change. And, as I say, there is some indication that the States are fully aware of this, and, as Mr. Bailey has pointed out, Connecticut and others are moving in this direction.

It may well be that it can be solved at the State level maybe more effectively than at the national level.

Senator KEATING. As you undoubtedly know, Governor Rockefeller has recommended that the legislature take steps in New York which will enfranchise anyone who comes into New York and stays. I forget the number of days. But he is seeking to meet this problem.

Mr. MILLER. As long as the statute takes care of the question of bona fide residents, this is all we are really interested in, I think, so that we can avoid any possible fraud. But in New York, of course, I don't know whether there is some misunderstanding about it, but in New York we have a similar system to yours in Connecticut. In New York to vote today, you must be a resident of the State for a year, and the county for 4 months, and the election district for 30 days.

Senator KEFAUVER. Do you want to speak about any of these others?

Mr. MILLER. No; that is all, Senator.

Senator KEFAUVER. Mr. Miller, let me ask you: At the bottom of page 2 you recommended in any event where there is a contest, where no presidential candidate receives the majority of the electoral votes, it should be decided by a joint session of the House and Senate rather than by the House, each State voting as a unit.

I certainly agree with Mr. Bailey that the present system is unfair, giving New York one vote and Hawaii one vote. But do you think the House of Representatives would go along with making the decision by a joint session of the House and Senate? In other words, would they be willing to share this responsibility with the U.S. Senate?

Mr. MILLER. I am not speaking, and, of course, cannot speak for every Member of the House of Representatives, but I do know that, as far as the members of our party are concerned in the present membership in the House of Representatives, they would be inclined to support this bill.

Senator KEATING. You haven't cleared it with the Speaker, have you?

Mr. MILLER. No.

Senator KEATING. May I ask a question, Mr. Chairman. One of the things that worries me about what we sometimes refer to as the Mundt-Coudert plan—and I would be grateful to get your advice on it—is the fear that these electors that are running in the various States would run too much on their own.

The parties would run real popular men in the State as electors. In the congressional district, they would seek to find the man who was most popular in that congressional district to be the candidate for elector. Too much stress might be laid upon the popularity of the particular elector rather than on the fact that we are electing a President of the United States.

I am reminded of the story they tell about Caleb Boggs running for Senator in Delaware. This fellow spoke to this dyed-in-the-wool Democrat, who indicated he was going to vote for Caleb Boggs. He said, "I am surprised; you are such a Democrat."

"Yes, I am a good Democrat, but I couldn't vote against old Caleb."

In other words, Caleb was so popular that he changed the feeling of a dyed-in-the-wool man on the other side.

In the congressional district that I formerly represented, I could pick out two or three men on both the Republican and Democratic tickets that would be likely to be named as a candidate for elector, who would get a reaction similar to the one I have expressed. Somebody would say, well, I am a Kennedy man, but I certainly will vote for him. And he might be a Nixon elector, and vice versa.

What do you say about that danger? Do you think it is a serious one?

Mr. MILLER. I don't think it is a serious one, Senator. It is a consideration, of course. There are always considerations in all of these important decisions. But it has not been my experience that it happened where we have had two slates of delegates, for instance, to our national convention running against each other as, for instance, in 1952 the Taft delegates and the Eisenhower delegates, and I am sure that this has been the experience of the Democratic Party from time to time. By and large, I think the electorate is intelligent and is aware of the issues and the questions and the problem that is posed.

I think that a person today running in a congressional district, say, as an elector in order to be elected would have to be a pledged elector for the presidential candidate, supported by the majority of the people within that congressional district regardless of his identity or his own personal popularity or stature within the congressional district.

Senator KEATING. He would, but he would be going around to the county fair and the picnics and all, and he would be making speeches, and his name would appear on the ballot, and some of the less well informed electorate at least would say, "Well, there is a great fellow. He helped my mother one time out of a very difficult situation. I really have got to vote for him."

That seems to me to present a real difficulty, and, to my way of thinking, one of the most serious of the difficulties.

Mr. MILLER. I don't think this would happen. I don't think that the electorate would be as confused as this. I don't believe that if they were, for instance, ardent supporters of President Kennedy, I don't think they would be prone to vote for the elector for Dick Nixon, no matter what the identity.

In addition to that, of course, it would then be indicated, I think, that each political party ought to attempt to select as its electors the very finest people within the respective congressional districts and raise the stature perhaps of electors and increase interest generally in the way we elect Presidents and do it through our finer citizens, and I can't see anything objectionable.

Senator KEATING. I think that would happen. They would try to select the most popular names, and they certainly would be ill advised if they didn't.

Mr. MILLER. May I just comment on that?

Senator KEATING. Yes.

Mr. MILLER. I am not at all sold on the fact that the American people aren't, by and large, entirely aware of these situations. It has never been my experience, for instance, that you are very successful in electing men to Congress or the Senate just because they happen to be popular heroes, whether on a football field or the prize-fight ring or wherever it may be. Many people in America will have great respect for certain people because of their prowess in

certain fields of endeavor, but nevertheless they do not and have not historically selected them for high elective office unless indeed those people have qualifications, too, for high elective office.

Senator KEATING. At least not reelect him. They sometimes elect him for one term.

Senator KEFAUVER. On this point we have been discussing, Mr. Miller, I notice in your statement you say that you don't think the use of electors is the root of the problem. But do you think it is really necessary to keep the electors? Why isn't it safer and better to alleviate the problem as Senator Keating said, by just allocating the presidential votes of the State?

Mr. MILLER. You mean on a proportional basis?

Senator KEFAUVER. No. Under the present system, if New York goes Democratic, the secretary of state would certify the result to the Senate, and then, of course, New York is entitled to so many votes and the votes of New York would be counted that way.

Mr. MILLER. Because of the fact that I feel that this is weighted against rural versus urban areas.

Senator KEFAUVER. I don't mean to change the number of votes. I am not talking about the district plan or the proportional plan. I am just talking about eliminating the electors.

Mr. MILLER. As such, except that you would certify—for instance, in New York we have 45 electoral votes presently. Nevertheless—

Senator KEFAUVER. Certify that New York is entitled to 45 presidential and vice-presidential votes.

Mr. MILLER. But you are saying just abolish the electoral college. But the results would be exactly the same as they are today. In other words, if the Republican or Democratic candidate—it doesn't make any difference—carried the whole State of New York by 10 votes, the 45 votes would be certified for the one winning the State by 10 votes.

Senator KEFAUVER. That is what I am talking about.

Mr. MILLER. I say that is why I feel that system is weighted against rural voters as opposed to urban and so forth.

Senator KEFAUVER. But even if you adopt the Mundt-Coudert plan, Senate Joint Resolution 12, it isn't necessary to have electors—

Mr. MILLER. No. In other words, if you wanted to base the return as certified that, let us say, 21 congressional districts cast their votes for Dick Nixon, and 22 for Senator Kennedy, and the State went at large for Senator Kennedy, giving him the 2 senatorial votes that you would have of the 45, 24 votes certified, never mind the electoral college that you are talking about, but we just certify from the State of New York for Senator Kennedy that he gets 24 votes, or however many it may be, and Dick Nixon 21. I wouldn't argue too much about that. The principle is roughly the same.

Senator KEATING. I think that is a distinct improvement.

Mr. MILLER. This would eliminate your objection as to having a person running as an elector in the electoral district.

Senator KEATING. It would, and that was the suggestion made in one of our committees. And I think if we thought seriously of reporting the Mundt-Coudert proposal, that would be an improvement on it.

One other question on that. The delineation of these electoral districts gives me a little difficulty. Did you envision that they would be the same as congressional districts?

Mr. MILLER. That they would be identical. In other words, my congressional district in New York is the 40th. And there would be also an elector running in the 40th Congressional District.

Senator KEATING. Well, there is nothing in the Mundt proposal that says that.

Mr. MILLER. That would be my understanding of how the States—

Senator KEATING. In other words, you would expect the States would do that.

Mr. MILLER. Yes.

Senator KEATING. The States would not be under any obligation to do it, and I would think it might hardly be expected that they would do it as a practical political matter. But, anyway, you think that that is the way it should be done?

Mr. MILLER. Yes.

Senator KEFAUVER. Well, did you mean that you would just let the congressional districts stand as they are now with their disproportionate population?

Mr. MILLER. No. As it states, reapportionment—I mean there would be no change in this, every 10 years following the census as the congressional districts were settled and set by boundaries; that you would then have an elector running in each congressional district in the State, and the two electors running statewide as do the two U.S. Senators.

Senator KEATING. But do you favor imposing upon the States the obligation with regard to cutting up their congressional districts, which is contained in the Mundt resolution with regard to setting up electoral districts?

Mr. MILLER. Yes, I would want them identical. I think this would be the fair approach in other words.

Senator KEATING. It is going to change a lot of congressional districts in this country on both sides if such a proposal as contained in the Mundt resolution—

Mr. MILLER. Why do you say that, Senator?

Senator KEATING. Because there are—

Mr. MILLER. Because legislatures and Governors would be prone to gerrymander the electoral districts different from the congressional?

Senator KEATING. We all know they gerrymander the congressional districts on both sides.

Mr. MILLER. Right.

Senator KEATING. The Mundt resolution says you can't gerrymander electoral districts. So, if you make them identical with congressional districts, then you impliedly say you can't gerrymander congressional districts.

Mr. MILLER. No; that was not my understanding of the Mundt resolution, that the electors, the districts would correspond to the congressional districts.

Senator KEATING. Well, the Mundt—

Senator KEFAUVER. It has been changed in this Congress, Mr. Miller. He has a new provision.

Senator KEATING. It says the electors shall be elected——

Mr. MILLER. Is this Senate Joint Resolution 12, Senator?

Senator KEATING. Yes.

Mr. MILLER. What page are you reading from?

Senator KEATING. Page 2. [Reading:]

* * * 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.

Mr. MILLER (reading):

and such districts when formed shall not be altered until another census has been taken.

Of course, that is the same—this language here, “such districts to be composed of compact and contiguous territory, containing as nearly as practicable” and so forth, is the language we have had before, as you well know, in the Judiciary Committee of the House in connection with congressional districts also.

Senator KEATING. Is that the same language in the Constitution providing congressional districts?

Mr. MILLER. No; because that is the language—I don’t know whether you were a cosponsor of it or not, but for several years now we have had pending before our House committee—I don’t know about the Senate——

Senator KEATING. No. I was not. And I would not favor imposing upon the State by this resolution the requirement that it must change its congressional districts, to correspond to the electoral districts under the Mundt resolution.

Mr. MILLER. I am not opposed to that.

Senator KEATING. Well——

Mr. MILLER. I am not opposed to that.

Senator KEATING. I assumed you are not opposed with regard to electoral districts.

Mr. MILLER. This whole thing, of course, is designed to eliminate as much as possible the gerrymandering which goes on, and I certainly have never been in favor of that.

Senator KEFAUVER. Congressman Miller, do you think the proportional plan would result in splinter parties?

Mr. MILLER. Yes; I do.

Senator KEFAUVER. And cause chaos and so forth?

Mr. MILLER. Yes; I do.

Senator KEFAUVER. Have you read the resolution that has been presented by Senator Case of South Dakota? He adopts a proportional plan but says that no candidate’s votes shall be counted in a particular State unless he gets as much as one-third of the vote.

Mr. MILLER. Yes; I have that here, but I don’t feel that I could support this. I think that proportional representation could lead—proportional voting could lead to splinter parties and possible minority parties. This is what happened in Germany.

As you well know, prior to 1933, after they had constitutional government given to them under the Constitution in 1924, in practically 9 years the Nazi Party took over in Germany although they never received—no Nazi candidate ever received more than 29 or 30 percent of the total vote cast in any general election in Germany for the Reichstag. But the point was that they had so many political parties

in Germany for the Protestants and Catholics and labor and manufacturers and people who lived in the city and in the country and business and farmers and so forth, that about all you had to have was 29 percent of the vote in many general elections and you elected a member of the Nazi Party to the Reichstag, and when they gained a majority in the Reichstag they abolished the Constitution and set up a government by decree. And I think this is the danger inherent in this proportional election theory.

Of course, the Case proposal of one-third does help a little bit, but I would be afraid of that.

Senator KEFAUVER. Well, we certainly appreciate your coming and being with us today, Congressman.

Mr. MILLER. Thank you very much, Senator, for your courtesy.

Senator KEFAUVER. Our next witness is Mr. Irwin, but we will have about a 2-minute recess because Senator Keating wants to come back.

(Brief recess.)

Senator KEFAUVER. Mr. Irwin.

TESTIMONY OF HENRY D. IRWIN, BARTLESVILLE, OKLA.;
ACCOMPANIED BY GEN. BONNER FELLERS, COUNSEL

Mr. IRWIN. I would like to introduce as my counsel Gen. Bonner Fellers, Mr. Chairman.

Senator KEFAUVER. General Fellers, we are glad to have you here.

Mr. FELLERS. Thank you, sir.

Senator KEFAUVER. Mr. Henry D. Irwin of Bartlesville, Okla., was a presidential elector for the State of Oklahoma in 1960. Mr. Irwin, do you wish to first give us a brief résumé of your background, your education, and business?

Mr. IRWIN. I would say that I am a graduate of the U.S. Military Academy, West Point, N.Y., class of 1941.

Senator KEFAUVER. And what is your business?

Mr. IRWIN. I have notes that will reflect that at a later date. If you wish me to explain that at this moment, I shall.

Senator KEFAUVER. Just as you wish.

Mr. IRWIN. I would prefer to refer to my notes in order to make it a more orderly presentation.

Senator KEFAUVER. Why don't you just proceed in order, Mr. Irwin.

Mr. IRWIN. Very well.

Senator KEFAUVER. One thing I want to ask you. No one questions but that you are going to tell the truth. I don't know—

Mr. IRWIN. If you have any such fears as these, the truth as I know it and as I can document it, I certainly shall present it, sir.

Senator KEFAUVER. I mean since you will perhaps be using other people's names, would you prefer to be under oath or do you just want to testify?

Mr. IRWIN. As you wish. I am ready to proceed, sir.

Senator KEFAUVER. If you have no objection to being sworn—I mean if you are going to say things about other people, it is better that—

Mr. IRWIN. Anything I have to say about other people I have documentary evidence as to their words, as I shall present them. It will

not be a matter of interpretation or anything of that nature. I have no fears of misquoting other people.

Senator KEFAUVER. Well, I think it would be better if we place you under oath, sir.

Do you solemnly swear the testimony you give this committee will be the whole truth, so help you God?

Mr. IRWIN. I do.

Senator KEFAUVER. Now you just proceed as you wish.

Mr. IRWIN. I have in hand from the Congress of the United States a subpoena commanding me to make this appearance on this date, and to bring with me—

all records, books, documents, correspondence or other papers pertaining to the performance of my duties as an elector for the President of the United States, including any other things pertaining to the near success of a coalition plan and points of breakdown mentioned in your telegram of May 24, 1961, to Senator Estes Kefauver.

I have brought all the documents that I have available to my knowledge.

Senator KEFAUVER. Maybe we had better make the telegram that you sent part of the record.

Mr. IRWIN. I will have that.

Senator KEFAUVER. You say you do not have it?

Mr. IRWIN. I have the telegram which I sent.

Senator KEFAUVER. Well, suppose you read the telegram. Or were you going to get to that later?

Mr. IRWIN. Yes, I will get to that later.

Senator KEFAUVER. Well, go ahead.

Mr. IRWIN. I have brought such records because of the charge here: "Fail not, else you will answer your default under the pains and penalties in such cases herein provided."

I should like to say that some of the communications which I have received were received in confidence. If ordered, I will provide you with the names and source as well as the contents of those communications. I have the Senator's letter replying to my wire of May 24, dated June 9, apologizing for the delay. I have a letter from the chief counsel to the same effect. I have my telegram in reply to their letters. I do not have any telegram in reply to their letters. I have the wire from the subcommittee counsel suggesting that I appear, to which I did not reply.

Senator KEFAUVER. We will make all these letters and telegrams that you have referred to a part of the record.

(The documents mentioned and the subpoena follow:)

BARTLESVILLE, OKLA., May 24, 1961.

The Honorable ESTES KEFAUVER,
Chairman, Senate Constitutional Amendments Subcommittee,
Washington, D.C.:

Reference electoral college. I am elector who voted Byrd-Goldwater in last meeting of college. If testimony is being taken from "republic system of government" supporters I am available on invitation. I believe you would be interested in near success of coalition plan, points of breakdown, and peril to the republic should Communist-Socialist infiltrate the college, or mass of have-nots elect our president.

HENRY D. IRWIN.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS,
June 9, 1961.

Mr. HENRY D. IRWIN,
Bartlesville, Okla.

DEAR MR. IRWIN: Please accept my apologies for the delay in answering your telegram of May 24, 1961, addressed to me as Chairman of the Subcommittee on Constitutional Amendments.

At the hearings of the subcommittee on the subject of electoral college changes, we are anxious to obtain all shades of point of view. Because of your personal experience as a member of the electoral college, I believe your testimony would be pertinent to the subject under inquiry.

The hearings which have already been held have been limited to the appearances of Senators in support of proposed constitutional amendments sponsored by them. On June 27, 28 and 29, 1961, the hearings will resume for the purpose of appearances of other witnesses. You are invited to appear in person on any of these three dates. I have asked Mr. James C. Kirby, Jr., chief counsel to the subcommittee, to write you for the purpose of scheduling your appearance and arranging other details.

Sincerely yours,

ESTES KEFAUVER, *Chairman.*

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS,
June 9, 1961.

Mr. HENRY D. IRWIN,
Bartlesville, Okla.

DEAR MR. IRWIN: Senator Kefauver, chairman of the subcommittee, has advised me that you have been invited to appear as a witness when the hearings by the Subcommittee on the Electoral College resume on June 27, 1961.

Budgetary considerations do not permit the subcommittee to pay any expenses of witnesses and I assume from your telegram of May 24, that you are prepared to come at your own expense. We will hear from 10 to 20 out-of-town witnesses on these dates and none of their expenses are being paid by the Senate.

The morning of June 27 would be the best time for your testimony. By June 22 you should furnish a written statement of the testimony which you plan to give. The subcommittee will then be prepared to discuss your statement with you after you have delivered it.

It would be appreciated if you would also send me a brief biographical or background sketch of yourself for purposes of preparation of our witness list. I am looking forward to meeting you on the 27th.

Yours very truly,

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

BARTLESVILLE, OKLA., June 22, 1961.

JAMES C. KIRBY, Jr.,
*Chief Counsel, Subcommittee on Constitutional Amendments,
U.S. Senate, Washington, D.C.:*

Reference your June 9 letter, regret am unable to appear due to unforeseen circumstances.

HENRY D. IRWIN.

WASHINGTON, D.C., June 22, 1961.

HENRY D. IRWIN,
Bartlesville, Okla.:

Subcommittee wants to hear your testimony and regrets you cannot appear on dates suggested. Please advise of dates prior to July 15 when you can appear.

JAMES C. KIRBY, Jr.,
Chief Counsel, Senate Subcommittee on Constitutional Amendments.

UNITED STATES OF AMERICA
CONGRESS OF THE UNITED STATES

To Mr. HENRY D. IRWIN, Texas Hotel, Spring Lake, New Jersey, or 1107 South Cherokee, Bartlesville, Oklahoma, or wherever he may be found, *Greeting*:

Pursuant to lawful authority, you are hereby commanded to appear before the Subcommittee on Constitutional Amendments of the Committee on the Judiciary of the Senate of the United States, on July 13, 1961, at 9:30 o'clock a.m., at their committee room, 457 Old Senate Office Building, then and there to testify what you may know relative to the subject matters under consideration by said committee. And to bring with you all records, books, documents, correspondence, or other papers pertaining to the performance of your duties as an elector of the President of the United States in 1960, including any such items pertaining to the "near success of coalition plan and points of breakdown" mentioned in your telegram of May 24, 1961, to Senator Estes Kefauver.

Hereof fail not, as you will answer your default under the pains and penalties in such cases made and provided.

To the United States Marshal, Newark, N.J., or any other authorized person to serve and return.

Given under my hand, by order of the committee, this 28th day of June, in the year of our Lord one thousand nine hundred and sixty-one.

ESTES KEFAUVER,
*Chairman, Subcommittee on Constitutional Amendments,
Committee on the Judiciary, United States Senate.*

Mr. IRWIN. I have a newspaper clipping from the Tulsa Tribune—I conclude it was released by the counsel—advising the world that I had been subpoenaed. That was on June 29. On July 6 I called the FBI in Spring Lake, N.J., told them my name, that I thought I was wanted, and within a half hour I was subpoenaed, and I hereby am complying with that subpoena.

In opening, let me say that I believe we should keep the electoral college with its constitutional provisions as it is, and that Congress should enact the necessary laws to remedy the evils of our present elective processes.

I have a terrific fear that if we alter our electoral college system we shall have surrendered our Republic to the brass knuckle type of gangsterism, labor organization, Socialists, organizations with which we are all so familiar from prohibition days in the 1930's.

I so hope in my testimony to prove to you and to convince you that the electoral college system in its present form is essential to the survival of this country as a republic, to the hopes of returning to a republican form of government and to the reversal of the present race toward socialist-bureaucratic control of our country.

I shall hope to prove to you and convince you that until Congress can enact laws and enforce them which would, first, insure redistricting of the separate States in accordance with the U.S. Constitution and the various State constitutions, and, secondly, establish a system of voting which will insure an honest, intelligent, informed individual exercising his considered judgment with equal force of any other individual, we are legalizing a system of socialism, communism, or anarchy in altering our electoral system.

I shall hope to prove to you and convince you that whereas we represent our politics as being a two-party system where an individual may choose to support an identifiable philosophy embodied in the platforms of those parties, we have in fact two societies vying with each other in their efforts to mean everything to everyone, and both with

but one philosophy—tax, tax, tax, spend, spend, spend, elect, elect, elect, and leaving the individual no choice in a philosophy except perhaps in degree.

In the past 60-odd years we have sanctified these two societies; parties, if you wish.

In altering our electoral college system we will have given dignity and legality to this usurpation of power.

I shall hope to prove to you and convince you that the political conventions by which the party candidates are designated are but circuses dominated by promises to the future rather than deeds of the past, designed to sustain and perpetuate a livelihood for politicians, to stifle the voice of opposition of the individual, and to steam-roll the ambitions of the smallest minority in our country.

Surely we cannot be so naive as to presume that the people nominated Jack Kennedy, L. B. Johnson, Dick Nixon and Henry Cabot Lodge in free and open conventions.

We know that General Eisenhower groomed Dick Nixon as his heir. We know that Dick Nixon selected Henry Cabot Lodge as his running mate to present a politically balanced ticket and to attract the maximum number of voters.

We know that Jack Kennedy selected L. B. Johnson as his running mate for the same political reasons, and we know the success which can be realized from such a plan, through the activities of Franklin D. Roosevelt.

To alter our electoral college system would legalize an existent farce and permit the moneyed class—and by that I mean the Communist-Socialist-labor and one-world groups—to impose their form of democracy on us to the destruction of our free-enterprise, private property, security-of-person, republican form of government.

To alter the electoral college system will permit the government-protected Socialist, Communist, anarchist labor unions to gain control of the political conventions as they gained control of private industry, and to elect a President by popular vote would permit them, through the use of millions of dollars obtained through legal confiscation of member salaries, an unlimited reign of terror. We have witnessed this episode in Miami where Hoffa was able to hold his union captive over the objections of the U.S. Government and the U.S. Supreme Court.

I shall hope to prove to you and convince you of the present practical impossibility of presenting to the electorate of any State an opportunity to support any philosophy of government but Socialist or Communist or worse except through the electoral college system as presently provided for in the U.S. Constitution.

And it is to these facts that I address my argument. I am here to plead the cause of liberty, freedom, and the republican form of government, to retain the present U.S. constitutional provisions of the electoral college system, and to maintain a republican form of government.

Basic to any change in our electoral college system is the constitutional provision which reads in part:

* * * Each state shall appoint, in such manner as the Legislature thereof may direct, a number of Electors * * *.

If a separate State not satisfied with our present winner-take-all division of the electoral vote of that State wishes the popular vote to be more nearly represented by a division of that electoral vote, the remedy is with that State.

It has been suggested—and very intelligently so—that one elector be elected by popular vote from each congressional district and two from each State at large.

If it please the committee, I should like to offer and have included in the record a letter from Dean Clarence Manion, former dean of law at the University of Notre Dame, to me, which reads, in part, as follows:

Senator KEFAUVER. We will let the whole letter be made a part of the record, and you read such parts as you wish.

(The letter referred to follows:)

DORAN, MANION, BOYNTON & KAMM,
South Bend, Ind., July 6, 1961.

Mr. HENRY IRWIN,
Essex & Sussex Hotel,
Spring Lake, N.J.

DEAR MR. IRWIN: I was glad to talk to you this morning, and I am delighted to know that you are to appear before the congressional committee that is considering proposed changes in our electoral system. The broadcast I mentioned is enclosed.

As I told you on the phone, I think it is important that you prepare a statement in writing and ask for permission to read it to the committee or to have it put into the record. The statement should be mimeographed and made available to the press before you appear, if possible. I am sure that General Fellers will help you with this.

It seems to me that the main points for you to make are these: The constitutional method for electing a President does not need to be changed. On the contrary, it needs to be enforced. At the present time, the constitutional procedure is smothered by the imposition of a two-party national convention system which is both undemocratic and unconstitutional. As conceived by the Constitution, the presidential elector is in the same legal relationship to the citizen and voter that exists between the corporate director and the shareholder. The corporate directors are elected by the directors exactly as is provided by the Constitution for the election of the President of the United States. This corporate system has been the foundation of our American business enterprise which now holds up the free world. If the corporate electoral system had been as badly perverted as is the constitutional system for electing a President of the United States, our private enterprise establishment would have collapsed into the bankruptcy of socialism and communism long ago.

The constitutional system for the election of our President is the crowning feature of our republican form of government. Those who clamor for the election of our President by a direct vote of the American people are proposing to prostitute the highest office and the most powerful officer in the world. No corporation in America would think of doing such a thing except as a prelude to bankruptcy.

The States of the Union should exercise their constitutional authority to provide for the election of presidential electors in and by congressional districts. Presidential electors should be elected to exercise their constitutional authority and best judgment in the selection of the best person available for the biggest office in the world. It is impossible for the mass of the people to exercise that kind of judgment, and the framers of the Constitution recognized that fact frankly and unhypocritically. Nowhere in the Constitution is there a provision for the "people of the United States" to vote as such on anything or for anybody. Voting is done by people of the States under State laws. It is more important now than ever before to keep it that way. This is precisely the republican form of government—government not by the people directly, but government by the people's representatives which the Constitution requires the United States to guarantee to each State in the Union (art. IV U.S.C.).

Your statement to the press should tell who you are and what you did as a presidential elector for Oklahoma in 1960. You were doing precisely what an elector is supposed to do, namely, to get the best persons possible for President and Vice President respectively. An election of the President by the House of Representatives—which might have resulted from your efforts—would have been entirely constitutional and completely justifiable under the circumstances.

Sincerely,

CLARENCE MANION.

Mr. IRWIN. Attached to that is an enclosure which I also beg of the committee to include, which is an address by Dean Clarence Manion on his broadcast "Manion Forum."

Senator KEFAUVER. Let it be made a part of the record.

(The document referred to follows:)

[Weekly Broadcast No. 321, Nov. 20, 1960, by Dean Clarence E. Manion, Manion Forum Network. Sponsor, Manion Forum, South Bend, Ind.]

ELECTORAL COLLEGE A BASTION OF FREEDOM

As is always the case with close contests, the Monday morning quarterbacks are still working overtime on the presidential election returns.

It is safe to say that nobody, not even President-Elect Kennedy, is completely happy about all of the final figures and millions of people, including some able cartoonists and a great many of our most distinguished editors, are unable to mask their misery.

The reasons for dissatisfaction on both sides of the political fence are diversified and sometimes contradictory; nevertheless, this post election time of atonement seems to demand a single scapegoat and the criticisms are now tending to converge into an indignant blast against the constitutional establishment known as the presidential electoral college.

Some of the frustrated commentators have discovered—apparently for the first time—that the overall nationwide popular vote received by a presidential candidate in November bears no necessary relationship to the decisive electoral vote which will be cast for the candidate in December.

Other critics are concerned because presidential electors have been chosen in Mississippi and Alabama who are uncommitted to either Nixon or Kennedy.

These observers are sure that such a suspension of judgment is pure political blackmail. If the practice spreads, they are afraid that the choice of the people as expressed in the November elections may be frustrated. The fact is, of course, that as of now in 1960, nobody has voted for the next President of the United States.

The millions who apparently cast their ballots for Kennedy and Nixon on November 8 were really voting for their own State's proportionate part of the 537 presidential electors who will meet in their respective States on December 19 and vote by ballot for a President and a Vice President of the United States.

In this constitutional context, the nationwide total of popular votes now tabulated for Kennedy and/or Nixon means absolutely nothing. Strictly speaking, we did not have a presidential election on November 8.

Actually, on that day, 50 separate elections were held, 1 in each State, and each of these was hermetically sealed off by the Constitution from each and all of the others.

Thus, the popular majorities which Nixon rolled up in Kansas and Indiana could not be used to help him in Illinois or Pennsylvania. Nor could Kennedy use his big New York surplus to push him over the top in Ohio.

In spite of all the current sound and fury, there is nothing unique about the discrepancy that appears when the 1960 nationwide popular vote total for Kennedy or Nixon is compared to the electoral vote that is now attributed to each of them.

In the history of our presidential elections, it has frequently happened that the candidate who won the Presidency with a majority of the electoral votes has had many more nationwide popular votes cast against him in the November election than were cast for him at that time.

This happened to Harry Truman in 1948, to Woodrow Wilson in 1912, to Benjamin Harrison in 1888, and to Rutherford B. Hayes in 1876.

But, the most celebrated of all of these so-called minority Presidents is Abraham Lincoln who won the Presidency exactly 100 years ago in a field of four candidates, each representing a different political party.

In that 1860 election Lincoln picked up 59 percent of the electoral votes after receiving only 39 percent of the nationwide popular vote. Furthermore, Lincoln had a clear popular majority in only 15 of the 33 States then composing the Union. And in seven Southern States Lincoln got no popular votes at all.

ELECTORAL COLLEGE SAVED UNION IN 1860

Considering the political passions that prevailed throughout the country at that time, it is difficult to see how Lincoln—or anybody else for that matter—could have been made President in 1860 without the help of the constitutionally established presidential elector system.

When that critical election was over, Lincoln's enraged enemies blasted the electoral machinery just as vehemently as some modern commentators are blasting it now. But, without the electoral system, the country would have lost Lincoln and, without Lincoln, we would probably have lost the Union.

It is undoubtedly true that the framers of the Constitution designed the presidential electoral college deliberately to keep the selection of the President at least one step removed from the actual popular balloting. Certainly, that reflected their lack of faith in the virtues of direct democracy.

But, it is also true that all of the modern corporation laws of the country are in like manner designed deliberately to keep the selection of the president and other officers of the company one step removed from the votes of the corporation's shareholders.

Nevertheless, that undemocratic legal safeguard has seldom been fired upon by the corporate owners and it has undoubtedly helped to make American industrial enterprise the modern wonder of the world.

It would be difficult to show that the fortunes of General Motors, United States Steel, or the General Electric Co., for example, would be improved by requiring their chief executive officers to be chosen by ballots cast directly by the thousands of people who own the stock of those companies.

Some years ago, in an unguarded moment, a prominent business man temporarily in Government service made the mistake of saying, in substance, that what is good for General Motors will be good for the United States and vice versa.

Without retooling that political babble, it can be said safely and truly that our political economy has a lot to learn from corporate business management where directors of the company are elected periodically by the voting shareholders, but where the responsible officers of the company are selected by the directors. This is precisely the type of indirect popular representative government that the framers of our Constitution attempted to provide for the management of the United States.

In no part of the Constitution was this effort spelled out in more detail than in those constitutional provisions which describe the election of our President. Candor requires us all to confess that critically important collective decisions, like naming a President for the United States, require surrounding safeguards that extend far beyond a simple simultaneous show of hands by a plurality or even by a big majority of all of the American people.

The need for such safeguards is even greater now than it was when the presidential elector system was invented by the Founding Fathers in the Constitutional Convention.

In the beginning, it was possible to follow the constitutional provision literally in the selection of George Washington. But, in succeeding years, the electoral college was continuously compromised by the exigencies of politics until the presidential electors, who were designed to be responsible but free agents of the people for the selection of their President, were transformed into rubber stamps for dominant political parties which have now completely usurped the constitutional right of the people to name the person, who, as President of the United States, holds in his hands more power over life, liberty, and property than any other elective officer in the world.

Today, modern organized politics has removed the real selection of our President much further from the reach of the people than the undemocratic framers of the Constitution ever dreamed of doing.

Two dominant extraconstitutional political organizations now tell Americans to choose one of two people for the office of President. In political campaigns

for the execution of this Hobson's choice, all of the really important issues of domestic and foreign policy are blurred, blunted and subordinated to the point where they give way entirely to the techniques of crowd psychology and the nuances of television pancake makeup.

Comes November, and millions of Americans troop to and through the polling places with the impression that they are voting directly for the next President of the United States. But, of course, none of them can really do that.

How many of you can name one—just one—of the 537 men and women whom you helped to elect on November 8 and who now have the official duty and responsibility to select the new President on December 19?

SYSTEM HAS BEEN PROSTITUTED

Of course, you can't name them. Nevertheless, at this moment and according to law, these people constitute the most important group of men and women in the world. But, they are all rubber stamps, of course, by virtue of their political pledges to the party bosses and you may confidently expect them to carry out those pledges on December 19 when they will vote for Kennedy and Johnson or Nixon and Lodge, depending upon their political complexion—unless, of course, some one of the candidates should die in the meantime. In that case, there would be the very devil to pay.

But, God willing, the 537 electors will faithfully carry out their pledges; that is, in all States, except Mississippi and Alabama, where, as just about everybody knows, presidential electors have been chosen who are unpledged free agents with the full untrammelled power of choice, precisely as the Constitution of the United States says that all shall be.

Our teachers of American political science owe a debt of gratitude to the people of Mississippi and Alabama for thus graphically highlighting this obscure point in American civil government which, up to now, practically no teacher has been able to get across—namely, the blatant hypocrisy of our quadrennial November presidential election and the extraordinary continuing authority of the obscured constitutionally created presidential elector.

The practitioners of organized politics are incensed, of course. It was definitely not cricket of their Mississippi and Alabama colleagues to let such a black cat out of the bag because, after all, other electors elsewhere may get these libertarian constitutional notions and start to feel their political oats—if not this year, then certainly 4 years from now.

Just suppose that some day all 537 duly elected presidential electors should start acting like directors of General Motors between November 8 and December 19 and dare to select the best available man for President of the United States, party pledges to the contrary notwithstanding. Horrors!

You may look, therefore, for an immediate drive by the "old political party pros," aided and abetted by thoughtless thousands who are disappointed one way or another by the current election returns, to amend the Constitution by wiping out what they will call the anachronistic undemocratic electoral college system and providing for the election of future Presidents by the direct votes of all the people of the United States.

Those who understand the priceless time-tested advantages of our Republican form of government will gird themselves to resist this hypocritical crusade to the very last ditch.

Undoubtedly there are some parts of the electoral college machinery that need repair and/or replacement, but there is nothing wrong with it that cannot be satisfactorily adjusted by each State acting for and by itself.

The Constitution now provides that each State shall appoint its electors in whatever manner the legislature thereof may direct. (Art. II, Par. 2.)

It is not necessary, therefore and for instance, for New York or Illinois or for the country to forever endure "a winner take all" electoral vote system which now causes the presidential election to go periodically to the political huckster who is willing to promise the most for a hundred thousand blocked votes in New York City and Chicago.

It is possible and desirable for every State, including Illinois and New York, to preserve the political effectiveness of all of its areas and for all of its people by having its presidential electors chosen separately by the voters of each congressional district with two to be chosen at large as its U.S. Senators are chosen.

The constitutional integrity of this country depends upon the constitutional integrity of its constituent States. One of the last bulwarks of defense for the vanishing rights of the States of the Union is now found in the constitutional

provisions which lodge control of elections generally, and of presidential elections particularly, in the several States of the Union.

When this constitutionally established State control of votes, voters and the vital presidential electors disappears into a single nationwide pool of popular voting power, this American Republic will be dead.

And, when this American Republic is dead, it will be immediately succeeded by a worldwide pool of absolute power controlled by Communists in the Kremlin.

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Mr. IRWIN. This division of the States to more nearly represent the popular vote is perhaps too obvious a solution. Who can see the States of New York, Pennsylvania, California, or Illinois diluting their voice in the control of a presidential election? These powerful States merely wish to dilute the opposition.

I implored the Legislature of the State of Oklahoma, in its present session, to lead the way by making such a division of its electoral vote. Instead, a law was enacted levying a fine of \$1,000 in indemnity against any elector performing his constitutional duty. I was quoted in one of the leading newspapers as saying that I did not believe this act of the Oklahoma Legislature would void or supersede the Constitution of the United States.

I offer for the committee's consideration a decision of the Supreme Court of Alabama in their *Opinion of the Justices, No. 87*, a summary of which consists of all or most of one page. I would be happy to read it or include it; as the counsel of the committee wishes.

Senator KEFAUVER. Well, how long is the decision of the Supreme Court of Alabama?

Mr. IRWIN. It is a very fine, concise, authoritative statement of law regarding presidential electors.

Senator KEFAUVER. We want to try to hold the record down as much as possible, but this seems to be only two pages so we will let it be made a part of the record, and, for identification, it is in Southern Reporter, second series, volume 34, at page 598. The style of the case is *Opinion of the Justices, No. 87*. Is that the one?

Mr. IRWIN. May I inquire if that pertains to the electors, the pledging of the electors from the State of Alabama, in which the supreme court stated that the parties did not elect the electors, but the people at large elected the electors, citing further reference to the U.S. Constitution and other cases in question?

Senator KEFAUVER. It appears to be. What is the style of the case you have there?

Mr. IRWIN. I am not familiar with those law references, sir.

Senator KEFAUVER. Yes, it is the same case, we have been advised.

(The decision referred to, *Opinion of the Justices, No. 87*, 250 Ala. 399, 34 So. 2d 598 (1948), is as follows:)

OPINION OF THE JUSTICES

No. 87

Supreme Court of Alabama. April 1, 1948

Opinion of the Justices of the Supreme Court in answer to questions propounded by the Governor under Code 1940, title 13, section 34, as to whether an amendatory act of the legislature, requiring presidential electors to cast their ballots for the nominee of the national convention of the party by which they were elected, is violative of constitutional provisions.

*"To the Chief Justice and Associate Justices of the Supreme Court of Alabama
"Judicial Building,
"Montgomery, Ala.*

"SIRS:

"Your written opinion on the following important constitutional questions is requested:

"1. Does Act No. 386, S. 46, approved July 7, 1945 (General Acts, 1945, p. 605) entitled 'An Act to amend Section 226 of title 17 of the 1940 Code of Alabama' violate any provision of Article II of the Constitution of U.S. or Article XII of the Amendments of the Constitution of the United States?

"2. Did the matter inserted in Section 226 of title 17 of the 1940 Code by said amendatory Act No. 386 constitute such a departure from the subject of the statute before amendment as to render Act No. 386 unconstitutional as violative of section 45 of the Constitution of Alabama?

"3. In view of the fact that presidential electors are not elected by political parties, would an elector chosen at the general election in November 1948 have a discretion as to the persons for whom he could cast his ballot for President and Vice President?

"4. If a presidential elector chosen at the general election in November 1948 should cast his ballot for a person for President or Vice President who was not the nominee of the national convention of the party by which the elector was elected, would the elector's ballot so cast be a legal vote for the person or persons for whom it was voted?

"5. Is said Act No. 386 so ambiguous, indefinite, and uncertain as to be invalid because it is incapable of enforcement?

"Very respectfully

"JAMES E. FOLSOM,
"Governor of Alabama."

Gessner T. McCorvey and McCorvey, Turner, Rogers Johnston & Adams, George S. Taylor and Samuel M. Johnston, all of Mobile, Wilkinson & Skinner, Borden Burr, Frank M. Dixon and Bowers, Dixon & Dunn, all of Birmingham, Julian Harris, Norman W. Harris, Russell W. Lynne, Philip Shanks, Jr., John A. Caddell, Charles H. Eyster, Noble J. Russell, Melvin Hutson and S. A. Lynne, all of Decatur, J. B. Blackburn, of Bay Minette, Rushton, Stakely & Johnston, of Montgomery, W. Howell Morrow, of Lanett, and John E. Adams, and Adams & Gillmore, all of Grove Hill, filed briefs, amicus curiae, asserting the invalidity of the act.

A. A. Carmichael, Attorney General, and Bernard F. Sykes, Assistant Attorney General, filed brief, amicus curiae, in support of the validity of the act.

*To the Governor of Alabama,
"State Capitol,
"Montgomery, Ala.*

DEAR SIR:

We acknowledge receipt of your communication of March 23rd in which you request our written opinion on certain constitutional questions in connection with Act No. 386, S. 46, approved July 7, 1945, General Acts 1945, p. 605, entitled, "An Act to amend section 226 of title 17 of the 1940 Code of Alabama." In our opinion the attempted amendment is violative of the Federal Constitution.

Section 226, Title 17, Code of 1940, is as follows:

"The electors of president and vice-president are to assemble at the office of the secretary of state, at the seat of government at twelve o'clock noon on the second Tuesday in December next after their election, or at that hour on such other day as may be fixed by congress, to elect such president and vice-president, and those of them present at that hour must at once proceed by ballot and plurality of votes to supply the places of those who fail to attend on that day and hour."

By the aforesaid act, § 226 was sought to be amended by adding the following words at the end of the section:

"and shall cast their ballots for the nominee of the national convention of the party by which they were elected."

The Constitution of the United States, Article II, § 1, clauses 2 and 3, says:

"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."

And the Twelfth Amendment says:

"The Electors shall meet in their respective states, and vote by ballot for President and Vice-President * * *"

[1] The language of the Federal Constitution clearly shows that it was the intention of the framers of the Federal Constitution that the electors chosen for the several states would exercise their judgment and discretion in the performance of their duty in the election of the president and vice-president and in determining the individuals for whom they would cast the electoral votes of the states. History supports this interpretation without controversy. The Federalist, Vol. II, p. 35; Story on the Constitution, 5th Ed., Vol. 2, p. 318; The World Book Encyclopedia, Vol. 5, p. 2246; The Laws of the American Constitution by Burdick, § 25.

[2] There is no doubt that the appointment and mode of appointment of electors belongs exclusively to the state under the Constitution of the United States. *McPherson v. Blacker*, 146 U.S. 1, 13 S.Ct. 3, 36 L. Ed. 869. But a study of the aforesaid constitutional provisions also shows that the action of the electors in casting their votes by ballot is governed by the Federal Constitution. It is true that there has grown up a practice under which electors have felt duty bound by virtue of their own consciences to vote for the nominees of the party that nominates them for election and such electors in casting their ballots have felt influenced by the plans and purposes of the party to which they belong. But this course of action has followed their own personal regard for what was their duty and not some statutory mandate. The elector is a constitutional officer and the words used in the original constitution and the amendment thereof show that he is to follow his own judgment and discretion. It is far cry from letting that judgment and discretion be controlled by his conscientious regard for the way in which he should cast his ballot to requiring by statute that his vote must be cast in a particular way regardless of his own discretion.

As supporting the view here expressed that the vote of this constitutional officer cannot be directed by statute, the deficiencies in the amendment to the statute before us are worthy of note. It may be observed that no presidential elector is elected by any political party but is elected by all of the electors of the state in the general election in November. The amendment of the act before us does not refer to the party by which the electors were nominated but refers to the party by which they were elected. Of course, the presidential electors are not elected by any political party but are elected by the people as a whole. Other deficiencies in the act could be pointed out as for example no one elected at the general election as an elector could function unless he belonged to some political party which had held a national convention and had a nominee for that office. The legislature cannot thus restrict the right of a duly elected elector.

[3] When the legislature has provided for the appointment of electors its powers and functions have ended. If and when it attempts to go further and dictate to the electors the choice which they must make for president and vice-president, it has invaded the field set apart to the electors by the Constitution of the United States, and such action cannot stand. In view of what has been said, it is not necessary to consider § 45 of the Constitution of Alabama and no further reply is needed.

Respectfully submitted,

LUCIEN D. GARDNER,
Chief Justice.

JOEL B. BROWN,
ARTHUR B. FOSTER,
J. ED LIVINGSTON,
THOMAS S. LAWSON,
ROBERT T. SIMPSON,
DAVIS F. STAKELY,

Associate Justices.

(The chairman subsequently directed that the decision of the U.S. Supreme Court in *Ray v. Blair*, 343 U.S. 214 (1952), be included at this point. It is as follows:)

RAY, CHAIRMAN OF THE STATE DEMOCRATIC
EXECUTIVE COMMITTEE OF
ALABAMA, v. BLAIR.

CERTIORARI TO THE SUPREME COURT OF ALABAMA.

No. 649. Argued March 31, 1952.—Decided April 3, 1952.—
Opinions filed April 15, 1952.

Where a state authorizes a political party to choose its nominees for Presidential Electors in a state-controlled party primary election and to fix the qualifications for the candidates, it is not violative of the Federal Constitution for the party to require the candidates for the office of Presidential Elector to take a pledge to support the nominees of the party's National Convention for President and Vice-President or for the party's officers to refuse to certify as a candidate for Presidential Elector a person otherwise qualified who refuses to take such a pledge. Pp. 215-231.

1. Presidential Electors exercise a federal function in balloting for President and Vice-President, but they are not federal officers. They act by authority of the state which in turn receives its authority from the Federal Constitution. Pp. 224-225.

2. Exclusion of a candidate in a party primary by a state or political party because such candidate will not pledge to support the party's nominees is a method of securing party candidates in the general election who are pledged to the philosophy and leadership of that party; and it is an exercise of the state's right under Art. II, § 1, to appoint electors in such manner as it may choose. *United States v. Classic*, 313 U. S. 299, and *Smith v. Allwright*, 321 U. S. 649, distinguished. Pp. 225-227.

3. The Twelfth Amendment does not bar a political party from requiring of a candidate for Presidential Elector in its primary a pledge to support the nominees of its National Convention. Pp. 228-231.

4. The requirement of such a pledge does not deny equal protection or due process under the Fourteenth Amendment. *Nixon v. Herndon*, 273 U. S. 536, distinguished. P. 226, n. 14.
257 Ala. —, 57 So. 2d 395, reversed.

The Alabama Supreme Court upheld, on federal constitutional grounds, a peremptory writ of mandamus requiring petitioner, the Chairman of the State Executive

Committee of the Democratic Party, to certify respondent as a candidate for Presidential Elector in a Democratic Primary which was to be held on May 6, 1952. 257 Ala. —, 57 So. 2d 395. This Court granted certiorari. 343 U. S. 901. In a *per curiam* decision announced on April 3, 1952, in advance of the preparation of this opinion, this Court *reversed* that judgment. 343 U. S. 154. This opinion states the reasons for that decision.

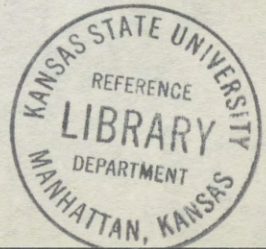
Marx Leva and *Harold M. Cook* argued the cause for petitioner. With them on the brief were *James J. Mayfield*, *George A. LeMaistre* and *Louis F. Oberdorfer*.

Horace C. Wilkinson argued the cause and filed a brief for respondent.

MR. JUSTICE REED delivered the opinion of the Court.

The Supreme Court of Alabama upheld a peremptory writ of mandamus requiring the petitioner, the chairman of that state's Executive Committee of the Democratic Party, to certify respondent Edmund Blair, a member of that party, to the Secretary of State of Alabama as a candidate for Presidential Elector in the Democratic Primary to be held May 6, 1952. Respondent Blair was admittedly qualified as a candidate except that he refused to include the following quoted words in the pledge required of party candidates—a pledge to aid and support “the nominees of the National Convention of the Democratic Party for President and Vice-President of the United States.” The chairman's refusal of certification was based on that omission.

The mandamus was approved on the sole ground that the above requirement restricted the freedom of a federal elector to vote in his Electoral College for his choice for President. 257 Ala. —, 57 So. 2d 395. The pledge was held void as unconstitutional under the Twelfth Amend-



ment of the Constitution of the United States.¹ Because the mandamus was based on this federal right specially claimed by respondent, we granted certiorari. 28 U. S. C. § 1257 (3); 343 U. S. 901.

On account of the limited time before the primary election date, this Court ordered prompt argument on March 31, 1952, after granting certiorari and handed down a *per curiam* decision on April 3, 343 U. S. 154, stating summarily our conclusion on the federal constitutional issue that determined the Alabama judgment. This opinion is to supplement that statement. Our mandate issued forthwith.

The controversy arose under the Alabama laws permitting party primaries. Title 17 of the Code of Alabama, 1940, as amended, provides for regular optional primary elections in that state on the first Tuesday in May of even years by any political party, as defined in the

¹ U. S. Const., Amend. 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 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 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 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. . . ."

chapter, at state cost. §§ 336, 337, 340, 343. They are subject to the same penalties and punishment provisions as regular state elections. § 339. Parties may select their own committee in such manner as the governing authority of the party may desire. § 341. Section 344 provides that the chairman of the state executive committee shall certify the candidates other than those who are candidates for county offices to the Secretary of State of Alabama. That official, within not less than 30 days prior to the time of holding the primary elections, shall certify these names to the probate judge of any county holding an election.

Every state executive committee is given the power to fix political or other qualifications of its own members. It may determine who shall be entitled and qualified to vote in the primary election or to be a candidate therein. The qualifications of voters and candidates may vary.²

Section 348 requires a candidate to file his declaration of candidacy with the executive committee in the form prescribed by the governing body of the party. There is a provision, § 350, which reads as follows: "At the bottom of the ballot and after the name of the last candidate shall

² Ala. Code, 1940, Tit. 17, § 347:

"All persons who are qualified electors under the general laws of the State of Alabama, and who are also members of a political party entitled to participate in such primary election, shall be entitled to vote therein and shall receive the official primary ballot of that political party, and no other; but every state executive committee of a party shall have the right, power and authority to fix and prescribe the political or other qualifications of its own members, and shall, in its own way, declare and determine who shall be entitled and qualified to vote in such primary election, or to be candidates therein, or to otherwise participate in such political parties and primaries; and the qualifications of electors entitled to vote in such primary election shall not necessarily be the same as the qualifications for electors entitled to become candidates therein; . . ."

be printed the following, viz: 'By casting this ballot I do pledge myself to abide by the result of this primary election and to aid and support all the nominees thereof in the ensuing general election.'

On consideration of these sections in other cases the Supreme Court of Alabama has reached conclusions generally conformable to the current of authority. Section 347 has been said by the Supreme Court of Alabama in *Ray v. Garner*, 257 Ala. —, 57 So. 2d 824, 826, decided March 27, 1952, to give full power to the state executive committee to determine "who shall be entitled and qualified to vote in primary elections or be candidates or otherwise participate therein . . . just so such Committee action does not run afoul of some statutory or constitutional provision."

The *Garner* case involved a pledge adopted by the State Democratic Executive Committee for printing on the primary ballot, reading as follows:

"By casting this ballot I do pledge myself to abide by the result of this Primary Election and to aid and support all the nominees thereof in the ensuing General Elections. I do further pledge myself to aid and support the nominees of the National Convention of the Democratic Party for President and Vice-President of the United States." 257 Ala., at —, 57 So. 2d, at 825.

This is substantially the same pledge that created the controversy in this present case. The court also called attention approvingly to *Lett v. Dennis*, 221 Ala. 432, 433, 129 So. 33, 34, a case that required a candidate in the primary to follow a party requirement and make a public oath as to his vote in the past general election, where it was declared "a test by a political organization of party affiliation and party fealty is reasonable and proper to be prescribed for those participating in its primary elections

for nomination of candidates for office.”³ As to the power to prescribe tests for participation in primary elections, it was added in the *Garner* case that “in Alabama this prerogative is vested in the State Party Executive Committee, acting through its duly elected or chosen members. *Smith v. McQueen*, [232 Ala. 90, 166 So. 788].”⁴ 257 Ala., at —, 57 So. 2d, at 826. The *McQueen* case involved the

³ See Merriam and Overacker, *Primary Elections* (1928), pp. 69-73, 124, 125. Cf. *State ex rel. Curveya v. Wells*, 92 Neb. 337, 138 N. W. 165; *Francis v. Sturgill*, 163 Ky. 650, 174 S. W. 753.

⁴ This was not a unique delegation. In 1928 Merriam and Overacker cited ten other states which delegate to the party authorities the right to prescribe such qualifications, with or without a statutory statement of minimum qualifications; these ten were Delaware, Idaho, and the remainder of the “solid South,” except North Carolina. See Merriam and Overacker, *supra*, note 3, at pp. 72-73. In 1948 Penniman reports the continued existence of these delegations in all these states except Idaho, which now apparently requires only that the candidate “represent the principles” of the party and be duly registered in the appropriate precinct. 6 Idaho Code (Bobbs-Merrill, 1948) §§ 34-605, 34-606, 34-614. See Penniman, *Sait's American Parties and Elections* (4th ed., 1948), p. 431. However, the situation has changed in several of those states: the South Carolina legislature apparently no longer regulates the conduct of primaries at all, see S. C. Acts 1944, No. 810, p. 2323; and Texas and Florida have repealed their election codes and enacted new ones which appear to lack any comparable provision, see *The New Election Code*, Vernon's Annotated Texas Statutes Service (1951), effective January 1, 1952; Fla. Laws 1951, c. 26870. In both Texas and Florida, the primary is open to party “members”; the extent to which the party itself may prescribe membership qualifications is not explicitly set forth. But cf. §§ 103.111 (3) and 103.121, Fla. Laws 1951, c. 26870.

For provisions in the remaining states bearing on this delegation, see 2 Ark. Stat. Ann. (Bobbs-Merrill, 1948) § 3-205; 12 Ga. Code Ann. (Harrison, 1936) § 34-3218.2; Va. Code, 1950 (Michie, 1940), §§ 24-367, 24-369; 3 Miss. Code Ann., 1942 (Harrison, 1943), § 3129; Del. Laws 1944-1945, c. 150, amending Del. Rev. Code, 1935, c. 58, 1782, § 14; La. Rev. Stat., 1950, Tit. 18, §§ 306, 309; La. Const. Ann. (Bobbs-Merrill, 1932), Art. 8, § 4.

selection of delegates to a national political convention. It was also said in *Ray v. Garner* concerning the voter's pledge that:

"Primarily, the pledge must be germane to party membership and party elections and, while the last clause of the pledge pertains to the national party, the party in Alabama will be a part of it by sending delegates to participate in the national convention, the Executive Committee having ordered their election and the party thereby having signified its intention to become a member of the national party. Therefore, it was within the competency of the Committee to adopt the resolution so binding the voters in the primary."⁵ 257 Ala., at —, 57 So. 2d, at 826.

As is well known, political parties in the modern sense were not born with the Republic. They were created by necessity, by the need to organize the rapidly increasing

⁵ Such a holding integrates the state and national party. See Cannon's Democratic Manual (1948):

"The Democratic National Committee is the permanent agency authorized to act in behalf of the Party during intervals between Conventions. It is the creature of the National Convention and therefore subordinate to its control and direction. Between Conventions the Committee exercises such powers and authority as have been delegated specifically to it and is subject to the directions and instructions imposed by the Convention which created it." P. 4.

"Duties and Powers of the Committee"

"The duties and powers of the National Committee are derived from the Convention creating it, and while subject to variation as the Convention may provide, ordinarily include:

"8. Provision for the National Convention, involving:

"b. Authorization of call and determination within authority granted by last National Convention of representation from States, Territories and Districts;" Pp. 7-8.

population, scattered over our Land, so as to coordinate efforts to secure needed legislation and oppose that deemed undesirable. Compare Bryce, *Modern Democracies*, p. 546. The party conventions of locally chosen delegates, from the county to the national level, succeeded the caucuses of self-appointed legislators or other interested individuals. Dissatisfaction with the manipulation of conventions caused that system to be largely superseded by the direct primary. This was particularly true in the South because, with the predominance of the Democratic Party in that section, the nomination was more important than the election. There primaries are generally, as in Alabama, optional.⁶ Various tests of party allegiance for candidates in direct primaries are found in a number of states.⁷ The requirement of a pledge from the candidate participating in primaries to support the nominee is not unusual.⁸ Such a provision protects a party from in-

⁶ See Penniman, *supra*, n. 4, cc. XIII, XVIII, especially at pp. 300, 416; Merriam and Overacker, *supra*, n. 3, at pp. 92-93.

⁷ Penniman, *supra*, pp. 425-426; Merriam and Overacker, *supra*, pp. 129-133.

⁸ *E. g.*, § 4, c. 109, N. D. Laws 1907, pp. 151, 153, discussed in *State ex rel. McCue v. Blaisdell*, 18 N. D. 55, 118 N. W. 141. See 7 Fla. Stat. Ann. (Harrison, 1943) § 99.021 (pkt. pt.); Fla. Laws 1951, c. 26870, § 99.021, amending 7 Fla. Stat. Ann. (Harrison, 1943) § 102.29, discussed in *Mairs v. Peters*, 52 So. 2d 793. Cf. 3 Miss. Code Ann., 1942 (Harrison, 1943), § 3129; *Ruhr v. Cowan*, 146 Miss. 870, 112 So. 386. Cf. Va. Code, 1950 (Michie, 1949), §§ 24-367, 24-369. See *Westerman v. Mims*, 111 Tex. 29, 227 S. W. 178, discussing Art. 3096 of Tex. Rev. Stat. of 1911; cf. *Love v. Wilcox*, 119 Tex. 256, 28 S. W. 2d 515.

For an example of a pledge specifically directed toward primary candidates for the office of presidential elector, see the resolutions of the State Democratic Committee of Texas discussed in *Carter v. Tomlinson*, 149 Tex. 7, 227 S. W. 2d 795; see also *Love v. Taylor*, 8 S. W. 2d 795 (Tex. Civ. App.); *McDonald v. Calhoun*, 149 Tex. 232, 231 S. W. 2d 656; cf. *Seay v. Latham*, 143 Tex. 1, 182 S. W. 2d 251. See also the pledge required by the Democratic Party of

trusion by those with adverse political principles.⁹ It was under the authority of § 347 of the Alabama Code, note 2, *supra*, that the State Democratic Executive Committee of Alabama adopted a resolution on January 26, 1952, requiring candidates in its primary to pledge support to the nominees of the National Convention of the Democratic Party for President and Vice-President. It is this provision in the qualifications required by the party under § 347 which the Supreme Court of Alabama held unconstitutional in this case.

The opinion of the Supreme Court of Alabama concluded that the Executive Committee requirement violated the Twelfth Amendment, note 1, *supra*. It said:

“We appreciate the argument that from time immemorial, the electors selected to vote in the college have voted in accordance with the wishes of the party to which they belong. But in doing so, the effective compulsion has been party loyalty. That theory has

Arkansas, discussed in *Fisher v. Taylor*, 210 Ark. 380, 196 S. W. 2d 217.

Similar pledges, of course, are frequently exacted of voters in the primaries. See, *e. g.*, *State ex rel. Adair v. Drexel*, 74 Neb. 776, 105 N. W. 174; *Morrow v. Wipf*, 22 S. D. 146, 115 N. W. 1121; *Ladd v. Holmes*, 40 Ore. 167, 66 P. 714. See Penniman, *supra*, note 4, at p. 431; Merriam and Overacker, *supra*, note 4, at pp. 124-129.

⁹ See *Seay v. Latham*, 143 Tex. 1, 182 S. W. 2d 251. This was a Texas case that allowed the Democratic Party of Texas to withdraw its nomination of presidential electors when they announced their determination to vote against the nominees of the party as made by the National Convention. The names of others were substituted. The court said:

“A political party is a voluntary association, instituted for political purposes. It is organized for the purpose of effectuating the will of those who constitute its members, and it has the inherent power of determining its own policies.” 143 Tex., at p. 5, 182 S. W. 2d, at 253. See *Carter v. Tomlinson*, 149 Tex. 7, 13, 227 S. W. 2d 795, 798; 29 Tex. L. Rev. 378.

generally been taken for granted, so that the voting for a president and vice-president has been usually formal merely. But the Twelfth Amendment does not make it so. The nominees of the party for president and vice-president may have become disqualified, or peculiarly offensive not only to the electors but their constituents also. They should be free to vote for another, as contemplated by the Twelfth Amendment." ¹⁰ 257 Ala., at —, 57 So. 2d, at 398.

In urging a contrary view the dissenting Alabama justices, in supporting the right of the Committee to require this candidate to pledge support to the party nominees, said:

"Any other view, it seems, would destroy effective party government and would privilege any candidate, regardless of his political persuasion, to enter a primary election as a candidate for elector and fix his

¹⁰ The court found support for its conclusion in the reasoning of an Opinion of the Justices in answer to questions propounded by the Governor of Alabama in 1948. 250 Ala. 399, 34 So. 2d 598. One question was "Would an elector chosen at the general election in November 1948 have a discretion as to the persons for whom he could cast his ballot for President and Vice President?" Alabama had amended § 226 of Title 17 of its Code, relating to the meeting and balloting of its electoral college, by adding "and shall cast their ballots for the nominee of the national convention of the party by which they were elected." That opinion said:

"The language of the Federal Constitution clearly shows that it was the intention of the framers of the Federal Constitution that the electors chosen for the several states would exercise their judgment and discretion in the performance of their duty in the election of the president and vice-president and in determining the individuals for whom they would cast the electoral votes of the states. History supports this interpretation without controversy." 250 Ala., at 400, 34 So. 2d, at 600. See *McPherson v. Blacker*, 146 U. S. 1, 36. See also Willbern, *Discretion of Presidential Electors*, 1 Ala. L. Rev. 40.

On this review the right to a place on the primary ballot only is in contest.

own qualifications for such candidacy. This is contrary to the traditional American political system." 257 Ala., at —, 57 So. 2d, at 403.

The applicable constitutional provisions on their face furnish no definite answer to the query whether a state may permit a party to require party regularity from its primary candidates for national electors.¹¹ The presidential electors exercise a federal function in balloting for President and Vice-President but they are not federal officers or agents any more than the state elector who votes for congressmen. They act by authority of the state that

¹¹ As both constitutional provisions long antedated the party primary system, it is not to be expected that they or their legislative history would illumine this issue. They do not. Discussion in the Constitutional Convention as to the manner of election of the President resulted in the arrangement by which presidential electors were chosen by the state as its legislature might direct. *McPherson v. Blacker*, 146 U. S. 1, 28.

The Twelfth Amendment was brought about as the result of the difficulties caused by the procedure set up under Art. II, § 1. Under that procedure, the electors of each state did not vote separately for President and Vice-President; each elector voted for two persons, without designating which office he wanted each person to fill. If all the electors of the predominant party voted for the same two men, the election would result in a tie, and be thrown into the House, which might or might not be sympathetic to that party. During the John Adams administration, we had a President and Vice-President of different parties, a situation which could not commend itself either to the Nation or to most political theorists.

The situation was manifestly intolerable. Accordingly the Twelfth Amendment was adopted, permitting the electors to vote separately for presidential and vice-presidential candidates. Under this procedure, the party electors could vote the regular party ticket without throwing the election into the House. Electors could be chosen to vote for the party candidates for both offices, and the electors could carry out the desires of the people, without confronting the obstacles which confounded the elections of 1796 and 1800. See 11 *Annals of Congress* 1289-1290, 7th Cong., 1st Sess. (1802).

in turn receives its authority from the Federal Constitution.¹² Neither the language of Art. II, § 1, nor that of the Twelfth Amendment forbids a party to require from candidates in its primary a pledge of political conformity with the aims of the party. Unless such a requirement is implicit, certainly neither provision of the Constitution requires a state political party, affiliated with a national party through acceptance of the national call to send state delegates to the national convention, to accept persons as candidates who refuse to agree to abide by the party's requirement.¹³

The argument against the party's power to exclude as candidates in the primary those unwilling to agree to aid and support the national nominees runs as follows: The constitutional method for the selection of the President and Vice-President is for states to appoint electors who shall in turn vote for our chief executives. The intention of the Founders was that those electors should exercise their judgment in voting for President and Vice-President. Therefore this requirement of a pledge is a restriction in substance, if not in form, that interferes with the performance of this constitutional duty to select the proper persons to head the Nation, according to the best judgment of the elector. This interference with the

¹² U. S. Const., Art. II, § 1:

" . . . 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. . . ."

Twelfth Amendment, note 1, *supra*; *In re Green*, 134 U. S. 377, 379; *Burroughs v. United States*, 290 U. S. 534.

¹³ The Supreme Court of Alabama has just said that the Democratic Party of that state was thus affiliated with the national organization. See the excerpt from *Ray v. Garner*, in the text at note 5, *supra*.

elector's freedom of balloting for President relates directly to the general election and is not confined to the primary, it is contended, because under *United States v. Classic*, 313 U. S. 299, and *Smith v. Allwright*, 321 U. S. 649, the Alabama primary is an integral part of the general election. See *Schnell v. Davis*, 336 U. S. 933. Although Alabama, it is pointed out, requires electors to be chosen at the general election by popular vote, Ala. Code, 1940, Tit. 17, § 222, the real election takes place in the primary. Limitation as to entering a primary controls the results of the general election.¹⁴

First we consider the impact of the *Classic* and *Allwright* cases on the present issues. In the former case, we dealt with the power of Congress to punish frauds in the primaries "[w]here the state law has made the primary an integral part of the procedure of choice." We held that Congress had such power because the primary was a necessary step in the choice of candidates for election as federal representatives. Therefore the sanctions of §§ 19 and 20 of the old Criminal Code, subsequently re-

¹⁴ There is also a suggestion that, since the Alabama primary is an integral part of the general election, the Fourteenth Amendment, which among other prohibitions forbids a state to exclude voters on account of their color, also forbids a state to exclude candidates because they refuse to pledge their votes. The answer to this suggestion is that the requirement of this pledge, unlike the requirement of color, is reasonably related to a legitimate legislative objective—namely, to protect the party system by protecting the party from a fraudulent invasion by candidates who will not support the party. See note 9, *supra*. In facilitating the effective operation of democratic government, a state might reasonably classify voters or candidates according to party affiliations, but a requirement of color, as we have pointed out before, is not reasonably related to any legitimate legislative objective. *Nixon v. Herndon*, 273 U. S. 536. This requirement of a pledge does not deny equal protection or due process.

Furthermore, the Fifteenth Amendment directly forbids abridgment on account of color of the right to vote.

vised as 18 U. S. C. §§ 241 and 242, which forbade injury to constitutionally secured rights, applied to the right to vote in the primary. 313 U. S., at 317-321. In the latter, the problem was the constitutionality of the exclusion of citizens by a party as electors in a party primary because of race. We held, on consideration of state participation in the regulation of the primary, that the party exclusion was state action and such state action was unconstitutional because the primary and general election were a single instrumentality for choice of officers. The Fifteenth Amendment's prohibition of abridgment by a state of the right to vote on account of race made the exclusion unconstitutional. Consequently, under 8 U. S. C. §§ 31 and 43 an injured party might sue one injuring him. 321 U. S. 649, 660-664.

In Alabama, too, the primary and general elections are a part of the state-controlled elective process. The issue here, however, is quite different from the power of Congress to punish criminal conduct in a primary or to allow damages for wrongs to rights secured by the Constitution. A state's or a political party's exclusion of candidates from a party primary because they will not pledge to support the party's nominees is a method of securing party candidates in the general election, pledged to the philosophy and leadership of that party. It is an exercise of the state's right to appoint electors in such manner, subject to possible constitutional limitations, as it may choose. U. S. Const., Art. II, § 1. The fact that the primary is a part of the election machinery is immaterial unless the requirement of pledge violates some constitutional or statutory provision. It was the violation of a secured right that brought about the *Classic* and *Allwright* decisions. Here they do not apply unless there was a violation of the Twelfth Amendment by the requirement to support the nominees of the National Convention.

Secondly, we consider the argument that the Twelfth Amendment demands absolute freedom for the elector to vote his own choice, uninhibited by a pledge. It is true that the Amendment says the electors shall vote by ballot. But it is also true that the Amendment does not prohibit an elector's announcing his choice beforehand, pledging himself. The suggestion that in the early elections candidates for electors—contemporaries of the Founders—would have hesitated, because of constitutional limitations, to pledge themselves to support party nominees in the event of their selection as electors is impossible to accept. History teaches that the electors were expected to support the party nominees.¹⁵ Experts in the history of government recognize the long-

¹⁵ 11 Annals of Congress 1289-1290, 7th Cong., 1st Sess. (1802):

"Under the Constitution electors are to vote for two persons, one of whom does not reside in the State of the electors; but it does not require a designation of the persons voted for. Wise and virtuous as were the members of the Convention, experience has shown that the mode therein adopted cannot be carried into operation; for the people do not elect a person for an elector who, they know, does not intend to vote for a particular person as President. Therefore, practically, the very thing is adopted, intended by this amendment."

S. Rep. No. 22, 19th Cong., 1st Sess. (1826), p. 4:

"In the first election held under the constitution, the people looked beyond these agents [electors], fixed upon their own candidates for President and Vice President, and took pledges from the electoral candidates to obey their will. In every subsequent election, the same thing has been done. Electors, therefore, have not answered the design of their institution. They are not the independent body and superior characters which they were intended to be. They are not left to the exercise of their own judgment; on the contrary, they give their vote, or bind themselves to give it, according to the will of their constituents. They have degenerated into mere agents, in a case which requires no agency, and where the agent must be useless, if he is faithful, and dangerous, if he is not." See 2 Story on the Constitution (5th ed., 1891) § 1463.

standing practice.¹⁶ Indeed, more than twenty states do not print the names of the candidates for electors on the general election ballot. Instead, in one form or another, they allow a vote for the presidential candidate of the national conventions to be counted as a vote for his party's nominees for the electoral college.¹⁷ This long-continued practical interpretation of the constitutional propriety of an implied or oral pledge of his ballot by a can-

¹⁶ *McPherson v. Blacker*, 146 U. S. 1, 36:

"Doubtless it was supposed that the electors would exercise a reasonable independence and fair judgment in the selection of the Chief Executive, but experience soon demonstrated that, whether chosen by the legislatures or by popular suffrage on general ticket or in districts, they were so chosen simply to register the will of the appointing power in respect of a particular candidate."

III *Cyclopedia of American Government* (Appleton, 1914), Presidential Elections, by Albert Bushnell Hart, p. 8:

"In the three elections of 1788-89, 1792 and 1796 there was a liberal scattering of votes, 13 persons receiving votes in 1796; but in 1800 there were only five names voted on. As early as 1792 an understanding was established between the electors in some of the different states that they should combine on the same man; and from 1796 on there were always, with the exception of the two elections of 1820 and 1824, regular party candidates. In practice most of the members of the electoral colleges belonged to a party, and expected to support it; and after 1824 it became a fixed principle that the electors offered themselves for the choice of the voters or legislatures upon a pledge to vote for a predesignated candidate."

¹⁷ *E. g.*, Massachusetts:

Annotated Laws of Massachusetts, c. 54:

"§ 43. Presidential Electors, Arrangement of Names of Candidates, etc.—The names of the candidates for presidential electors shall not be printed on the ballot, but in lieu thereof the surnames of the candidates of each party for president and vice president shall be printed thereon in one line under the designation 'Electors of president and vice president' and arranged in the alphabetical order of the surnames of the candidates for president, with the political designation of the party placed at the right of and in the same line with

didate for elector as to his vote in the electoral college weighs heavily in considering the constitutionality of a pledge, such as the one here required, in the primary.

However, even if such promises of candidates for the electoral college are legally unenforceable because violative of an assumed constitutional freedom of the elector under the Constitution, Art. II, § 1, to vote as he may choose in the electoral college, it would not follow that the requirement of a pledge in the primary is unconstitutional. A candidacy in the primary is a voluntary act of the applicant. He is not barred, discriminatorily, from participating but must comply with the rules of the party. Surely one may voluntarily assume obligations to vote for a certain candidate. The state offers him opportunity to become a candidate for elector on his own terms, although he must file his declaration before the primary. Ala. Code, Tit. 17, § 145. Even though the victory of an independent candidate for elector in Alabama cannot be anticipated, the state does offer the opportunity for the development of other strong political organizations where the need is felt for them by a sizable block of voters. Such parties may leave their electors to their own choice.

the surnames. A sufficient square in which each voter may designate by a cross (X) his choice for electors shall be left at the right of each political designation."

See S. Doc. No. 243, 78th Cong., 2d Sess. (1944), containing a summary of the state laws relating to nominations and election of presidential electors.

See Library of Congress, Legislative Reference Service, Proposed Reform of the Electoral College, 1950; Edward Stanwood, *A History of the Presidency from 1788 to 1897* (1912), pp. 47, 48, 50, 51. The author shows the practice of an elector's announcing his preference and gives an alleged instance of violation.

See the comments on instruction of electors in *State Law on the Nomination, Election, and Instruction of Presidential Electors*, by Ruth C. Silva, 42 *Am. Pol. Sci. Rev.* 523.

We conclude that the Twelfth Amendment does not bar a political party from requiring the pledge to support the nominees of the National Convention. Where a state authorizes a party to choose its nominees for elector in a party primary and to fix the qualifications for the candidates, we see no federal constitutional objection to the requirement of this pledge.

MR. JUSTICE BLACK took no part in the consideration or decision of this case.

MR. JUSTICE FRANKFURTER, not having heard the argument, owing to illness, took no part in the disposition of the case.

MR. JUSTICE JACKSON, with whom MR. JUSTICE DOUGLAS joins, dissenting.

The Constitution and its Twelfth Amendment allow each State, in its own way, to name electors with such personal qualifications, apart from stated disqualifications, as the State prescribes. Their number, the time that they shall be named, the manner in which the State must certify their ascertainment and the determination of any contest are prescribed by federal law. U. S. Const., Art. II, § 1, 3 U. S. C. §§ 1-7. When chosen, they perform a federal function of balloting for President and Vice President, federal law prescribing the time of meeting, the manner of certifying "all the votes given by them," and in detail how such certificates shall be transmitted and counted. U. S. Const., Amend. XII, 3 U. S. C. §§ 9-20. But federal statute undertakes no control of their votes beyond providing "The electors shall vote for President and Vice President, respectively, in the manner di-

rected by the Constitution," 3 U. S. C. § 8, and the Constitution requires only that they "vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves." U. S. Const., Amend. XII. No one faithful to our history can deny that the plan originally contemplated, what is implicit in its text, that electors would be free agents, to exercise an independent and nonpartisan judgment as to the men best qualified for the Nation's highest offices.* Certainly under that plan no state law could control the elector in performance of his federal duty, any more than it could a United States Senator who also is chosen by, and represents, the State.

This arrangement miscarried. Electors, although often personally eminent, independent, and respectable, officially became voluntary party lackeys and intellectual nonentities to whose memory we might justly paraphrase a tuneful satire:

They always voted at their Party's call
And never thought of thinking for themselves at all.

As an institution the Electoral College suffered atrophy almost indistinguishable from *rigor mortis*.

*See The Federalist, No. 68 (Earle ed., 1937), pp. 441-442:

"It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preëstablished body, but to men chosen by the people for the special purpose, and at the particular conjuncture.

"It was equally desirable, that the immediate election should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations."

However, in 1948, Alabama's Democratic Party Electors refused to vote for the nominee of the Democratic National Convention. To put an end to such party unreliability the party organization, exercising state-delegated authority, closed the official primary to any candidate for elector unless he would pledge himself, under oath, to support any candidate named by the Democratic National Convention. It is conceded that under long-prevailing conditions this effectively forecloses any chance of the State being represented by an unpledged elector. In effect, before one can become an elector for Alabama, its law requires that he must pawn his ballot to a candidate not yet named, by a convention not yet held, of delegates not yet chosen. Even if the nominee repudiates the platform adopted by the same convention, as Democratic nominees have twice done in my lifetime (1904, 1928), the elector is bound to vote for him. It will be seen that the State has sought to achieve control of the electors' ballots. But the balloting cannot be constitutionally subjected to any such control because it was intended to be free, an act performed after all functions of the electoral process left to the States have been completed. The Alabama Supreme Court held that such a requirement violates the Federal Constitution, and I agree.

It may be admitted that this law does no more than to make a legal obligation of what has been a voluntary general practice. If custom were sufficient authority for amendment of the Constitution by Court decree, the decision in this matter would be warranted. Usage may sometimes impart changed content to constitutional generalities, such as "due process of law," "equal protection," or "commerce among the states." But I do not think powers or discretions granted to federal officials by the Federal Constitution can be forfeited by the Court for disuse. A political practice which has its origin in custom must rely upon custom for its sanctions.

The demise of the whole electoral system would not impress me as a disaster. At its best it is a mystifying and distorting factor in presidential elections which may resolve a popular defeat into an electoral victory. At its worst it is open to local corruption and manipulation, once so flagrant as to threaten the stability of the country. To abolish it and substitute direct election of the President, so that every vote wherever cast would have equal weight in calculating the result, would seem to me a gain for simplicity and integrity of our governmental processes.

But the Court's decision does not even move in that direction. What it is doing is to entrench the worst features of the system in constitutional law and to elevate the perversion of the forefathers' plan into a constitutional principle. This judicial overturn of the theory that has come down to us cannot plead the excuse that it is a practical remedy for the evils or weaknesses of the system.

The Court is sanctioning a new instrument of power in the hands of any faction that can get control of the Democratic National Convention to make it sure of Alabama's electoral vote. When the party is in power this will likely be the administration faction and when not in power no one knows what group it will be. This device of prepledged and oath-bound electors imposes upon the party within the State an oath-bound regularity and loyalty to the controlling element in the national party. It centralizes party control and, instead of securing for the locality a share in the central management, it secures the central management in dominance of the local vote in the Electoral College. If we desire free elections, we should not add to the leverage over local party representatives always possessed by those who enjoy the prestige and dispense the patronage of a national administration.

The view of many that it is the progressive or liberal element of the party that will presently advantage from this device does not prove that the device itself has any

proper place in a truly liberal or progressive scheme of government. Who will come to possess this weapon and to whose advantage it will prove in the long run I am not foresighted enough to predict. But party control entrenched by disfranchisement and exclusion of nonconforming party members is a means which to my mind cannot be justified by any end. In the interest of free government, we should foster the power and the will to be independent even on the part of those we may think to be independently wrong.

Candidates for elector, like those for Senator, of course, may announce to their constituents their policies and preferences, and assume a moral duty to carry them out if they are chosen. Competition in the primary between those of different views would forward the representative principle. But this plan effects a complete suppression of competition between different views within the party. All who are not ready to follow blindly anyone chosen by the national convention are excluded from the primary, and that, in practice, means also from the election.

It is not for me, as a judge, to pass upon the wisdom or righteousness of the political revolt this measure was designed to suppress. For me it is enough that, be it ever so benevolent and virtuous, the end cannot justify these means.

I would affirm the decision of the Supreme Court of Alabama.

Mr. IRWIN. But if a State can enact such laws as the last mentioned—and it is incredible that such a large percentage of our population think a legislature can, including some of the present Members of Congress—the U.S. Congress can enact a law with even greater force.

If you change the Constitution in regard to the electoral college system, I beg of you to enact at the same time laws which will—

1. Insure honest redistricting of the various States;
2. Insure honest elections;
3. Insure a choice of at least two philosophies;
4. Insure that the conventions be free of political intrigue;
5. Insure recognition of the right of a person or group to have its own philosophy recognized on the ballot;
6. To afford the citizens of this country in voting the same protection from labor organization tactics of mayhem, murder, arson, bribery, confiscation of property, and confiscation of salaries as they have from the once-feared corporations;
7. Title the change in the Constitution, "A constitutional amendment to change our republican form of government."

I say ye dare not.

Regarding my activities in the election, I would first like to say that my position was wisely counseled and carefully thought out. My purpose was to insure the country a return to constitutional government and a return to respect for the Constitution by the election of a conservative coalition government.

The action did not in itself constitute a bolt from the Republican Party or a repudiation of the Republican candidate. I was not faced with that problem. My strategy was to release Republican electors to join with Democratic electors in electing a President and Vice President in the electoral college.

The purpose was not to throw the election into the House of Representatives but to decide the election in the electoral college.

As to the probability of success, polls indicated that 200 Republican electors would vote for the coalition provided public assurance could be received from 60 Democratic electors.

Senator KEFAUVER. What poll is that?

Mr. IRWIN. A poll which I conducted, sir.

Senator KEATING. You mean a poll of the Republican electors?

Mr. IRWIN. All of the Republican electors from all of the States which went Republican, sir. Those that did not go Republican were not included in the poll.

Senator KEATING. And you say that poll indicated that if 60 Democrats would vote for someone else, 200 of the Republican electors would repudiate Mr. Nixon?

Mr. IRWIN. I do not believe they were going to repudiate Mr. Nixon, Senator Keating. I believe you will be amazed as to who is included in those 200, which I shall reach shortly.

Senator KEATING. Well, I am trying to get at the facts.

Was the purpose to avoid voting for Mr. Nixon?

Mr. IRWIN. No, sir, that was not—I say no, sir. I do not know. I do not believe so. I believe those Republican electors were concerned with the future of our country and the the Republican form of government.

Senator KEATING. But all 200 of them were not going to vote for Mr. Nixon?

Mr. IRWIN. My poll indicated that 200 Republican electors would vote for the coalition provided assurance could be received from 60 Democratic electors.

Senator KEATING. But the coalition did not involve Mr. Nixon and Mr. Kennedy as candidates?

Mr. IRWIN. It did but not directly. It did because they were also offered to make an alternate selection. I shall come to that.

Senator KEATING. All right.

Mr. IRWIN. These votes, together with the unpledged electoral votes, would insure the election in the electoral college.

As for representative government, the coalition government would have been a more representative government than the government elected, which received a disproportionate electoral vote of 300, but less than a majority of the popular vote, thus not a vote of confidence by the people.

I received the tacit support of the National Republican Committee. I participated in a national——

Senator KEATING. Let me interrupt you there.

What do you mean by the fact that you had the tacit support of the Republican National Committee?

Mr. IRWIN. I shall bring that out later, sir.

Senator KEATING. Are you going to tell us who gave you that support?

Mr. IRWIN. I have the letters here, which I shall be happy to present and read. I suggest that we look up the definition of "tacit" to be aware of what we are speaking of.

Senator KEFAUVER. What is your definition of tacit?

Mr. IRWIN. As covered in Webster's Dictionary, sir.

Senator KEFAUVER. Well, I don't have a dictionary here.

Mr. IRWIN. Nor do I. I participated——

Senator KEATING. You must know what it means or you wouldn't use the phrase.

Mr. IRWIN. I looked it up before I used it.

Senator KEATING. What does it mean to you?

Mr. IRWIN. I must say I would have to refer to the dictionary for fear of inaccuracy.

Senator KEFAUVER. We will get a dictionary.

Mr. IRWIN. Yes, sir.

(A dictionary was subsequently obtained. There then occurred the following:)

* * * * *

Senator KEFAUVER. We have a dictionary now, and at the point where we talked about "tacit," this should be included. Mr. Kirby will read the definition. From what dictionary are you reading?

Mr. KIRBY. This is from the Webster's New Collegiate Dictionary.

Mr. IRWIN. I have access to an unabridged dictionary, however, but I will listen.

Mr. KIRBY. Perhaps you will recognize this as the same definition:

(1) Unspoken, silent, also not speaking; (2) implied or indicated but not actually expressed, as "tacit consent."

Mr. IRWIN. I will accept that definition.

* * * * *

Mr. IRWIN. I participated in a national political movement with the knowledge and tacit support of the Republican National Committee.

Senator KEATING. You mean all the members of the committee?

Mr. IRWIN. No, sir. Well, now, if a statement of a national committeeman is to be accepted, I would say all.

Senator KEATING. You mean the Oklahoma national committeeman?

Mr. IRWIN. No.

Senator KEATING. One national committeeman?

Mr. IRWIN. One. I shall get to that.

Senator KEATING. Do you consider that is the tacit support?

Mr. IRWIN. I beg your pardon?

Senator KEATING. Do you consider that is the tacit support of the Republican—

Mr. IRWIN. If we are to believe the statement of this individual, I think you will be amazed at what—

Senator KEATING. Did Senator Thruston Morton tell you you had his support?

Mr. IRWIN. I have a reference to Senator Thruston Morton in a letter which I shall read, and I think it will make the point very clear.

Senator KEATING. All right, I will be interested to hear it.

Mr. IRWIN. I believe a chronological presentation of the account of my activities could best be followed, and I shall use that method.

On April 15, 1960, I filed for presidential elector, office No. 5, with the chairman of the election board. I pointed out to the chairman that in the space for occupation I had described my occupation as "slave laborer for the Federal Government." With this knowledge, the chairman accepted my filing papers and, in fact, recognized the description of my job as a proper occupation. I had also made known that I would not support then Vice President Nixon for President should he be designated by the party. The Republican national committeeman—

Senator KEFAUVER. I didn't understand. You say you—

Mr. IRWIN. I had also made known that I would not support the then Vice President for President should he be designated by the party.

Senator KEFAUVER. Where did you make that known, sir?

Mr. IRWIN. Generally, sir, to acquaintances. I declined to pay for ads to so advertise, but there was no question in the minds of the informed electorate, shall I say.

Senator KEFAUVER. I mean did you make a public announcement?

Mr. IRWIN. I do not recall. I do not recall any meeting at which I made such an announcement.

Certainly, I informed my friends, the delegates to the convention which was to follow, and anyone else in authority whom I thought might consider my weak voice.

Senator KEATING. Were you selected at the convention or by a primary election?

Mr. IRWIN. I shall point that out in this next statement, sir.

Senator KEATING. Well, that is what I am asking you to do.

Mr. IRWIN. The electors from the State of Oklahoma are elected in the primaries.

Senator KEATING. And you ran in a primary?

Mr. IRWIN. I did run in a primary.

Senator KEATING. Against other candidates?

Mr. IRWIN. I shall cover that in my next statement, sir.

Senator KEATING. That is what I was asking you to do.

Mr. IRWIN. If it please the Senator.

Senator KEATING. Yes.

Senator KEFAUVER. Very well, you may proceed.

Senator KEATING. Proceed.

Mr. IRWIN. The Republican national committeeman and State chairman filed another candidate for office against me. This candidate subsequently withdrew, giving as his reason an error in his filing papers. The newspapers carried most of the above.

Prior to, during, and after the convention I at all times made known my support of conservative candidates and refusal to support Vice President Nixon.

November 8 and 9—

Senator KEATING. You were eventually the only candidate after the other man withdrew?

Mr. IRWIN. After my opposition, which was placed on the ballot by the Republican national committeeman and State chairman, withdrew, I remained the only candidate for office.

Senator KEATING. Did he withdraw before the actual ballots were marked?

Mr. IRWIN. Yes, indeed.

Senator KEATING. So when a Republican went to vote for the elector you were the only one on the ballot?

Mr. IRWIN. Quite true; yes, sir.

Senator KEATING. And did you at that time make it known publicly that you would not support Mr. Nixon?

Mr. IRWIN. I say publicly because I certainly conveyed my intentions to my friends that, should Oklahoma go Republican I had no intention of supporting—this was, you must bear in mind, before the conventions. I would say every delegate who attended the Republican Convention was fully aware of my intentions.

Senator KEATING. Were you at the Republican Convention?

Mr. IRWIN. I was not at the Republican Convention.

Senator KEATING. You were elected—

Mr. IRWIN. Mrs. Theo Klockman, who was both a delegate to the convention and an elector, was fully aware of my intentions.

Senator KEATING. And you were elected as an elector by all of the Republican votes in the State of Oklahoma?

Mr. IRWIN. I was elected as an elector by the people of Oklahoma, not by the Republican Party. The Alabama case makes that position quite clear. A political party does not elect an elector. The people elect an elector.

Senator KEATING. The political parties put up a candidate for elector against those of the opposite party.

Mr. IRWIN. Unfortunately, most of the States deny the opportunity for a person to vote otherwise in the election. The State of Oklahoma provides that anyone may file as an independent. What is an independent? What party is an independent?

We have—the reason there are not more independents is because they might just as well be Communists as Republicans.

Senator KEATING. Do you think that the people in Oklahoma who voted for you thought you were against Mr. Nixon?

Mr. IRWIN. Of the replies and the comments that I have had on my position, as reflected by letters and post cards that I have received and which I hope to attach to the record, two took issue with my position. The remainder were highly laudatory, were likening me to Patrick Henry, maybe because of Henry Irwin. I don't know. But highly commendatory and laudatory.

Senator KEATING. That wasn't my question. My question was do you think people who voted for you as an elector thought that you were not going to support Mr. Nixon.

Mr. IRWIN. I have no way of knowing that, sir.

Senator KEFAUVER. Very well. Proceed, sir.

Mr. IRWIN. On November 8 and 9 it became apparent to a shrewd observer or analyst that a possibility existed to deny the Presidency to Kennedy and to elect a conservative coalition. I received a copy of a letter suggesting the southern Democratic electors meet to consider withholding their support of Kennedy.

This letter I offer merely to indicate that the question is: Would you not like to meet with other southern electors and persuade the presidential nominees to give the South * * * and so forth. The point I would like to make here is that it was a meeting of southern Democratic electors.

Senator KEFAUVER. What letter is that? Can you identify it?

Mr. IRWIN. This is a letter from R. Lea Harris, Montgomery, Ala., November 9, 1960.

Senator KEFAUVER. Received by you?

Mr. IRWIN. It is an open letter, apparently an open letter to all presidential electors. This copy I did receive.

Senator KEFAUVER. That will be made a part of the record.

(The entire correspondence submitted by Mr. Irwin at this point, with attachments, follows. Handwritten portions are shown in italics.)

MONTGOMERY, ALA., *November 9, 1960.*

To All Presidential Electors:

The Constitution of the United States makes the presidential elector an official of the utmost importance. The next President of the United States has not really been elected, as under our electoral system, the so-called "election" is legally in the nature of a preferential primary. The presidential electors have the complete power to name the next President and this fact gives you an immensely powerful bargaining position. Already three times in our history, the majority of voters preferred one candidate but the electors named another President, and several other times candidates with mere pluralities have been named President. You may elect an entirely different nominee, or before you vote, have any required public commitments concerning future policies on national affairs, or prevent any punitive actions against the South. I am confident that many electors, regardless of their economic and political leanings, earnestly desire to see this great power they hold exercised to give the South some influence in national affairs. This may be accomplished in several ways, but only if southern electors will act in concert. Please carefully read the enclosed memorandum. Considering your position of great power and influence, would you not like to meet with other southern electors and persuade the presidential nominees to give the South certain assurances of proper treatment and discuss the affairs of the Nation in general. Possibly the electors may decide on another course.

Nothing can be lost by such a meeting, but much may be gained. Feeling certain that such a conference or convention will be avidly welcomed by most south-

ern electors whereby they may personally have the pleasure of meeting the next President and Vice President, and since time is short, I have moved to be of assistance by making hotel reservations and having facilities for the meeting.

If you support such an idea, please contact me immediately. Those who first respond can begin acting as a steering committee for the conference or convention.

Very sincerely,

LEA HARRIS.

MEMORANDUM

(Proposed or Suggested Presidential Elector Plan)

Attention: All Presidential Electors:

Convention of southern presidential electors could be called for November 18, 1960, at Montgomery, Ala.

A PLAN TO GIVE THE SOUTH A PARTIAL VOICE IN THE AFFAIRS OF THE NATION

There is a possibility that enough southern Democrats will not vote for Senator Kennedy in the electoral college, thereby denying him the electoral selection. To ascertain exactly who is voting for the nominee and *further to exercise a healthful influence* as set out below, a proposed convention of southern presidential electors may be called for November 18, 1960, at the Jefferson Davis Hotel, Montgomery, Ala. *Regardless* of how you personally feel in casting your electoral vote, all electors should come and personally meet the next President and Vice President of the United States, and other nationally known figures. You would enjoy getting to personally know the next President, Vice President and other prominent national figures. *In addition and more important*, you could participate in formulating national policy if you desire.

Please read carefully the enclosed information concerning the *Office of Presidential Elector*, and also this proposed "Plan to give the South a voice in the affairs of the Nation," which plan consists of three alternative plans. *You, the presidential electors*, are completely *legally free to act as you think best*. Between now and the proposed elector convention time, give this plan your utmost consideration.

A PLAN TO GIVE THE SOUTH A PARTIAL VOTE IN THE AFFAIRS OF THE NATION

(In Three Alternative Plans—A, B, and C)

Presidential electors from the 11 Southern States could be invited to attend a southern presidential elector convention to be held in Montgomery, Ala., on November 18, 1960. Presidential electors would be invited to this southern convention from the following States:

- | | |
|-------------------|----------------|
| 1. Virginia | 7. Mississippi |
| 2. North Carolina | 8. Tennessee |
| 3. South Carolina | 9. Arkansas |
| 4. Georgia | 10. Louisiana |
| 5. Alabama | 11. Texas |
| 6. Florida | |

President electors, Republican and Democratic, from other States would be invited to the 2d presidential elector convention, possibly set in Chicago 10 days later on November 28, 1960. (This convention probably will be dominated by Republican electors.)

Alternative plan A

This plan is assuming that the convention of southern presidential electors decide to support the Democratic presidential nominee, Senator John Kennedy. This convention will cause him to adjust his administrative policies on certain policies of the United States (if the convention so decides) such as curtailing the U.S. policy of giving large grants of foreign aid to Communist countries. A close examination of the foreign aid policy of this country indicates that our foreign aid policy is not entirely motivated by the high purpose of helping the Communist countries revolt against their Communist masters but in part promulgated to placate certain radical pressure and leftwing groups in this country. Do you know that since 1946, after World War II was over, the United States has given over \$11 billion of foreign aid to Communist Russia alone? Millions of

additional dollars have been given to other Communist countries. Both major parties advocate continuing foreign aid to Communist countries such as Poland and Czechoslovakia, yet these same "poor Communist countries" have wealth enough to send guns, war material and expensive radio transmitters and the like to the anti-American Castro regime in Cuba and help formulate world trouble elsewhere. Khrushchev stated that the Communist countries would "bury the West" in production. Unfortunately, if they succeed, they will be succeeding in part with sizable production and help from the United States.

Your attention is called to the fact that after the atomic spy traitors, Julius and Ethel Rosenberg were tried and found guilty, that a mob of 75,000 of your fellow American gathered in New York City to protest the carrying out of the sentence. By no means does this writer imply that this group were Communists, but obviously this group was used for a Communist purpose. It is not impossible that this radical group could be the balance of power for the block of New York votes. These radical groups have pressured and also bona fide convinced fine and sincere men that America should, for various reasons, give a considerable portion of our wealth and production to the Communists.

If the southern presidential electors would request Kennedy to change the U.S. policy of giving sizable aid to Communist nations, he would have no alternative except to accede to demands of southern presidential electors. This southern elector influence or counterpressure would offset the radical pressure of certain northern radical groups.

Other policy changes in national affairs may be required of him by the southern convention of presidential electors, such as possibly recognition that the 10th amendment of the Constitution still exists, and any other policy they decide on.

The 10th amendment says: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

The Democratic electors could offer their resolution to Senator Kennedy and if Senator Kennedy refused to accede to their demand, the southern Democratic electors could act upon plan B or plan C. Plan A is, in essence, a policymaking arrangement.

Alternative plan B

Southern convention of presidential electors could pass resolution reversing the position of candidates for President and Vice President; that is, have Senator Lyndon Johnson voted in as President, and Senator John Kennedy voted in as Vice President. While this plan B would not be to the preference of the northern and western Democrats, this plan should be acceptable to them as it would be a compromise and better for them than plan C.

No statesman from the 11 Southern States has been President since Civil War days. Thus, for over 100 years, no man from the South, which is almost one-third of the Nation, has had the privilege of occupying the Presidential chair. This of course, is due largely to unwarranted sectional prejudice against southerners. Plan B would be for the presidential electors, at the insistence of the southern presidential electors convention, to reverse the Democratic ticket and name Senator Lyndon B. Johnson for President and Senator John Kennedy for Vice President.

If the northern and western Democrats would not be willing to have a southern Democrat (Lyndon Johnson) lead the Democratic Party just once in 100 years the southern electors at the convention could proceed with plan C.

Alternative plan C

(Remember one and an idea may be a majority. Republican presidential elector convention planned for Chicago.)

If the northern Democrats do not want to go along with the above alternative plan B, then the alternative plan for the southern convention would be that they could achieve in the electoral college what has been achieved in Congress for many years; that is, a coalition of southern Democrats and Republicans.

Plan C is as follows: The southern presidential elector convention would nominate a list of outstanding southern men to be President of the United States and the Republican electors would have a meeting in Chicago and select the candidate for President from among the list that they would prefer to have as President of the United States. As an added inducement, the southern convention would agree to support any Republican candidate for Vice Presi-

dent the Republicans desire to nominate. Among the outstanding southern men to be on the list may be possibly :

1. Senator George Smathers of Florida.
2. Senator Richard Russell of Georgia.
3. Governor Vandiver of Georgia.
4. Senator Strom Thurmond of South Carolina.
5. Governor Hodges of North Carolina.
6. Governor Almond of Virginia.
7. Senator John Sparkman of Alabama.
8. Governor Ross Barnett of Mississippi.
9. Senator Lyndon Johnson of Texas.
10. Governor Allen Shivers of Texas.
11. Governor Jimmy Davis of Louisiana.
12. Governor Orval Faubus of Arkansas.

It is to be remembered that the Constitution of the United States is one of the greatest instruments ever written and it should be noted and borne in mind that this great instrument was not just simply decided upon, but is the result of not one but many compromises of the delegates at the Constitutional Convention. It is entirely possible that it was the spirit of compromise which gave the Constitution its greatness and durability. If the southern convention will be willing to cooperate and compromise with each other, they can bring about the selection of a great and outstanding American to lead our Nation. Republican presidential electors are requested to notify this writer if they would be willing to cooperate with alternate plan C whereby they would actually do the selecting of the President of the United States from one of the above named group (or added names on the list to suit the desire of the southern elector convention) and select their own member for Vice President. The Republican electors are, of course, free to nominate any Republican they desire for Vice President, possibly Richard Nixon, Henry Cabot Lodge, Governor Rockefeller, Senator Barry Goldwater, Congressman Walter Judd, or whoever they desire.

It is to be noted that no alternative plan has been proposed to throw the election of the President into the House of Representatives because the U.S. Constitution squarely places the duties and responsibilities of selection of the President and Vice President on the presidential electors. The constitutional provision to throw the election into the House of Representatives is a last resort measure only; that is, if the electors become so diversified that they could not fulfill their constitutional obligations. (See article on "Office of Presidential Elector.")

Federal patronage in each State would be taken away from the U.S. Senators and placed under supervision of cooperating presidential electors from that particular State. This influence would restore to the office of presidential elector the high position this office was supposed to have under our Constitution. In addition it would free the Senators from "executive patronage influence," thus leaving the Senators free to vote their conscience and conviction on all legislative bills.

(By Lea Harris, 137 Lee Street, Montgomery, Ala.)

THE OFFICE OF PRESIDENTIAL ELECTOR AND THE ELECTORAL COLLEGE

A cursory view of the electoral principle will reveal that it is not of American origin but like many of our governmental facets, borrowed from Europe. The electoral system, in a very limited manner, was used by the Roman Empire: electors of privilege selecting the Roman Emperor. However, 18th century Germany had an elective monarchy, the great princes of the principal provinces also held the office of elector and they elected their Emperor, but the selection was practically always limited to the reigning family.

When the Constitutional Convention met, the electoral principle was decided upon as a means of electing the President and the electoral college was the method devised after a series of compromises.

Under the Constitution, the National Government was set up and organized to be a federated republic with delegated powers, having both the senior House of Congress (the Senate) and the Chief Executive appointed directly and indirectly respectively by the legislatures of the various States. The U.S.

Senators continued to be appointed by the legislatures until the 17th amendment to the Constitution was ratified in 1913, which placed the selection of the Senators on a popular basis.

The wise framers of our Constitution intended to remove the Presidency of or country from the pressure of pressure groups and partisan strife, which they foresaw would cause division among us. The constitutional framers planned to get the best and highest caliber of men for the Presidency and provided that the legislatures of the various States would "appoint" outstanding men as presidential electors and these men would in turn carefully and judiciously select an outstanding statesman for the President.

When Washington was first elected, or more appropriately "appointed" President, the States of Rhode Island and North Carolina did not participate as they had not joined the Union. Confusion and disunity was so great in New York that this State failed to name electors and therefore failed to participate. Political partisanship caused the evolvement of the present block electoral system which was never intended by our Founding Fathers.

The electoral college system has caused the United States much uncertainty and difficulty, among which was probably the War Between the States in 1860-65. It is very likely that a properly working electoral college could have very easily possibly averted the War Between the States.

For a very concise, authoritative statement of the law regarding presidential electors, I cannot find a better presentation than the decision of the Supreme Court of Alabama in their opinion of the justices No. 87. While this decision was rendered by the Supreme Court of Alabama, the court points out that it is based on Federal law and so cited Federal cases; therefore although this decision was rendered by a State court, it is also the essence of the law pertaining to presidential electors regardless in what State you reside.

This controversy was brought about when the Alabama Legislature attempted to bind presidential electors. The supreme court, in ruling such a law void and of no effect stated the following (vol. 34, So. 2d 598):

"The Constitution of the United States, article II, § 1, clauses 2 and 7 says:

"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."

"And the 12th amendment says:

"The Electors shall meet in their respective States and vote by ballot for President and Vice President * * *"

"(1) The language of the Federal Constitution clearly shows that it was the intention of the framers of the Federal Constitution that the electors chosen for the several States would exercise their judgment and discretion in the performance of their duty in the election of the President and Vice President and in determining the individuals for whom they would cast the electoral votes of the States. History supports this interpretation without controversy. ('The Federalist,' vol. II, p. 35; 'story on the Constitution,' 5th ed., vol. 2, p. 318; 'The World Book Encyclopedia,' vol. 5, p. 2246; 'The Laws of the American Constitution,' by Burdick, s. 25.)

"(2) There is no doubt that the appointment and mode of appointment of electors belongs exclusively to the State under the Constitution of the United States. *McPherson v. Blacker* (146 U.S. 1, 13 S. Ct. 3, 36 L. Ed 869). But a study of the aforesaid constitutional provisions also shows that the action of the electors in casting their votes by ballot is governed by the Federal Constitution. It is true that there has grown up a practice under which electors have felt dutybound by virtue of their own consciences to vote for the nominees of the party that nominates them for election and such electors in casting their ballots have felt influenced by the plans and purposes of the party to which they belong. But this course of action has followed their own personal regard for what was their duty and not some statutory mandate. The elector is a constitutional officer and the words used in the original constitution and the amendment thereof show that he is to follow his own judgment and discretion. It is a far cry from letting that judgment and discretion be controlled by his conscientious regard for the way in which he should cast his ballot to requiring by

statute that his vote must be cast in a particular way regardless of his own discretion.

"As supporting the view here expressed that the vote of this constitutional officer cannot be directed by statute, the deficiencies in the amendment to the statute before us are worthy of note. It may be observed that no presidential elector is elected by any political party but is elected by all of the electors of the State in the general election in November. The amendment of the act before us does not refer to the party by which the electors were nominated but refers to the party by which they were elected. Of course, the presidential electors are not elected by any political party but are elected by the people as a whole. Other deficiencies in the act could be pointed out as for example no one elected at the general election as an elector could function unless he belonged to some political party which had held a national convention and had a nominee for that office. The legislature cannot thus restrict the right of a duly elected elector.

"(3) When the legislature has provided for the appointment of electors its powers and functions have ended. If and when it attempts to go further and dictate to the electors the choice which they must make for President and Vice President, it has invaded the field set apart to the electors by the Constitution of the United States, and such action cannot stand. In view of what has been said, it is not necessary to consider S. 45 of the constitution of Alabama and no further reply is needed."

The above is intended only as some informative but competent background material on the very important office you occupy and with it the great political influence that accompanies this position.

(By Lea Harris, 137 Lee Street, Montgomery, Ala.)

MONTGOMERY, ALA., November 15, 1960.

Mr. HENRY D. IRWIN,
Bartlesville, Okla.

DEAR MR. IRWIN: I received your telegram and wish to thank you for same. I have received considerable support on this idea, but as yet, everything is uncertain.

I certainly hope you will contact some of your Republican elector associates and ascertain if they will cooperate for a coalition ticket. Rest assured that I will keep your answer in confidence as I realize I am dealing with gentlemen who are in the public light. It would be a big help to southern Democratic electors to know they could rely on the Republican electors.

Again, thanking you for your telegram and your assistance, I am,
Very sincerely,

LEA HARRIS.

NOVEMBER 18, 1960.

Mr. HENRY D. IRWIN,
1107 Cherokee Street,
Bartlesville, Okla.

DEAR MR. IRWIN: Let me assure you that I am extremely grateful for your offer of support. There are Republican electors in other States that are also helping, but somehow they did not have the enthusiasm which I felt you had and which is absolutely necessary to put our coalition ticket across. The more help and support we get, of course we are that much stronger. This idea is, of course, such a new and revolutionary idea that it has taken everyone by surprise and in fact, believe it or not, many of the electors, even though I set the facts out in the material, do not fully understand exactly the plan of the coalition and how we must vote to achieve that end. I want to call your attention to the fact that this lack of understanding might be the stumbling block to some of the electors.

I would like to encourage you all I can to give as much help as possible for we are constantly picking up help all the time, in fact, the preachers are beginning to help. I call your attention to the fact that the latest AP vote tabulated shows that Jack Kennedy does not have a majority of the popular vote, but a plurality, this when you consider the vote of independents, so no one can rightfully say that he truly has the mandate of the people.

Mr. Irwin, I am sure that you realize that this procedure may be a permanent precedent to enable those who believe in the free enterprise system to gather at a rallying point.

Before this proposal went out, the southern voters apparently had only a choice between Kennedy and Nixon with no real hope of electing a man sympathetic to the South. Now, with this new horizon, it has certainly stirred new activity in the conservative field. As I mentioned to you, when these electors or their representatives get together with Mr. Kennedy, anything can happen.

I mention to you that we should consider that while we are looking for electoral votes, let us not overlook a potential break in the Texas delegation.

Enclosed is a suggested telegram, or possibly night letter, which would be cheaper. Also enclosed are the names and addresses of the Republican electors. You might get some of your preachers out in Oklahoma to also start a movement to support this coalition ticket.

Very truly yours,

LEA HARRIS.

See why Allen Shivers is a good man?

[Note: A line is drawn from this postscript to the word "Texas" in the next to last paragraph of this letter.]

(The following is the enclosure to the letter of November 18, 1960:)

Suggestion.

Imperative that we electors save the free enterprise system. Growing desire among southern electors to organize coalition ticket. The Lea Harris proposal raises possibilities of help to the Republican party for years to come. Does not an Allen Shivers-Barry Goldwater ticket beat a Jack Kennedy-Lyndon B. Johnson combination. Our leaders are approving this plan. Time is of importance. Let me know.

Henry, remember this is a cooperative effort; we all can't have everything we want. A half a loaf is better than none.

Lea.

MONTGOMERY, ALA., November 22, 1960.

DEAR HENRY: Am convinced that the moderates and conservatives have the majority in the electoral college over the Kennedy liberals if they can just agree and work for a coalition ticket. This coalition ticket is catching on like a prairie fire. Please help put in motion the Republican electors by phone, wire, Republican party leaders and possibly the preachers. Several other Republican electors will be working for this coalition ticket.

After much consideration, we feel the Shivers-Goldwater ticket in general would be most likely to succeed. Mr. Nixon is popular and with his experience would make a good Secretary of State.

Enclosed is a list of the Republican electors. Please let me hear from you, and give this effort all you have.

Very sincerely,

LEA HARRIS.

Henry, my office is a mess with all the volume of mail. Thought this went out before. We are gaining rapidly. Please redouble your efforts, it is really possible to accomplish this. We have men working with us from New Eng. to Calif. and Alaska.

Lea.

Sat.

Extra secretary got list confused but here it is. Please excuse manner but time is of essence, get started. She omitted a few states but will mail you those Monday.

Lea.

IMPORTANT INFORMATION TO ALL ELECTORS

MONTGOMERY, ALA., November 28, 1960.

To All Presidential Electors:

From the following information, it appears that Senator John Kennedy will not receive the needed electoral votes necessary to be elected President when the electoral college meets.

From my communications with all sections of the country, from apparently reliable information, the following facts appear:

1. *Illinois (27 electoral votes).*—In one precinct in Cook County (Chicago, Ill.) the vote tally was 99.29 percent, an unreasonable and unlikely percentage, and it is likely that this and other boxes may be thrown out from which Senator Kennedy received overwhelming majorities. For this and other reasons, certain responsible Republicans are confident this will deny Illinois' 27 electoral votes to Senator Kennedy. Even Senator Paul Douglas, Democrat, Illinois, has expressed concern that the canvassing board dominated by Republicans will not certify the electors to Senator Kennedy.

2. *New Jersey (16 electoral votes).*—A prominent Republican told me that they were "uncovering evidence" whereby this State's votes would be denied Mr. Kennedy.

3. I have been in direct contact with influential members of the Louisiana Legislature and it is felt that the legislature is in the mood to repeal State laws pertaining to electors (they would be reenacted after this is over) and then remove the electors and appoint new electors.

4. Even if events do not fall exactly as reported to me, it is likely that law suits in these three States may prevent certification of electors. This would reduce Kennedy's total to 247 and further deductions appear highly likely. In Texas, it is likely the Republicans may "adjudicate" the Texas legal provision where opponent's ballots must be scratched out because this resulted in upwards of 100,000 votes being thrown out. This may nullify Texas' 24 electoral votes for Mr. Kennedy.

When George Washington was elected, the presidential elector situation was so confused in the State of New York that although New York was entitled to vote, they could not agree on their electors so through their own confusion, the State was denied the right to vote. The Legislature of the State of South Carolina in 1860 abolished its electoral laws and handpicked its electors. The office of presidential elector, although it selects the President, is strictly a State office and is paid by the State as opposed to a Federal office such as a Congressman, who is paid by the Federal Government and therefore all legal action would be in the State courts.

The North and West do not understand the one-party system of the South. Other than the South, our country has two great parties which serve as two channels of public opinion. In the South, we have only one channel of public opinion and that is the Democratic Party and we have the two-party system within the traditional Democratic Party. As a result, the liberals, moderates, and the conservatives use this party. The economic liberals scream to the skies about the lesser liberals and conservatives using the southern Democratic Party, but as there is no other effective channel of political expression, the conservatives, of necessity, must continue the use of this party, and they consider that they belong to the Democratic Party of Alabama as opposed to the national Democratic Party. For instance, closely examine the Georgia situation. Note that after Senator Kennedy received the nomination in California, the Democratic voters of Georgia by a sizable mandate directed the electors to be freed and, in effect, gave them a mandate not to vote for Mr. Kennedy. The Georgia situation clearly points out the Democratic victory in the South was one for the traditional Democratic Party and not for Senator Kennedy. Should the Georgia electors vote in accordance with the Democratic mandate, they will vote for someone other than Kennedy, thus reducing the total to 235 (not considering the Texas possibility).

PLEDGE

The Democratic Party of Alabama had a pledge but later rejected it and it is believed by the writer that only one other State in the Union has actually imposed a pledge on the electors. The writer only knows of one State that has laws attempting to bind electors. Such binding efforts, according to the Supreme Court decision, are null and void (see law in memorandum on elector). It is pointed out under the Supreme Court decision an elector has a positive consti-

tutional duty to select the best man according to his conscience to be President. If an elector has mistakenly taken a pledge contrary thereto, he must resolve this conflict himself.

As I have stated, my position is to place the South in the position that New York has held for over 100 years, that is the position of balance of power. Often it has been said the South has no place to go. Well, here is a definite plan for such a meeting could accomplish much and should our request be denied, the South has a definite place to go—a coalition ticket. The situation is now reversed, the northern Democrats have no place to go. Our Nation will greatly benefit as this will place a break on the ultraliberal forces. In order to put strength in the South's new position, I am doing all I can to line up a ticket of Allen Shivers, Democrat, former Governor of Texas, and Senator Barry Goldwater, States' Righter Republican, Arizona, just in case.

We are making rapid headway on both sides of the political fence. In fact, we have Republicans all the way from New England to California and Alaska working diligently to place this coalition ticket into being.

A growing number of both southern Democrats and Republican electors desire to raise the office of elector to a significant position and utilize this system of checks and balances. Groups of citizens are being organized in the South to discuss this matter with electors. It appears now there are a number of southern Democratic electors who are "less liberal" and conservative, plus those concerned over the erupting racial situation in New Orleans and elsewhere will see fit to exercise the influence of their important office. There is also a growing feeling among southern electors that since the Kennedy family interceded in the Atlanta Courts of Martin Luther King, that Kennedy should do likewise for the State of Louisiana in New Orleans. (Kennedy refused to see a delegation from the Louisiana legislature.)

Based upon the above facts, I would not be surprised when December 19 rolls around, that the most votes Senator Kennedy can muster may only be approximately 200 (not including Texas possibility).

Of the date of this letter, I fully expect a southwide meeting to be called— not by me, but by others in influential positions of leadership.

Mr. Elector, you are urged to discuss with your friends the great power of the office you occupy, especially in the light of world conditions and the tension in our own country.

Respectfully yours,

LEA HARRIS.

P.S.—I have noticed certain newspaper reports discounting the possibilities of this meeting and the results therefrom. It is my belief that such reports are definitely politically inspired—and from weakness.

(The following are enclosures to the letter of November 28, 1960:)

NOTE

Your communication was truly greatly appreciated. Please forgive this type of reply, but the volume of mail received makes this necessary. I will write you a personal letter at a later date.

It should be noted that the votes of the States' Rights Democrats added to the votes of the Republicans is a majority over that of Mr. Kennedy, in other words, if there is a mandate from the people, the mandate is for the coalition ticket, not for Mr. Kennedy. This movement is to make it possible to cause the public mandate, although slim, to be reflected in the electoral college.

With the wide experience of Mr. Nixon in foreign affairs, I feel that he would make a fine Secretary of State, with a resulting positive and firm foreign policy. It should be noted that under the vacillating foreign policy such as that of Mr. Acheson's, the free world lost China to the Iron Curtain, and this loss could have indirectly brought on the Korean war. Can we afford any more sizable losses of the free world to the Iron Curtain?

Political parties exist for the welfare of the country and must act accordingly.

Should a Shivers for President, Goldwater for Vice President succeed, I will wholeheartedly endorse Mr. Nixon for Secretary of State. We strongly urge you to help Mr. Nixon be in a position to formulate foreign policy, but not simply criticize it.

This movement is spreading like a prairie fire. For the sake of a firm and constant foreign policy, let's join hands for America and let's make this movement

succeed so Mr. Nixon can be Secretary of State, and to this end you are strongly encouraged to contact your presidential electors and urge them to vote for Mr. Shivers and Mr. Goldwater.

The plan is very simple. The Republican electors and also the southern Democratic electors pool their votes and both groups vote for Allen Shivers for President and then both groups vote for Barry Goldwater for Vice President.

Sincerely yours,

LEA HARRIS.

MEMORANDUM No. 2

The coalition ticket of former Gov. Allen Shivers, Democrat, of Texas, and Senator Barry Goldwater, Republican, of Arizona, is obviously a compromise ticket. Much thought and consideration has gone into the selection of these two men for the ticket. In addition, some of the reasons for suggesting these men as a winning ticket are not obvious unless all the political facts were known. It should be pointed out that both of these men have the necessary character, experience, and ability, and that intangible leadership personality whereby they could fulfill their respective high positions with success, dignity, and understanding. This coalition ticket, obviously being a compromise arrangement, very likely will not be the preference of all the electors and well wishers of this effort.

It further should be noted that although the votes for the States Rights Democrats in Mississippi and Alabama, and all the minor parties such as the Prohibition and Socialist Parties, that Senator Kennedy did not receive a majority of the popular vote and therefore has no mandate from the American people. Therefore, Senator Kennedy's only claim to the Presidency is that of the block electoral system which many think has given him the majority of the electoral votes; however it is becoming increasingly apparent that he likely does not have this electoral majority. It is believed, and for very good reasons, that events in the near future will show Kennedy does not have a majority.

It should be noted that although the State of Georgia went Democratic, that after Mr. Kennedy was nominated by the convention for President, the voters, in a referendum, overwhelmingly voted to free their electors and should they vote for Senator Kennedy now, they will be going against the mandate of the citizens of Georgia. It is my belief that with exceptions of only a couple of Southern States, the electors did not actually pledge themselves to Mr. Kennedy in the true meaning of the word "pledge." The Democratic victory in the South was one primarily of a traditional party victory and many of these electors had not previously taken a pledge to support Senator Kennedy. It further should be noted that the Constitution of the United States and the Supreme Court decision thereof interpreting the law makes it clearly the duty and obligation of the elector to vote according to his conscience and select the best man for this high office.

There are many reasons too lengthy to set out here whereby this maneuver could, in fact, strengthen a two-party system. One obviously would be equalizing the support of both parties. Is not this ticket to lead our Nation better than a ticket headed by Jack Kennedy? Many of you, no doubt, have other preferences for such a ticket, but obviously if we go at cross-purposes and different candidates, our efforts will not succeed. We must not separate and be Don Quixotes and ride off in all directions.

The Democrats control the House of Representatives and through the strong political party ties, if the election is thrown into the House, this will, in all probability, insure Mr. Kennedy's election.

Why should not the Republican electors cooperate? First, they will elect a President who is more in line with their political philosophy. Second, they will elect one of their own members as the Vice President. Third, they will set in motion a counterbalance or system of checks that will restrain the ultraliberal forces and balance off the fact that the Republican Party is the minority party. Fourth, the Republicans throughout the Nation will receive the Federal patronage except in the States with cooperating Democratic electors.

Very sincerely,

LEA HARRIS.

Senator KEATING. Do you know who Mr. Harris is?

Mr. IRWIN. I have never met Mr. Harris. I would not know him if he were standing wherever he might be. I phoned the office from which the letter was mailed and suggested that if the southern con-

servative Democrats would deny this support, the Republicans would probably support a conservative coalition of Byrd and Goldwater and, with the unpledged votes, elect such a coalition. We agreed that I should solicit the Republican electors with the practical assurance that the southern conservatives would agree.

On November 10—

Senator KEFAUVER. Go back a minute. I didn't understand. It was agreed that you would solicit the Republican electors. Agreed with whom?

Mr. IRWIN. The author of the letter.

Senator KEFAUVER. Mr. R. Lea Harris?

Mr. IRWIN. Yes, sir.

Senator KEFAUVER. We have another letter just for identification. He seems to be an attorney and counselor at law, 137 Lee Street, Montgomery, Ala.

Mr. IRWIN. He is one and the same; yes, sir.

Senator KEFAUVER. Did you meet him?

Mr. IRWIN. I never met with him.

Senator KEFAUVER. How did you agree then?

Mr. IRWIN. By phone, sir.

Senator KEFAUVER. You called him, or he called you?

Mr. IRWIN. I called him. I just stated I phoned the office from which the letter was mailed.

Senator KEFAUVER. And talked with Mr. Harris?

Mr. VAUGHN. A person representing himself as being Mr. Harris.

Senator KEFAUVER. All right, sir.

Mr. IRWIN. We agreed. On November 10 I telephoned the national committeeman from Oklahoma and presented my plan and asked him to make a statement releasing the Oklahoma electors from any feeling of moral obligation to support Nixon.

He offered his enthusiastic support of the plan and agreed to announce that evening the release of the electors. He subsequently telephoned Mr. Leonard Hall, and while I am not aware of their discussion, the Oklahoma national committeeman withheld any such statements.

On November 20, I sent a wire to all Republican electors in effect as follows:

I am Oklahoma Republican elector. The Republican electors cannot deny the election to Kennedy. Sufficient conservative Democratic electors available to deny labor Socialist nominee. Would you consider Byrd President, Goldwater Vice President, or wire any acceptable substitute. All replies in strict confidence.

I have attempted to get copies of this and other wires and I am advised by the telegraph office as follows:

Retel. Sorry we only keep records 6 months. These messages have been destroyed.

WESTERN UNION TELEGRAPH CO.

Senator KEFAUVER. I understand by that that you wired Western Union?

Mr. IRWIN. I wired Western Union asking them to provide me with copies of those wires.

Senator KEFAUVER. And that was quite recently?

Mr. IRWIN. That was subsequent to my discussions with Mr. Kirby, your chief counsel.

Senator KEFAUVER. And what is the date of the telegram from—

Mr. IRWIN. This wire is dated—well, there is a stamp date here. I can't recognize it in the wire itself. 3:44 p.m., eastern daylight time, July 5, 1961.

Senator KEFAUVER. As I understand it, then, the wire that you got back you didn't keep—

Mr. IRWIN. Oh, yes. These are copies of wires which I sent. I asked the telegraph office to provide me with copies of the wires which I had sent. I have no copy.

Senator KEFAUVER. I thought you said you sent them to all the Republican electors.

Mr. IRWIN. That I did, sir. All of the Republican electors in the States which went Republican.

Senator KEFAUVER. Yes.

Mr. IRWIN. I sent copies to each. The telegraph office destroyed those records. I have no copies. This is in essence, as I have just read, the contents. The contents as I recall are as I have read.

Senator KEFAUVER. All right, sir. You may proceed.

Mr. IRWIN. "All replies in strict confidence."

I have attempted to get copies of this wire and other wires and I have been advised by the telegraph office as follows:

Retel. Sorry we only keep records 6 months. These messages have been destroyed.

WESTERN UNION TELEGRAPH CO.

From these replies to this last wire to the electors, which was approximately 25 percent, I projected the possibility of Republican support of the coalition in the college. I was amazed at the replies in several respects, but mainly at the ignorance of the electors as pertained to their constitutional duty.

Since I advised that these replies would be in confidence, I beg the committee to permit me to read some of the replies I received without identifying the author or the State of origin.

Senator KEFAUVER. For the time being, read some of the telegrams and we will make a further ruling about them as to whether you will identify the names.

Mr. IRWIN. These are telegrams received from electors who had previously received my wire.

Feel obligated Nixon. However, if genuine possibility exists, would consider coalition although this not pledge.

Would consider ticket of Goldwater for President Byrd for Vice President anything further contact me.

Senator KEFAUVER. At least give us the State.

Mr. IRWIN. The first wire was from the State of Kansas. The second wire was from the State of Indiana.

From the State of Utah:

Retel Byrd and Goldwater too conservative but would consider Byrd and Nixon.

Honolulu:

Oppose move which could be opening wedge for creating parties to be known as liberals and conservatives respectively and result in extinction of Republican Party as it is now known.

State of Illinois, which was in question at the moment :

Would approve Byrd and Goldwater if you get opportunity.

Senator KEFAUVER. If you get opportunity? What?

Mr. IRWIN. It says, "if you get opportunity." The wire would have to speak for itself.

Would approve Byrd and Goldwater if you get opportunity.

He might have meant if I get opportunity, which I am inclined to believe he did mean.

From Illinois :

Admire each person named by you. Am favorably inclined to agree to suggestion subject to law and consultation with other electors.

From California :

If no possible chance for Nixon-Lodge I will definite consider coalition ticket Goldwater and Byrd or Goldwater and Shivers.

From South Dakota :

As South Dakota elector am interested in your proposed coalition ticket namely Byrd and Goldwater if you have sufficient Democrat electors to go along.

They all don't read as positively as that. I shall continue if you wish, or as you wish.

Senator KEFAUVER. Well, go ahead. Read them all.

Mr. IRWIN. Iowa :

Iowa rep delegates meet December 18 and I would not make any commitments until that time.

Ohio :

I am pledged to Nixon and will vote for him.

Utah :

Retel morally committed to vote Nixon appreciate your interest good luck.

I have a telephone note from Iowa.

From Oregon :

Thank you for your telegram best ticket available is Nixon-Lodge.

From Ohio :

Am morally pledged to Nixon. Trust South would go along.

From Alaska :

Retel am pledged under oath impossible comply.

Kansas :

Want to work with you prefer Nixon Lodge await details.

Maine :

As a Republican elector I am committed to cast my ballot for the Republican nominee.

Arizona :

As presidential elector I am bound to follow the expressed wishes of our voters of Arizona who gave Mr. Nixon a 61,000 majority I am sorry that cannot be of assistance at this time thank you for your wire.

New Hampshire :

Contents of your wire received favorably appreciate concern electors have letter follows.

There is no punctuation. I cannot——

Idaho:

Have not received Montgomery letter. Would appreciate seeing it. Must stay with Nixon until recounts are exhausted. Would like to be kept informed as to progress. Interested.

Alaska:

Alaska votes dedicated to Nixon.

Oklahoma:

Interested to receive wire will be awaiting further details as discussed in our telephone conversation November 21.

Oregon:

Am pledged to vote Nixon-Lodge ticket.

Washington:

How about compromise slate Nixon Johnson we might get this across Byrd and Goldwater OK with me don't think it would go over. Would have to get release from my delegation think this possible my people here very interested keep me posted.

California:

Am California Republican elector planning to vote for Nixon-Lodge.

This is for California:

Retel I am hundred percent Nixon elector who believes completely honest valid count would show him as having been elected.

In addition to those telegrams I subsequently received these letters from the various electors. The pertinent parts I will read. If you wish me to read them all, I will be happy to.

From Wisconsin:

Your wire has received my serious consideration, but after a talk with my Congressman, I do not believe it is possible * * * Thruston Morton seems to agree.

(NOTE.—The full text of the above letter appears at p. 615.)

Senator KEATING. That is not the basis of your saying that you had the tacit support of the national committeemen.

Mr. IRWIN. No, sir. It was merely to apprise the committee of the fact that Thruston Morton was aware of the transaction or aware of what was going on.

Senator KEFAUVER. Well, I gather that he thought—Senator Morton agreed that anything like that was impossible.

Mr. IRWIN. Yes, he did, and that we know to have been in error.

From Washington:

Will say that I, in fairness to my party must vote as the people voted, and under no circumstances could I be induced to do otherwise.

From Ohio:

Since the voters of Ohio chose Richard M. Nixon, I feel it my obligation to cast my ballot for him. Should the Republican Party of the State of Ohio approach me on your suggestion, I would then reconsider, but until such time I am pledged to vote for the candidate for whom we worked so hard.

From Maine:

In reply to your telegram of November 20, I beg to advise that the electors in the State of Maine were nominated and elected on party lines and are under obligation to express the preference of the party as indicated by the popular vote in the election.

From Kansas:

It would be my disposition to act in unison with my fellow electors in Kansas in what they might feel is to the best interest of our State and Nation.

From Washington:

I am very sympathetic. However, during our State convention, there was a resolution instructing the electors to cast their vote for the Republican nominees for President and Vice President. Hence, in my opinion, it would be necessary for the nominee to formally release these electors before any consideration could be given in this matter.

It has long been my personal feeling that sooner or later your conservative Democrat leadership of the South and that of the North were going to have to form a coalition because they have too many things in common, particularly the same theory of government at the lower level. This was made apparent in the 1930's when our democracy as we know it and as it was originally established was preserved solely through the leadership of the southern representatives in Congress and to them I think we owe a great debt. The name of the party seems to be the stumbling block and from my standpoint I wouldn't hesitate to adopt a new title, if it would only bring this type of thinking together in a unified whole.

I sincerely hope that this realignment will become a reality instead of a barren hope or dream.

From Oregon:

I have high regard for these fine gentlemen.

From New Hampshire:

It is gratifying to hear and to know that many others feel as I do toward the terrific Fabian Labor Socialist that is the nominee for President. I never want to live to see this country in any more of a Communist control than it would be if this man is President. It is frightening to think about. The evil forces have been working for many years in this country.

Mr. Kennedy a student of the London School of Economics which was founded by Mr. and Mrs. Sidney Webb and with Professor Lasky as one of his teachers we know full well that a lot has been absorbed in the Fabian and Keynesian approach. Add to him Galbraith, Williams, Bowles, and what will we have?

The margin is getting closer all of the time with men such as Byrd, Thurmond, Russell, Lausche, Walter and you know the Republicans who have been fighting for us. Had a man such as Senator Byrd been put up at any time by the Democrats for President I am certain that he would have gotten a lot of Republican votes. * * *

Personally Goldwater is my man and we need one like him—

Senator KEATING. Is that the same letter?

Mr. IRWIN. Yes. [Reading:]

We need one like him for he has had the fortitude to stand on his convictions and continue to speak out. But the pressure groups, and liberals will silence him if they can—and that includes Republicans. Byrd-Goldwater team would mean a lot but do you think the electoral college could swing it? How do the southern Democrats stand when their States went for Kennedy. If ever there is a time to stop the trend it is now. * * *

This week's Human Events—as is true in all issues brings out a good article on the electoral college and as we know the Mundt-Coudert bill has been up in Congress for several years.

Yes, I am very interested in the proposal. Unless one is certain that Kennedy would be shelved the play is useless. I would be more in favor of trying to get some of the electors to accept Mr. Nixon.

Our country is in a very very sad and deplorable state and I am discouraged and can see no way out without an awakening by the American people.

May we have God's guidance in this serious question and I shall be grateful to hear from you of any progress.

From South Dakota:

I think that any real Democrat need have no qualms of conscience in not voting for him; and especially so, if he can have the opportunity of voting for a real Democrat who will stand for old Democratic principles. And we Repub-

icans should, for the good of the United States, help them to select some one along those lines.

From Wyoming:

I have been privileged to know practically all of the men who have been mentioned and am certain they would be excellent leaders for our Nation in this very difficult period.

My conception of the responsibilities of a presidential elector is probably old fashioned, but I cannot do anything other than what I was elected to do on November 8.

* * * and I am sorry I am not able to change my mind under all the circumstances.

From Ohio:

The money that Kennedy spent in the primaries and the irregularities that are now being discovered in the general election disqualifies him for President.

From Maine—she was hoping to elect Nixon-Lodge.

From Idaho, it is a reply, and since it is a reply, I shall include it.

Senator KEFAUVER. Well, I will ask the counsel to get the substance of some of the letters—you haven't read all of them—and they will be included in the record.

We will rule later about the names.

(The following are additional excerpts from this group of letters submitted by Mr. Irwin:)

From Idaho:

Our wire contained this: "Must stay with Nixon until recounts are exhausted." That does not mean that we must stay with him until it is too late to change the picture. As a matter of fact, Goldwater is our man and we are staunch admirers of Harry Byrd. We would be elated to have them head our Government. * * * If you can show strength and early recounts do not change the picture, I would be happy and anxious to help the movement in any way possible, * * * If there is sufficient favorable response, I feel there should be a meeting of the electors so inclined, to decide on a ticket and final strategy. Such meeting should not be publicized until the accomplishment was assured. If anything is done, it must be done fast. I commend you for your effort and hope your goal is realized.

From Maine:

As one Republican elector from Maine, I feel that I have a mandate from the people to cast my ballot for the Nixon-Lodge ticket. The names of the candidates, and not the electors, were on the ticket in this State and the people voted for them.

From Wisconsin:

Your wire has received my serious consideration but after a talk with my Congressman, I do not believe it is possible. He is quite sure that Kennedy has a clear majority, even with the recounts in process. Thruston Morton seems to agree. And I cannot envision a Southern State risking the lack of patronage such a move would entail.

(NOTE.—The above is the same letter from which Mr. Irwin read at p. 613.)

From Oregon:

I do urge you and as many electors as you can influence to vote for Nixon. * * * I feel there might be enough Democratic electors that might be free to cast their votes for Nixon. I urge you to work for as many electoral votes as you can secure for Vice President Nixon.

From Kansas:

I do not know whether or not the practice in Kansas conforms to other States; however, I did not receive any personal votes, in that no voter in the general election placed an "X" in the square after my name. The form of ballot we use

does not make provision for such purpose. The only square appearing on the particular ballot referred to was after the names of Nixon and Lodge. It was in this square that the voter put his mark and my name was not listed under theirs along with the other electors nominated in the primary. I do not know whether this makes our State different from that of other electors. I will be interested in receiving further and subsequent information should either of you* be disposed to inform me.

Senator KEFAUVER. These men being mentioned here, they don't know anything about all of this?

Mr. IRWIN. I don't know the men to whom you have reference, sir.

Senator KEFAUVER. I mean, Senator Byrd, Senator Goldwater.

Mr. IRWIN. I shall come to that later, sir.

Senator KEATING. Well, let me ask you before you come to that, have you given us at least excerpts from all of the telegrams and letters which you received from Republican electors in answer to your communication?

Mr. IRWIN. I have, to the best of my knowledge, sir.

Senator KEATING. And it is on the basis of that that you projected the fact that there were 200 Republican electors?

Mr. IRWIN. It was on that basis, sir.

Senator KEFAUVER. Well, how did you project it? You have only read about—

Mr. IRWIN. I tallied those that I thought—that definitely said "Yes," those who said "Maybe," and those who said "No." I replied that to the whole and came out with those figures.

Senator KEATING. You mean that you thought those that ignored your telegram and that you had no reply from, some of them you thought agreed with you?

Mr. IRWIN. In the same proportion. That might be weighting it in one way or the other. I have no way of knowing the significance.

December 5: The principal deterrent to a coalition vote by the Republican electors appeared to be a feeling of moral obligation to support Vice President Nixon. Many believed this false assumption could be removed should a responsible individual in the Republican Party agree to release the electors from any such feeling. Accordingly, on December 5 I wired each national committeeman and State chairman of the Republican Party as follows:

I fear for future of our Republic under socialist-labor leadership of Kennedy. Surely our first obligation is to our country. In view of impossibility to elect Nixon, I call on you to issue public statement releasing electors from any feeling of moral obligation to vote for Republican nominee. This will permit Republican electors to elect conservative coalition Byrd-Goldwater for whom they have expressed overwhelming preference.

Of the replies I received, I should like to read the following.

Senator KEFAUVER. Read the States without the names.

Mr. IRWIN. Very well, sir. These wires were not solicited in confidence. This letter was not solicited in confidence, and I feel free to reveal both the State and identity of the person sending it. I will yield to the wishes of the committee.

Senator KEFAUVER. You didn't ask for any confidence on this?

Mr. IRWIN. I asked for no confidence whatsoever.

* (NOTE.—Below the signature to this letter appears "cc: Mr. R. Lea Harris, 137 Lee St., Montgomery 4, Alabama.")

Senator KEFAUVER. Very well. If you didn't ask for confidence. Mr. IRWIN. I feel perfectly at liberty to reveal the contents to this committee, sir.

Senator KEFAUVER. Proceed.

Mr. IRWIN. From Indiana Republican State Central Committee, Edwin Beaman, Republican State chairman:

As you well know, Indiana went for Nixon by a very large majority, and our electors are under obligation to vote for him.

From the Territory of Hawaii, Herbert M. Richards:

Although I am personally a strong Nixon man, I can see certain merit to your suggestions. Although unable to vote for President until recently, I was a Taft man.

I have discussed your proposal with attorney friends of mine, who have confirmed my interpretation of the State constitution (I was an elected member of the State constitution convention), which does not permit a releasing of electors by a political party.

Thank you, however, for your wire.

From the Congress of the United States, House of Representatives, Washington, D.C., Clarence J. Brown, Member of the Congress, Seventh Ohio District.

Under Ohio law, Ohio electors are obligated to vote for Nixon and Lodge.

From Tacoma, Wash., Mrs. A. B. Ball, State committeewoman, including Walter J. DeLong, State committeeman:

We are both members of the State executive board, and attended the State convention in Spokane, Wash., last June where we were pledged to the Nixon ticket.

We cannot go along with you or anyone else unless the National Republican Committee releases us from voting for Mr. Nixon and Lodge. That is where we stand.

Vernon, Tex., is my home and I well understand the position you find yourself in on this election. Edgar Eisenhower, the brother of Ike, addressed a meeting last week where he stated the South would pull us out of this kind of fiasco. Knowing the South well, I feel sure this will happen. What I cannot understand is why Texas as well as other Southern States voted for Kennedy and Johnson with such a platform their party set up—it is a mystery how anyone could buy all those tired old Roosevelt promises he made, plus the inexperience of the man for the top spot. It is true that I have never had so many calls from people saying they were afraid, for the first time in their life, of what is going to happen to their country. Didn't the South know he was in Walter Reuthers pocket?

Thank you for your telegram, Mr. Irwin. I am an American and a fighter too but I am pledged to vote for Nixon and Lodge and I just don't know what can be done about it. Wishing you the best of luck in your campaign and I am with you in spirit, if that is any help.

From Albert, N. Mex., signed by Albert K. Mitchell, national committeeman for New Mexico:

Your recent telegram with reference to releasing the electors so they would be free to vote for a Byrd-Goldwater coalition was forwarded to me while in Washington attending a meeting of the National Advisory Commission in Agriculture.

I took this question up with some of the leaders of the Republican National Committee level and found that while everyone was in favor of the move, they felt that it should not be sponsored by the Republican organization. I concur in your strategy in this program and anything that would eliminate Kennedy from the Presidency would definitely meet with my enthusiastic approval. I still don't think that a public statement from me would accomplish the desired results, however, and I was persuaded to go along with the decision of the Republican National Committee in the matter.

With best wishes.

Senator Keating, sir, these letters to which I have reference, the Republican National Committee offering their tacit support to the move.

Senator KEATING. And that letter from Mr. Mitchell is the basis for your saying that the National Committee gave their tacit approval to what you were doing?

Mr. IRWIN. In part. Plus these other replies. And I have one more I would like to read, sir.

Senator KEATING. But the one you largely base it on is this one from Mr. Mitchell.

Mr. IRWIN. This letter would have to speak for itself, sir, and the words are there.

Senator KEATING. I am asking what the operation of your mind is. You said you had the tacit approval of the Republican National Committee. I want to know what it is based on.

Mr. IRWIN. I take for face value the statement, "I took this question up with some of the leaders of the Republican National Committee level and found that while everyone was in favor of the move," and the additional statements.

Senator KEATING. In favor of what move?

Mr. IRWIN. The topic in discussion, sir, was with reference to my telegram, the contents of which I read.

Senator KEATING. You mean in favor of the move for the Republican electors to vote against Mr. Nixon. Is that the way you interpret it?

Mr. IRWIN. No. The Republican electors to exercise their constitutional duty in giving us—exercising their constitutional duty, sir.

Senator KEATING. In other words, voting as they saw fit.

Mr. IRWIN. For the good of our country, sir, parties notwithstanding.

I took for face value its further statement that—

I was persuaded to go along with the decision of the Republican National Committee on the matter—

the pointed question being a public statement releasing the electors from any moral obligation to support the Republican nominee. I took that for face granted.

I have a letter from John W. Tyler, Oklahoma.

DEAR HENRY: Upon my return yesterday I found your telegram at my home concerning the Oklahoma electors.

To begin with, the presidential electors are elected by the State at large and are legally under no obligation to follow any lead that I might suggest. As I have attempted to indicate to you in the past, I feel that the progress we have made politically in Oklahoma would be severely damaged by any statement that I would make suggesting that the electors be released from their moral obligations and considering that as of this time we have little chance of throwing the election into the House, which would be necessary before Byrd and Goldwater could possibly be elected.

If there is any change within the next few days, I would certainly make any statement that I felt would be effective.

Senator KEATING. Well, I am certainly glad that my colleague, Senator Tower, recognized the moral obligation of State of Oklahoma, and I commend him.

Mr. IRWIN. I did not so construe his letter, sir. That is John Tyler, T-y-l-e-r.

Senator KEATING. I beg your pardon.

Mr. IRWIN. Who is national committeeman.

Senator KEATING. Anyway, my comment goes for Mr. Tyler.

Mr. IRWIN. I offer these letters as the committee wishes to receive them.

Senator KEFAUVER. Very well. You have read them. We will keep the originals or photostats.

(The documents referred to are in the files of the subcommittee.)

Senator KEFAUVER. I want to say what I think your assumption there, of any substantial part of the Republican leadership, the national committee, being willing to go along with such an idea, is pretty farfetched, and is not in my opinion sustained by what you have read.

Mr. IRWIN. Very well, sir. The point I would make is that they were all apprised of my activities and no one by letter to me or otherwise to my knowledge took exception to the possibility and desirability of the success of such a coalition.

Senator KEFAUVER. You have read a number of letters and given names. The rule of this committee is, and I want the public to know, anybody whose name has been mentioned can send in a statement to the committee in explanation, or if they want to, come here personally and make any explanation or testify; we will welcome them immediately to do that.

Mr. IRWIN. My object was to relate the information I received, sir, and no further object in my mind.

Senator KEATING. Mr. Chairman, I want to say I concur completely with the Chairman's conclusion that there is nothing in any of these letters, including Mr. Mitchell's, that gave any justification whatever for the original statement of the witness that the Republican National Committee tacitly approved running out on Mr. Nixon. This has rarely occurred in our Nation's history—most electors have recognized the moral obligation, although under the Constitution the elector has a free choice of whom he will vote for. It may well be that we should make it a matter of law that the elector is required to vote, if we retain the electoral college, which, as you know, I am not very keen for, but if we do, in support of the choice of the people who elected him and should not arrogate to himself the choice of someone else for a candidate for President.

Mr. IRWIN. I have no objection to any interpretation which anyone wishes to place on the communications which I have just read. They need not necessarily agree with mine. It is perhaps significant that this has not happened many times before. It happened once when our Republic was quite a young Republic, in the election of George Washington. One elector declined to vote as he was expected to vote because he did not wish George Washington or anyone else to be elected by unanimous consent.

The second occasion occurred shortly after the Civil War when an elector from the South refused to support a Republican nominee and voted instead, I believe, Senator Kefauver, for one—it wasn't Beauregard but an equally influential family name from Tennessee. To my knowledge this is the third occasion. Perhaps when we are faced with a change in direction, shall we go this way or shall we go that way?

If I may continue, sir—

Senator KEFAUVER. Very well.

Mr. IRWIN. November 22. On November 22 I wired Senator Goldwater's office as follows:

I am polling Republican electors for support of Byrd-Goldwater conservative coalition ticket. Over half replies indicate willingness but for moral obligation. Sufficient southern Democrats refuse to support Socialist Labor nominee to make plan workable. Would advance cause if Senator would state in speech tonight electors should feel no moral obligation and feel released from any moral obligation for good of country. Nixon used this in television debate. Please convey to Senator and urge incorporation.

To which the following reply was received:

Senator Goldwater on vacation. Unable to be contacted. He is not making any speech tonight.

December 13: I was apprised that the unpledged southern electors were meeting in Mississippi to choose their candidates. I wired the Governor of Mississippi that I believed sufficient votes available to elect a coalition ticket of Byrd-Goldwater. It was comforting to me and perhaps presumptive that the unpledged electors agreed to support Senator Byrd for President and declined to name a Vice President at that time.

Senator KEATING. Mr. Chairman, I assume our colleagues, Senators Byrd and Goldwater, will also have an opportunity to appear here if they desire to do so in connection with their interests.

Senator KEFAUVER. Senators are always welcome and immediately recognized.

While we have a break—it is 1:25. Obviously, we are not going to be able to finish before lunch. About how much more of your testimony do you have?

Mr. IRWIN. I would say I have these three pages, sir, if I might continue.

Senator KEFAUVER. I know counsel has a number of questions to ask and Senator Keating will have some and I will have some. I believe it would be best that we finish up this afternoon.

Mr. IRWIN. Very well. As you wish.

Senator KEFAUVER. We will stand in recess until 3 o'clock.

(Whereupon, at 1:25 p.m., the committee recessed, to reconvene at 3 p.m., the same day.)

AFTERNOON SESSION

Senator KEFAUVER. We will proceed now, Mr. Irwin.

TESTIMONY OF HENRY D. IRWIN—Resumed

Mr. IRWIN. Where was I, please? I believe I had advised the committee that I had sent a wire to Senator Goldwater.

Senator KEFAUVER. Yes.

Mr. IRWIN. And I read the reply from his office.

Senator KEFAUVER. For the information of the press and for the record, Senator Keating and I have discussed further the matter of the telegrams. The substance of the telegrams will be placed in the record, but they were sent to Mr. Irwin on his statement that they would be confidential. That, of course, does not bind us, but I do not think it serves any particularly useful purpose to reveal the names, so it is our decision not to do so. You go ahead, sir.

Mr. IRWIN. I was apprised that the unpledged southern electors were meeting in Mississippi to choose their candidates.

I wired the Governor of Mississippi that I believed sufficient votes available to elect a coalition ticket of Byrd-Goldwater.

It was comforting to me and, perhaps, presumptive, that the unpledged electors agreed to support Senator Byrd for President and declined to name a Vice President at that time.

On December 15 I wired each Republican elector as follows:

We must rise above false morals and petty politics. In the West Point tradition of duty, honor, country, there is never conflict. Poll indicates Kennedy 240, Nixon 28, conservative coalition 270. You must vote Byrd-Goldwater.

The only written reply I received was from Albuquerque, N. Mex.:

My vote is Byrd, President and Goldwater, Vice President.

MRS. EARL L. MOULTON, *Elector.*

Prior to the election of the electoral college, it should be noted that although the State of Georgia went Democratic, that after Mr. Kennedy was nominated, the voters, by referendum, overwhelmingly voted to free their electors, and should they vote for Mr. Kennedy they would be going against a mandate of the citizens of Georgia. This they did December 15.

On this date the electors of Oklahoma had agreed to and did caucus in Bartlesville to consider the following resolution:

In view of the impossibility of electing Richard M. Nixon, President, and considering the fact that Senator Kennedy failed to obtain a majority of the popular vote cast, and in addition to the feeling that the Democratic platform and control of the Government by Socialist Labor bosses is a threat to our Republic, and because the success of a compromise conservative coalition appeared likely, the Oklahoma presidential electors met to consider their constitutional duty in choosing the next President of the United States.

After due consideration, we, the Oklahoma presidential electors, do hereby call on the National Republican Party leadership, each national committeeman and each State chairman, collectively and individually, to issue a public statement releasing their electors from any feeling of moral obligation to vote for the Republican nominee.

And, further, we call on all Democratic presidential electors, who fear for the future of our Republic under Socialist Labor bosses, to join with us in electing a conservative coalition President and Vice President.

And, further, we call on all presidential electors to discharge their duty to our country by voting for the conservative Coalition ticket of Harry F. Byrd for President and Barry Goldwater for Vice President.

I had previously determined by telephone that the resolution would carry. After caucus the following news release was issued:

The Oklahoma presidential electors, meeting in a minority, agreed to adjourn and reconvene in Oklahoma City at the call of the State chairman for the purpose of caucusing prior to the vote on Monday.

December 16: About the 8th of December the leaders of the Louisiana Legislature decided to call a meeting of the Southern Governors and southern Democratic presidential electors to discuss the election situation. The object was to force concessions from Mr. Kennedy in his presence, which he was unable to make, thereby freeing the electors to support the conservative coalition of Senators Byrd and Goldwater.

The Louisiana Legislature was to pass a resolution issuing the call on the 12th of December, and the call was to have been for Friday, December 16, 3 days before the electors were to meet. I had been

assured that there were sufficient votes in the legislature to pass this resolution.

The source of that information is a letter dated December 30 from R. Lea Harris which I would propose to insert.

Senator KEFAUVER. Let it be made a part of the record at this point. (The document referred to is as follows:)

Re RESURRECTION OF ELECTORAL COLLEGE: (1) FUTURE PLANS (1964);
(2) POSTMORTEM (1960)

MONTGOMERY, ALA., December 30, 1960.

To the Many Friends of This Movement:

First, I wish to thank all the many wonderful people from all sections of America who worked and offered their assistance for this possible coalition movement. It is truly refreshing to know that there are so many citizens who would unselfishly work for the best interests of their country. Please consider this a personal letter in reply to your communications.

Important.—Let me assure each of you that your communication with me, either by letter or telephone, will be kept in the strictest confidence, as some may, for business or political reasons, prefer not to be known working for a coalition ticket or the elevation of the electoral college to its rightful position in the Constitution.

The world will never know exactly how close the southern electors came to upsetting Mr. Kennedy's election.

POSTMORTEM

You are entitled to know some of the inner workings of this "tug of war" for the southern electoral votes prior to December 19. So far as the public knows, not much was done, but in private there was a mass of activity by long-distance telephone, political maneuvers, and the like.

Louisiana.—The key to the whole election lay completely in the hands of the Louisiana Legislature and Governor Davis, for if the Legislature of Louisiana, under the present circumstances and turmoil in New Orleans, had called this southwide meeting in Baton Rouge of presidential electors and southern Governors, it would have been political suicide for the southern Governors to have refused to attend. I was in direct contact with influential members of the Louisiana Legislature. About the 8th of December, the leaders of the Louisiana Legislature decided to call this southwide meeting of southern Governors and presidential electors to discuss politics in general. The Louisiana Legislature was to pass a resolution issuing the call on the 12th of December, and the call was to have been for Friday, December 16, 3 days before the electoral college was to meet. I asked them if they had the sufficient votes in the legislature to pass this resolution and they replied that they had more than enough. However, between the 8th and the 12th, there was "a sharp reversal" in the legislature. Had the legislature proceeded to call this southwide meeting, southern Governors such as Alabama's Patterson, Georgia's Vandiver, South Carolina's Hollings, North Carolina's Hodges, Arkansas' Faubus, and Texas' Daniels would have had no alternative but to accept this invitation to meet and talk. With even half this delegation at the meeting, Senator Kennedy would have had no alternative but to have attended or forfeit his victory in the electoral college. Had he come, Kennedy would have had to agree to (1) eliminate the present sizable foreign aid we presently give to the Communist economy; (2) adhere to the spirit of the 10th amendment; (3) appoint one of these southern Governors Attorney General.

This southwide meeting could have changed the entire course of the election regardless of what was later done in Illinois or Texas. From all the reports I had from Louisiana, on Thursday, December 8, I was supremely confident that this meeting would materialize and I further knew that from the interest in the Southern States, this meeting would unquestionably be a great success, and I was making my plans to go to Baton Rouge. My fine friends in Louisiana and I were keenly disappointed when the "reversal" took place. I do not know the reason for the reversal and probably will never know. If any deals or compromises were made with Mr. Kennedy, I feel these compromises would be more effective if they had been announced to the public.

It should be a matter of interest to know that the Citizens Council, which carries a strong political influence in the South, was already working on a southwide basis to support such a southwide meeting and to utilize their influence if necessary for a coalition ticket or if the election had been thrown into the House.

However, for those who wanted concessions from Mr. Kennedy or wanted to deny Mr. Kennedy the election, it should be noted that despite the keen loss inflicted with the "reversal" in Louisiana, the fight was by no means over as the circumstances in either of two large States could put victory beyond Kennedy's reach. There were still enough southern votes which were supposedly in Kennedy's column that were willing to switch if they could have seen success.

In addition, we could have obtained three northern Democratic electors, north of Maryland, and several others were flirting with the idea.

Texas (lawsuit determines election).—The Republicans in Texas filed a lawsuit in the Federal Court in front of Judge Connally, the son of former U.S. Senator, Tom Connally. Judge Connally granted a temporary restraining order against the certification of the 24 Texas Democratic electors and set further hearings for December 12. It may be hard for some to realize it, but actually the electoral victory of the presidency of the United States was determined by the decision of Judge Connally. Judge Connally decided to lift his restraining order which, had he ruled otherwise, would have been sufficient to cause a mass uprising of presidential electors in the South to block Kennedy. John B. Connally was recently appointed Secretary of the Navy. It is my understanding that both John B. and Judge Connally were close friends of Senator Lyndon B. Johnson.

Illinois (ruling of canvassing board determines election).—The "mystery" of the Illinois situation is still unsolved as to what happened among the many conflicting claims. Was there fraud in Cook County or was there not? Senator Morton, heading the Republican campaign committee, made very forceful statements concerning the evidences of fraud in Cook County. This writer personally contacted by telephone various Republicans in Cook County and these gentlemen satisfied my mind that there were many irregularities and evidences of fraud. From these reports, I could not possibly believe the Republicans would certify the Democratic electors. In order to assure the Republicans that the next President of the United States hinged upon their decision, a southerner flew up to Springfield and had a meeting in Governor Stratford's office approximately a week before the canvassing board was to meet. This southerner left Governor Stratford's office convinced that the certification of the Democratic electors would not be made. As my efforts were directed toward "placing the South in a position of balance of power," I personally took it upon myself to see that the Republicans in Illinois were properly notified of the southern situation, so they knew that Kennedy's victory hinged upon their decision. One of my Republican friends later telephoned me long distance from the North 4 days before the board met and told me we had lost our battle. The Republican-dominated board was going to approve the tabulation and that he had discovered a plot where the Republicans thought it was smart politics to go along with the certification of the Democratic electors. By the board's decision, the evidences of fraud charges were wiped away and the Democrats cleared, which leaves the Republican charges out on a long limb, or else the board condoned the fraud, which is just as bad.

Northern Democrats.—There were some northern liberal Democrats who also liked the idea of resurrecting the electoral college, but for a different purpose and wanted to use this idea to deny Lyndon Johnson the North's Democratic votes to get the vice-presidency and substituted Senator Paul Douglas; however, they did not have time to get properly organized.

Nixon has plurality over Kennedy (error in counting).—Based upon an Associated Press report and also a Newsweek report, the Kennedy popular vote figures was a plurality over Mr. Nixon by about 111,000 votes. Both reports cited their basis for the independent vote and neither report included any popular votes which the six States' Rights Democrats received in Alabama. These six States Rights Democrats ran on a pledge openly opposed to Mr. Kennedy and they later voted for Senator Byrd. Although they ran on the Democratic ticket with five "loyalist" Democrats, all the Democrats of varying degrees knew they were voting for anti-Kennedy Democrats. The popular vote of these six individuals obviously should not be placed in the Kennedy column, but placed in the independent column of voting tabulations. It should be apparent that

six-elevenths of Alabama's 320,000 Democratic vote, which is approximately 162,000 should properly be placed in the independent column, thus leaving Mr. Nixon with approximately a 51,000 plurality over Senator Kennedy.

FUTURE PLANS (1964)

Many, many interested citizens wrote me from all sections of America, from New England to California and Alaska, offering to help in this movement. We have a sizable list of well wishers, which I will keep; in fact, enough that if only a portion of them will get busy and start making their plans to become electors 4 years from now, we can definitely control the policies of the Government in 1964, or they may proceed, if the majority desires, to appoint the President that year. We are now organized with this long list of well wishers and definitely have the number of strategically located persons to make our influence in national affairs felt the next time. Just know the right people so that you may be selected in which ever way your State selects its electors. The pay for this office is small so few desire to be electors. Generally, in most States, you may be an elector merely by so requesting if you know any State party leaders.

What we expect to gain by such a movement is the elimination of foreign aid to the Communist economy and to cause the Federal Government to recognize the 10th amendment to the Constitution.

For those of you who did not notice your local newspaper, Mr. Henry Irwin of Bartlesville, Okla., voted for a coalition ticket, voting for Senator Byrd, Democrat, for President, and Senator Barry Goldwater, Republican, as Vice President. Mr. Irwin took his otherwise worthless vote for Mr. Nixon and by so voting, educated millions of Americans to the office of presidential elector, not only to the legal rights but the moral obligations that an elector has under and to the U.S. Constitution, to act according to his judgment and the best of his belief in the highest duty to his country. Mr. Irwin's courageous action is to be most highly commended. Possibly the majority of the electoral college will follow his leadership in 1964.

A NEW ERA IN AMERICAN POLITICS

The nationwide television debates ushered in a new era in national American politics. This procedure places the two candidates on an even plane, and it is my belief that it was the television debates which brought about this phenomenal even election. Ever since this Nation was formed, there have been the economic liberals and the economic conservatives which have basically been evenly divided since the beginning of the American history. It is my belief that with this new television procedure that, henceforth and from now on, all the forthcoming presidential elections will be much closer than they have ever been in the past, especially since the American economy is over its boom-burst economic days.

SPECULATION AND RUMOR

From prominent men in both the Democratic and Republican Parties, certain guesses have been passed to me. Obviously it is impossible to even make good speculations for possibilities 4 years from now, but here are some educated guesses I pass on to you.

(1) That Kennedy is going to utilize his influence to defeat Governor Rockefeller of New York for reelection in order to eliminate Rockefeller from being the presidential candidate for the Republican Party in 1964.

(2) That if Rockefeller receives the Republican presidential nomination in 1964, a good bet for his running mate for Vice President is Mark Hatfield.

(3) Should Senator Goldwater receive the nomination, a good bet for Goldwater's running mate may be Congressman Walter Judd of Minnesota.

(4) There is no real friendship between Senators Kennedy and Johnson and that 4 years from now when Kennedy is renominated, he will select another running mate in Johnson's place, and a good bet for this is former Governor Mennen Williams. It might be worthy to note that on the first term, President Roosevelt picked Mr. Garner of Texas for his running mate, but later when he was in complete command of the party, replaced him with someone more to his liking. Four years from now, Johnson will not be in the Senate and if he is replaced, will not be in a position to interfere with Kennedy's Senate program.

Please continue to write and let me know your ideas and desire to help. Now that this rush is over, I will have the time to answer your individual letters.

Again, many thanks to so many wonderful people who unselfishly gave of their time.

Sincerely yours,

LEA HARRIS.

P.S.—I think it is best at this time that we do not publicly discuss this plan as it may disturb the major parties and they may make our success more difficult.

L. H.

Mr. IRWIN. I do not know all of the States in which the electors caucused before the voting. California electors tried to get Mr. Nixon himself to release the electors.

The Kansas electors agreed to caucus. The Oklahoma electors agreed to caucus. The Washington, South Dakota, Oregon, New Mexico, Utah, and Iowa electors agreed.

In the event the Baton Rouge meeting resulted in the support of the coalition by the conservative southern electors, these and many other States would have voted for the conservative coalition. That was the status on Monday morning, December 19; and we all know the results.

I have pointed out how near the coalition came to success. I believe the coalition failed because of the evils I described in my first remarks. I cannot recognize the possibility of Congress providing us with a remedy for these evils, certainly not by mere change in the electoral college system. The electoral college is the last institution of a republic remaining in our Constitution.

I say if there be those who wish to change our electoral college system, let the Supreme Court do it. They will meet with greater success than the Congress.

I have this additional material which was demanded of me by this committee: a pamphlet setting forth the obligations of the electors and the constitutional and the United States Code provisions of the law governing the electors, which was published by the U.S. Printing Office, Office of the Federal Register, National Archives and Records Service, General Services Administration.

Senator KEFAUVER. We already have that in the record, so we won't put this one in.

Mr. IRWIN. The copy of of the subpoena which you might not wish. I have a letter from the Governor—

Senator KEFAUVER. A copy of the subpoena will be put in the record at the beginning of your testimony with the telegrams and correspondence.

Mr. IRWIN. I have a letter from the Governor of Oklahoma setting forth the law concerning the electors and the electoral college.

Senator KEFAUVER. Do you wish to make that a part of the record?

Mr. IRWIN. Only to this extent, I might say that, in part, reading from the law:

That each elector shall receive for every mile of travel and going to the seat of government as provided herein, and returning to his place of residence, 10 cents to be paid on the warrant of the auditor out of any money in the treasury not otherwise appropriated.

I have petitioned the Governor for reimbursement of my expenses, to no avail.

Senator KEFAUVER. In other words, you went to Oklahoma City—

Mr. IRWIN. To exercise my duty as an elector. I have attempted to get reimbursement as provided by law, to no avail, That amount is approximately \$85, sir.

Senator KEFAUVER. Maybe you will get it yet.

Mr. IRWIN. Perhaps, sir. Thank you.

I have also included at the demand of this committee all the wires, letters, and other communications which I have received as a result of my participation in the electoral college. They are highly complimentary, sir. I would be glad to read them, in part or in full.

I would remark that only two of the volume which I have received took issue with my position.

I would like those included in the record, if there is no objection.

Senator KEFAUVER. Very well, let them be made a part of the record.

(The documents referred to follow the testimony of Mr. Irwin.)

Mr. IRWIN. I also have the certificates of certification from the Governor of Oklahoma certified, attested to by the Secretary of State in six copies, if they are of value to the committee.

Senator KEFAUVER. Yes; we would like to have them and one will be included in the record.

(The document referred to follows:)

STATE OF OKLAHOMA

EXECUTIVE DEPARTMENT

CERTIFICATE

Whereas there has been certified to me by the State Election Board of the State of Oklahoma the result of the final ascertainment, under and in pursuance of the laws of the State of Oklahoma, of the General Election held in said State, on the 8th day of November, 1960, to elect Presidential and Vice-Presidential Electors as provided by the Constitution and laws of the United States of America; and

Whereas from an examination of said certificate I find that the law covering such election has, in all things, been observed, and that such election was duly and regularly held; and

Whereas it appears that in said election the following named persons, who constitute all the candidates for Presidential and Vice Presidential Electors, for whose election any and all votes have been given or cast, each received the number of votes set opposite their names for Presidential and Vice-Presidential Electors, viz:

Name	Politics	Votes received
John R. Porter.....	Republicans.....	533,039
Thomas C. Points.....		
Theo L. Klockman.....		
Glenn T. Nichols.....		
Henry D. Irwin.....		
D. Jo Ferguson.....		
Genevieve Seger.....		
Jesse Berry.....		
Diak D. Hamilton.....		
James Reed.....		
Charles R. Nesbitt.....	Democrats.....	370,111
A. T. Watson.....		
James Kirkpatrick.....		
Jack Webb.....		
Clarence Robison, Jr.....		
Hollis Hampton.....		

Now, therefore, I, J. Howard Edmondson, the Governor of the State of Oklahoma, by virtue of the authority vested in me by law, do hereby declare, proclaim, and certify that: John R. Porter, Thomas C. Points, Theo L. Klockman, Glenn T. Nichols, Henry D. Irwin, D. Jo Ferguson, Genevieve Seger, Jesse Berry, Republicans, each having received the greatest number of votes for the offices of Presidential and Vice-Presidential Electors of the State of Oklahoma, are each

and all of them duly elected to such offices, and by virtue thereof, are entitled to all the rights, privileges, immunities, and emoluments pertaining to said offices.

In witness whereof, I have hereunto set my hand and caused these presents to be attested by the Great Seal of the State of Oklahoma, this the 2nd day of December, in the year of our Lord, Nineteen Hundred and Sixty, and of the Independence of the United States of America the One Hundred and Eighty-Fifth.

[SEAL]

J. HOWARD EDMONDSON,
The Governor of the State of Oklahoma.

Attest:

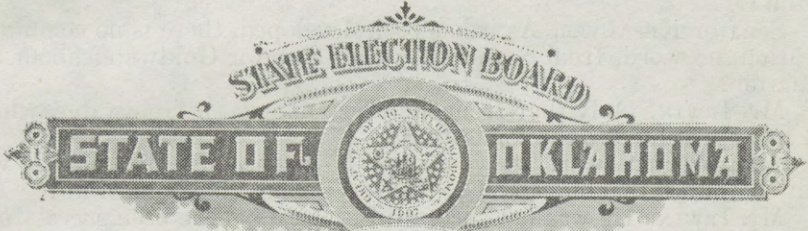
WILLIAM N. CHRISTIAN,
Secretary of State of the State of Oklahoma.

Mr. IRWIN. I have a warrant from the secretary of the election board stating that I was a presidential elector, office No. 5.

I have a folder of miscellaneous papers which I have received. To my knowledge they are not pertinent. I surrender them on demand.

Senator KEFAUVER. Well, we will let them be placed in our files as a part of our records but not copied in the printed record, unless counsel decides that some of them are pertinent.

(A reproduction of Mr. Irwin's official "Certificate of Election" follows:)



CERTIFICATE OF ELECTION

Whereas, *At a General Election held throughout the State of Oklahoma on the 8th day of November A. D. 1960,*

HENRY D. IRWIN

having received the highest number of votes cast for the office of

PRESIDENTIAL ELECTOR, OFFICE NUMBER FIVE,

as appears from the Certificate of the State Election Board to the Secretary of State;

Therefore, This is to Certify. That the State Election Board of the State of Oklahoma, does

herely declare the said

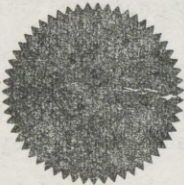
HENRY D. IRWIN

to be the duly and legally elected

PRESIDENTIAL ELECTOR, OFFICE NUMBER FIVE,

of the State of Oklahoma for a term of _____ *years, beginning with the 19th day of December, A.D. 1960.*

In Testimony Whereof, the State Election Board of the State of Oklahoma has caused this Certificate of Election to be issued by the Secretary of the State Election Board and its official seal to be hereunto affixed on the 15th day of November, A. D. 1960, in the Capital of the State.



Lee Wentz
Secretary, Oklahoma State Election Board

Senator KEFAUVER. Is that all?

Mr. IRWIN. That is all I have, all the material I have, sir.

Senator KEFAUVER. Well, sir, during the time that you were working with the Republican electors, was Mr. Harris carrying on a similar effort among the Democratic electors?

Mr. IRWIN. Any conclusions I drew are—I might draw are—presumptive. I presume he was, sir.

Senator KEFAUVER. Did you compare notes with Mr. Harris from time to time?

Mr. IRWIN. From time to time, I think I probably communicated with him by phone.

Senator KEFAUVER. Did you communicate with him several times by phone?

Mr. IRWIN. Yes, indeed, sir. I could very well check my telephone billings and determine exactly. I do not know at this moment.

Senator KEATING. Did you charge those billings to the Byrd-Goldwater organization?

Mr. IRWIN. I did not think they would pay for it. There was no Byrd-Goldwater organization. I did it as a patriotic duty to my country.

Senator KEFAUVER. As it has been developed, there is no communication, no word, from Senator Byrd or Senator Goldwater about the matter?

Mr. IRWIN. Only that from the office of Senator Goldwater, which I have presented to the committee.

Senator KEFAUVER. Do you know how successful Mr. Harris was in the effort that he was carrying on among the Democrats?

Mr. IRWIN. He was not successful because had he been successful I feel quite certain the coalition would have carried.

Senator KEFAUVER. Well, sir, is it your idea that a national election should consist only of electing electors without regard to candidates of the major political parties, that there should not be such candidates?

Mr. IRWIN. That is the situation into which we have been forced because the State laws prohibit for practical purposes in the State of Oklahoma, we cannot file, a Conservative ticket. We can file as an independent and, as I pointed out previously, there is no way of telling whether that independent is Communist or Conservative. That is the situation into which we have been forced.

Senator KEFAUVER. Well, as I understand your position, you are in favor of just electing electors and let them decide who they want, without regard to any national contest?

Mr. IRWIN. I am in favor of retaining the provisions of the Constitution as they now exist, with all the protections they guarantee and all the freedoms they guarantee.

Senator KEFAUVER. Neither Senator Byrd nor Senator Goldwater were candidates or wanted to be candidates for President and Vice President, so far as I know, and yet under your idea of how it should be done, it would be possible for the electors to ferret out anybody they thought best qualified.

Mr. IRWIN. Yes, sir. I believe we are all candidates for the highest office in the land. Perhaps some of us might not feel capable of executing the office, while others, a majority, might feel we are.

I would like the electoral college system in relation to our Fed-

eral Government and our executives to a board of directors, just liken them to the president of a corporation.

The stockholders do not elect the president of a corporation. There is not a business, which Dean Clarence Manion has pointed out in the letter which I was not permitted to read, plus the radio address, Dean Manion has pointed out—

Senator KEFAUVER. You were permitted to read it.

Mr. IRWIN. Saving time. Very well, sir.

Senator KEFAUVER. To save time we put it in the record.

Mr. IRWIN. Very well, sir. That was the point he made. The electors hold the same position in relation to the President of the United States that the directors of a corporation hold in relation to the president of that corporation, and for the stockholders to presume to elect a president of a corporation is the first step toward bankruptcy of that corporation. The same holds for the President of the United States.

Senator KEFAUVER. Then under your idea there should be no national campaigns—

Mr. IRWIN. Yes.

Senator KEFAUVER (continuing). On behalf of any candidate, just let every State elector, well, let them decide?

Mr. IRWIN. Not in the sense of the campaigns presently conducted. I believe in the fact that if the American Legion wishes to put Joe Doaks up for President, the American Legion is entitled to say, "We endorse Joe Doaks."

If the DAR's or Communist Party or the Socialist Party or any other group can publicly announce, "We believe this person should be President of the United States," I believe the electors should then decide who they think would best serve the interests of the United States and the interests of the individuals and the interests of the corporations.

Senator KEATING. I do not agree with you in giving the members of the Communist Party that much power. To give them that power might destroy our country.

Members of the Communist Party are not a political party at all. I do not agree with you that they should be given any such power as that.

Mr. IRWIN. I cannot take exception to your position, Senator Keating, and I was being generous in applying the rules of democracy that everyone should be included and everyone should be entitled to a vote. I have the same fears.

Senator KEFAUVER. Any other questions, Senator Keating, before I turn the questioning over to counsel?

Senator KEATING. Are you a Republican?

Mr. IRWIN. I am a registered Republican. I have told the organization in Oklahoma that I shall be a candidate for elector in the next election.

Senator KEATING. Will you be a candidate for President?

Mr. IRWIN. If the people of the United States so choose, I would be a candidate, and I believe you are very well a candidate, sir.

Senator KEATING. Well, I am not a candidate, but I was interested in whether you had any aspirations of that kind.

Mr. IRWIN. As for my own personal position, I offered to quote the United Press and Associated Press that I have no political ambitions whatsoever.

Senator KEATING. You did not support Mr. Nixon?

Mr. IRWIN. I did support Mr. Nixon. If that is a point to, if we shall reduce our argument to, did you or did you not, I don't know that I can say that I did or did not support Mr. Nixon. I did not vote for Mr. Nixon in the electoral college.

Senator KEATING. Did you support Mr. Eisenhower?

Mr. IRWIN. General Eisenhower is a fellow alumnus of mine, and while I was not entirely pleased with everything he did in the traditions of West Point, in my understanding of the traditions of West Point, I certainly did support Mr. Eisenhower. And I would support him on an independent ticket or a third party, or what have you, if he chose to run on such a third party, as he has indicated, if we are to believe what Sherman Adams said, that he would be very much interested in seeing it established.

Senator KEATING. Don't you think that to give every elector the opportunity to vote for anyone he wanted to vote for might well lead to a large amount of splinterization in voting for our two political parties?

Mr. IRWIN. Considering the patronage available to the two parties, I would say it would evolve into a coalition of Conservatives and Democrats—pardon me, Conservatives and Socialists or rightwing and leftwing, however you wish to differentiate. There would still be two major parties.

Senator KEATING. What would you do with those who had some conservative and some liberal tendencies?

Mr. IRWIN. I believe that is our problem now. We have in our society liberal and conservative, on the left and the right, and in the other society liberal and conservative on the left and right. We are, both parties are, pitching, in my opinion, to the minorities. We are not concerned with the majority or the backbone and the stability of our country, and it is actually those minorities that we are pitching to, and we are neither right nor left. Perhaps, in my opinion, we are more left than right, but that is my opinion.

Senator KEATING. You would not favor, I take it, doing away with the electoral college and letting the people elect the candidates?

Mr. IRWIN. My opening statement was that, my statement was, I believe, the electoral college should be maintained in its present constitutional form, with all the provisions of safeguards and guarantees.

If the States wish to change that they are free within the Constitution and present laws to make such changes to proportionally represent the population, if that is the wish of the people.

Senator KEATING. And your interpretation of the Constitution is that it is within the power of any elector who is elected to vote any way he wants to?

Mr. IRWIN. I am not capable of making any decision myself. I have trusted the judgment of Dean Clarence Manion who, I believe, is in favor of such a decision; Mr. George Montgomery, Jr., from New York City; Mr. Charlie Waller from Wilkes-Barre, Pa., and others, as well as our local judges and court officials.

Senator KEATING. Do I understand, based upon that, that it is your opinion that the Constitution permits an elector to vote any way he wants to?

Mr. IRWIN. Based upon that there is no question in my mind but what that is the case.

Senator KEATING. Well, that is the only, about the only, statement you have made today with which I find myself in complete agreement. I think that is permitted under the Constitution, and the only question I have in my mind is whether we ought not to remedy that so that such an incident as yours can never again occur in the history of our country.

Mr. IRWIN. We would be making a grave mistake, Senator.

I would like to quote, as I recall, ex-President Harry Truman in a few words that he addressed in Mr. Edward R. Murrow's show about the 4th of January, that what the people of this country overlook is the fact that we are a republic. We have a republican form of government and we are not a democracy, and may we never reach that point when it comes to choosing a President.

Senator KEATING. I am afraid you agree with Mr. Truman more than I do although that statement, I have no objection to. But Mr. Truman, he has not testified, has he?

Senator KEFAUVER. No, he wanted to, but was unable to come. He will send a statement, however.

Senator KEATING. My understanding of former President Truman's position is that there is a moral obligation on the part of anyone elected by the people on the basis that he is going to vote for a certain candidate, to vote for that candidate.

Mr. IRWIN. I would refer the committee, the Senator, to Mr. Edward R. Murrow's show, "The Beat Majority, CBS Presents," presented one Thursday, the first week in January, that is the source of my recollection of his statement, and I believe I am correct in my recollection.

Senator KEATING. In this move which you made, was it entirely personal or did you have the backing of some organization?

Mr. IRWIN. It was personal to the extent that I am personally involved in the future of our republican form of government and our country, and I don't like to see the direction in which we have been going for the last 30 years.

I believe that is shared by quite a large number of other individuals who are down on the streets; they are not in our legislatures, perhaps.

Senator KEATING. Well, the two that you were backing are both in our Legislature.

Mr. IRWIN. The two that I am, but the opinion was what I had reference to.

Senator KEATING. Did any others act in concert with you in this—

Mr. IRWIN. To my knowledge, no one acted in concert with me except those who have expressed their—I would make no exceptions. In the criminal use of the word "concert" no one acted in concert with me.

Senator KEATING. I was not charging you with the commission of a crime. On the contrary, I was agreeing with you that within the four walls of the Constitution you were permitted to do, in my judgment, just exactly what you did do.

The Constitution does not cover moral obligations. My question was whether any organization or organizations acted with you or backed you in the move which you made.

Mr. IRWIN. To my knowledge, the only persons in that interpretation of "concert" acted with me were these replies to these wires and telegrams which I presented to the committee. That was contingent on certain other actions that did not develop.

If you are trying to have me say did the Communist Party or the Socialist Party or the Republican Party pay any of my expenses, why, they did not.

Senator KEATING. No, I am not trying to make you say anything. I am just trying to get the facts.

Mr. IRWIN. No, sir.

Senator KEATING. And no other private organizations paid any part of your expenses?

Mr. IRWIN. As far as paying any of my expenses, I paid, I spent less than \$1,000. With the millions and millions of dollars available to labor and some of these other organizations to do what I tried to do, with the possibilities of every individual vote being counted, the implications are tremendous, with those funds available, to do what I tried to do.

Senator KEATING. I think that is all, Mr. Chairman.

Senator KEFAUVER. Mr. Kirby.

Mr. KIRBY. Mr. Irwin, by way of further background on you, I believe you are originally from the State of Georgia?

Mr. IRWIN. I was born and raised in the State of Georgia.

Mr. KIRBY. Where you were an honor student at the Georgia Military Academy?

Mr. IRWIN. I was first captain, I was everything they had to offer.

Mr. KIRBY. And you graduated from West Point in the class of 1941, you stated?

Mr. IRWIN. Yes, I was a cadet lieutenant, a cadet officer, participated in sports. I acquitted myself quite well, if I may say so.

Mr. KIRBY. I believe you were separated with the rank of lieutenant colonel?

Mr. IRWIN. I separated with the rank of lieutenant colonel, and I probably reached each grade ahead of any of my classmates.

Mr. KIRBY. When did you move to Oklahoma?

Mr. IRWIN. On separation from the Army.

Mr. KIRBY. 1947?

Mr. IRWIN. About, yes. If you have the date, yes.

Mr. KIRBY. Prior to 1960, what had been the nature of your participation in Republican Party politics?

Mr. IRWIN. Prior to 1960?

Mr. KIRBY. Did you make a race for the State senate once, for instance?

Mr. IRWIN. Yes, I made a race for the State senate once.

Mr. KIRBY. Was that in the Republican primary?

Mr. IRWIN. Well, now, wait, pardon me, I progressed a great deal further than that. Yes, I am quite sure. I haven't gone back in my memory for those facts for some time.

Senator KEATING. Don't tell me you ran in a Democratic primary?

Mr. IRWIN. I beg your pardon, sir?

Senator KEATING. You didn't run a Democratic primary?

Mr. IRWIN. I made no such suggestion.

Senator KEATING. You said you progressed beyond the Republican Party, and I wondered where you had been.

Mr. IRWIN. Yes, sir; no, sir.

Senator KEATING. You ran in a general election?

Mr. IRWIN. I don't know whether I was opposed in the primary or not. Do you know whether I was opposed? I think I ran, I am sure I ran, in the general election, and I am sure I came within 3,000 votes of carrying a two-county State district.

Mr. KIRBY. You were the Republican nominee?

Mr. IRWIN. I was the Republican nominee.

Mr. KIRBY. That was about 1956?

Mr. IRWIN. If you know, I don't know.

Senator KEATING. Was that in Georgia or Oklahoma?

Mr. KIRBY. Oklahoma.

Senator KEATING. Who did you run against down there?

Mr. IRWIN. They called him the Old Guard Democrat; also we have a situation over there we refer to those people as yellow dog Democrats. They would vote for a yellow dog on the Democratic ticket, and that is, I am sure, I fear is the case, other than in Oklahoma. I ran against an Old Guard Democrat who had been in office, I think, 27 years, and I came within 3,000 votes of defeating him.

Mr. KIRBY. I believe Bartlesville is largely Republican, but the district you are in is largely Democratic, is it not?

Mr. IRWIN. I think that might well be true.

Mr. KIRBY. You are represented by a Democratic Congressman, for instance?

Mr. IRWIN. The Oklahoma Constitution says we shall be reapportioned every 10 years. We have not been reapportioned since statehood. We are gerrymandered into a district to reduce and eliminate Republican opposition.

Mr. KIRBY. To answer my question, your Congressman is Mr. Edmondson, I believe, a Democrat?

Mr. IRWIN. Yes. That congressional district goes from the Texas border up the east side of the State and across the west, the north, part of the State to include—

Mr. KIRBY. The State senate seat that you ran for, is that normally held by a Democrat or a Republican?

Mr. IRWIN. This Old Guard Republican had held the office for 27 years, about.

Senator KEATING. Old Guard Republican, you said?

Mr. IRWIN. Begging your pardon, sir, Old Guard Democrat.

Senator KEATING. You consider yourself an Old Guard Republican?

Mr. IRWIN. I am afraid I must place myself in that category, sir.

Mr. KIRBY. You had never been a presidential elector before?

Mr. IRWIN. I had not.

Mr. KIRBY. You stated that in order to become an elector the first thing you did was to file your notification and declaration with the secretary of the State board of elections?

Mr. IRWIN. I think those are referred to as filing papers.

Mr. KIRBY. Filing papers.

Mr. IRWIN. Yes.

Mr. KIRBY. Did that include a document called "Notification and Declaration"?

Mr. IRWIN. It might well have been, I do not know.

Mr. KIRBY. Well, the document in which you stated your occupation as "Slave labor for the Federal Government," do you recall that document?

Mr. IRWIN. I recall that entry in a document which I was required to file if I wished to run for presidential elector.

Mr. KIRBY. Do you also recall the statement in that document:

I believe in the principles of said Republican Party and intend to support its principles and policies and vote for its nominees at the coming general election.

Mr. IRWIN. Would you repeat that, please?

Mr. KIRBY (reading):

I believe in the principles of said Republican Party and intend to support its principles and policies and vote for its nominees at the coming general election.

Mr. IRWIN. I think I could have very well said the same thing on the Democratic ticket. There was absolutely no difference.

Mr. KIRBY. Mr. Irwin, just answer my questions, please.

Mr. IRWIN. What is that question?

Mr. KIRBY. Was that statement contained in the paper you filed?

Mr. IRWIN. Perhaps it was, I don't know; perhaps it was. If you know I will accept it.

Mr. KIRBY. Well, I am reading from the Oklahoma election laws, title 26, section 162, and this is the official form which must be filed.

Mr. IRWIN. Yes; if that be the wording and, no doubt, there is no question now, but what it is, that same statement is contained when the judge files for his office, the courthouse clerk files for his office.

Mr. KIRBY. We will get into the discussion on that later. I think you will now state for the record that you did file a paper which contained that statement?

Mr. IRWIN. As near as I can understand your reading, I will accept such a statement.

Mr. KIRBY. Mr. Chairman, I would like to place in the record at this point this section of the Oklahoma election law.

Senator KEFAUVER. Very well, let it be made a part of the record.

(The following is sec. 162, title 26, Oklahoma Statutes 1951, reprinted from Primary and General Election Laws of the State of Oklahoma, compiled by Leo Winters, secretary, State election board, 1959:)

Notification and declaration of candidacy—Accompanying affidavit—Petitions of nonpartisan candidates.

Any qualified elector, as defined in the Constitution and laws of the State of Oklahoma, who is a member of a political party, and who is now and has been affiliated with such legally recognized party at whose hands he seeks the nomination, shall have his name printed on the official ballot of his party for an office to which he is eligible in any primary election, upon filing with the proper officer, within the time provided by law, a Notification and Declaration of candidacy. Said Notification and Declaration shall be in the following form, and shall be filled in as to all the requirements therein contained, and the declarations therein shall be subscribed and sworn to by the person making the same, before any officer qualified to administer an oath.

Said Notification and Declaration shall be in the following form:

For the purpose of having my name placed on the official primary election ballot as a candidate for nomination by the _____

Party, I _____, do solemnly swear (or affirm), that I _____
(Name of party)
(Legal name)

reside at No. _____ Street, in the City of _____;
that my post office address is _____, State of Oklahoma;
that my age is _____; that my occupation is _____;
and that I am a registered _____ (Party) voter in _____
(Name of party)

precinct, City of _____ County of _____;
that I believe in the principles of said _____ Party, and
(Name of party)

intend to support its principles and policies, and vote for its nominees at the coming general election, and that I have affiliated with such party and that I supported its nominees at the last statewide general election, or was prevented from doing so by reason of _____

_____ ; that, if nominated as a candidate of said _____ Party at the said ensuing election,
(Name of party)

I will accept such nomination; that I am not affiliated directly or indirectly with the Communist Party, the Third Communist International, or with any foreign political agency, party, organization or government, nor do I advocate revolution, teach or justify a program of sabotage, force and violation, sedition or treason, against the government of the United States or of this State, nor do I advocate directly or indirectly, teach or justify by any means whatsoever, the overthrow of the government of the United States or of this State, or change in the form of government thereof by force or any unlawful means; that I will not knowingly violate any election law or any law defining or relating to corrupt and fraudulent practice in campaigns or elections in this State, and, if finally elected, I will qualify for said office.

You are also notified that I have appointed and authorized _____ of _____ and _____ of _____ to expend money in defraying the expenses of my campaign. (If no one has been appointed or authorized, leave blank.)

I have not and will not authorize any person to expend money or other things of value in the interest of my candidacy, but I will, in person, account for all the money or other things of value expended in the interest of my candidacy, as required by law.

(Signature of legal name of candidate)

(Typewrite your name here)

Subscribed and sworn to before me by _____ this _____ day of _____, 19_____
(Signature of officer)

My Commission Expires _____
(Title of officer)

The said candidate shall at the time of filing his Notification and Declaration file therewith an affidavit of two reputable electors, members of the same party to which the applicant belongs, which affidavit shall be in the following form, and filled out so as to meet all the requirements indicated therein:

State of Oklahoma, }
_____ County } ss.

We, _____ and _____ do solemnly swear (or affirm) that we are qualified electors and members of the _____
(Name of party)

Party, and have affiliated with said party, and supported its nominees at the last _____ Township statewide general election; that we are residents and legal voters of the _____

City _____ of _____, County of _____, State of Oklahoma; that we are personally acquainted with _____, who files the hereto attached Notification and Declaration, and we know him to be a discreet citizen, and member of the _____ Party, and that, to the best of our knowledge and belief, he has affiliated with and supported said party, as defined in the primary election

law; that he is a resident of the city, county and state, set out in his Notification and Declaration, and is not directly or indirectly affiliated with the Communist Party or other subversive groups, and we believe him to be qualified to fill the office of _____

 (Signature of Affiants)

Subscribed and sworn to before me by _____ and _____
 this the _____ day of _____, 19_____

 (Signature of officer)

My Commission Expires _____
 (Title of officer)

Said Notification and Declaration, and the accompanying affidavits may be on the same or separate sheets, but shall be filed together and at the same time, and when so filed with the proper officer, it shall be the duty of said officer, upon the candidate's compliance with the requirements of this Act, to have printed the applicant's name on the ballot, according to the primary election law, under the penalties provided therein. This Act, except as to declaration of party affiliation, shall apply to independent and nonpartisan candidates. The petition of a nonpartisan candidate, or of the people to place a nonpartisan candidate's name upon the ballots, shall be filed with the Secretary of the proper Election Board within the time prescribed by law for the filing of petitions of Notification and Declaration of candidacy. Any willful or intentional misstatement of fact contained in said Notification and Declaration shall constitute a fraudulent act.

All Notification and Declaration of candidacy for Presidential Electors, United States Senators, Representatives in Congress, State Officers, Members of the Senate and House of Representatives, District Judges, and for all other offices for which the electors of the entire state or subdivision thereof greater than a county are entitled to vote shall be filed with the Secretary of the State Election Board. All nominating petitions for county and township officers or offices for which the electors of a subdivision of a county are entitled to vote, shall be filed with the Secretary of the County Election Board.

Mr. IRWIN. If the committee has no objection, I would like to include the entire Oklahoma law referred to in my letter from the Governor concerning the Oklahoma electors. It is found in title 26, Oklahoma Statutes, sections 511 to 518, inclusive.

Your particular attention is invited to section 516 of title 26 which is pertaining to where we meet and travel allowances.

Senator KEFAUVER. We have here, which is part of our files, the rather thick laws, and I do not think we can encumber the record with all of them. We will have reference to it.

Mr. KIRBY. But I have learned, as a matter of fact, Mr. Irwin, that there is such a statement on file. I don't believe you contest that, do you?

Mr. IRWIN. I will accept it. You have established that fact.

Mr. KIRBY. Now then, I assume you knew at the time you signed it that the statement was in there that you intended to support the nominees of the Republican Party?

Mr. IRWIN. That is a reasonable presumption.

Mr. KIRBY. Did you not really intend what the statement said when you signed it?

Mr. IRWIN. I intended when I signed the statement, whatever I signed, to perform the duties of the office of the elector as had been established to me by counsel to be the constitutional duties of that elector.

Mr. KIRBY. Regardless of what I read, regardless of the statements you were signing?

Mr. IRWIN. Now, in swearing to a contrary, and impossible—swearing to an impossibility, that would encumber that freedom, well, I

don't think it is properly included in the law. I think the law should be tested. The law has not been tested.

I have never been challenged in any manner about my right to act as I acted. That was an essential element to obtain the office of elector. It is—

Mr. KIRBY. Let us discuss that for just a moment. You have stated there are provisions in the Oklahoma law for an Independent to get on the ballot.

Mr. IRWIN. I said there are none, no provisions of the Oklahoma law for an individual with a philosophy to be on the ballot with that philosophy recognized.

I have excepted the possibility of filing as an Independent which might, in most cases does, brand one as a Communist or Communist associate to my mind.

Mr. KIRBY. You could get on the ballot with a petition signed by 5 percent of the voters voting in the previous election, couldn't you?

Mr. IRWIN. I tried to establish that as a matter of law.

Mr. KIRBY. That was not a reasonable alternative to you?

Mr. IRWIN. I beg your pardon?

Mr. KIRBY. It was not a reasonable alternative to you, but you could have done it as a matter of law?

Mr. IRWIN. Oh, no, no. I tried to establish that in trying to get the Constitution Party on the ballot. I was informed, without any qualifications, unequivocally that it was impossible to file except as an Independent.

Mr. KIRBY. When did you attempt to get the Constitution Party on the ballot?

Mr. IRWIN. Four or five years ago; I don't recall.

Mr. KIRBY. In a presidential election?

Mr. IRWIN. Prior to it, in order to get the Constitution Party in a position to participate in the presidential election, yes. That was widely known, in fact, in Oklahoma.

There is no—if you will get the University of Oklahoma Collegian, whatever their publication is, you will find I paid for a considerable number of ads to advance the cause of the Constitution Party.

Senator KEATING. May I pinpoint a question along the line of counsel, Mr. Chairman.

Senator KEFAUVER. Very well, Senator.

Senator KEATING. When you signed this paper, did you at that time intend to vote for the nominees of the Republican Party at the coming general election?

Mr. IRWIN. I did, sir. My name, I was a nominee of the Republican Party in the general election which followed. I fully intended to support myself.

Senator KEATING. Your change of mind came later?

Mr. IRWIN. No, sir; no, no, no, sir. I was the nominee of the party.

Mr. KIRBY. You mean as a result of the primary, you were the nominee for the office of elector?

Mr. IRWIN. Yes, sir.

Senator KEATING. You think when this refers to the coming general election—

Mr. IRWIN. The coming general election; yes, sir.

Senator KEATING. You think they were referring to you, not Mr. Nixon?

Mr. IRWIN. It was referring to me in the general election. Now, when was the general election? It was not December 19. It was——

Senator KEATING. We are trying to get your views as to the presentation.

Mr. IRWIN. Quite true. The general election was not December 19. It was November 8, I believe. I was the party nominee.

Senator KEATING. All you think you were committed to was to vote for Mr. Nixon in the election?

Mr. IRWIN. No, sir. I had no opportunity to vote for Mr. Nixon. I voted for myself.

Senator KEATING. And that you think this interpretation of the statute is that all you are saying is that you intend to support the principles and policies of the Republican Party and to vote for yourself as a nominee in the coming general election?

Mr. IRWIN. In the general election, yes, sir. There is the determination of the control of any law over my activities.

Senator KEATING. There is no relationship in your mind in this law between the principles and policies of the party and the nominees?

Mr. IRWIN. None whatsoever.

Senator KEATING. So that if all electors took that position we might have a wide variance——

Mr. IRWIN. I quite well agree, sir.

Senator KEATING (continuing). In either of our parties between the principles and the candidates?

Mr. IRWIN. In being on the ballot, I was the principles and policies of the Republican Party in that respect.

Senator KEATING. There is one little question I wanted to clear up before we go on that I meant to clear up before. Aside from being what you call a slave labor worker for the Federal Government, do you have any other occupation? It is not clear on the record what your occupation is.

Mr. IRWIN. I think my occupation might best be described as spectacular, sir. I speculate for gain, monetary gain, that is.

Senator KEATING. That is invest, speculate in both commodities and stocks?

Mr. IRWIN. I am not bothered with commodities; no, sir.

Senator KEATING. Are you what would be called a stock trader?

Mr. IRWIN. The term is not familiar to me.

Senator KEATING. What do you speculate in?

Mr. IRWIN. Dollars, sir, or just about anything that anybody wants to make a bet, well, I wouldn't say I would take the bet, but——

Senator KEATING. You are a bookmaker?

Mr. IRWIN. I beg your pardon, sir?

Senator KEATING. You are not a bookmaker?

Mr. IRWIN. I am not familiar with bookmakers, sir, and I don't—I am not——

Senator KEATING. Well, you know what a gambler is?

Mr. IRWIN. I would not associate gambling with speculation, although there is an element of gambling in there, certainly.

Senator KEATING. I am not sure that the term "speculator" might be an oil speculator.

Mr. IRWIN. Quite true, sir. I speculated in oil.

Senator KEATING. In commodities?

Mr. IRWIN. I have speculated in oil. I have speculated in stock, some good, some bad.

Senator KEATING. Thank you.

Mr. KIRBY. Back to my last line of inquiry, Mr. Irwin. You could have in the general election in November in Oklahoma, by filing a petition signed by 5 percent of the voters at the last general election have gotten on the ballot as an independent candidate for presidential elector?

Mr. IRWIN. As an independent candidate, quite true.

That is the point I am making. I cannot establish, I cannot have a rooster or a donkey or elephant or any other symbol I want on that ballot until these ignorant Okies stamp their—

Mr. KIRBY. But you could have gotten on the ballot as Henry Irwin, candidate for elector.

Mr. IRWIN. As an independent, yes, indeed. There is no question of that.

Senator KEATING. If you would take a word of advice, I don't think you are going to get very far in politics if you call them the ignorant Okies.

Mr. IRWIN. As I said, I have no political ambitions whatsoever, and I appreciate your advice, however, sir. They have been called worse and better.

Mr. KIRBY. When you filed this notification and declaration, you also filed a filing fee, I believe it was \$100?

Mr. IRWIN. \$100 to be returned in the event I polled whatever percentage it was of the vote.

Mr. KIRBY. You stated there was a candidate who filed in opposition to you who later withdrew before the primary in July.

Mr. IRWIN. Yes.

Mr. KIRBY. At the time of the primary you and several other candidates for Republican nominees for electors were on the ballot?

Mr. IRWIN. Yes, I think that would be correct.

Mr. KIRBY. Doesn't the Oklahoma law provide that if you are unopposed, your name does not even appear on the ballot?

Mr. IRWIN. I was just—I beg your pardon?

Mr. KIRBY. On July 5 you said you were unopposed. Under Oklahoma law your names do not even appear on the ballot if you are unopposed.

Mr. IRWIN. I was just apprised of the fact. However, my name did appear on the ballot, we did have the results of the election which are posted in the certificate of election.

Mr. KIRBY. This is the November election. I am talking about the July 5 primary.

Mr. IRWIN. As a matter of fact I do not know. I was in Spring Lake, N.J. vacationing. I didn't even know they had a primary. I don't know the results of the primary.

Mr. KIRBY. You knew in April when you filed your papers that you were filing for a primary?

Mr. IRWIN. Yes, indeed.

Mr. KIRBY. Didn't you know it was to be on July 5?

Mr. IRWIN. If they want me, if they wanted to elect me an elector, I will stand on the front porch for them; if they wanted to elect me as President, I will stand on the front porch for them.

Mr. KIRBY. Do I understand that you did not know they were having a primary?

Mr. IRWIN. I knew they were having a primary. I didn't know the date or time or anything else about it. I was not concerned. If they wanted me for elector, let them elect me as an elector, which they did.

Mr. KIRBY. Mr. Chairman, I would like to also insert at this point in the record the provision of the Oklahoma law providing that where there is no opposition the names do not appear on the ballot of the primary.

Senator KEFAUVER. Very well.

(There follows secs. 166 and 167, Oklahoma Statutes 1951, reprinted from Primary and General Election Laws of the State of Oklahoma, compiled by Leo Winters, secretary, State election board, 1959:)

Unopposed candidates—Procedure.

In all primary elections where candidates for political party nominations, wherein candidates are unopposed, the State Central Committee, as to the state offices, and the County Central Committee, as to county, city or town offices, and offices of independent school district of cities, of the respective political party or parties in which there may be unopposed candidates, shall, within ten days after the close of the filing period for such office, meet and declare each of such unopposed candidates the party nominee for the office for which he or she, respectively, filed, and shall forthwith file such declaration in behalf of their party with the Secretary of the State Election Board, or with the County Election Board as may be proper. The secretaries of the respective election boards shall receive such declaration by the respective party committees, the election board shall compare the same with its filings, and if it be found to be accurate, the respective election board, or boards, shall declare such candidate to be the party nominee for the office for which such candidate has filed and is unopposed, whereupon all names of all unopposed candidates so certified and found correct by said boards shall be left off the primary ballot, and it shall be the duty of said State Election Board, or county election board, respectively, to issue to each of said unopposed candidates a Certificate of Nomination in due and proper form at such time as is provided by law.

§ 166, Title 26, O.S. 1951.

Unopposed candidates—Procedure on neglect or failure to file declaration.

If either the State Central Committee or the County Central Committee fails or neglects to file such declaration as to any unopposed candidate, the State Election Board or County Election Board shall, of its own motion, or at the request of any candidate, issue such unopposed candidate a Certificate of Nomination, and names of such candidates shall be left off the primary ballot.

§ 167, Title 26, O.S. 1951.

Mr. KIRBY. In any event, as of July 5, 1960, you and seven others were the Republican nominees for the office of elector?

Mr. IRWIN. That is a presumption. I was in Spring Lake, N.J., on July 5, I don't know. I was—

Mr. KIRBY. If the election were held on that day.

Mr. IRWIN. I was there until September. In the interim I did not read a newspaper because the conventions were going on, and I didn't want to be brainwashed any more.

Senator KEATING. Didn't you vote for yourself?

Mr. IRWIN. Not in the primary; no, sir.

Senator KEATING. That is another thing you never do. If you are ever to get anywhere in politics, you have to vote for yourself.

Mr. IRWIN. I am ignorant of all of these political points.

Senator KEFAUVER. What was that you said about not wanting to be brainwashed by watching the conventions?

Mr. IRWIN. Yes, sir; because we have the opinion that conventions are dignified affairs, and in my opinion the last two that I saw, they were circuses, and should be—we should have some other means of designating such an important contestant, in my mind.

Senator KEATING. Were you aware that your idol, Senator Goldwater, had urged the support of Mr. Nixon for President?

Mr. IRWIN. I am aware that Senator Nixon himself in his first or second debate with Senator Kennedy, Vice President Nixon said that, as serving my recollection again, that if an elector did not feel that his party was doing as he thought they should, in words to that effect, he was perfectly free to leave that nominee?

Senator KEATING. I think that is true under the Constitution.

Mr. KIRBY. Then you say you didn't even follow the conventions, you were in Spring Lake, N.J., until September?

Mr. IRWIN. That is right; I did not see one moment of either national convention.

Mr. KIRBY. I gather then that after you were nominated in the Republican primary then you didn't conduct any sort of campaign—

Mr. IRWIN. None whatsoever.

Mr. KIRBY (continuing). For the general election?

Mr. IRWIN. Neither before nor after.

Mr. KIRBY. And you didn't follow the campaign between Mr. Nixon and Mr. Kennedy?

Mr. IRWIN. I was more interested in the unpledged electors and the conservative people, what they were going to do about it.

Mr. KIRBY. Did you start working on the coalition plan before November 8?

Mr. IRWIN. No. I can't—I don't know that I ever worked in a plan in the sense that—

Mr. KIRBY. Whatever you have been telling us about, did that start before November 8?

Mr. IRWIN. I beg your pardon?

Mr. KIRBY. Did this start before November 8, these events you have been discussing?

Mr. IRWIN. No; not to my knowledge.

Mr. KIRBY. So, from your nomination until the November 8 election, you were completely inactive?

Mr. IRWIN. Between the last election and this convention, this present past Republican convention, I was working for a conservative. I didn't care who the conservative was.

Mr. KIRBY. Which one were you working for?

Mr. IRWIN. I don't care. I don't care now who the conservative is. Barry Goldwater is fine.

Mr. KIRBY. What sort of work were you doing before November 8 for this conservative?

Mr. IRWIN. In the undesignated group I have a letter from one of the Republican delegates to the convention.

Mr. KIRBY. You received that letter. What else did you do?

Mr. IRWIN. "Mr. Irwin," she said, "Henry, you are a man of my own heart." I will get the letter out if you wish to see it. "You are a man of my own heart." This delegate that I mentioned, Theo Klock-

man, she was a delegate. She was on the rules committee—I believe that was the nature of her work.

However politicians work, it might be said that I worked in that, by those means.

Mr. KIRBY. But you were trying to—you were not in Oklahoma trying to solicit votes for the office of elector?

Mr. IRWIN. No, sir. At no time did I solicit the vote of anyone for elector. Perhaps my neighbor, I don't know; he was a Democrat.

Mr. KIRBY. Yet you received 533,039 votes for the office of elector, did you not?

Mr. IRWIN. I presume.

Mr. KIRBY. That was in the document you handed us, in fact, every Republican elector received that same vote, according to this document.

Mr. IRWIN. Yes.

Mr. KIRBY. And I believe the Oklahoma ballot was set up so that a voter just sees one block for all eight of you; he doesn't even vote for you individually.

Mr. IRWIN. No; it is not set up that way at all.

Mr. KIRBY. Mr. Chairman, I would like to insert again a portion of the Oklahoma election laws concerning presidential electors, which provides that one block is set up for all eight electors.

Senator KEFAUVER. Let it be entered in the record.

Mr. IRWIN. There is an alternative which you will find, that alternative is also there.

(There follow sections 511 through 518, title 26, Oklahoma Statutes, 1951, reprinted from Primary and General Election Laws of the State of Oklahoma, compiled by Leo Winters, secretary, State election board, 1959.)

PRESIDENTIAL ELECTORS

Number and election of—Qualifications.

On the first Tuesday after the first Monday in November in each year next preceding the expiration of the term of office of each President of the United States, a number of electors of the President and Vice-President of the United States, equal to the whole number of Senators and Representatives in Congress to which the State is entitled at the time the President and Vice-President to be chosen shall come into office, shall be chosen by the qualified electors of this State in the same manner as is provided by the general election laws for the election of State officers. The electors of President and Vice-President of the United States so chosen shall be qualified electors of this State; but no Senator or Representative or person holding an office of trust or profit under the United States shall be an elector.

§ 511, Title 26, O.S. 1951.

Separate ballot to be used.

It shall be the duty of the State Election Board to cause the names of candidates for the office of Presidential Elector to be printed upon a separate ballot from that of the ballots for State and County offices.

§ 512, Title 26, O.S. 1951.

Electors for each party to be bracketed and grouped—Manner of voting.

At any general election hereafter held in which Presidential Electors are to be elected, the State Election Board shall provide a form of ballot in which the names of the Presidential Electors of each political party shall be bracketed and grouped on the ballot of the political party under the designation of which such Presidential Electors are running, and this bracket shall be headed by the names of such party's candidate for President and Vice-President. At the left of this bracket shall appear a square of the size provided by law, and a stamped vote

in such square shall constitute a vote for all of the Presidential Electors in such group.

§ 513, Title 26, O.S. 1951.

Duties of Electors—Compensation.

The electors chosen as aforesaid shall meet at the hour of ten o'clock a.m. in the Governor's Office, at the seat of government of this State at the time appointed by the laws of the United States, and give their votes in the manner therein provided, and perform such duties as are or may be required by law. Each elector shall receive for every mile of travel in going to the seat of government, as herein provided, and returning to his place of residence, ten cents, to be paid on the warrant of the auditor out of any money in the treasury not otherwise appropriated.

§ 516, Title 26, O.S. 1951.

Vacancies.

In case any person declared duly elected an elector of President or Vice-President of the United States shall fail to meet at the seat of government, as provided in the preceding section, it shall be the duty of such electors present at the time and place aforesaid to appoint a person to fill such vacancy.

§ 517, Title 26, O.S. 1951.

Canvass of election returns—Certificates of nomination and election—Contests.

In Primary and General Elections the precinct returns with reference to Presidential Electors shall be canvassed by the County Election Board in each County and such County Election Boards shall make their returns with reference to Presidential Electors to the State Election Board which shall canvass the same. The State Election Board shall issue Certificates of Nomination and Certificates of Election to the persons receiving the highest number of votes for said offices of Presidential Electors. The laws relating to contests in Primary and General Elections shall apply in the nomination and election of Presidential Electors. The Certificates of Election issued by the State Election Board to the persons elected as Presidential Electors shall be transmitted to such persons by the Governor. In Primary Elections Certificates of Nomination for Presidential Electors shall be issued and delivered by the State Election Board.

§ 518, Title 26, O.S. 1951.

Senator KEFAUVER. If there is an alternative, let that be inserted, too.

Mr. IRWIN. In which a block is set after each elector's name, and that was the manner in which our Oklahoma ballot was set up.

Mr. KIRBY. But no one exercised the right to vote for one and reject another?

Mr. IRWIN. It would be thrown out.

Mr. KIRBY. It would be thrown out?

Mr. IRWIN. Absolutely.

Mr. KIRBY. Then, as a practical matter, the voters had to vote for all eight electors rather than just picking one or two at random.

Mr. IRWIN. As a practical matter, the voters had no choice in the matter. They might just as well have voted—if we are to believe the platform of the Democrats, as Republicans, if we would have believed the platform of the Republicans—the voters had absolutely no choice.

I have an article in this unallocated group which I would be glad to read to you which is, "Who Elected Nixon?"

Senator KEFAUVER. Excuse me, Mr. Irwin, you think both parties stand for the same thing?

Mr. IRWIN. Except for degree, sir, unfortunately; that is my opinion. There might be a degree, the degree is minute.

Senator KEFAUVER. What if Mr. Nixon had won the election and had gotten most of the electors, would you have started this effort?

Mr. IRWIN. That is a moot question. I don't know what I would do. I don't know what I am going to do tomorrow.

Senator KEFAUVER. Were you——

Senator KEATING. We don't either.

Mr. IRWIN. Exactly. I think I can say, however, that I probably would. I have no—here was my choice. Could I vote for Nixon? Now, which is the worse of the evils? Could I vote for Mr. Nixon or could I vote for someone else or could I refuse to vote? Which were the worst alternatives?

I could not stomach, if you will pardon the expression, voting for Vice President Nixon.

Mr. KIRBY. Mr. Irwin, you stated that back in April when you filed——

Senator KEFAUVER. Let him finish the alternatives.

Mr. KIRBY. I thought he had finished. I am sorry, Mr. Chairman.

Mr. IRWIN. I refused to vote for Senator Kennedy—no, sir. I would refuse to vote for Senator Kennedy. Therefore, it left me the alternative of not voting at all or voting for whom I thought would serve our country, as the Constitution designated. What should I do?

If I vote not at all, a Democrat Governor will appoint an elector. What are the obligations of that elector? To vote for as the Constitution dictates him to, as his conscience does. He will vote for a Democrat, for Mr. Kennedy. He will do the same thing I refused to do. There was no alternative.

Senator KEATING. Did you vote in the general election?

Mr. IRWIN. I did vote in the general election, a privileged communication.

Senator KEATING. I didn't ask you who you voted for. That is your business.

Mr. IRWIN. Yes, sir; I did.

Senator KEATING. But I asked if you voted.

Mr. IRWIN. Yes, sir; I did.

Mr. KIRBY. I believe you said you voted for yourself as nominee for elector.

Mr. IRWIN. I did.

Senator KEATING. Of the 533,000 people who cast votes for you, don't you think most of them were, by that act, showing their preference for Mr. Nixon over Mr. Kennedy.

Mr. IRWIN. As a matter of preference; yes, sir. But my question is where else did they have to go? They had no place to go. I have this newspaper article.

Senator KEATING. They had Mr. Kennedy to go to.

Mr. IRWIN. Yes, sir; in their opinion that was worse. The article is "Who Chose Nixon?"

It was interesting to note that one of the Republican electors stood and voted upon his beliefs of what is best for our country. Such men are hard to find anymore, which is probably one reason we are losing "prestige" abroad.

Senator KEATING. Where are you reading from?

Mr. IRWIN. This is an article that appeared in the Oklahoma Times. You can verify that, you can verify it at a later date.

Senator KEATING. Is it an editorial?

Mr. IRWIN. No, sir; it is a letter to the editor signed by H. F. Doesnges, Goodwell, Okla. If I might continue if you please:

However, even more interesting, was one of Mr. Bellmon's statements: "He (Irwin) apparently feels his opinion is superior to the judgment of the one-half million Oklahoma voters who chose Richard Nixon." Preposterous. This statement is even more presumptuous than Mr. Irwin's action.

Who chose Nixon? I was not aware that when I marked my ballot for the Republican electors, I chose Nixon; I merely preferred him. He was chosen by party big-shots, Mr. Bellmon * * * How can the major party leaders presume to speak for all the American people? Two candidates are thrust upon us; we are told a vote for anyone else will be wasted, which is probably true. Now, do we choose a man, or merely indicate preference?

It seems to me Mr. Irwin was much closer to the people of Oklahoma than his party leaders might guess. Perhaps it would be well if they would lift their heads from the sands of political intrigue, and look for the will of the people. Men such as Mr. Irwin made American great. Thank God we still have men like him left.

The other communications are indicative of that same leaning.

Senator KEFAUVER. Who is that letter by?

Mr. IRWIN. H. F. Doesnges, Goodwell, Okla.

Senator KEATING. Not related to you?

Mr. IRWIN. My name is Irwin.

Senator KEATING. He is not a relative?

Mr. IRWIN. Not to my knowledge.

Senator KEATING. Do you know the person?

Mr. IRWIN. I have never seen him, wouldn't know him, don't know who he is.

This file consists of similar correspondence.

Senator KEATING. All right, let's proceed.

Mr. KIRBY. Mr. Irwin, we have, according to the Daily Oklahoman a more complete statement from the Republican chairman, Mr. Henry Bellmon, in which he said that the Republican Party had—

no responsibility for Mr. Irwin's actions. He acted entirely on his own for reasons I don't understand. He apparently feels his opinion is superior to the judgment of one-half million Oklahoma voters who chose Richard Nixon. This irresponsible action demonstrates a need for change in our cumbersome, outmoded electoral college system.

That completes the quotation. To go back to—

Mr. IRWIN. Pardon me, it does not complete the comment, however.

Henry Bellmon is the candidate for Governor of Oklahoma in the coming election. Oklahoma has never had a Republican Governor since statehood. Henry Bellmon was contacted on the phone by Theo Klockman and two or three other electors in the caucus and the room in which we were caucusing. He was apprised of the whole affair. He agreed to adjourn to reconvene at the call of the State chairman, which he is, prior to our meeting of voting on Monday. He was fully aware of it.

John Tyler, who is the State national committeeman, was with Henry Bellmon the afternoon I called him by phone, presented my plan which John Tyler enthusiastically supported, and John Tyler and Henry Bellmon called Washington immediately upon my finishing the discussion.

That is a lot of political hogwash, if you will excuse the expression.

Senator KEATING. Are you supporting him for Governor?

Mr. IRWIN. We will have a primary, of course, before the election. Certainly I don't know who I will support, but I cannot envision my supporting Henry Bellmon.

Senator KEFAUVER. You say Oklahoma never had a Republican Governor since statehood? I thought Wild Bill Murray—

Mr. IRWIN. No, sir. He and his son was the only son and father Governor combination I know of to run a State.

Senator KEFAUVER. Wasn't he a Republican?

Mr. IRWIN. I do not believe he was, sir. I am quite sure he wasn't. He held a constitutional convention. I am quite sure he was not, sir.

Senator KEFAUVER. All right, proceed, Mr. Kirby.

Mr. KIRBY. To complete the Oklahoma tally, the Democratic electors received 370,111 votes, according to the documents you furnished us.

Then on December 19 the electors gathered, and you cast your ballot at Oklahoma City. At that time I gather from your previous testimony you thought other Republican electors over the country were going to do the same thing you did?

Mr. IRWIN. No, I did not.

Mr. KIRBY. Did you realize then the coalition plan was a failure?

Mr. IRWIN. I was fearful that it was.

Mr. KIRBY. Even if you had known that no others were going to vote as you did, you would have gone ahead and done so anyway wouldn't you?

Mr. IRWIN. I feel quite certain I would have. Again it is conjecture, it is moot; I don't know.

Mr. KIRBY. I believe there has been a change in the Oklahoma law for presidential electors since these events.

Mr. IRWIN. I was vacationing in Spring Lake when that law was enacted. It is the worst law that could ever have been conceived.

Mr. KIRBY. Please answer my question. Your answer is, "Yes, there has been a change"?

Mr. IRWIN. There have been several.

Mr. KIRBY. In fact I believe at the same July 5 election when the Republican primary was held, there was a constitutional amendment adopted by referendum so that party nominees for electors in the future are chosen by conventions.

Mr. IRWIN. No, they are not chosen, they are designated.

Mr. KIRBY. By the conventions?

Mr. IRWIN. By the party.

Mr. KIRBY. Party conventions?

Mr. IRWIN. I don't think it is convention, I think it is party. They are not chosen, they are designated.

Mr. KIRBY. Mr. Chairman, may I place the provision of the Constitution of Oklahoma, article III, section 5, as amended July 5, 1960, by the referendum election, in the record at this point?

Senator KEFAUVER. Very well, let it be made a part of the record. (The provision referred to is as follows:)

ARTICLE III, SECTION 5, CONSTITUTION OF THE STATE OF OKLAHOMA

Mandatory primary system—Non-partisan candidates.

The Legislature shall enact laws providing for a mandatory primary system, which shall provide for the nomination of all candidates in all elections for State, District, County, and municipal officers, for all political parties, including

United States Senators, except for the office of Presidential Electors who shall be nominated by the regularly called conventions of the various political parties and the chairman and secretary of each political party convention shall certify the names of said nominees to the Secretary of the State Election Board: *Provided, however*, This provision shall not exclude the right of the people to place on the ballot by petition any non-partisan candidate. (As amended State Question No. 388, Referendum Petition No. 123, adopted election July 5, 1960.)

Mr. KIRBY. Then, on February 21, Mr. Irwin, the legislature enacted sections 519 to 522 of title 28 dealing with presidential electors?

Mr. IRWIN. I don't know that. I think that is the one to which I made reference in which they fine the elector \$1,000 for doing his constitutional duty? I challenged the law at that time, and at this time I still challenge it.

Mr. KIRBY. At this time I would like to place this in the record.

Mr. IRWIN. I challenge it on constitutional grounds.

Senator KEFAUVER. It will be received.

(The provisions referred to are as follows:)

CHAPTER 15.—PRESIDENTIAL ELECTIONS

Sec.

519. Oath or affirmation by nominees—filing—vacancies [New].

520. Form of oath or affirmation [New].

521. Penalty [New].

522. Nomination of candidates for presidential electors—certification of names [New].

§ 519. Oath or affirmation by nominees—Filing—Vacancies

Every person nominated as a Presidential Elector by the convention of a political party, as provided by Section 5, Article III, of the Oklahoma Constitution, shall take the oath or affirmation prescribed by Section 2 of this Act,¹ and shall file the same with the Secretary of the State Election Board, not less than ninety (90) days before the general election next succeeding his said nomination. Failure of any such person to take and file said oath or affirmation by said date shall automatically vacate his said nomination, and a substitute candidate shall be nominated for said office of Presidential Elector to fill such vacancy in the same manner as is provided by the statutes of this State for the nomination of substitute candidate to fill other vacancies in political party nominations. Laws 1961, H.B.No.538, § 1.

§ 520. Form of oath or affirmation

The oath or affirmation required by this Act, same being cumulative to all other oaths required to be taken by the Constitution or statutes of this State, shall be as follows: I _____, do solemnly swear (or affirm) that if I am elected to the office of Presidential Elector at the next general election, I will cast my ballot as such Presidential Elector for the persons nominated for the offices of President and Vice-President of the United States by the national convention of the (here insert the name of the political party the Oklahoma convention of which nominated the person taking the oath or affirmation, as a candidate for the office of Presidential Elector) party.

Subscribed and sworn to before me this _____ day of _____, 19_____

Signature of nominee for Presidential Elector

Notary Public, or other officer
authorized to administer oaths.

Laws 1961, H.B.No.538, § 2.

§ 521. Penalty

Any person elected as a Presidential Elector after having been nominated by the convention of a political party, as provided by Section 5, Article III, Oklahoma Constitution, and after and filing the oath or affirmation prescribed by

¹ Section 520 of this title.
Emergency. Effective Feb. 21, 1961.

this Act, who violates said oath or affirmation by either failing to cast his ballot as Presidential Elector for the persons nominated for President and Vice-President by the national convention of the political party the Oklahoma convention of which nominated said Presidential Elector, or by casting his ballot for any other persons, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00). Laws 1961, H.B.No.538, § 3.

§ 522. Nomination of candidates for presidential electors—Certification of names

The State Central Committee of any political party recognized by the laws of this State shall cause a state wide convention of the members of such party to hold such representation of the members of such party and method of selection as such State Central Committee shall determine for the purpose, among others that such party may desire, of nominating such party's candidates for Presidential Electors. The persons nominated by such convention as candidates for Presidential Electors for such party shall be certified by name to the Secretary of the State Election Board by the Chairman, attested by the Secretary, of such State Central Committee at least ninety (90) days but not more than one hundred and eighty (180) days prior to the date of a Presidential Election. Failure of a political party to properly certify the names of candidates for Presidential Elector within the time herein specified shall bar such party from placing any candidates for Presidential Electors on the ballot at the general election next held following the time herein specified in which to certify. Laws 1961, H.B.No.564, § 1.

Senator KEFAUVER. Did you challenge it? What did you do about it?

Mr. IRWIN. I conveyed my opinions to my Senator and Representatives, who are in agreement, I believe, with me on that matter.

I subsequently announced in the paper that I did not believe the action of the State legislature in this respect would void or supersede the U.S. Constitution.

Senator KEFAUVER. You mean you conveyed your feeling to that old guard Democratic senator?

Mr. IRWIN. No; we have since had another election, Senator, and my State senator is now—having learned from my experiences—we now have a Republican who has displaced the old guard State senator.

Senator KEFAUVER. So you are happy about the situation now?

Mr. IRWIN. Much happier. We have seven more to go, however.

Mr. KIRBY. Mr. Irwin, you stated you plan to run for presidential elector again in Oklahoma?

Mr. IRWIN. I do not believe I said I planned to run. If someone wishes to run me I cannot object. I said that I would be a candidate.

Mr. KIRBY. Will you place your own name in candidacy?

Mr. IRWIN. That I would have to do.

Mr. KIRBY. I gather you don't expect to be nominated by one of the party conventions?

Mr. IRWIN. In this case—no, I will not petition. I don't know whether the law provides this. I have not studied the law for anyone but the two parties. I think I might even be, I mean, I am not stronger than the Republican Party, but I think there are enough—the Republican Party figures there are enough intelligent voters in Oklahoma to elect a conservative, and I think it might be prevailed upon the committee to designate me as an elector.

Mr. KIRBY. Well, this law provides for an oath or affirmation now by the nominees of the parties.

Mr. IRWIN. I am not aware of that.

Mr. KIRBY. It provides for an oath or affirmation of intention to vote in the electoral college—

Mr. IRWIN. There again the Constitution—

Mr. KIRBY. I am apprising the Senators what the law provides. Please let me finish. It provides for an oath or affirmation to be taken by the nominees of the party conventions that if elected to the office of elector they will cast their ballots for the persons nominated by the national convention of the party which has nominated them.

It provides a penalty; it declares it a misdemeanor if such an elector violates his oath by casting a ballot otherwise or by failing to cast his ballot, and provides for a fine up to \$1,000 upon conviction.

Now, apart from the constitutionality of that statute, Mr. Irwin, it applies only to nominees of party conventions who must take this oath.

Mr. IRWIN. We are talking about the future?

Mr. KIRBY. So you won't test that law unless you are nominated by the party convention.

Mr. IRWIN. I don't know that that is so. In the first place, this was passed this January or February, whenever you indicated. The law requires an oath on something that is impossible to require, I think, legally. The law has never been tested. It remains to be tested. It will be tested if I am an elector.

Mr. KIRBY. I believe it can only be tested, Mr. Irwin, by a nominee of a convention who takes the oath and violates it.

Mr. IRWIN. We have not had any convention since then.

Mr. KIRBY. I am talking only about the terms of the law. You are not even familiar with this, you said.

Mr. IRWIN. Yes, but it remains to be tested also. Further, I don't know, I ask you, is there any provision made for a nominee who dies, what the electors shall do? I don't know, but certainly you can't swear to vote for a dead man.

Mr. KIRBY. I think that is provided for in other sections of the law.

One further question: I gather that if such a law had been in effect in 1960, the mere prospect of paying \$1,000 as a fine in order to test the constitutionality would not have kept you from voting as you did?

Mr. IRWIN. You are making a conjecture, a conclusion.

Mr. KIRBY. I am asking you.

Mr. IRWIN. My reply would have to be a conjecture or conclusion. I don't know.

Mr. KIRBY. You think if a \$1,000 fine had been involved you might have cast your vote for Mr. Nixon?

Mr. IRWIN. I assure you of this: If Hoffa was the nominee I would, I assure you of that. If Walter Reuther was, I assure you I would.

Mr. KIRBY. You assure me of what?

Mr. IRWIN. I would vote against them. That \$1,000, I have staked my life on a battlefield, I am not worrying about \$1,000.

Mr. KIRBY. A man who feels as strongly as you do, you would pay it, wouldn't you?

Mr. IRWIN. I am not worrying about \$1,000.

Senator KEATING. You are not putting Mr. Nixon in the category with Hoffa and Reuther?

Mr. IRWIN. I don't think I made reference to him, but the question was would I bolt in 1960 or 1964. I say if either of those gentlemen, using the word loosely, were on the ballot, I assure you I would.

Mr. KIRBY. How did you happen to receive a legal opinion from Dean Manion, Mr. Irwin?

Mr. IRWIN. My first contact with Clarence Manion was a telephone call about the end of November, the 28th or so.

My wife—the telephone, she said. On the other end—he said, “This is Dean Clarence Manion.” I had never talked with Mr. Manion. I had never approached Mr. Manion.

He called me for a discussion. It was in that conversation—

Mr. KIRBY. He called you?

Mr. IRWIN. He called me.

It was in that conversation in which he stated that there were groups in Texas who wanted him to run for President. He said he had discouraged that. He would have no part of it. Further along in the discussion I inquired as to his opinion, which he gave me.

Mr. KIRBY. You mean as a result of that telephone call he gave you his opinion?

Mr. IRWIN. Yes. I have since communicated with Mr. Manion.

Mr. KIRBY. Do you know if that opinion was circulated to other Republican electors?

Mr. IRWIN. I feel quite certain it was because in the address for Manion’s Forum he makes that point quite clear. Whether they got it or not I don’t know, or whether they understood it or not I don’t know, or whether they heard it or not I don’t know.

Mr. KIRBY. No, sir. You couldn’t be expected to know.

You mentioned a moment ago a telegram from a New Mexico elector telling you that she would vote with you.

Mr. IRWIN. That telegram is in the record. I called out the State, the individual sending it, and I don’t recall who she was.

Mr. KIRBY. I think it was a Mrs. Moulton.

Mr. IRWIN. Yes; I think you are correct.

Mr. KIRBY. New Mexico went Democratic. Was this a Republican or a Democratic elector?

Mr. IRWIN. I was not aware—maybe it wasn’t New Mexico. I don’t know.

Senator KEFAUVER. You said it was New Mexico.

Mr. IRWIN. Albuquerque, N. Mex.:

My vote is Byrd President and Goldwater Vice President.

Mrs. EARL L. MOULTON, *New Mexico.*

Senator KEFAUVER. She didn’t vote that day, did she?

Mr. IRWIN. There was a miscount if she did.

Mr. KIRBY. Was she a Democratic elector?

Mr. IRWIN. I presume you know she was a Democratic elector.

Mr. KIRBY. No; I don’t know at all.

Mr. IRWIN. I can resolve that quite readily. New Mexico, if we are to accept U.S. News & World Report, New Mexico is—I am getting to that age I cannot read this. Can someone read these figures?

Mr. KIRBY. Sir, according to the statistics of the election prepared by the Clerk of the House of Representatives, the vote in New Mexico for presidential electors was Democratic 156,027, Republican 153,733.

Mr. IRWIN. Then it went Democratic, and she had no voice in the matter, no voice in the college of electors in any case.

Mr. KIRBY. Sir, you were kind enough to hand me this morning before you testified this correspondence between you and R. Lea Harris. Have these been put in the record otherwise by you?

Mr. IRWIN. I beg pardon?

Mr. KIRBY. Are they also included in the material—

Mr. IRWIN. I believe those you have, and more. I put them in a duplicate file which was miscellaneous papers.

Mr. KIRBY. I wanted to offer these if you had not already offered them.

Mr. IRWIN. Very well. However, whatever point you have in mind, sir—

Mr. KIRBY. I have no particular point in mind.

Mr. Chairman, I would like to offer for the record, following the *Opinion of the Justices*, the Alabama decision mentioned by Mr. Irwin, the opinion of the Supreme Court of the United States in *Ray v. Blair* in 1952. It also arose in Alabama and held valid the requirement of a pledge of an elector, or candidate for elector, in a primary election. This was held not to violate the Constitution. However, it left open the question of whether the pledge itself was enforceable as a matter of constitutional law. But the pledge itself was constitutional, and I believe this supersedes the authority of the Alabama case.

Senator KEFAUVER. Very well. Let that be made a part of the record at that point.

(The opinion referred to is found at p. 571.)

Mr. IRWIN. I would not question that. However, I would say that is inconsistent with the Alabama decision to which I have made reference, the one by the Supreme Court of Alabama.

Mr. KIRBY. That is true, it is inconsistent.

Mr. IRWIN. Yes.

Mr. KIRBY. The Alabama decision was in 1948, and the decision of the Supreme Court of the United States was in 1952, both arising under the Alabama laws.

Those are all the questions I have.

Senator KEFAUVER. Anything else, Senator Keating?

Senator KEATING. No.

Senator KEFAUVER. Senator Keating asked you whether you were receiving any organizational assistance. Is there any organization that is proposing that the electors use their freedom and how they vote?

Mr. IRWIN. I don't wish to avoid the question, but as to organization support, if we are talking about dollar support and me receiving dollar support, well, I can answer both. I received no dollar support from any organization. If there are organizations supporting such a coalition, I have no way in the world of knowing it. There might well be, I am inclined to believe there are.

Senator KEFAUVER. I was just asking you whether you knew of any, and if so whether you were a member.

Mr. IRWIN. Well, if Human Events—and I don't really know the policy of Human Events—but if Human Events is an organization, and actually it is—they have written in support of a coalition a number of times. I don't have the exact references. Manion's Forum is that; certainly Manion's Forum is an organization. Whether it has written in support of the coalition I don't know. Those I have no way of knowing, sir. To my knowledge I could not identify any such.

(The following communications are those submitted by Mr. Irwin at p. 626, as having resulted from his actions.)

MONTGOMERY, ALA., *December 20, 1960.*

HENRY IRWIN,
Bartlesville, Okla.:

Congratulations and God bless you. Your courageous action has educated all the politicians and millions of Americans to the real purpose of the electoral college. You have taken your worthless vote for Nixon and accomplished a great service to our Nation. Furthermore you have shown all America there is a rallying position for the moderates and conservatives. It is men like you to whom America must look for leadership. Letter to follow.

LEA HARRIS.

HOUSTON, TEX.

Mr. HENRY D. IRWIN,
Bartlesville, Okla.

DEAR MR. IRWIN: I just read about your activity concerning the possibility of swinging the electoral college decision to Harry Byrd and Barry Goldwater.

Hooray for you. This is the only thing that could save us from this one-party government we have been operating for the past 20 or more years. We ran a Goldwater-for-President campaign down here before the Republican Convention and went to Chicago and gave it our all, and we are getting ready to organize the Goldwater conservative forces the first week in January. Hope to be in Washington for the Human Events Congress January 6 and 7.

We are organized into John Birch Societies, Freedom in Action, Mindszenty groups and are going to set up a grassroots Freedom Council here in cooperation with Independence Foundation of Portland, Ind. Houston is a hotbed of conservatism and patriotism and political activity.

Can you send me some information on your plans?

Can we help?

Sincerely yours,

Mrs. NOELIE R. HOLTZ.

ENID, OKLA., *November 4, 1960.*

Mr. HENRY D. IRWIN,
Bartlesville, Okla.

DEAR MR. IRWIN: I read the article about you and the electoral college with much interest. I believe you are a man of my own heart. I was a delegate to the Republican National Convention in Chicago and I feel just about the way you do.

I am enclosing a couple of copies of a letter I have been writing and mailing to some of my relatives and friends monthly for the past 35 years. These might interest you.

Most sincerely,

HENRY B. BASS.

OKLAHOMA CITY, OKLA., *New Year's Day, 1961.*

DEAR MR. IRWIN: I had been intending to write you, something like Mr. Doenges' views, so I will enclose his article with my agreement.

I would add that inasmuch as it was now fully evident that Mr. Nixon would not be the winner, there was hope that if Oklahoma and a few others, not yet fully decided, would join with some of the southern electors and do just what you tried to do—it might have been the salvation of our country and our few remaining freedoms.

I'm also glad there is someone from Bartlesville who shows some intelligence and honesty and good judgment.

Would that we had a majority who had honorable and upright and sound convictions and the courage to stand for them. I hope you continue your efforts along this line.

Most sincerely,

V.J.R.

P.S.—There was an excellent message given by a minister over WNAD, Norman, Okla., this morning, that was in line with your apparent concepts and that would add to the encouragement and give you a "lift." It is the only one given over that station on Sunday—you might write for a copy and receive one, I do not know.

AVANT, OKLA., *December 20, 1960.*

Mr. HENRY D. IRWIN :

I want to congratulate you on being the top nut of all ages. You showed the true color of a real Republican, the Senator Barry Goldwater type. I hope you and yours will be able come next presidential election to nominate Barry Goldwater. We Democrats would gladly give you Senator Harry F. Byrd. Boy would that make a pair. They wouldn't carry as many elector votes as Alf Landon did in 1936.

Henry, why don't you run for some office, say in the next 2 years and see just how popular you would be.

Wish you well.

C. R. BROWN.

TULSA, OKLA., *December 10, 1960.*

DEAR MR. IRWIN : Surely there can be no doubt in your mind as to the choice of the Oklahoman electorate for the Presidency.

The vast majority went to the polls with no other thought in mind than to select Richard M. Nixon. Surely you will be led to vote as the people directed. (There could be no doubt in the minds of anyone as to what the people of Oklahoma want.)

Sincerely,

VERA CALICO.

BARTLESVILLE, OKLA., *December 16, 1960.*

Mr. HENRY D. IRWIN,
Bartlesville, Okla.

DEAR MR. IRWIN : More power to you. You'll be interested to know that many wish you success in your efforts to form a coalition for the good of our country. Your courageous undertaking is sincerely appreciated. Good luck.

Best wishes for a happy holiday season.

Sincerely,

LEO B. CROLEY.

TULSA, OKLA., *November 25, 1960.*

Mr. HENRY IRWIN,
Bartlesville, Okla.:

I read with keen interest last night's Tribune article setting forth your efforts to bring to pass the possible chance of the election being thrown into the House of Representatives.

This providential chance to save our country from the domination of the left-wing-beatnik element may be our last and I only hope we can rise to the occasion, though it is doubtful if a generation of "gimmie" citizens which Rooseveltism spawned have enough sense or fortitude to grasp the situation.

I wish to commend you for your stand and I wrote personally to the Human Events staff to ask them to assist you as they have a huge coverage and interest in the preservation of our sovereign Christian constitutional Republic.

God bless you and crown your efforts with success. I don't expect an answer. I'm just an elderly widow who dreads seeing the fall of our beloved country, and who clings to hope, however slim, that it may be prevented.

Sincerely,

Mrs. ALICE F. HIBBARD.

HOUSTON, TEX., *December 27, 1960.*

Mr. HENRY D. IRWIN,
Bartlesville, Okla.

DEAR MR. IRWIN : Please accept my congratulations on your voting for Senator Byrd for President. We certainly need more people like you to lead us out of this political situation.

If you have any plans for the future, please let me know and I will attempt to channel it to our leading patriots.

With best wishes for the coming year, I am

Yours sincerely,

Mrs. ROBERT NORDIN.

HOUSTON, December 15, 1960.

Mr. IRWIN: Thought we've never met, my hat is off to you. My relatives have been settled in Texas since the days of the Republic; however, I also consider myself as "slave laborer for the Federal Government."

I helped push a Goldwater movement in Houston this past summer, and was heavy laden after the Republican "Munich" at Chicago.

Something must be done to free the taxpayer from the chains of the U.N., Federal Reserve, graduated income tax, National Socialists, liberals, et al. The Southern States have, at long last, an opportunity to vindicate Vicksburg, Gettysburg, Appomattox.

I wish you Godspeed in your Byrd-Goldwater coup.

Constitutionally yours,

JOHN MORRIS KILGORE.

STILWELL, OKLA., December 21, 1960.

Mr. HENRY D. IRWIN,
Bartlesville, Okla.

DEAR SIR: I am enclosing a letter that I wrote to the editor of the Tulsa World.

I am the party who called from Stilwell, Okla., last week, and wish to again state that your stand is appreciated by many people.

Would count it a privilege to be able to meet you some time.

Sincerely,

W. L. LOFTON.

STILWELL, OKLA., December 21, 1960.

EDITOR,
The Tulsa Daily World.

DEAR SIR: "Low comedy performance"? Yes, I believe we have seen much of "low comedy" in the last few months, but believe that you have failed to see it.

It seems to be the accepted custom of this enlightened day, to subscribe to the prevalent schemes of the times, regardless of their merit, and many persons would not, no, dear no, "embarrass" their friends, colleagues, or constituents, if it meant that they had to sacrifice every principle for which they had stood.

Yes, perhaps the present electoral college is outmoded, but not for the reason you would suggest in your editorial, in which you heap abuse upon a man who dared to stand boldly for his convictions; rather we need a different system because, under the present electoral college, and the misuse of same, the common man, the little man, the quiet man, is seldom heard, and less seldom represented.

Was our country made strong, our freedom assured, by conformity of the individual to the "accepted" way?

Have we gotten so far from the principle that we would debase the Patrick Henrys and the Henry D. Irwins, and glorify the "Yes" men and the conformists? If it be thus with us here in the United States of America, may Almighty God have mercy upon us.

It is certain that there are many voters in Oklahoma, and in the Nation, who had nowhere to go, except to cast their vote for, what amounted to them, the lesser of two evils.

Often, in our county conventions, we find them subjected to gag rule, and the voices of the above mentioned little men, quiet men, ignored, and the delegates go instructed and pledged; aye, "bound" would be a better word, and they are wont to call this by the unanimous vote of the convention assembled, often without opportunity for a nay vote.

If opportunity for write-in vote in the presidential election was allowed in Oklahoma, we were not made aware of it. Thus we can see, if we have an open mind, that many voters had no champion of their rights, no representation.

Then, when we find one man in the State who is willing to stand up for a cause that is not in keeping with the accepted way, and selflessly chose to represent those who had no representation, we find the illustrious Tulsa World denouncing him roundly, and our State Republican chairman, Henry (me too, yes! yes!) Belmon, party loyalty at any cost, even the cost of our freedom, heap public, verbal abuse upon that man.

In our opinion, Henry Irwin spoke for many more voters than any other elector in Oklahoma probably more than the other seven combined.

Therefore to the Tulsa Daily World and to Henry Belmon: may your stand on this matter go down in infamy.

And to Henry D. Irwin: long may you stand to defend the principles for which you stood, to champion those who have no voice. Would to God there were more of you.

W. L. LOFTON.

CHICAGO, ILL., *December 20, 1960.*

MR. HENRY D. IRWIN,
Bartlesville, Okla.:

Congratulations on your voting for Byrd and Goldwater. At least there are some real Republicans.

HARRY L. STERN,
President, 43d Ward Young Republicans Organization, Cook County, Ill.

OOLAGAH, OKLA., *December 20, 1960.*

HENRY D. IRWIN,
Bartlesville, Okla.

DEAR SIR: I was very happy to have you represent me in the electoral college. You expressed my sentiments exactly.

Let us hope your move will help break these conservatives loose and put them together in something other than a United Front Party.

Yours,

WM. R. SWANK.

Senator KEFAUVER. Well, I believe that is all. We thank you for your coming and giving us the benefit of what you did and what happened, Mr. Irwin.

I think that Mr. Irwin's testimony is a most indicative example of what may happen under the present system of the electoral college. For my own part, as evidenced by resolutions I have filed—I do not know how Senator Keating feels about it—I feel that we are running a great danger, of what the people thought their will to be, being mis-carried under the present system.

This seems to be a rather substantial effort that Mr. Irwin made, and it does exemplify and set forth the danger we are running with the electoral college system set up as it is now.

Undoubtedly, he had the legal right, as far as legality is concerned and aside from moral responsibility, to vote the way he wanted to.

Is there anything you want to add, Senator Keating?

Senator KEATING. No. I think I have made my position quite clear.

Senator KEFAUVER. Mr. Kirby, are there any announcements about any future meetings?

Mr. KIRBY. No, sir. This concludes the scheduled hearings. I have statements by Prof. Norman W. Johnson, Mr. Gus Tyler, and Prof. David B. Truman for inclusion in the record.

Senator KEFAUVER. Very well. They will be included at the close of today's hearings.

Mr. KIRBY. And I would suggest that the record remain open for 10 days for the inclusion of statements or pertinent material received.

Senator KEFAUVER. Very well. Such material will also be included following today's hearings. Have we had any request from anyone to testify that we have not heard as yet?

Mr. KIRBY. No, sir; we have not. This concludes everyone who asked to be heard in person.

Senator KEATING. We may as a result of today's testimony.

Senator KEFAUVER. All right. We stand in recess subject to the call of the Chair.

(Whereupon, at 4:20 p.m., the subcommittee adjourned, subject to the call of the Chair.)

(The statement submitted by Prof. Norman W. Johnson follows:)

STATEMENT OF NORMAN W. JOHNSON, ASSISTANT PROFESSOR OF MATHEMATICS,
GENEVA COLLEGE, BEAVER FALLS, PA.

The wake of the 1960 presidential campaign and election has brought a renewal of demands for a change in the machinery by which the President and the Vice President of the United States are chosen. Some have attacked the convention system by which the parties nominate their candidates; others have asserted that the campaign period lasts too long; still others have urged that the interval between the election and the inauguration be shortened. But almost everyone has agreed that something ought to be done about the electoral college.

Under the electoral college system each of the 50 States and the District of Columbia is allotted a certain number of electoral votes. These votes are generally cast by each State in a block for the presidential candidate who carries that State. It is this winner-take-all feature of the system that is most often criticized.

It is argued that the unit rule concentrates political strength in a few States with large blocs of electoral votes and gives these States too much power in electing the President. It is also claimed that votes cast by the minority in any State are in effect wasted, since they produce no electoral votes. These and similar arguments are the basis for the two most widely advocated proposals for reform of the electoral college.

The Mundt-Coudert plan, as proposed by Senator Karl E. Mundt and former Representative Frederic Coudert, Jr., of New York, would give each State one elector for each of its Representatives in Congress and two extra electors for its two Senators, as at present, but would have the electors chosen by congressional districts with two more electors to be elected at large in each State. The Lodge-Gossett plan, originally proposed by former Senator Henry Cabot Lodge of Massachusetts and former Representative Ed Gossett of Texas, would also keep the present distribution of electoral votes among the States but would do away with the actual electors. The electoral vote of each State would be divided in proportion to the popular vote, to the nearest thousandth of an electoral vote.

While I favor a change in the method of electing the President, for reasons I shall subsequently explain, I submit that the criticisms of the unit rule do not go to the heart of the matter, and that the proposed reforms of the electoral college are misdirected. The faults of the electoral college system are not solely, or even primarily, a consequence of the unit rule. On the contrary, the unit rule is probably the chief reason that the present system has worked as well as it has. Let us see why this is so.

THE UNIT RULE

One effect of the unit rule is that the electoral vote of the winner of a presidential election is usually exaggerated, so that the vote in the electoral college is ordinarily nowhere near as close as the popular vote. Conversely, the losing candidate generally receives a smaller share of the electoral vote than of the popular vote, while minor-party candidates as a rule get no electoral votes at all. (See table I.) This has at least two beneficial results.

First, the two-party system is strengthened, since third parties are likely to have little influence in the electoral college. Second, the exaggeration of the winner's vote practically insures that one candidate will receive a majority of the electoral votes, although frequently no candidate has a majority of the popular votes.¹ Only when the two-party system broke down in the four-way contest of 1824 did the electoral college fail to produce a majority for one candidate.

¹ There have been 13 elections in which no candidate had a popular majority: 1824, 1844, 1848, 1856, 1860, 1880, 1884, 1888, 1892, 1912, 1916, 1948, and 1960.

Another point to consider is that a new President can find a mandate in a decisive electoral-vote victory even when the popular vote was relatively close. There can be little objection to this so long as the successful candidate did indeed have a popular margin over his opponent, and this has almost always been the case.

Thus, we see that the lack of close correspondence between the vote in the electoral college and the popular vote for President is not in itself a bad thing. It would be dangerous only if one candidate had a clear popular margin but his opponent won in the electoral college.

Before examining the arguments against the unit rule, let us see what other factors contribute to the discrepancy between the popular vote and the electoral vote. The three principal reasons that the electoral college does not accurately reflect the popular vote for President are:

1. *The unit rule.*—All of a State's electoral votes go to the candidate who carries the State by even the narrowest margin.

2. *The senatorial bonus.*—Each State is given two electoral votes for its two Senators, regardless of population.

3. *Unequal voter participation.*—The electoral vote of each State is determined by its representation in the Congress and is independent of the number of popular votes actually cast.

Other reasons are that the distribution of electoral votes among the States, being based on a census taken from 2½ to 10½ years previously, does not take account of recent shifts in population, and that persons who have moved may not be able to vote because of residence requirements.

It is often claimed that the winner-take-all system gives a few large States in the North undue influence in the election of a President. How valid is that contention?

The eight largest States outside the South—New York, California, Pennsylvania, Illinois, Ohio, Michigan, New Jersey, and Massachusetts—had 46.28 percent of the population of the 50 States in 1960. In the 1960 election the people of these States cast 52.71 percent of the 68,832,778 popular votes for President, but the 8 States cast only 39.66 percent of the 537 electoral votes.

On the other hand, the people of the remaining 42 States cast only 47.29 percent of the popular votes in 1960, but these States cast 60.34 percent of the electoral votes. To put it another way, each popular vote in one of the eight largest Northern States was worth only about 59 percent as much as a popular vote elsewhere in the country.

By way of further contrast, the 16 smallest States in the Union² had 5.91 percent of the population and accounted for 6.14 percent of the popular votes in the 1960 election, but because of the senatorial bonus they were able to cast 10.99 percent of the electoral votes. In the South, restriction of or failure to exercise the franchise enables a small number of voters to have disproportionate weight in the electoral college. The 11 States of the former Confederacy,³ though having 24.33 percent of the Nation's population, cast only 14.92 percent of the popular votes in 1960; yet their share of the electoral vote still came to 23.84 percent.

It should be clear that, although the unit rule does work to the advantage of the large Northern States, they are considerably handicapped by their decided underrepresentation in the electoral college. To suppose that because of the unit rule the present system is weighted in favor of States with large blocs of electoral votes is to overlook the effects of the senatorial bonus, which is an advantage to the small States, and of unequal voter participation, which operates to the advantage of the South. The truth of the matter is that as the electoral college has evolved into something quite different from what the Founding Fathers intended, it has come to represent a nice balance in political power between different parts of the country.

Another criticism of the unit rule revolves around the issue of "wasted votes." It is claimed that any votes cast for a presidential candidate in a State he fails to carry are wasted, since he can receive none of that State's electoral votes. Under the winner-take-all principle, it is argued, such minority votes are actually counted for the opposition. In refutation of this argument, Senator Paul H. Douglas, speaking against the Daniel-Mundt-Thurmond resolution on the floor of the Senate in 1956, said:

² Alaska, Nevada, Wyoming, Vermont, Delaware, New Hampshire, North Dakota, Hawaii, Idaho, Montana, South Dakota, Rhode Island, Utah, New Mexico, Maine, and Arizona.

³ Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

"I cannot be disturbed over this argument of 'lost votes.' I think it is naive and without reason or logic. In every election where there can be only a single winner, all votes cast for the losing candidate can be labeled 'lost' or 'counted for the winner.' The Mundt-Coudert plan would merely transfer the winner-take-all rule from the State level to the congressional district. The votes cast for the candidate who failed to carry the congressional district could be called lost or counted for the candidate who did carry the district. The Lodge-Gossett plan would merely transfer these so-called lost votes from the State to the National level. As former Senator Homer Ferguson has said, the truth is that no votes are lost when validly cast in an election. They are actually counted toward the final decision, and, if insufficient for victory, they have simply exhausted their power as votes."

THE DANGER OF A MINORITY PRESIDENT

Of the various reasons that are urged for a change in the present method of electing the President, the only one of any real merit is that it is possible for the electoral college system to defeat the popular choice for President. In fact, on two occasions a candidate has won a majority of the electoral votes without having a popular plurality.

We may disregard the election of 1824, when John Quincy Adams was elected President although Andrew Jackson had received a plurality of the popular votes. In the first place, it is by no means evident that Jackson was the choice of the people. Four candidates were in the field; Jackson did not obtain a majority but only a little more than 42 percent of the popular votes; Jackson was not on the ballot in some States, and Adams not on the ballot in others; in some States there was no popular vote. In the second place, Adams was elected not by the electoral college but by the House of Representatives, since no one had a majority of the electoral votes.

In the election of 1876 Rutherford B. Hayes was elected by a margin of one electoral vote even though his opponent, Samuel J. Tilden, had a popular majority. The outcome of the election depended on the electoral votes of four States, which were claimed by both sides. The Congress referred the matter to a special electoral commission of eight Republicans and seven Democrats, which, by a strict party vote, gave all the disputed electoral votes to Hayes. Granted that Tilden was the popular choice, in view of the circumstances of the election it is hardly fair to attribute his defeat solely to the electoral college system.

In the election of 1888, Benjamin Harrison won a majority of the electoral votes despite his having received fewer popular votes than Grover Cleveland. It should be noted, however, that Cleveland did not receive a majority of the popular votes and that his plurality over Harrison was less than 1 percent.

To the elections of 1876 and 1888 one may add two "near misses." In 1884 Grover Cleveland, though lacking a popular majority, had a 23,000-vote plurality over James G. Blaine. The election turned on the outcome in the State of New York, which Cleveland won by only 1,149 votes. In 1916 Woodrow Wilson won reelection with a nationwide popular plurality of more than 590,000 votes over Charles Evans Hughes. Yet Hughes would have been elected if he had carried California, a State he lost by 3,806 votes.

It is more than good fortune that, so far at least, there has been no clear-cut instance of the people's will being thwarted by the electoral college. As we have seen, the unit rule tends to reinforce the popular verdict rather than to work against it. In any given election the probability that the result of the electoral vote will run counter to the will of the people is slight. Yet the possibility is there, and it may safely be predicted that, unless the present system is changed, we shall see the clear choice of the people defeated in some presidential election by an unfavorable distribution of electoral votes.

This, in short, is the whole case for electoral reform. There are, to be sure, other flaws in the electoral college system, such as the possible abuse by electors of their theoretical freedom to exercise independent judgment and the highly unsatisfactory provisions for the choice of a President by the House of Representatives if no candidate should have a majority of the electoral votes, but these are not basic defects. The dangers which they involve are not very great, and in any case they could be remedied within the framework of the present system.

AN ANALYSIS OF TWO CURRENT PROPOSALS

Any plan of electoral reform worthy of the name must do three things. It must, first of all, eliminate the danger inherent in the present system that a candidate may decisively outpoll his opponent in the popular vote but lose in the electoral vote. It must do this without introducing substantial new difficulties into the electoral process. Finally, it must be reasonably fair to all sections of the country so that there may be some hope of its being accepted by two thirds of each House of the Congress and by three-fourths of the States.

How do the Mundt-Coudert plan and the Lodge-Gossett plan measure up to these requirements?

The chief fault of both these plans is that they would eliminate only one of the three major causes of the discrepancy between the popular vote and the electoral vote. Large States would no longer be in a position to cast their electoral votes en bloc, but nothing would be done about the inequities due to the senatorial bonus or unequal voter participation. The people of the large Northern States would have their lone advantage under the present system taken away, and they would receive nothing in return. The result would be a definite shift in political power to the small States and to the South.

The Mundt-Coudert plan would compound the danger of minority rule by making it possible for a candidate to carry a State and yet obtain fewer than half of the State's electoral votes. Indeed, given the urban-rural dichotomy of voting behavior in most big-city States, this would be far from an unusual occurrence.⁴ While it is claimed in support of the Mundt-Coudert plan that under the present system minorities in the pivotal States with large blocks of electoral votes have too great a voice in the election of the President, under the Mundt proposal presidential campaigns would be keyed to the minority of voters who happen to live in marginal districts.⁵

The elimination of the unit rule in the Lodge-Gossett plan would greatly magnify the effect of unequal voter participation. To illustrate this, the two Northern States of Indiana and Iowa, with 23 electoral votes between them in 1960, have approximately the same population as the two Southern States of Alabama and Georgia, also with 23 electoral votes. In the 1960 election Mr. Nixon carried Indiana and Iowa by a combined plurality of 394,578 votes out of a total of 3,409,180, which under the Lodge-Gossett plan would have provided a Republican margin of 2,705 electoral votes in these two States. Yet a combined Democratic plurality of 264,488 votes out of only 1,297,591 cast in Alabama and Georgia would have given Mr. Kennedy a net gain of 4,579 electoral votes from these States, more than offsetting his losses in the two Northern States. The contention that the Lodge-Gossett plan would result in a more equitable distribution of electoral votes does not hold water. A small margin of victory in one place would be worth considerably more than a large margin in another because of the relatively low voter turnout in the South. The plan, in fact, would place a premium on keeping the voter turnout low and would provide little incentive for Southern officials to remove obstacles to a greater extension of the franchise.

Not only would both the Mundt-Coudert plan and the Lodge-Gossett plan upset the present balance of political power and give rise to new inequities in the electoral process, but neither of these plans would in any way solve the basic problem of preventing the defeat of the popular choice for President. The Mundt-Coudert plan would help a candidate whose chief strength lay in one-party States or in small or moderate-sized States, where he would still win nearly all the electoral votes of the States he carried, while on the other hand he could expect to carry several Congressional districts in every large State won by his opponent. This was the situation in 1960, when the Mundt-Coudert plan would have resulted in the election of Mr. Nixon. The Lodge-Gossett plan would favor the party which was strongest in the South, so that a Democrat might win even when the Republican candidate had a majority of the popular votes. This would have happened, for example, in the McKinley-Bryan election of 1896.

⁴ In 1960 Nixon won 14 of Illinois' 25 congressional districts and 7 of the 11 districts in Missouri, though Kennedy carried both States.

⁵ In the last four elections only eight States (not including Alaska) have not voted Democratic at least once, and only six States (not including Hawaii) have not gone Republican at least once. The remaining 36 States (and perhaps the District of Columbia), including all of the big States, are marginal. By contrast, not more than about 175 congressional districts can be considered marginal, and in most elections the number which could go either way would be less than 100.

The fact of the matter is that no plan based on some system of electoral votes is going to get to the roots of the problem of making the electoral system more representative of the will of the people. No matter what rule is used to allocate the electoral votes among the candidates, there is bound to be a disparity between the popular vote and the electoral vote, and so long as this is the case, there will always be a danger of the system's bringing about the defeat of a candidate who is the clear choice of the people. If electoral votes are to be retained at all, I think the present system is far superior to any of the alternatives proposed.

QUALIFIED DIRECT POPULAR VOTE

Ideally, the President should be chosen by direct vote of the people. However, because direct election would deprive the small States of their present advantage of the two extra electoral votes given to every State and would reduce Southern voting strength to the actual number of votes cast, it is doubtful whether the necessary amendment to the Constitution could win sufficient support to be adopted.

I would like to suggest a system of qualified direct popular vote, the qualification involving a concession to the principle of State sovereignty under certain circumstances.

If a presidential candidate receives a majority of the popular votes, there can be no question that he is entitled to the victory. There ought to be no possibility of his being defeated as Tilden was under the present system and as McKinley might have been under the Lodge-Gossett plan. One can go further and say that, even in those elections where no candidate has a popular majority, if the leading candidate has a clear margin of votes over his nearest rival, he probably deserves to be elected. The question is, What constitutes a clear margin of votes?

The following yardstick seems reasonable. The candidate receiving the greatest number of votes in an election will be said to have a sufficiency if the total of his vote and the amount by which it exceeds the vote for any other candidate makes a majority. Thus if a candidate has a majority, he automatically has a sufficiency. Otherwise, the leading candidate has a sufficiency if his vote falls short of a majority by less than it exceeds the vote for the runner-up.

(In 1948 Truman's 49.51 percent of the popular vote exceeded Dewey's total by 4.38 percent. Since the vote for Truman plus his margin over Dewey was more than 50 percent, Truman had a sufficiency. In 1960 Kennedy received 49.717 percent of the popular vote to 49.553 percent for Nixon. Adding the difference of 0.164 percent to Kennedy's 49.717 percent, one obtains a total of only 49.881 percent, so that Kennedy did not have a sufficiency).

Under my proposal the candidate receiving the greatest number of popular votes would be elected, if this number were a sufficiency or if he carried a majority of the States. If the leading candidate should not only lack a sufficiency but also fail to carry a majority of the States, the President would be chosen by a joint session of the Congress from the two highest candidates (not three, as at present).

By recognizing the principle of the equality of the States as a factor in the electoral process, qualified direct popular vote would offer the small States and the South a measure of protection against the domination of presidential elections by the greater voting population of the large Northern States. At the

same time it would render impossible the defeat of any candidate receiving a majority or even a substantial plurality of the popular votes.

The sufficiency criterion would tend to discourage the growth of minor parties by making a Presidential election basically a two-man contest, as it is now. Moreover, it would provide a relative measure of the closeness of an election more meaningful than a requirement that the leading candidate receive some arbitrary percentage of the vote in order to be elected. In case of a split in one of the major parties, as happened in 1824, 1860, and 1912, it is not at all unlikely that the leading candidate could fail to receive even 45 percent of the votes. This is well illustrated by the election of 1912, when Woodrow Wilson received only 41.85 percent of the votes in a three-way race. Yet he led his nearest rival by more than 14 percent and was clearly the victor.

One possible objection to this proposal is that it would require presidential elections to be decided by the Congress more frequently. Although an election would never be thrown into the Congress if one candidate had a majority of the popular votes, there have been 13 elections in which no candidate had a popular majority. Even so, if the system of qualified direct popular vote had been in effect in the past, only 3 of these 13 elections would have had to be decided by the Congress, namely: the two closest presidential elections in history, in terms of the popular vote (1880 and 1960), and the 1 election in which the present system was clearly responsible for the defeat of a candidate with a popular plurality (1888).⁹

It is not likely that more than two elections a century would be thrown into the Congress. Moreover, if this did happen, it would be under a greatly improved set of procedures. With each Member of the Congress having one vote and only two candidates to choose from, there would be no possibility of a deadlock and little chance that a small minority would hold the balance of power. The voting would probably follow party lines, with the result a foregone conclusion. A combination of circumstances that would not only throw the election into the Congress but also leave any room for doubt as to the outcome there would seem to be no more likely than that the election would be thrown into the House of Representatives under the present system, in which case almost anything could happen. On the positive side, my plan provides a guarantee that if a President should sometime be elected without a popular plurality, he would not be doubly handicapped at the beginning of his term by having both Houses of the Congress controlled by his opponents. (Consider the difficulties Mr. Nixon would have faced if he had been elected President with fewer popular votes than Senator Kennedy and confronted with Democratic majorities in both the House and the Senate.)

In summary, qualified direct popular vote would end the danger that a candidate who was clearly the choice of the people might be defeated through a quirk of the electoral system. The only difficulty it would create is that it would occasionally require the election to be decided by the Congress, but this is not such a serious objection as it seems. It would not upset the balance of political power between North and South, large States and small States, and so should be acceptable to all.

⁹ For a comparison of qualified direct popular vote with the present system and with the Lodge-Gossett and Mundt-Coudert plans, see table II.

TABLE I.—*Presidential elections, 1876-1960*

[SMALL CAPITALS denote candidates who received a majority of the popular votes. *Italics* denote candidates who had a popular plurality falling short of a majority but by less than it exceeded the vote for the second highest candidate]

Year	Candidate	Party	Popular vote	Per cent	States won	Electoral vote
1876	Rutherford B. Hayes	Republican	4,033,768	47.94	21	185
	SAMUEL J. TILDEN	Democratic	4,285,992	50.94	17	184
	Others		93,895	1.12		
1880	James A. Garfield	Republican	4,454,416	48.32	19	214
	Winfield S. Hancock	Democratic	4,444,952	48.21	19	155
	Others		319,583	3.47		
1884	Grover Cleveland	Democratic	4,874,986	48.50	20	219
	James G. Blaine	Republican	4,851,981	48.28	18	182
	Others		323,739	3.22		
1888	Benjamin Harrison	Republican	5,439,853	47.80	20	233
	Grover Cleveland	Democratic	5,540,329	48.68	18	168
	Others		400,871	3.52		
1892	Grover Cleveland	Democratic	5,556,543	46.11	23	277
	Benjamin Harrison	Republican	5,175,582	42.95	16	145
	James B. Weaver	People's	1,040,886	8.64	5	22
	Others		277,373	2.30		
1896	WILLIAM M'KINLEY	Republican	7,111,607	51.03	23	271
	William Jennings Bryan	Democratic	6,509,052	46.70	22	176
	Others		316,299	2.27		
1900	WILLIAM M'KINLEY	Republican	7,219,525	51.65	28	292
	William Jennings Bryan	Democratic	6,358,737	45.49	17	155
	Others		399,252	2.86		
1904	THEODORE ROOSEVELT	Republican	7,628,785	56.41	33	336
	Alton B. Parker	Democratic	5,084,442	37.59	12	140
	Others		810,881	6.00		
1908	WILLIAM HOWARD TAFT	Republican	7,677,788	51.58	30	321
	William Jennings Bryan	Democratic	6,407,982	43.05	16	162
	Others		800,219	5.37		
1912	<i>Woodrow Wilson</i>	Democratic	6,293,019	41.85	40	435
	Theodore Roosevelt	Progressive	4,119,507	27.40	6	88
	William Howard Taft	Republican	3,484,956	23.18	2	8
	Others		1,138,960	7.57		
1916	<i>Woodrow Wilson</i>	Democratic	9,129,606	49.27	30	277
	Charles Evans Hughes	Republican	8,538,221	46.08	18	254
	Others		861,916	4.65		
1920	WARREN G. HARDING	Republican	16,152,200	60.47	37	404
	James M. Cox	Democratic	9,147,353	34.25	11	127
	Others		1,411,630	5.28		
1924	CALVIN COOLIDGE	Republican	15,725,016	54.06	35	382
	John W. Davis	Democratic	8,386,593	28.83	12	136
	Robert M. LaFollette	Progressive	4,822,856	16.58	1	13
	Others		155,883	.53		
1928	HERBERT C. HOOVER	Republican	21,391,381	58.21	40	444
	Alfred E. Smith	Democratic	15,016,443	40.87	8	87
	Others		337,180	.92		
1932	FRANKLIN D. ROOSEVELT	Democratic	22,821,857	57.42	42	472
	Herbert C. Hoover	Republican	15,761,841	39.66	6	59
	Others		1,160,615	2.92		
1936	FRANKLIN D. ROOSEVELT	Democratic	27,751,597	60.80	46	523
	Alfred M. Landon	Republican	16,679,583	36.55	2	8
	Others		1,211,296	2.65		
1940	FRANKLIN D. ROOSEVELT	Democratic	27,244,160	54.69	38	449
	Wendell L. Willkie	Republican	22,305,198	44.77	10	82
	Others		266,991	.54		
1944	FRANKLIN D. ROOSEVELT	Democratic	25,692,504	53.36	36	432
	Thomas E. Dewey	Republican	22,006,285	45.87	12	99
	Others		367,573	.77		
1948	<i>Harry S. Truman</i>	Democratic	24,105,695	49.51	28	303
	Thomas E. Dewey	Republican	21,969,170	45.13	16	189
	J. Strom Thurmond	States' Rights	1,169,021	2.40	4	39
	Henry A. Wallace	Progressive	1,156,106	2.37		
	Others		284,899	.59		
1952	DWIGHT D. EISENHOWER	Republican	33,936,252	55.13	39	442
	Adlai E. Stevenson	Democratic	27,314,992	44.38	9	89
	Others		299,675	.49		
1956	DWIGHT D. EISENHOWER	Republican	35,585,316	57.37	41	457
	Adlai E. Stevenson	Democratic	26,031,322	41.97	7	73
	Others		410,402	.66		1
1960	John F. Kennedy	Democratic	34,221,531	49.72	23	303
	Richard M. Nixon	Republican	34,108,474	49.55	26	219
	Others		502,773	.73	1	15

TABLE II.—Comparison of different systems on the basis of past elections

[The name of the winner of the election under each plan is given—
 in SMALL CAPITALS if he received or would have received a majority of the votes,
 in *italic* if he had or would have had a plurality falling short of a majority but by less than it exceeded
 the vote for the 2d highest candidate,
 in roman type if he had or would have had a plurality falling short of a majority by more than it exceeded
 the vote for the 2d highest candidate.
 Under the qualified direct popular vote plan, the Congress would have had to choose the President from the
 2 leading candidates in 1880, 1888, and 1960. Not enough data are available to determine how the Mundt-
 Couderf plan would have operated in the elections prior to 1896.]

A. ELECTIONS IN WHICH 1 CANDIDATE HAD A MAJORITY OF THE POPULAR VOTES

Year	Qualified direct popular vote	Present electoral college system	Lodge-Gossett plan	Mundt-Couderf plan
1876	TILDEN	HAYES ¹	TILDEN	(?)
1896	M'KINLEY	M'KINLEY	<i>Bryan</i> ¹	M'KINLEY.
1900	M'KINLEY	M'KINLEY	McKinley ²	M'KINLEY.
1904	ROOSEVELT	ROOSEVELT	ROOSEVELT	ROOSEVELT.
1908	TAFT	TAFT	TAFT	ROOSEVELT.
1920	HARDING	HARDING	HARDING	TAFT.
1924	COOLIDGE	COOLIDGE	<i>Coolidge</i>	HARDING.
1928	HOOVER	HOOVER	HOOVER	COOLIDGE.
1932	ROOSEVELT	ROOSEVELT	ROOSEVELT	HOOVER.
1936	ROOSEVELT	ROOSEVELT	ROOSEVELT	ROOSEVELT.
1940	ROOSEVELT	ROOSEVELT	ROOSEVELT	ROOSEVELT.
1944	ROOSEVELT	ROOSEVELT	ROOSEVELT	ROOSEVELT.
1952	EISENHOWER	EISENHOWER	ROOSEVELT	ROOSEVELT.
1956	EISENHOWER	EISENHOWER	EISENHOWER	EISENHOWER.
			EISENHOWER	EISENHOWER.

B. ELECTIONS IN WHICH NO CANDIDATE HAD A MAJORITY OF THE POPULAR VOTES

1880		GARFIELD	<i>Hancock</i> ¹	(?)
1884	Cleveland	CLEVELAND ²	CLEVELAND	(?)
1888		HARRISON ¹	CLEVELAND	(?)
1892	Cleveland	CLEVELAND	Cleveland	(?)
1912	<i>Wilson</i>	WILSON	<i>Wilson</i>	WILSON.
1916	<i>Wilson</i>	WILSON ²	WILSON	WILSON.
1948	<i>Truman</i>	TRUMAN	<i>Truman</i>	TRUMAN.
1960		KENNEDY	Kennedy	NIXON. ¹

¹ Cases in which the candidate with the greatest number of popular votes was, or would have been, defeated.

² Cases in which a shift of a few hundred votes in a single State would have defeated the candidate with the most popular votes.

ARTICLE —

SECTION 1. Representatives shall be apportioned among the several States which may be included within this Union, the District of Columbia, and the organized Territories of the United States according to their respective numbers, but each State, the District of Columbia, and each organized Territory shall have at least one Representative. The electors in each State or organized Territory shall have the qualifications requisite for electors of the most numerous branch of the State or Territorial Legislature, and the electors in the District of Columbia shall have such qualifications as the Congress may require by law. When vacancies happen in the representation from any State or organized Territory, the Executive Authority thereof shall issue writs of election to fill such vacancies, and when vacancies happen in the representation from the District of Columbia, the President shall issue such writs of election.

SECTION 2. Every person qualified as an elector of a Representative shall be qualified as a voter for President and Vice President, but the Congress may provide by law how a person not having resided for a sufficient length of time in one place to qualify as an elector of a Representative may qualify as a voter for President and Vice President. Any political party recognized in one-third of the several States shall be entitled to have the names of its candidates for President and Vice President appear on the ballot in every State, the District of Columbia, and each organized Territory of the United States.

SECTION 3. The Executive Authority of each State or organized Territory and the President, for the District of Columbia, shall transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate, certified lists of all persons voted for as President and of all persons voted for as Vice President in the State, Territory, or District, with the number of votes for each. The Congress may by law provide for the manner in which votes cast

by persons not legal residents of any State or organized Territory or the District of Columbia are to be certified. 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.

SECTION 4. The person having the greatest number of votes for President shall be the President, if such number added to the amount by which it exceeds the next highest number be a majority of the whole number of votes, or if he shall have received the greatest number of votes in a majority of the States; otherwise, from the persons having the two highest numbers, the Senate and the House of Representatives, in joint session, shall choose immediately by ballot the President. The person having the greatest number of votes for Vice President shall be the Vice President, if such number added to the amount by which it exceeds the next highest number be a majority of the whole number of votes, or if he shall have received the greatest number of votes in a majority of the States; otherwise, from the persons having the two highest numbers, the Senate and the House of Representatives, in joint session, shall choose by ballot the Vice President. For the purpose of choosing a President or a Vice President, a quorum shall consist of two-thirds of the whole number of Senators and two-thirds of the whole number of Representatives, and a majority of all the votes shall be necessary to a choice. 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.

SECTION 5. Sections 2, 3, and 4 shall take effect on the 20th day of January 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 to the States by the Congress.

(The statement submitted by Mr. Gus Tyler follows:)

STATEMENT BY GUS TYLER, DIRECTOR, POLITICAL DEPARTMENT, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, TO SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS OF U.S. SENATE COMMITTEE ON THE JUDICIARY, REGARDING PROPOSED CHANGES IN CONSTITUTIONAL PROVISIONS GOVERNING THE PRESIDENTIAL ELECTION PROCESS

I should like to indicate my views on several of the proposals now being considered by this subcommittee, dealing with possible changes in the method of electing the President and Vice President of the United States. However, I wish to make it clear that I am not expressing these views in my capacity as director of the Political Department of the International Ladies' Garment Workers' Union, but rather as an individual who has spent much time in recent years in studying, speaking, and writing on this subject.

Of those proposed constitutional changes being considered by this subcommittee, the one which I believe most merits support is that embodied in Senate Joint Resolution 23, submitted by Senators Mansfield and Keating, which provides for the election of the President by direct popular vote and the consequent elimination of both electors and the concept of electoral votes.

Such a system is among the features contained in Senate Joint Resolution 1, submitted by Senator Smith of Maine and I should like to indicate my support of that section of Senator Smith's proposal.

Senator McGee's proposal, Senate Joint Resolution 26, calling for the elimination of electors but the retention of electoral votes is to me the most desirable of all those proposals which do not do away with the system of electoral votes.

I should like to express my opposition to Senate Joint Resolution 12, the proposal by Senator Mundt which would establish the so-called district system, and to Senate Joint Resolutions 2, 4, 9, 17, 28 and 48, the proposals by Senators Johnston, Dodd, Smathers, Kefauver, Saltonstall, and Case of South Dakota, all of which would establish the so-called proportional system.

Let me begin by stating my general position on the question of changing the presidential election process. I believe that—

1. The most desirable system for electing the President would be by direct popular vote—that is, by a system whereby the candidate receiving the most popular votes throughout the Nation is elected. (I would not object to inclusion

of special provisions to deal with situations in which no candidate obtains an absolute majority of the popular votes.)

2. The least fair, most undemocratic (and therefore most undesirable) of the major proposed systems is the so-called district system. Its adoption would incorporate all the evils of "gerrymandering" into the presidential election process, and would transmit to the presidential election procedure, all the electoral inequities which now make the House of Representatives a most unrepresentative legislative body. In addition to being unfair in the absolute sense, use of the district system in presidential elections would give unfair advantages in the method of choosing the head of the executive branch of our Federal Government to those same areas and groups which now enjoy unfair advantages in the method of electing the members of the legislative branch.

3. The so-called proportional system—dividing a State's electoral votes in the same proportion as the popular votes cast within the State—although it may at first appearance seem to be fairer than the existing system, would, in actual practice, be even less fair. Its use in past elections (including, incidentally, the election of 1960) would have given the Presidency on several occasions to candidates who had fewer popular votes than their opponents.

4. The existing system, while it does without question contain a number of inequities, tends to balance those inequities in such a way that no single interest group or single geographic area or single type of States receives all the advantages. Substitution of the proportional (or district) system would unbalance the inequities by leaving untouched the advantages enjoyed by certain types of States while eliminating those now held by other types of States. Therefore, unless the direct election system is adopted, retention of the system now in use would be preferable to adoption of either the proportional or the district system.

5. Again barring adoption of the direct election system, the only change I should like to see adopted is one under which, within the framework of the present system, electors are eliminated and electoral votes are cast automatically. A similar result could be achieved by adoption of a rule requiring that electors be legally pledged to presidential candidates.

Let me now explain the reasoning which underlies the foregoing views.

THE DIRECT ELECTION SYSTEM

By any analysis using fair and reasonable criteria, a system whereby the President would be elected by a direct vote of the people would not only be the fairest possible system, but the only truly democratic system. It is the only conceivable system under which the "wrong" man—that is, the candidate receiving fewer popular votes than his opponent—could never be elected. It is the only system under which the vote of any voter, living in any part of any State, has exactly the same effect on the election's outcome as the vote of any other voter, living in any part of any other State, anywhere in the Nation.

Perhaps one clear indication of just how fair the direct election system is, is the fact that it is the system generally given the least chance of being adopted, for the prospect of its adoption thoroughly alarms every one of the groups, areas, and types of States which have vested interests in the various inequities of the existing system.

Because the direct election system is generally believed to be the one with the least possibility of adoption, it is necessary for its advocates to examine the remaining possibilities and to determine which of them offers the most desirable alternative. Such an examination shows that, just as the direct election system is clearly the most representative proposal, so the district system is clearly the least representative.

THE DISTRICT SYSTEM

As stated above, adoption of the district system would make possible in presidential elections the same kind of artificially manipulated outcomes which have been so common in our congressional elections. This is true regardless of whether, under a district system, the already existing congressional district lines are used, or whether special districts are created for presidential election purposes. Either alternative presents the possibility of election by gerrymander.

It is perfectly obvious that any system which permits not only the manipulation of district lines for partisan political purposes, but also the existence of districts with populations which vary from the populations of other districts

in the same State by huge numbers of inhabitants, cannot but produce unrepresentative results.

The following table illustrates this point by indicating how unrepresentative have been the results of congressional elections in many States in recent years. The table lists those occasions when, on a statewide basis, the congressional candidates of one political party received a majority of the votes at the polls but the other party nonetheless won a majority of the House seats in the State. These examples are all drawn from the five congressional elections during which the congressional apportionment based on the 1950 census was in effect (1952, 1954, 1956, 1958 and 1960).

State	Year	Democrats' percentage of popular vote	Republicans' percentage of popular vote	Number of Democrats elected	Number of Republicans elected	Percentage of seats won by Democrats	Percentage of seats won by Republicans
Michigan	1958	53.1	46.9	7	11	38.9	61.1
Minnesota	1958	52.7	47.3	4	5	44.4	55.6
California	1956	52.4	47.6	12	18	40.0	60.0
Michigan	1954	51.7	48.3	7	11	38.9	61.1
Pennsylvania	1960	51.6	48.4	14	16	46.7	53.3
California	1954	51.5	48.5	11	19	36.4	63.6
Michigan	1960	51.1	48.9	7	11	38.9	61.1
Ohio	1958	50.8	49.2	9	14	39.1	60.9
New York	1958	50.7	49.3	19	24	44.2	55.8
Pennsylvania	1954	50.6	49.4	14	16	46.7	53.3
Minnesota	1960	50.3	49.7	3	6	33.3	66.7
Illinois	1954	50.2	49.8	12	13	48.0	52.0

The last decade also produced two similar election outcomes, one on a nationwide basis, the other on a nationwide basis exclusive of the Southern States.

In 1952 Democratic congressional candidates received 50.2 percent of the votes cast in the entire Nation, as against 49.8 percent cast for Republican candidates. Yet Republicans elected 221 Congressmen—50.9 percent of the total—as against 213 Democrats, who comprised only 49.1 percent of the total.

In 1960 Democratic candidates in 37 non-Southern States (all except the 11 "Confederate" States, and Kentucky and Oklahoma), received 52.3 percent of the votes cast, as against a Republican percentage of 47.7 percent. Nevertheless, a total of only 152 Democratic Congressmen were elected from these States (47.9 percent of the total), as against 165 Republicans (52.1 percent of the total).

The great variations which exist in the populations of congressional districts within the same States are the direct cause of the foregoing unrepresentative election results. The following table indicates the 1950 and 1960 populations of the most populous and least populous congressional districts in each State at the time of the 1960 congressional election:

State	1950 population of least populous district	1950 population of most populous district	1960 population of least populous district	1960 population of most populous district
Alabama	250,726	558,928	236,216	634,864
Alaska	(1)	(1)	(1)	(1)
Arizona	331,770	417,817	638,651	663,510
Arkansas	224,278	407,480	182,314	360,183
California	219,018	480,827	253,360	1,014,460
Colorado	173,298	415,786	195,551	653,954
Connecticut	274,300	539,661	318,942	689,555
Delaware	(1)	(1)	(1)	(1)
Florida	210,428	525,041	239,992	982,968
Georgia	246,227	618,431	272,154	823,680
Hawaii	(1)	(1)	(1)	(1)
Idaho	243,977	344,660	257,242	409,949
Illinois	281,468	466,064	235,202	905,761
Indiana	258,441	551,777	290,596	697,567
Iowa	252,926	414,421	236,585	465,828
Kansas	227,270	448,435	212,520	580,124

State	1950 popula- tion of least populous district	1950 popula- tion of most populous district	1960 popula- tion of least populous district	1960 popula- tion of most populous district
Kentucky.....	275, 145	487, 180	303, 431	610, 947
Louisiana.....	249, 776	417, 898	263, 850	536, 029
Maine.....	290, 146	327, 874	304, 984	349, 291
Maryland.....	210, 623	426, 371	243, 570	711, 045
Massachusetts.....	281, 589	390, 896	272, 361	474, 691
Michigan.....	178, 251	525, 334	177, 431	802, 994
Minnesota.....	273, 125	433, 942	266, 075	697, 572
Mississippi.....	262, 838	426, 396	237, 887	460, 100
Missouri.....	276, 499	427, 856	301, 098	568, 029
Montana.....	251, 777	339, 247	274, 194	400, 573
Nebraska.....	298, 104	369, 970	296, 592	421, 198
Nevada.....	(1)	(1)	(1)	(1)
New Hampshire.....	256, 297	276, 945	275, 103	331, 818
New Jersey.....	258, 127	441, 978	255, 165	667, 906
New Mexico.....	(1)	(1)	(1)	(1)
New York.....	297, 131	393, 130	260, 235	906, 187
North Carolina.....	247, 894	401, 913	253, 511	487, 159
North Dakota.....	(1)	(1)	(1)	(1)
Ohio.....	226, 341	545, 644	236, 288	726, 156
Oklahoma.....	266, 995	439, 518	227, 692	552, 863
Oregon.....	247, 383	471, 537	265, 164	522, 813
Pennsylvania.....	255, 740	444, 921	260, 767	553, 154
Rhode Island.....	375, 291	416, 605	399, 782	459, 706
South Carolina.....	266, 559	415, 893	272, 220	531, 555
South Dakota.....	159, 099	493, 641	182, 845	497, 669
Tennessee.....	247, 912	482, 393	223, 387	627, 019
Texas.....	227, 735	614, 799	216, 371	951, 527
Utah.....	286, 552	402, 310	317, 973	572, 654
Vermont.....	(1)	(1)	(1)	(1)
Virginia.....	289, 598	403, 923	312, 890	539, 618
Washington.....	283, 392	385, 661	342, 540	510, 512
West Virginia.....	279, 954	446, 466	268, 334	421, 085
Wisconsin.....	249, 654	438, 041	236, 870	530, 316
Wyoming.....	(1)	(1)	(1)	(1)

¹ No districts.

An examination of the new districts already established by those States which have passed redistricting statutes to become effective with the 1962 congressional elections indicates no trend away from these great variations. Indeed, in a number of States, the variations will become considerably more severe under the new districting laws than they were previously. For example, whereas the most populous district in Florida had a population of 525,041, and the least populous district had a population of 210,428 (a ratio of 2.5 to 1), the newly adopted statute creates one district with a population of 660,345, and another with a population of 237,235 (a ratio of 2.8 to 1). In Maryland, the 1950 extremes were 426,371 and 210,623 (a ratio of 2 to 1). The new redistricting statute creates districts with populations that range from 621,935 down to 286,573 (a ratio of 2.8 to 1).

Even where there are no substantial differences between the populations of districts, use of the district system can still very easily cause distorted results because of the uneven way in which the candidates' voting strength may be distributed through a State. Let us take a hypothetical example to illustrate this point:

Assume that a State have a population of 4 million is divided into 10 districts, each with a population of exactly 400,000. Assume that of the 400,000 persons in each district, 150,000 turn out to vote on Election Day. Then assume that candidate A receives a 10,000-vote margin in 7 of the 10 districts, and that candidate B receives a 50,000-vote margin in the remaining 3 districts. As the following table shows, this would mean that candidate A had gotten 710,000 votes—46 percent of the statewide total—and that candidate B had gotten 790,000 votes—54 percent of the total, yet candidate A would get 7 electoral votes (1 for each of the 7 districts he won) and candidate B would get only 5 electoral votes (1 for each of the 3 district he won, plus 2 for his statewide edge). Thus, with only 46 percent of the popular vote in the State, candidate A would receive 58.3 percent of the State's electoral votes.

The following table illustrates this hypothetical example :

District	Vote for candidate A	Vote for candidate B	District	Vote for candidate A	Vote for candidate B
1st.....	80,000	70,000	8th.....	50,000	100,000
2d.....	80,000	70,000	9th.....	50,000	100,000
3d.....	80,000	70,000	10th.....	50,000	100,000
4th.....	80,000	70,000			
5th.....	80,000	70,000	Total vote.....	710,000	790,000
6th.....	80,000	70,000	Electoral votes.....	7	5
7th.....	80,000	70,000			

As long as so many of the State legislatures remain as unrepresentative as they now are—and they are now far less representative than even the Federal House of Representatives—no system which gives the legislatures the authority to establish district lines either for congressional elections or for any other elections—will be fair.

"The Father of the Constitution," James Madison, foresaw this problem almost two centuries ago. In discussing the granting to the State legislatures of the power to draw congressional district lines, he wrote: "The inequality in the representation in the legislatures of particular States would produce a like inequality in their representation in the National Legislature, as it was presumable that the counties having the power in the former case would secure it to themselves in the latter."

What was and is true of elections for the National Legislature would be as true (if not even truer) for elections for the National Chief Executive.

The following table indicates just how unrepresentative our State legislative bodies are. (Although these figures were compiled in 1955, there have been very few significant changes since) :

Ratio between population of most-populous and least-populous districts in State legislative chambers (1955)

State and chamber	Ratio
Connecticut, lower house.....	682.3 to 1.
Vermont, lower house.....	676.6 to 1.
California, senate.....	296.3 to 1.
New Hampshire, lower house.....	136.2 to 1.
Nevada, senate.....	81.8 to 1.
Idaho, senate.....	77.0 to 1.
Rhode Island, senate.....	75.2 to 1.
Florida, lower house.....	75.0 to 1.
Georgia, lower house.....	63.3 to 1.
New Mexico, senate.....	48.3 to 1.
Florida, senate.....	47.5 to 1.
Utah, lower house.....	46.1 to 1.
Kansas, lower house.....	41.7 to 1.
Arizona, senate.....	38.9 to 1.
Alabama, senate.....	31.0 to 1.
Georgia, senate.....	29.2 to 1.
Louisiana, lower house.....	28.3 to 1.
Delaware, lower house.....	27.0 to 1.
Ohio, senate.....	26.5 to 1.
New Jersey, senate.....	26.3 to 1.
Illinois, senate.....	22.5 to 1.
Maryland, senate.....	21.9 to 1.
Rhode Island, lower house.....	20.2 to 1.
Tennessee, lower house.....	19.0 to 1.
South Carolina, senate.....	17.6 to 1.
Delaware, senate.....	16.4 to 1.
Idaho, lower house.....	15.9 to 1.
Oklahoma, senate.....	15.8 to 1.
Pennsylvania, lower house.....	15.6 to 1.
Minnesota, lower house.....	14.7 to 1.
New Mexico, lower house.....	14.5 to 1.
North Carolina, lower house.....	14.1 to 1.

Ratio between population of most-populous and least-populous districts in State legislative chambers (1955)—Continued

<i>State and chamber</i>	<i>Ratio</i>
New York, lower house	11.8 to 1.
Kansas, senate	11.8 to 1.
Mississippi, lower house	11.6 to 1.
Iowa, senate	10.7 to 1.
Oklahoma, lower house	10.1 to 1.
Massachusetts, lower house	10.0 to 1.
Montana, lower house	10.0 to 1.
Missouri, lower house	10.0 to 1.
Alabama, lower house	9.9 to 1.
Nevada, lower house	9.8 to 1.
Wyoming, senate	9.6 to 1.
Ohio, lower house	9.3 to 1.
Minnesota, senate	9.1 to 1.
Kentucky, lower house	8.1 to 1.
Louisiana, senate	7.9 to 1.
Colorado, lower house	7.4 to 1.
North Dakota, senate	7.4 to 1.
West Virginia, lower house	7.3 to 1.
Maryland, lower house	7.3 to 1.
Washington, lower house	6.9 to 1.
Washington, senate	6.9 to 1.
Iowa, lower house	6.5 to 1.
Michigan, senate	6.5 to 1.
South Dakota, lower house	6.3 to 1.
Texas, senate	5.9 to 1.
Virginia, lower house	5.8 to 1.
Pennsylvania, senate	5.7 to 1.
Arkansas, lower house	5.5 to 1.
Montana, senate	5.4 to 1.
Mississippi, senate	5.4 to 1.
North Dakota, lower house	5.2 to 1.
Vermont, senate	5.0 to 1.
Utah, senate	4.8 to 1.
Tennessee, senate	4.8 to 1.
Maine, lower house	4.7 to 1.
Indiana, lower house	4.4 to 1.
Connecticut, senate	4.1 to 1.
Wisconsin, lower house	3.9 to 1.
New Jersey, lower house	3.9 to 1.
North Carolina, senate	3.9 to 1.
West Virginia, senate	3.9 to 1.

Adoption of the district system would have one inevitable result: it would create a tremendous advantage in presidential elections for the rural areas of the Nation which now enjoy huge advantages as a result of unfair congressional districting, and it would work to the permanent disadvantage of the rapidly-growing urban and suburban areas. In a Nation as highly "metropolitan" as ours, this system would tend to make our Presidents far less responsive to the needs of our 20th century civilization than they now are. In today's world, such an eventuality would be tragic in the extreme.

THE EXISTING SYSTEM AND THE PROPORTIONAL SYSTEM

I believe that the best way to understand the dangers inherent in the so-called proportional system is by comparing it with the existing system.

I referred above to the existing system as one of "balancing inequities." Let me explain:

There are three major inequities inherent in the system now in use. These are the "block-vote" inequity, the "three-vote-minimum" inequity, and the "population-basis" inequity. Each of these creates an unfair advantage for certain types of States: the first for the most populous States, the second for the least populous States, and the third for the States where voting participation is lowest.

Of the above inequities, the one most widely understood is the "block-vote" inequity, whereby all the electoral votes of a State go to the candidate who wins the plurality of the popular vote, regardless of the size of that plurality. This creates an advantage for the populous States, because it means that even a very narrow victory in a big State wins a very sizable block of electoral votes for a candidate. Therefore, candidates tend to "woo" the populous States, and to expend more time, money and energy in the attempt to win them than in the effort to win in less populous States.

The second inequity of the existing system—the one which gives an unfair advantage to the States with the smallest populations—derives from the fact that every State, regardless of its population, starts out with a guaranteed minimum of three electoral votes. The following table illustrates the advantage which this gives to the least populous States:

Ratio of electoral votes to population in each State for 1964 and 1968 presidential elections (based on 1960 census)

<i>Rank and State</i>	<i>Ratio</i>	<i>Rank and State</i>	<i>Ratio</i>
1. Alaska	75,389	28. Kansas	311,230
2. Nevada	95,093	29. Connecticut	316,904
3. Wyoming	110,022	30. Washington	317,024
4. Vermont	129,960	31. Tennessee	324,281
5. Delaware	148,764	32. Louisiana	325,702
6. New Hampshire	151,730	33. Alabama	326,674
7. North Dakota	158,112	34. Georgia	328,593
8. Hawaii	158,193	35. Wisconsin	329,315
9. Idaho	166,798	36. Virginia	330,579
10. Montana	168,692		
11. South Dakota	170,129	National average	333,314
12. Rhode Island	214,872		
13. Utah	222,657	37. Kentucky	337,573
14. New Mexico	237,756	38. Minnesota	341,386
15. Maine	242,316	39. North Carolina	350,473
16. District of Columbia	254,652	40. Florida	353,682
17. Arizona	260,452	41. New Jersey	356,870
18. West Virginia	265,774	42. Indiana	358,654
19. Nebraska	282,266	43. Missouri	359,984
20. Oklahoma	291,036	44. Massachusetts	359,984
21. Colorado	292,325	45. Michigan	372,533
22. Oregon	294,781	46. Ohio	373,325
23. Arkansas	297,712	47. Texas	383,187
24. South Carolina	297,824	48. Illinois	387,736
25. Iowa	306,369	49. New York	390,286
26. Maryland	310,069	50. Pennsylvania	390,323
27. Mississippi	311,163	51. California	392,930

The table indicates, for example, that, in the next presidential election, California will only have one electoral vote for every 392,930 inhabitants, whereas Alaska will have 1 for every 74,389—a ratio of more than 5 to 1. The States with the lowest ratios—that is, with the biggest advantages—are the States with the smallest populations, and, conversely, the States at the bottom of the list are the populous States of the Nation.

The third inequity in the existing system is probably the least widely understood, but, in one sense, the most important. It arises from the fact that the number of electoral votes which a State has over the basic three (like the number of congressional seats a State has over the basic one) is based not on the number of popular votes cast in the State, but rather on the State's population at the time of the last decennial census before the election. This means, in effect, that the people who turn out to vote on election day actually are voting not only for themselves but for those people in their States who do not turn out to vote as well. For example, if a particular State should be entitled to, say, 10 electoral votes, it would cast those 10 votes even if only one voter in the entire State came out on Election Day. This fact creates an advantage for those who do vote in those States where relatively few votes are cast, because the fewer the voters, the more important are the votes of those who do vote. This is indicated by the following tables which show the relationship between popular and electoral votes in the 1952 and 1960 elections.

Number of popular votes per electoral vote in each State in 1952 presidential election

<i>Rank and State</i>	<i>Ratio of popular votes to electoral votes</i>	<i>Rank and State</i>	<i>Ratio of popular votes to electoral votes</i>
1. Nevada	27, 397	26. Maryland	100, 230
2. Mississippi	35, 691	27. Nebraska	101, 610
3. Alabama	38, 738	28. Rhode Island	103, 625
4. South Carolina	42, 636	29. Colorado	105, 017
5. Wyoming	43, 084	30. West Virginia	109, 194
6. Arkansas	50, 600	31. Kansas	112, 021
7. Vermont	51, 180	32. Oregon	115, 843
8. Virginia	51, 641		
9. Georgia	54, 650	National average	116, 158
10. Delaware	58, 008	33. Oklahoma	118, 623
11. New Mexico	59, 652	34. Washington	112, 523
12. Arizona	65, 143	35. Minnesota	125, 408
13. Louisiana	65, 195	36. Iowa	128, 677
14. Montana	66, 259	37. Wisconsin	133, 948
15. North Dakota	67, 532	38. Connecticut	137, 114
16. New Hampshire	68, 238	39. Michigan	139, 930
17. Idaho	69, 058	40. Pennsylvania	143, 147
18. Maine	70, 357	41. Missouri	145, 543
19. South Dakota	73, 571	42. Ohio	148, 030
20. Tennessee	81, 141	43. Indiana	150, 410
21. Utah	82, 389	44. New Jersey	151, 160
22. North Carolina	86, 494	45. Massachusetts	151, 534
23. Texas	86, 498	46. New York	160, 357
24. Florida	98, 934	47. California	160, 683
25. Kentucky	99, 315	48. Illinois	165, 965

Number of popular votes per electoral vote in each State in 1960 presidential election

<i>Rank and State</i>	<i>Ratio of popular votes to electoral votes</i>	<i>Rank and State</i>	<i>Ratio of popular votes to electoral votes</i>
1. Alaska	20, 254	27. Nebraska	102, 183
2. Nevada	35, 756	28. West Virginia	104, 723
3. Mississippi	37, 271	29. Kentucky	112, 446
4. Wyoming	46, 961	30. Oklahoma	112, 894
5. South Carolina	48, 336	31. Kansas	116, 103
6. Alabama	51, 294	32. Maryland	117, 261
7. Arkansas	53, 564	33. Colorado	122, 708
8. Vermont	55, 772	34. Iowa	127, 381
9. Georgia	61, 112		
10. Hawaii	61, 568	National average	128, 776
11. Virginia	64, 287	35. Oregon	129, 404
12. Delaware	65, 321	36. Washington	137, 952
13. Montana	69, 395	37. Minnesota	140, 172
14. North Dakota	69, 608	38. Wisconsin	144, 090
15. New Hampshire	73, 940	39. Missouri	148, 802
16. Idaho	75, 113	40. Connecticut	152, 809
17. South Dakota	76, 669	41. Massachusetts	154, 343
18. New Mexico	77, 777	42. Florida	154, 418
19. Louisiana	80, 789	43. Pennsylvania	156, 441
20. Maine	84, 353	44. New York	162, 018
21. Utah	93, 677	45. Indiana	164, 258
22. Tennessee	95, 617	46. Michigan	165, 905
23. Texas	96, 327	47. Ohio	166, 474
24. North Carolina	97, 754	48. New Jersey	173, 319
25. Arizona	99, 623	49. Illinois	176, 200
26. Rhode Island	101, 384	50. California	203, 331

These tables actually show the combined effects of the "three-vote minimum" inequity and the "population-basis" inequity. In both elections, the States at the top of the list are those with the smallest populations (Alaska, Nevada, Wyoming, Vermont, etc.), and those where the vote turnout tends to be smallest (Mississippi, South Carolina, Alabama, Arkansas, etc.). Conversely, the most disadvantaged States are those with the biggest populations and the heaviest voting turnouts. As a result of these inequities, a vote in Alaska in the 1960 election was "worth" more than 10 times a vote in California, and a Mississippi vote in 1952 was "worth" more than 6 times an Illinois vote.

Because each of these three inequities works to the advantage of different kinds of States, they tend in effect, to strike a kind of political balance. However, introduction of the proportional system would throw this balance off. It would eliminate the "block vote inequity" which gives an advantage to the populous States, but it would have no effect at all on the "three-vote minimum" inequity or on the "population basis" inequity which give advantages to the least-populous and low-vote States.

Under the proportional system, the electoral votes of the States would no longer be cast in a block, but would be divided in the same proportion as the popular vote within the States. This would do away with the "block-vote" inequity.

Adoption of the proportional system would in no way remove the advantage now given to the least populous States by the "three-vote minimum" inequity, for each State would continue to have a guaranteed minimum of three electoral votes.

Similarly, under the proportional system, the number of electoral votes which a State would cast over the basic three would still be determined not by the number of popular votes cast in the State, but by the State's population at the time of the most recent census. Thus the low-vote States would continue to enjoy their advantage.

Furthermore, in addition to maintaining the advantages now held by the least populous and the low-vote States, adoption of the proportional system would introduce a new inequity—one which would work to the advantage of the so-called one-party States (that is, the States where one political party tends to receive a topheavy proportion of the popular votes).

This advantage for the one-party States would arise from the elimination of the block-voting system. This is because the most populous States tend to be closely contested two-party States. They very frequently are won by one party or the other by very narrow margins (as, for example, in 1960). Thus, under the proportional system, these States would often give the candidates of the two major parties almost the same number of electoral votes. In the one-party States, by contrast, even though the total number of electoral votes involved would be smaller, the electoral-vote advantage which a candidate could receive would be potentially much larger than in the closely contested populous States.

Let me illustrate this point by using figures from the last election:

In the 1960 election, Mr. Kennedy won the States of Connecticut, New York, New Jersey and Pennsylvania by a combined popular margin of 613,325 votes. He won the States of Georgia and Louisiana by a combined popular majority of 360,525. If the proportional system had been in effect, he would have gained a margin of 3.835 electoral votes in the former group of States and a margin of 5.196 in the latter. In other words, a popular margin of 613,325 would have netted less than three-quarters as much of an electoral vote advantage as a popular margin of 360,525.

Similarly, Mr. Nixon won the States of Florida and California by a combined popular majority of 82,399, and won the states of Alaska, Vermont, and Wyoming by a combined margin of 44,209, yet under the proportional system he would have picked up a total electoral vote advantage of 0.478 for Florida and California as against a combined electoral vote edge of 0.877 for Alaska, Vermont, and Wyoming. In this case, then, a popular margin of 44,000 would have yielded almost twice as much of an electoral vote advantage as a popular margin of 82,000.

THE 1960 ELECTION ON THE BASIS OF THE VARIOUS SYSTEMS

One of the most significant arguments in favor of the direct election system and the existing system on the one hand, and against the district system and the proportional system on the other, is that on the basis of either the district or proportional systems, the candidate who received the popular plurality in the 1960 election—Kennedy—would not have been elected. Only under the existing

system or the direct election system would the election have gone to the man who was the choice of the largest number of voters—albeit by a very slim margin.

The final 1960 returns indicate that 34,221,349 persons voted for Kennedy as against 34,108,546 who voted for Nixon. This gives Kennedy 50.08 percent of the nationwide popular vote, and Nixon 49.92 percent (exclusive of minority-party candidates).

On the basis of the existing congressional districts, the district system, used in the 1960 election, would have resulted in Nixon's being elected President with an electoral vote of 279 as against only 244 for Kennedy.

Under the proportional system, projected on the basis of the 1960 results, Nixon would have received 266.075 electoral votes; Kennedy would have gotten 265.075 electoral votes. (The election would thus have been thrown into the House of Representatives, as neither candidate would have received the required majority of 268.001 electoral votes.)

The actual electoral vote outcome under the existing system was 303 for Kennedy, 219 for Nixon and 15 for Senator Byrd.

Thus, under either the district or the proportional systems, the candidate with the greatest number of votes would not have been elected.

"WRONG MAN" VICTORIES IN PAST ELECTIONS

Projections of past election results on the basis of the proportional system destroy one of the favorite arguments of the proponents of that system.

The argument is frequently presented that the existing system has resulted in the election of candidates, in past elections, who received fewer popular votes than their opponents. Actually, the only time this happened clearly as a result of the workings of the existing electoral-vote system was in the election of 1888, when Benjamin Harrison won the Presidency despite the fact that Grover Cleveland had received more popular votes. (Although, in 1876, Hayes received fewer popular votes than Tilden and was still elected, this cannot be counted as an instance in which the workings of the electoral machinery were responsible for distorting the result. The distorted outcome of that election was attributable to much more deliberate human machinations).

On the other hand, figures reveal that if the proportional system had been in use, the candidate with fewer popular votes would have been elected in 1880 (Hancock over Garfield) and 1896 (Bryan over McKinley), as well as in 1960 (Nixon over Kennedy). (The 1896 election is particularly noteworthy in this regard, for Bryan would have won despite the fact that he received only 47.9 percent of the major-party popular vote as against McKinley's 52.1 percent.)

Thus, despite the arguments of the proponents of the proportional system that the existing system has caused "wrong man" victories, the system they advocate would actually have caused three clear "wrong man" victories, whereas the existing system has caused but one.

(The statement submitted by Prof. David B. Truman, in the form of a letter, is as follows:)

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,
New York, N.Y., July 7, 1961.

Senator ESTES KEFAUVER,
Chairman, Subcommittee on Constitutional Amendments, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR KEFAUVER: I am very glad to respond to the request of Mr. James C. Kirby that I convey to you in writing my comments on various of the Senate joint resolutions concerning Federal elections that are currently before your subcommittee. I regret that I was unable to accept his invitation to testify in person.

With your permission I shall confine my observations to the 12 resolutions dealing with the nomination and election of the President and Vice President, omitting any comment on the 8 concerned with the qualifications of electors. Further, since a number of the resolutions are virtually identical, I shall not discuss each one but shall concentrate on the types of proposal that they contain.

In assessing these proposals I start from four general assumptions that I should like to regard as principles. First, an election system, especially one designed for the choice of a Chief Executive, should be as simple as possible. A simple scheme has the double virtue of being readily comprehensible to the electorate, an intangible but significant value, and of offering a minimum number

of points for dispute, for litigation, or for improper manipulation. Second, an appropriate system should provide for making the choice of a President as quickly as possible and for making it with as little residual doubt as possible concerning the legality of the winner's title. I need not tell you that in the life of any political system occasions for a change of government are critical. Perhaps especially under a system of popular elections, operating in conditions of acute and chronic international tension, it is often more important that a decision concerning the constitution of the legitimate government be made quickly and with finality than that it conform precisely to some standard of equity. Third, in an arrangement of popular elections it is imperative that the system foster and protect stable and responsible leadership in the party structure. For an electorate to choose wisely, its decision should be able to take account not merely of the qualifications of two individuals but as well of the sets of persons with whom they will principally have to work if they are elected. Where the latter are subject to constant change, the evidence demonstrates beyond much doubt that responsibility is undermined. Fourth, a system for choosing the President cannot properly be assessed apart from that for selecting the Members of the Congress, and any system that is defensible must provide for an appropriate balance within the system as a whole, so that no major interest in the country, especially none which is peculiarly exposed to problems of critical dimension, should be without effective voice.

In connection with this last assumption it is appropriate to say that no one can with complete confidence predict the full range of consequences that may result from the operation of any untried system. Since, as I would argue, the limitations of the present arrangements are known and are far from intolerable, the burden of proof lies with the sponsors of change to demonstrate that their proposals would not predictably produce disadvantages of greater magnitude.

1. THE PROPORTIONAL DISTRIBUTION OF ELECTORAL VOTES

Seven of the pending resolutions have this as their central feature (S.J. Res. 2, S.J. Res. 4, S.J. Res. 9, S.J. Res. 17, S.J. Res. 28, S.J. Res. 96, and S.J. Res. 48). The weaknesses of this type of proposal have been so fully demonstrated, especially during the Senate debates in the 2d session of the 84th Congress on Senate Joint Resolution 31, that nothing much more need be said. The chief deficiency of this plan is that it would seriously violate the principle of balance, since it would drastically reduce the importance of the large urban States in both the nomination and the election of the President. These States have certain advantages under the present system, but they scarcely compensate for the underrepresentation of the interests of these States elsewhere in the system, especially in the House of Representatives, and for the underrepresentation of their urban centers in the State legislatures. To deny such areas adequate representation both in the States and in the Federal Government would be a radical act with most explosive implications.

It is less certain that these proposals would lead to the disintegration of the two-party system as we know it, since this would depend in considerable measure on the electoral vote plurality required for election. A simple plurality, such as that provided in Senate Joint Resolution 2, almost certainly would encourage splintering. The 40-percent plurality required in several of the other proposals probably would reduce this tendency, but it would be less certain in this respect than the present system. The qualified proportional provisions of Senate Joint Resolution 48, which otherwise shares the disadvantages of the rest of these proposals, obviously is designed to reduce this possibility. It might succeed, but its sponsor clearly is not fully confident of this prospect, since he provides that, if the choice must be made by the House of Representatives, as many as three names may be considered.

Whether these proposals would more frequently than at present devolve the choice on the Congress or the House of Representatives is also uncertain. This also would depend on the plurality requirements. Should such devolution occur with any frequency, it would violate the principle of speed and finality. If the present majority requirement were retained, this result would probably occur with greater frequency than has so far been the case. It might be less likely under the requirement of the 40-percent minimum, but this is by no means certain.

2. THE DISTRICT GENERAL TICKET SYSTEM WITH TWO ELECTORS AT LARGE

This proposal (S.J. Res. 12) would have all the disadvantages and dangers of the proportional system and to them it would add several others. Not only would it project into the presidential election the inequities conspicuous in the present arrangement of congressional and State legislative districts, but it further would involve the choice of President in all the recrimination and conflict that is associated with State legislative districting and in the questionable maneuvering that frequently accompanies the drawing of congressional boundaries. In its present form, moreover, this proposal would retain the electoral colleges and, by implication, the opportunity for unpledged electors, which is an archaic device utterly at variance with the spirit of our contemporary institutions. Finally, this proposal would increase the complexity of the system without compensating gains for anyone except those who wish to weaken the voice of our urban populations.

3. ABOLISH ELECTORAL COLLEGES WITHOUT FURTHER SIGNIFICANT CHANGE

The proposal to abolish the electoral colleges and otherwise to leave the present system substantially unchanged is contained in Senate Joint Resolution 26. The chief effect of this proposal would be to do away with the possibility of unpledged electors. It would, as suggested in the previous paragraph, bring the present system into closer conformity with the spirit of our current practices, which generally assume that the voters know for whom their choices will be counted. The device of the unpledged slate, as employed in Mississippi in the election of 1960, is at best a subterfuge. Its employment increases uncertainty, where it has any effect at all, and its elimination would certainly be in the interests of rationality. The proposal contained in this resolution would seem to me the most constructive and the least disadvantageous of any currently before your committee, were it not for one minor provision in it. This is the portion of section 2 which provides for an even distribution of electoral votes in a State where two or more candidates receive an equal number of popular votes. The conditions requiring application of this provision are unlikely to occur with any frequency, but the assumptions underlying it seem to me as objectionable as those in the proportional schemes. If there is no reason to divide the electoral votes in a State proportionally when, for example, the popular vote divides 51 percent to 49 percent, there surely is no stronger reason to make such a division when the popular vote is split 50 percent to 50 percent. The general ticket system is defensible and prudent in all cases or it is so in none.

4. DIRECT POPULAR ELECTION

Of the more dramatic proposals in this collection, that for direct popular election is, on most grounds, the least objectionable. The two bills aiming in this direction, however, Senate Joint Resolution 1 and Senate Joint Resolution 23, both contain provisions which would make them undesirable. Direct popular election with a provision for a majority requirement would have the virtue of high simplicity. A considerable portion of the electorate today probably assumes that this is what the present system provides for. It would assure an appropriate speed and, in most cases, certainly of decision, and it would have little of the quality of upsetting the balance of interests in the society that is so objectionable in the proportional proposals. The large urban States as such would not retain their present advantages, but the significant interests within them would not be seriously inhibited from making their reasonable demands effective.

Of the two proposals along this general line Senate Joint Resolution 1 is the most undesirable. Its provision for nomination of presidential and vice presidential candidates by primaries in the several States is inherently objectionable on the grounds asserted against other primary provisions, below. In addition, however, its elaborate arrangements for successive runoffs in primaries and general elections, for write-in votes, and, in effect, for double candidacies would create a system so cumbersome as to be understood by few and to assure prolonged delay and uncertainty in settling the matter of a change of Chief Executive. It would add so greatly to the already heavy burdens of American voters, who are called upon to go to the polls too often and to vote for too many offices at present, as to exhaust their capacity for intelligent involvement.

Senate Joint Resolution 23 omits a primary requirement, though it provides, perhaps wisely, for the establishment of nominating machinery by statute.

The danger in this proposal, however, is the provision for a simple plurality election. The consequences of such provision are not completely clear, but it is reasonable to expect that it would encourage splinter candidacies and, in time, would seriously weaken the advantages of our present two-party arrangement. Its replacement with a majority or at least a 40-percent plurality requirement, with the choice being made by a joint session of the House and Senate in case no candidate achieved the necessary margin would do much to eliminate this danger.

5. NOMINATION BY PRIMARY

Three of the pending proposals (S.J. Res. 1, S.J. Res. 9, and S.J. Res. 16) provide in various forms for nomination of presidential and vice presidential candidates by primaries. The implicit assumption in all such proposals is that the national convention is a failure or at best an outmoded and useless device. I know of no evidence to substantiate such an interpretation. Although the convention's effectiveness may have been somewhat handicapped by capricious presidential primaries in a handful of unrepresentative States, its choices over the years have been a credit to the country. A peculiarly American invention, the national convention has afforded a means of giving some coherence to the many components of our national parties; it has, moreover, achieved a remarkable balance between mere popularity, with its potentially destructive implications, and automatic succession in a party hierarchy, with its accompanying dangers of time-serving mediocrity. It has been reasonably open to the appeal of fresh talent without being stampeded by demagogues, and it has been discriminating in examining the governing capacities of aspirants without being subordinated to a closed clique of professionals.

The processes of nomination in any political system are critical, more sensitive to unwise experiment, more significant for the operation of the political order than is the system of elections proper. For in the process of nomination the field is narrowed from many to two or three, while election involves the less difficult problem of a choice within a limited list of possibilities. Nominations, especially for the Presidency of the United States, are not something to be trusted to an untried device that provides no restraints upon the excesses of demagoguery. We cannot be certain that a primary at the presidential level would produce the same kinds of consequences that have followed primary systems in the States. But there is nothing in our experience with such systems in the States that should commend the primary to us as a device for nominating presidential candidates. Its tendencies have been to weaken the party structure, to undermine responsibility, to encourage capricious candidacies, and generally to subvert the power to govern. At its inception the direct primary was an understandably welcome alternative to the abuses of the convention system in many of the States, but the national convention, even when least effective, has not been subject to such abuses.

In my opinion the national convention has served us well and should be retained. If, however, there is disposition to alter the system for nominating presidential and vice presidential candidates and to experiment with a primary or some other device, let this not be done directly by amendment to the Constitution, with its attendant obstacles to later modification or repeal. Let it rather be done by statute, under some broad authorizing language such as that in Senate Joint Resolution 23: "The candidates for the offices of President and Vice President shall be selected in such manner as the Congress shall by law provide."

These, sir, are my principal comments on the pending resolutions. I am grateful to you for the opportunity to convey them to you and to your colleagues.

Sincerely yours,

DAVID B. TRUMAN,

Professor of Government and Chairman.

(The following letter and enclosed statement were received by the chairman from the Honorable Harry S. Truman:)

INDEPENDENCE, Mo., July 10, 1961.

HON. ESTES KEFAUVER,
Senate Office Building, Washington, D.C.

DEAR ESTES: Attached hereto is my suggested proposal to amend the Constitution in relation to the electoral college.

I had hoped to appear before your committee in person and to respond to any questions, but was prevented from doing so by developments here.

Some of my thinking on the subject is covered in the memorandum herewith enclosed. I am inclined to think my proposal will help to solve the problem and I hope you will be good enough to put it into the record.

Sincerely yours,

HARRY S. TRUMAN.

STATEMENT OF HON. HARRY S. TRUMAN, FORMER PRESIDENT OF THE UNITED STATES

ELECTORAL COLLEGE—SUGGESTED AMENDMENT

I see no need for any drastic change in the electoral college device as part of our process of electing a President and Vice President of the United States.

I do believe, however, that it is necessary to modify the structure of the electoral college to meet the needs of the times.

The electoral college was first devised to protect the small States from dominance by the larger States, as for example, Delaware and Rhode Island from being dominated by Virginia and New York.

The problem we face today is that of the emergence of the big cities into political overbalance, with the threat of imposing their choices on the rest of the country. And in order to offset such encroachment by the big cities, I would suggest that we consider modifying our method of choosing the electors along the following lines:

1. Electors designated by each party should be submitted to the direct vote of the people at the time that the candidates for Congress are voted on at the presidential elections. These electoral candidates should be selected for nomination by the political parties in the same manner now used by individual States for selecting candidates for Congress, and that is by districts.

It would provide an additional stimulant to the democratic process by making the electoral candidates active participants in the campaign for the party's congressional and presidential choice.

It would, in addition, provide an important and necessary way of giving expression to shifts in political complexions in every State.

2. As a further step of enabling each State to have an equal role in the choice and election of a President and Vice President I suggest that two additional electors at large be elected from each State. These electors at large, chosen by the States, added to the elector from each congressional district would serve to offset in large measure the preponderance of electors from the big States and the big cities.

3. The electors, immediately after the presidential election would meet in each State to cast their votes.

4. In the event of a tie all the electors from all the States would then convene in Washington and vote again until the tie is broken.

5. If the tie fails to break, after a set period, then the election should be thrown into the House of Representatives, where each State would have one vote.

I suggest that this proposed modification, herewith briefly outlined, is all we should need at this time to meet present-day conditions and to carry out the intent and purposes of the framers of the Constitution.

There is always great danger of writing too much into the Constitution. Yet we must have certain flexibility to meet changing conditions. We have already experienced the consequences of hastily amending the Constitution without adequate public discussion, as in the cases of the 18th and 22d amendments.

The framers of our Constitution drafted a brilliant and inspired document in which they anticipated and provided for nearly all of the basic developments of our democracy. But who could fully foresee the role of the American President in the kind of a world in which we now live.

To amend amendment XII adopted in 1804. On September 25, 1804, Secretary of State James Madison sent a circular letter to the Governors of the several States which declared the 12th amendment ratified by three-fourths of the States.

I submit, therefore, the following:

PROPOSED AMENDMENT TO THE CONSTITUTION

Presidential electors shall be nominated in the several congressional districts of the various States of the Union of the United States as the law of the States provides.

Two electors at large shall be nominated to represent the various States as a whole. The nominations for the congressional districts and for the State at large shall be made according to the law of the State.

The nominees for presidential electors shall then be elected in the general election provided by law and shall be declared elected under the same rules and laws that provide for the election of Senators and Representatives in Congress from the various States.

On the first Tuesday after the first Monday in December after the general election, the presidential electors who have officially been declared to be elected under the laws of the various States, shall meet in the capitols of the States and cast their votes for President and Vice President of the United States. 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 President 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 elected; 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. 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.

A statement submitted by Senator John L. McClellan is as follows:)

STATEMENT OF HON. JOHN L. MCCLELLAN, A U.S. SENATOR FROM THE STATE OF
ARKANSAS

My statement is in behalf of Senate Joint Resolution 12, of which I am a cosponsor with Senators Mundt, Thurmond, Hruska, and Morton and former Senator Blakley, of Texas. I support Senate Joint Resolution 12 because it will accomplish all that needs to be done in the way of electoral college reform with the least possible change in the Constitution.

Senate Joint Resolution 12 provides a uniform system of electing members of the electoral college that is eminently fair to every citizen regardless of the size of the State in which he lives. It is fair because it will give to each voter, no matter where he lives in our Federal Union of States, an equal voice in choosing the President of the United States.

The heart of Senate Joint Resolution 12 is this provision:

"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-electors 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 entitles the State to one Representative in the Congress; and such districts when formed shall not be altered until another census has been taken."

This means that each voter in each of the States could vote for three—and no more than three—presidential elector candidates.

We must forever keep in mind that our Federal Union is made up of large States and small States. In the 1960 election 32 of the 50 States had fewer than the average number of presidential electors, the average number being 10.75. The 18 larger States had a total of 346 electors while the 32 smaller States had only 191.

No one can rightly object to the larger States having the full number of presidential electors to which they are entitled under the Constitution. But we can object, and we do object, to the failure of the large States and the small States as well to permit a division between the parties of their respective electoral weights in a presidential election.

As we know, this en bloc election of presidential electors is contrary to the pattern of the Constitution as carried out by the States in the election of Members of the Senate and of the House of Representatives. Yet, the electoral college is the exact numerical counterpart of a joint session of Congress.

Because of the existence of the U.S. Senate where each State is equally represented in the Congress, each State has two members in the electoral college. Because of the existence of the House of Representatives in which the States are represented according to their populations, or because of their status as a State even though their population would not otherwise entitle them to one Representative, each State has a member of the electoral college to correspond to each of its Representatives.

If the pattern of the Constitution as applied in the election of the Members of the House of Representatives is valid, that same pattern is valid for the election of those members of the electoral college who correspond to the Representatives.

If the en bloc election of presidential electors on a statewide general ticket is valid, then it would be equally valid for each State to elect its Representatives on a statewide basis, wiping out every congressional district in the entire United States.

To me it is unfair and unwise that we should any longer tolerate a system of representation for the President of the United States that we would instinctively reject out of hand if it were proposed for the House of Representatives.

Imagine the political shape of the House of Representatives under such a system. The delegations to the House from the big States would completely dominate that body; and most of these delegations would be dominated by the organized pressure groups who put them in office.

Instead of the House being a relatively stable legislative body, with a maximum shift or not more than 20 percent of the seats in any election, it could easily become a legislative body with wild fluctuations in its membership as between the parties, perhaps as much as 50 percent a single election. That would be highly undesirable.

This prospect of big-State domination of the House of Representatives is exactly what has been happening all along, under our very eyes, in the electoral college, because of the general ticket system.

Last year in Arkansas I voted for eight elector candidates, giving one vote to each of them. Against this, my colleagues from New York each voted for 45 elector candidates, giving each of them 1 vote.

Another witness has told this committee that the canvassing board of the State of New York reported that in the 1960 election "the whole number of votes given for the office of electors of President and Vice President was 331,590,904." This astronomical figure is reached by multiplying the total number of voters by 45. Had my two New York colleagues been running for the Senate each New York voter would have had three votes for Members of Congress, two for the Senate and one for the House of Representatives.

The total New York vote for Members of Congress, with two Senate candidates running and a Representative in each of the 43 districts, would have been something over 22 million votes. This would also have been the total vote for electors if two had been chosen at large and one had been chosen from each congressional district. But, under the present weighted-vote system, the New York voters cast more than 309 million extra votes. The same pattern is true in lesser degree in every State that has more than one Representative in Congress.

It is this weighted-vote in presidential elections, due to the use of the general ticket system, that gives the large States virtually complete domination of the White House no matter which party has the Presidency.

In 1964, if the House of Representatives reverts to its former size of 435 Members, the 11 largest States could elect a President under the present weighted-vote system, completely overriding the other 39 members of our Federal union of States. It could be that each of the 11 States could be carried by a one vote plurality for one candidate while the other 39 States could go the other way by substantial margins.

In my considered judgment possibly the fairest, most just and most equitable plan for electing the President and Vice President yet suggested is the system

of representation enjoyed by the two Houses of Congress. Of necessity, this will draw the President and Congress closer together in shaping the policies to protect the future of the United States.

I urge the subcommittee to report favorably Senate Joint Resolution 12.

(A letter and statement of Senator Strom Thurmond follow:)

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
July 25, 1961.

HON. ESTES KEFAUVER,
*Chairman, Constitutional Amendments Subcommittee,
Senate Judiciary Committee, Washington, D.C.*

DEAR ESTES: I am enclosing herewith a supplementary statement with regard to the enforceability of antigerrymandering language for presidential elector districts contained in Senate Joint Resolution 12. I believe that this memorandum will be of benefit to your subcommittee, and I request that it be included in the record of the hearings.

With best wishes.

Sincerely,

STROM THURMOND.

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF
SOUTH CAROLINA

ENFORCEMENT OF ANTIGERRYMANDERING PROVISION OF DISTRICT PLAN (S.J. RES. 12)
FOR ELECTORAL COLLEGE REFORM

Senate Joint Resolution 12 proposes that two of each State's presidential electors shall be elected by statewide electors, and each of the remaining presidential electors to which each State is entitled shall be elected by the people within single-electtor districts established by the legislature of the State. Senate Joint Resolution 12 further provides with respect to such single-electtor districts that such districts are "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."

The effectiveness, and particularly the enforceability, of the above quoted "antigerrymandering" language has been questioned. The doubts which exist as to the enforceability of antigerrymandering language have obviously arisen from experience in the most nearly related area—gerrymandering of congressional districts.

Generally the courts have refused to entertain actions by individuals to prevent or upset gerrymandering of congressional districts or, for that matter, even to interfere in any way with the manner by which Members of the House of Representatives are chosen. While many of the decisions of the Supreme Court avoid the issue on one ground or the other, the basic reluctance of the Court was expressed succinctly in *Colegrove v. Green* (328 U.S. 549 (1946)). In this case citizens in a congressional district in Illinois which contained substantially larger population than other congressional districts in the same State sought to enjoin an election by such congressional districts. The Court said, at page 552:

"We are of opinion that the appellants ask of this Court what is beyond its competence to grant. This is one of those demands on judicial power which cannot be met by verbal fencing about 'jurisdiction.' It must be resolved by considerations on the basis of which this Court, from time to time, has refused to intervene in controversies. It has refused to do so because due regard for the effective working of our Government revealed this issue to be of a peculiarly political nature and therefore not meet for judicial determination." It seems clear, therefore, that the Court's refusal to interfere with gerrymandering of congressional districts was on the basis that any challenge of the districting presents a political question rather than a judicial one.

A number of factors are responsible for the Court's conclusion that questions concerning gerrymandering of congressional districts are political in nature. A review of the constitutional and statutory provisions bearing on the question readily serves to illustrate why the Court has reached such a conclusion.

Clause 1 of section 2 of article I of the Constitution provides in part, "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States."

Clause 4 of the same section provides, "When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies."

Section 4 of article I provides, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

Of a most important bearing on this question is section 5 of article I of the Constitution, which provides in part, "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members."

Acting under the authority of section 4 of article I of the Constitution, Congress has from time to time enacted reapportionment acts, in some of which appears antigerrymandering language similar, if not identical, to that contained in Senate joint resolution 12 for the purpose of preventing gerrymandering. (The Reapportionment Act of 1911, 37 Stat. 13, sec. 3, specified the election of House Members should be by districts "composed of contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants.") Other reapportionment acts have conspicuously omitted such antigerrymandering language. (Reapportionment Act, June 18, 1929, 46 Stat. 21, 2 U.S.C., sec. 2(a).)

From the foregoing it is obvious that the Court could reach no other conclusion but that the question of gerrymandering of congressional districts was a non-judicial question. Section 4 of article I of the Constitution obviously gives Congress the right to regulate by statute the manner of holding elections for Senators and Representatives, and section 5 of the same article makes each House the judge of the elections of its own Members. Although Congress has seen fit to enact provisions against gerrymandering, the House of Representatives has never exercised its right to enforce such provisions by refusing to seat a Member of Congress certified by the State on the grounds that the antigerrymandering language was not complied with by the State in establishing the congressional districts.

It does not follow that because gerrymandering of congressional districts presents a political, rather than a judicial question, that a challenge of the antigerrymandering language pertaining to presidential elector districts would present a political question in the event Senate joint resolution 12 were to be adopted as an amendment to the Constitution. A number of differences would exist which bear heavily on the question.

In the first place, the Constitution itself contains no language which prevents or purports to prevent, gerrymandering of congressional districts; but rather it leaves the manner of holding elections for Senators and Representatives to the State legislatures, subject to such changes as Congress may see fit to make by law. Senate joint resolution 12, on the contrary, proposes to write into the Constitution, itself, language prohibiting gerrymandering of presidential elector districts without any discretion on the part of Congress.

The House of Representatives is, by specific language of the Constitution, made judge of the election of its own Members. This provides a remedy to gerrymandering of congressional districts at the hands of the House of Representatives. What the Court has found to be a political question has, therefore, a political remedy. The electoral college is neither now, nor would it be under the provisions of Senate joint resolution 12, the judge of the election of its own members. There would, therefore, be no specific political remedy specified in the language of the Constitution on which the Court could rely as a substitute for judicial remedy.

The primary difference between the question presented to a court by the gerrymandering of congressional districts, on the one hand, and the gerrymandering of presidential elector districts, on the other hand, would be the existence of a specific standard in the language of the Constitution with regard to the latter. Where standards appear, and such standards are of a specific and definable nature, it is most improbable that the Court would refuse to require compliance with such standards.

The Court, while seldom spelling out its reasons therefor, has invariably been reluctant to undertake the provision of a remedy which the Court was patently incapable of enforcing. This bears directly on questions concerning the gerrymandering of congressional districts, for even were the Court to find that the

antigerrymandering language of a reapportionment act had been violated and, upon such finding, base either an injunction against an election or a declaratory judgment that elections pursuant to such districting were invalid, the House of Representatives, being the judge of its own elections, could obviously ignore or negate the Court's finding and leave the Court no recourse from its decision. Were Senate Joint Resolution 12 to be enacted, however, the Court would be in no such impotent position with regard to an injunction or a declaratory judgment bearing on a presidential elector. No other branch or agency of government, other than the judicial, is delegated a power to negate the Court's decision. The Court would be in a position to deprive a State of the portion of its electoral vote which was represented by electors not chosen in conformity with the constitutional standards.

In addition, the Congress would have the authority to enact legislation specifically giving the Court jurisdiction to decide questions arising in this field.

In view of these distinctions, any doubts about the enforceability of the anti-gerrymandering language for Presidential elector districts, which would be established under Senate Joint Resolution 12, appear rather remote.

(The following was submitted by Senator Karl E. Mundt:)

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Washington, D.C.

ENFORCEMENT OF THOSE PROVISIONS OF SENATE JOINT RESOLUTION 12 REQUIRING ELECTORS TO BE ELECTED BY THE SO-CALLED DISTRICT SYSTEM

(Prepared according to the instructions of Hon. Karl E. Mundt by Samuel H. Still, legislative attorney, American Law Division, July 25, 1961)

THE LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
Washington, D.C., July 25, 1961.

To: Hon. Karl E. Mundt.

From: American Law Division.

Subject: Enforcement of those provisions of Senate Joint Resolution 12 requiring electors to be elected by the so-called district system.

There are here set forth some of the arguments in support of legal means whereby enforcement may be had of that mandate in Senate Joint Resolution 12 that where electors are chosen within single-electror districts established by the legislature such districts must be composed of "compact and contiguous territory, containing as nearly as practicable the number of persons which entitled the State to one Representative in Congress."

COLEGROVE *v.* GREEN DISTINGUISHED

At the outset it might be pointed out that the chief source of doubt as to the enforcement of the above provisions of Senate Resolution 12 stems from a decision of the U.S. Supreme Court of June 10, 1946, holding that under existing acts of Congress, and provisions of the Constitution the matter of dividing a State into congressional districts presented issues "of a peculiar political nature and therefore not meet for judicial determination." *Colegrove v. Green*, 328 U.S. 549, 552 (1946).

The situation presented in that case was, however, different from a situation which might be involved should a State legislature establish electoral districts in violation of Senate Joint Resolution 12.

In *Colegrove v. Green* the Court was asked for relief because the Illinois Legislature had failed to revise its congressional representative districts in a manner to reflect great changes, over some 40 years, in the distribution of the State's population. In its decision and failure to grant relief the Supreme Court emphasized (1) that the then existing apportionment act of Congress contained no "requirements as to compactness, contiguity, and equality in population" and cited *Wood v. Broom*, 287 U.S. 1 (1932), as precedent for failure to grant relief; (2) for want of equity because the issues were in the absence of a constitutional mandate "of a peculiarly political nature"; and (3) because of a belief that in

the exercise of its power to judge of the qualifications of its own Members under article I, section 5, clause 1, Congress alone has final authority to assure fair representation. To emphasize the language of the Constitution as controlling in its decision Justice Frankfurter speaking for the majority of the Court said:

"The short of it is that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility. If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people. Whether Congress faithfully discharges its duty or not, the subject has been committed to the exclusive control of Congress (id. 554)."

Colegrove v. Green was a 4-to-3 decision, Justices Douglas and Murphy not participating, with Justices Black, Douglas and Murphy dissenting.

"Justice Black, in a dissenting opinion with his two associates, first spelled out a 'constitutional policy' of substantially equal representation for all inhabitants and then countered the majority's arguments. He viewed State (and presumably congressional) power to regulate the 'manner' of elections as operable only within that constitutional policy, and *Wood v. Broom* as standing for no broader proposition than that the current Federal statute includes no 'equal population' requirement. As for the want of equity argument he denied that the relief sought was either unprecedented likely to involve the Court in a clash with Congress, and termed it a play on words to say that, because elections are connected with politics, courts cannot protect the right to cast an effective ballot" (56 Yale L. Rev. 133-134 (1946)).

Justice Black stated:

"While the Constitution contains no express provision requiring that congressional election districts established by the States must contain approximately equal populations, the constitutionally guaranteed right to vote and the right to have one's vote counted clearly imply the policy that State election systems, no matter what their form, should be designed to give approximately equal weight of each vote cast. * * * legislation which must inevitably bring about glaringly unequal representation in the Congress in favor of special classes and groups should be invalidated, 'whether accomplished ingeniously or ingenuously'" (*Colegrove v. Green*, 570-571).

SUPPORT HAD FROM THE SOLICITOR GENERAL, UNITED STATES, IN RECENT BRIEF

A most illuminating argument that the Supreme Court has never held that the questions of apportionment are beyond the power of the Federal courts appears in the brief for the United States as amicus curiae filed by Solicitor General Archibald Cox in the Tennessee [State Legislature] apportionment case, *Baker v. Carr*, docket No. 103, October term, 1960, set down for reargument on November 9, 1961, before the U.S. Supreme Court. The Solicitor General states (at pp. 24-29):

"1. *This Court has never held that questions of apportionment are beyond the power of the Federal Courts*

"It should be stressed that this Court has never held that apportionment cases necessarily raise nonjusticiable questions. On the contrary, it has passed on the merits of apportionment systems in several cases and has granted relief in some of them. Thus, in *Smiley v. Holm*, 285 U.S. 355, the Court held that the existing Minnesota apportionment of U.S. Representatives did not meet Federal requirements because the Governor had refused to approve the bill, and accordingly the Court ordered an election at large. The Court also held a State apportionment law invalid (the Governor had vetoed it) and ordered an election at large in *Carroll v. Becker*, 285 U.S. 380. And in *Koenig v. Flynn*, 275 U.S. 385, the Court affirmed a decision of a State court holding that, in the absence of a valid districting statute (the Governor had not approved the resolution of the State legislature) to conform to the increase in Representatives allotted to a State by Congress, the additional Representatives must be elected at large.

"*Colegrove v. Green*, 328 U.S. 549, does not hold to the contrary. Admittedly, Mr. Justice Frankfurter, joined by two other Justices, would have held that State apportionment of Representatives is a political question beyond the power of the Federal courts to decide. But a majority of the participating Justices (Mr. Justice Rutledge concurring, and the three dissenting Justices) took the view that Federal courts had the power to adjudicate the validity of the system of apportionment under attack. Mr. Justice Rutledge, whose vote in this respect was dis-

positive of the case, concluded that this power should be employed 'only in the most compelling circumstances' (id. at 565). Since such circumstances were absent, he decided that 'the case is one in which the Court may properly, and should, decline to exercise its jurisdiction' (id. at 566).

"Shortly after the *Colegrove* case, the scope of the Court's decision became even more clear. In *Cook v. Fortson*, 329 U.S. 675, 678, involving the Georgia county unit system, Mr. Justice Rutledge described the actual ruling in the earlier case:

"* * * A majority of the justices participating refused to find that there was a want of jurisdiction, but at the same time a majority, differently composed, concluded that the relief sought should be denied. I was of the opinion that, in the particular circumstances, this should be done as a matter of discretion, for the reasons stated in a concurring opinion."

"In *Cook v. Fortson* Mr. Justice Rutledge would have postponed consideration of the issue of jurisdiction to the argument, even though he admitted that the order on appeal might 'have become moot in part,' Id. at 677. The Court, however, dismissed the bills, citing *United States v. Anchor Coal Co.*, 279 U.S. 812, which involved the dismissal of a bill seeking an injunction as moot.

"In *MacDougall v. Green*, 335 U.S. 281, the Court passed on the merits of the claim that an Illinois statute requiring a candidate of a new political party to obtain a specified number of signatures on his nominating petitions in 50 of the 102 counties in the State was unconstitutional. Mr. Justice Rutledge, in a separate opinion, stated that 'this case is closely analogous to *Colegrove v. Green*' and '[e]very reason existing in *Colegrove* * * * which seemed to me compelling to require this Court to decline to exercise its equity jurisdiction and to decide the constitutional questions is present here. * * * As in *Colegrove* * * * I think the case is one in which * * * this Court may properly, and should, decline to exercise its jurisdiction in equity.' Id. at 284, 286-287. No member of the Court suggested that the Court was without jurisdiction or power to consider the issue.

"In *South v. Peters*, 339 U.S. 276, 277, the Court again recognized that the question is not one of judicial power but of its proper exercise. The decision was embodied in a single sentence: 'Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a State's geographical distribution of electoral strength among its political subdivisions' (emphasis added). None of the cases cited in support of this conclusion held that the issue involved was not justiciable. Reliance was placed on *MacDougall v. Green*, in which, as we have seen, the Court passed on the merits of a State election issue; *Colegrove v. Green*, in which a majority of the Court held that the Federal courts have power to consider the merits of apportionment cases; and *Wood v. Broom*, 287 U.S. 1, 8. In the *Wood* case, the Court held that the Reapportionment Act of 1911, requiring that congressional election districts be of contiguous and compact territory and, as nearly as practicable, of equal population, applied only to districts formed under that act and not to the Apportionment Act of 1929. Four members of the Court (in a statement beginning on page 8) said that they believed that the bill should be dismissed 'for want of equity.' That phrase suggests that under traditional equity principles an injunction should not issue, not that the courts are without jurisdiction to consider the merits because a nonjusticiable political issue is involved.

"In no subsequent apportionment case has this Court held, so far as we can determine, that the Federal courts lack power to adjudicate the constitutionality of apportionment systems. In *Cox v. Peters*, 342 U.S. 936, involving an attack on Georgia's county unit laws, and *Remmey v. Smith*, 342 U.S. 916, involving a suit to compel reapportionment of the Pennsylvania Legislature, the appeals were simply dismissed for want of a substantial Federal question, without citation of authority. In *Anderson v. Jordan*, 343 U.S. 912, the Court dismissed the appeal on the authority of *Colegrove v. Green*, *MacDougall v. Green*, and *Wood v. Broom* (the opinion of the Court). As we have seen, in the latter two cases the Court considered the issues on the merits. In *Kidd v. McCannless*, 352 U.S. 920, involving an attack upon the same Tennessee apportionment law now before the Court, the appeal was dismissed on the authority of *Colegrove v. Green* and *Anderson v. Jordan*. In *Radford v. Gary*, 352 U.S. 991, involving an attack on the Oklahoma apportionment laws, this Court affirmed the district court's dismissal of the action, citing *Colegrove v. Green* and *Kidd v. McCannless*. And in *Hartsfield v. Sloan*, 357 U.S. 916, without citation of authority, the Court denied a motion for leave to file a petition for a writ of mandamus to compel the convening of a three-judge court to pass on the validity of the Georgia county unit laws.

"Where the Court has rejected attacks on apportionment systems without cita-

tion, it is of course impossible to know the basis of the decision. But such action is just as compatible with a determination that the case clearly does not present 'compelling circumstances' necessary for Federal judicial relief as with a holding of lack of power. Where the Court has cited *Colegrove v. Green*, the reason for this reliance is also not entirely clear. As we have seen, four of the seven Justices voting in that case upheld the power of the Court to consider the merits. The citation of the *Colegrove* decision to support rejection of attacks on State apportionment must therefore, we believe, mean reliance on the only holding of the prevailing majority in that case, i.e., that an injunction was not justified in the circumstances. It cannot be assumed that the Court intended to settle this important issue of Federal judicial power in accordance with the review of the minority of the Court in *Colegrove v. Green* by citing *Colegrove* in per curiam decisions, without the benefit of full briefing or oral argument."

Probably the most effective means of enforcing the district system would be through the Federal courts.

Action would be of a civil nature perhaps brought under the Declaratory Judgment Act of the United States providing for the declaration of rights and other legal relations of interested parties petitioning therefor, and for other relief. Sections one and two of the Declaratory Judgment Act are set forth in sections 2201 and 2202 of title 28, United States Code, 1958 edition, as follows:

§ 2201. *Creation of remedy*

"In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

§ 2202. *Further relief*

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

Assuming that a favorable decision be had, there should be no difficulty in enforcing a decree. In his dissenting opinion in *Colegrove v. Green*, 328 U.S. 549, 573 (1946), Justice Black stated that without assuming any jurisdiction over elections the Court could declare any inequitable bill invalid and enjoin State officials from enforcing it. He cited *Smiley v. Holm*, 285 U.S. 355 (1932). Of course, the Supreme Court has already struck down a State redistricting law wherein the boundaries of a municipality were gerrymandered to single out "a readily isolated segment of a racial minority for special discrimination." *Gomillion v. Lightfoot*, 364 U.S. 339, 347 (1960). In the *Gomillion* case the Court said: "a constitutional power cannot be used by way of a condition 'to attain an unconstitutional result'", citing *Western Union Telegraph Co. v. Foster*, 247 U.S. 105, 114 (1918). Also see *Western Union Telegraph Co. v. Kansas*, 216 U.S. 1 (1910); *Pullman Co. v. Kansas*, 216 U.S. 56 (1910); *Sioux Remedy Co. v. Cope*, 235 U.S. 197 (1914).

ENFORCEMENT OF COMPARABLE PROVISIONS AS TO COMPACT AND CONTIGUOUS DISTRICTS AND NEARLY EQUAL POPULATION BY STATE COURTS

Virginia

The constitution of Virginia places a limitation on the legislature that each congressional district "shall be composed of contiguous and compact territory containing as near as practicable an equal number of inhabitants."

"The general assembly shall by law apportion the State into districts, corresponding with the number of Representatives to which it may be entitled in the House of Representatives of the Congress of the United States; which districts shall be composed of contiguous and compact territory containing as nearly as practicable, an equal number of inhabitants" (art. IV, sec. 55).

The Supreme Court of Virginia has held that section 55 places limitations on the discretion of the legislature, and whether or not a redistricting act exceeds those limitations becomes a judicial question when raised by the proper parties in a proper proceeding. *Brown v. Saunders*, 159 Va. 28, 166 S.E. 105 (1932).

The Virginia Supreme Court reviewed some of the authorities:

"Few, if any, of the State constitutions contain provisions for dividing the State into congressional districts similar to those found in section 55 of the Virginia constitution, but a great many of them contain the identical, or similar, provisions which control the legislative discretion in dividing the State into districts for the purpose of choosing State senators or representatives in the lower house of the State legislature. The unit of representation in such cases would be less than when applied to the unit of representation in congressional districts, but the validity of such acts should be tested by the same principles of law. Many of the courts when passing upon such limitations as applied to legislative districts apply the rule of approximate equality, and frequently quote the statement made by Daniel Webster, found in a report made by him as chairman of a senatorial committee, thus:

"The Constitution, therefore, must be understood, not as enjoining an absolute relative equality, because that would be demanding an impossibility, but as requiring Congress to make an apportionment of representatives among the several States, according to their respective numbers as nearly as may be. That which cannot be done perfectly must be done in a manner as near perfection as can be. If exactness cannot, from the nature of things, be attained, then the nearest practicable approach to exactness ought to be made. Congress is not absolved from all rule, merely because the rule of perfect justice cannot be applied. In such a case approximation becomes a rule. It takes the place of the other rule which would be preferable, but which is found inapplicable, and becomes itself an obligation of binding force. The nearest approximation to exact truth or exact right, when that exact truth or exact right cannot be reached, prevails in other cases, not as a matter of discretion, but as an intelligible and definite rule, dictated by justice, and conforming to the commonsense of mankind—a rule of no less binding force in cases to which it is applicable, and no more to be departed from than any other rule." Story on Constitution (4th ed.), pages 484-496.

This rule, with some variations, depending upon the exact language used in the constitutions of the different States, has been adopted by the courts in the following States: Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New York, New Jersey, Pennsylvania, Ohio, West Virginia, Wisconsin, and Washington. The cases are referred to in the annotations following *Donovan v. Suffolk County Commissioners*, reported in 225 Mass. 55, 113 N.E. 740, 2 A.L.R. 1334.

The attorney general refers to the fact that the population in the congressional districts created by the legislatures of the other States shows a much greater disparity than in the case now under review, and states that that fact "is a tremendously weighty consideration supporting the contention of the respondent that no such authority exists in Congress." As authority, he cites the report of the election committee to the 56th Congress, in the contested election case of *Davison v. Gilbert*, Miscellaneous House Reports, volume 3, which, in part reads thus:

"The apportionment act based upon the census of 1850 made no provision for the division of State into districts, nor did the act of 1862. The act of February 2, 1872, provided that representatives should be elected by districts composed of contiguous territory, and added the provision 'containing, as nearly as practicable, an equal number of inhabitants.' The same provision appears in the apportionment acts of 1882 and 1891."

"So far as legislative declaration is concerned, it is apparent that Congress has expressed an opinion in favor of its power to require that the States shall be divided into districts composed of contiguous territory, and of as nearly equal population as practicable. Whether it has the constitutional right to enact such legislation is a very serious question, and the uniform current of opinion is that, if it has such power under the Constitution, that power ought never to be exercised to the extent of declaring a right to divide the State into congressional districts, or to supervise or change any districting which the State may provide.

"The best opinion seems to be that the Constitution does not mean that under all circumstances Congress shall have power to divide the States into districts, but only that the constitutional provision was inserted for the purpose of giving Congress the power to provide the means whereby a State should be represented in Congress when the State itself, for some reason, has failed or refused to make such provision for itself."

The report contains extracts from the writings of Justice Story, Alexander Hamilton, James Madison, Chancellor Kent, and the following from a senatorial report made to the 22d Congress by Daniel Webster:

"Whether the subdivision of the representative power within any State, if there be a subdivision, be equal or unequal, or fairly or unfairly made, Congress cannot know and has no authority to inquire. It is enough that the State presents her own representation on the floor of Congress in the mode she chooses to present it. If a State were to give to one portion of her territory a representative for every 25,000 persons, and to the rest a representative for every 50,000, it would be an act of unjust legislation, doubtless, but it would be wholly beyond redress by any power in Congress, because the Constitution has left all this to the State itself." Story, on the Constitution (4th ed.) pages 484-496.

The cases of *Moran v Bowley*, supra, *James J. Hume v. Sara W. Mahan* ((D.C.) 1 F. Supp. 142), decided September 3, 1932, by a special court composed of three Federal judges for the eastern district of Kentucky, and *Broom v. Wood* ((D.C.) 1 F. Supp. 134), decided by a special court composed of three Federal judges for the southern district of Mississippi, held that section 3 of the act of August 8, 1911, was still in force, and that the apportionment acts of Illinois, Kentucky, and Mississippi were illegal and void because the legislatures of those States did not observe the principle of apportionment of equality in forming the districts in the respective States, required by the act of Congress. * * *

* * * * *

As was said by Judge Peckham in *Baird v. Board of Supervisors* (138 N.Y. 95, 33 N.E. 827, 833, 20 L.R.A. 81), "We have no trouble whatever in detecting the difference between noon and midnight, but the exact line of separation between the dusk of the evening and the darkness of advancing night is not so easily drawn." In construing a similar constitutional limitation, he promulgated this test, i.e., that when facts are presented argument should not be necessary "to convince a fair man that very great and wholly unnecessary inequality has been intentionally provided for."

The Massachusetts court in *Attorney General v. Suffolk County Apportionment Commissioners* (224 Mass. 598, 113 N.E. 581, 586), on the same subject said: "When fairminded men from an examination of the apportionment and division can entertain no reasonable doubt that there is a grave and unnecessary and unreasonable inequality between different districts, the Constitution has been violated and it is the duty of the court so to declare."

New York

New York's constitution, article 3, section 4, requires that senate districts "shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens and be in as compact form as practicable."

The New York Court of Appeals has held that this provision is mandatory. *Sherrill v. O'Brien* (188 N.Y. 185, 81 N.E. 124 (1907)). The court stated (at pp. 130-131 of 81 N.E.):

"Can it be doubted that in view of the history of constitutional changes in regard to legislative apportionment, which shows a gradual withdrawal from the legislature of discretionary power and a continued adding of limitations upon their power relating thereto, and in view of the clear intention of the constitutional convention of 1894 and of the people in adopting the constitution, this court should now hold that the minimum of discretion necessary to preserve county and other lines and to give reasonable consideration to the other provisions of the constitution is left to the legislature? As the discretion of the legislature relating to the relative number of inhabitants in senate districts arises from necessity, it should cease where the necessity for discretion ends. In the section of the constitution relating to assemblymen (art. 3, sec. 5) it is provided that in any county entitled to more than one member of assembly the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, shall 'divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable.' The word 'convenient' is omitted in directing the legislature in regard to a division of the State into senate districts. We must assume that it was intentionally omitted. *Roosevelt v. Godard* (52 Barb. 533). Every provision of the constitution which allows any discretion by the legislature in

apportionment must to some extent be affected and controlled by every other provision of the constitution, but in the division of the State into senate districts matters of mere convenience and individual taste are not subjects for consideration * * * we are of the opinion that the constitution as it now exists should be construed so as to require that the legislature in dividing the State into senate districts make as close an approximation to exactness in number of inhabitants as reasonably possible in view of the other constitutional provisions, and that such approximation is the limit of legislative discretion. In construing the language of the constitution, as in construing the language of a statute, the courts should look for the intention of the people and give to the language used its ordinary meaning. The ordinary and plain meaning of the words 'contiguous territory' is not territory nearby, in the neighborhood or locality of, but territory touching, adjoining, and connected, as distinguished from territory separated by other territory. Richmond county is not contiguous to Queens county within the meaning of contiguous as thus defined."

ENFORCEMENT OF THE ELECTORAL DISTRICT SYSTEM BY A JOINT SESSION OF THE CONGRESS IN COUNTING THE ELECTORAL VOTE

Senate Joint Resolution 12 provides for the counting of the electoral vote by the Senate and House in joint session :

"* * * 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 * * *"

Similar language now appears in amendment XII, ratified September 25, 1804. Under this authority the Congress has enacted legislation providing for the rejection of the vote given under certain circumstances. This provision appears as section 15 of title 3, United States Code, 1958 edition, and is actually in enactment into law of rules previously agreed to by the two Houses in deciding a contest over the election of the President growing out of the validity or invalidity of certain electoral votes.

Under such authority the two houses in joint session could refuse to accept votes not cast from districts not formed in accordance with the constitutional requirements of Senate Joint Resolution 12. See Cannon's Precedents of the House of Representatives, volume 10, pages 11-14 for miscellaneous decisions involving the electoral count and validity of an electoral vote.

SECTION 15, TITLE 3, UNITED STATES CODE

§ 15. Counting electoral votes in Congress.

Congress shall be in session on the sixth day of January succeeding every meeting of the electors. The Senate and House of Representatives shall meet in the Hall of the House of Representatives at the hour of 1 o'clock in the afternoon on that day, and the President of the Senate shall be their presiding officer. Two tellers shall be previously appointed on the part of the Senate and two on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates and papers shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the latter A; and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted according to the rules in this subchapter provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and together with a list of the votes, be entered on the Journals of the two Houses. Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made to any vote or paper from a State shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision; and no electoral vote or votes from any

State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected, but the two Houses concurrently may reject the vote or votes when they agree that such vote or votes have not been so regularly given by electors whose appointment has been so certified. If more than one return or paper purporting to be a return from a State shall have been received by the President of the Senate, those votes, and those only, shall be counted which shall have been regularly given by the electors who are shown by the determination mentioned in section 5 of this title to have been appointed, if the determination in said section provided for shall have been made, or by successors or substitutes, in case of a vacancy in the board of electors so ascertained, as have been appointed to fill such vacancy in the mode provided by the laws of the State; but in case there shall arise the question which of two or more of such State authorities determining what electors have been appointed, as mentioned in section 5 of this title, is the lawful tribunal of such State, the votes regularly given of those electors, and those only, of such State shall be counted whose title as electors the two Houses, acting separately, shall concurrently decide is supported by the decision of such State so authorized by its law; and in such case of more than one return or paper purporting to be a return from a State, if there shall have been no such determination of the question in the State aforesaid, then those votes, and those only, shall be counted which the two Houses shall concurrently decide were cast by lawful electors appointed in accordance with the laws of the State, unless the two Houses, acting separately, shall concurrently decide such votes not to be the lawful votes of the legally appointed electors of such State. But if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted. When the two Houses have voted, they shall immediately again meet, and the presiding officer shall then announce the decision of the questions submitted. No votes or papers from any other State shall be acted upon until the objections previously made to the votes or papers from any State shall have been finally disposed of. (June 25, 1948, ch. 644, 62 Stat. 675.)

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RESULTS OF POLL OF POLITICAL SCIENTISTS' OPINIONS ON ELECTORAL COLLEGE PROPOSALS

On June 7, 1961, Senator Estes Kefauver, chairman of the Subcommittee on Constitutional Amendments, mailed a form letter and questionnaire to 766 of the Nation's political scientists. The mailing list used was the American Political Science Association's list of heads of departments of political science or government in American universities and colleges. This list does not include the names of such persons but lists them only by title and institution.

The following is the form letter mailed by Senator Kefauver:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS,

June 7, 1961.

DEAR SIR: Please accept my apology for not addressing this letter to you in person. I am writing similar letters to everyone on the American Political Science Association's mailing list of heads of departments, which lists such persons only by official title. This is the best available means of obtaining the views of a cross section of eminent political scientists on questions of unique interest to them and great importance to the country.

The Subcommittee on Constitutional Amendments is conducting hearings on 20 resolutions which propose amendments concerning our Federal elections system, including the method of nomination and election of the President and Vice President and qualifications for voting. If you desire digests or copies of these proposals, I will furnish them upon request.

You are doubtless familiar with the various plans which have been proposed for reform of the electoral college. The enclosed questionnaire is designed to poll the opinions of political scientists on these basic proposals. I urge you to complete and return the questionnaire, attaching any statement which you care to make. The results of this poll and your statement will be included in the printed record of the hearings, and I assure you that the subcommittee will give them careful consideration.

If you prefer not to complete the questionnaire personally for any reason, please feel free to refer it to another faculty member on your staff.

Thank you very much for your assistance.

Sincerely yours,

ESTES KEFAUVER, *Chairman.*

(The following questionnaire was enclosed with each letter:)

POLITICAL SCIENTISTS' QUESTIONNAIRE

1. Do you favor any amendment to the Constitution which would change our present method of electing the President? Yes____ No____
2. Do you feel the office of elector should be abolished? Yes____ No____
3. Do you favor retaining the present electoral voting strengths of the States? Yes____ No____
4. Do you favor election of the President by national direct popular vote? Yes____ No____
5. Do you favor a proportional division system by which each State's electoral votes would be divided according to percentages of the popular vote? Yes____ No____
6. Do you favor a proportional division system which would divide only the electoral votes of States in which the minority candidate receives some minimum percentage of the popular vote? Yes____ No____
If so, what should this minimum percentage be? ____

7. Do you favor the district system under which two presidential electors would be elected at large and the balance in single-elector districts in each State? Yes____ No____
8. Do you favor some plan other than those mentioned? Yes____ No____
If so, please include a summary in your attached statement.
9. Do you favor any change in the present method of election of the President in the House of Representatives when no candidate receives a majority? Yes____ No____
10. If so, do you favor election by a majority of the House and Senate in joint assembly with each Member having one vote? Yes____ No____

(Signature)

(Title)

NOTE.—Please attach any statement or comments which you wish to make concerning your answers or the general subject under inquiry. Completed questionnaire should be returned by July 1, 1961.

As of July 18, 1961, 254 completed questionnaires had been returned. The following is a compilation of the answers to each question with percentage breakdowns for each:

ANSWERS TO POLITICAL SCIENTISTS' QUESTIONNAIRE

QUESTION NO. 1

Do you favor any amendment to the Constitution which would change our present method of electing the President?¹

	Number	Percentage of total
Yes-----	230	90.6
No-----	24	9.4

QUESTION NO. 2

Do you feel the office of elector should be abolished?

	Number	Percentage of total
Yes-----	182	71.7
No-----	62	24.4
Unanswered-----	10	3.9

QUESTION NO. 3

Do you favor retaining the present electoral voting strengths of the States?

	Number	Percentage of total
Yes-----	154	60.7
No-----	85	33.4
Unanswered-----	15	5.9

¹Five questionnaires left question No. 1 unanswered. For tabulation purposes, these were allocated between "Yes" and "No" on the basis of answers to other questions indicating that the person either favored one or more of the proposed changes, or was opposed to all of them.

QUESTION NO. 4

Do you favor election of the President by national direct popular vote?

	<i>Number</i>	<i>Percentage of total</i>
Yes.....	87	34.2
No.....	160	63.0
Unanswered.....	7	2.8

QUESTION NO. 5

Do you favor a proportional division system by which each State's electoral votes would be divided according to percentages of the popular vote?

	<i>Number</i>	<i>Percentage of total</i>
Yes.....	119	46.9
No.....	124	48.8
Unanswered.....	11	4.3

QUESTION NO. 6

Do you favor a proportional division system which would divide only the electoral votes of States in which the minority candidate receives some minimum percentage of the popular vote?

If so, what should this minimum percentage be? ¹

	<i>Number</i>	<i>Percentage of total</i>
Yes.....	47	18.5
No.....	188	74.0
Unanswered.....	19	7.5

QUESTION NO. 7

Do you favor the district system under which two presidential electors would be selected at large and the balance in single-elector districts in each State?

	<i>Number</i>	<i>Percentage of total</i>
Yes.....	41	16.2
No.....	199	78.3
Unanswered.....	14	5.5

QUESTION NO. 8

Do you favor some plan other than those mentioned?

	<i>Number</i>	<i>Percentage of total</i>
Yes.....	5	2.0
No.....	187	74.3
Unanswered.....	60	23.7

¹ The breakdown of the answers to this question is as follows: 4, 5 percent; 11, 10 percent; 2, 15 percent; 11, 20 percent; 9, 25 percent; 3, 30 percent; 2, 33.33 percent; 1, 35 percent; 2, 40 percent; and 2 written answers: (1) "He should carry at least a number equal to population of smallest congressional district," and (2) "Enough to account fully for 1 elector."

QUESTION NO. 9

Do you favor any change in the present method of election of the President in the House of Representatives when no candidate receives a majority?

	Number	Percentage of total
Yes.....	142	55.9
No.....	96	37.8
Unanswered.....	16	6.3

QUESTION NO. 10

If so, do you favor election by a majority of the House and Senate in joint assembly with each member having one vote?

	Number	Percentage of total
Yes.....	130	51.2
No.....	69	27.2
Unanswered.....	55	21.6

LIST OF PARTICIPATING POLITICAL SCIENTISTS

[An asterisk (*) indicates that the person submitted a statement along with his completed questionnaire. These statements are printed in alphabetical order following the list of participants in the poll]

Name	College or university	Location
Ader, Emile B.....	University of Tulsa.....	Tulsa, Okla.
Alexander, Wm. M.....	California State Polytechnic College.....	San Luis Obispo, Calif.
Allen, Ethan P.....	University of Kansas.....	Lawrence, Kans.
Amacker, D. M.....	Southwestern at Memphis.....	Memphis, Tenn.
Arndt, John.....	Long Beach State College.....	Long Beach, Calif.
*Ashley, Frank.....	Newberry College.....	Newberry, S.C.
*Baker, John W.....	The College of Wooster.....	Wooster, Ohio.
Bates, Margaret L.....	Goddard College.....	Plainfield, Vt.
Baum, William O.....	Southeast Missouri State College.....	Cape Girardeau, Mo.
*Beauchesne, Rene K.....	The Creighton University.....	Omaha, Nebr.
Bennett, A. LeRoy.....	Drake University.....	Des Moines, Iowa.
*Berman, Daniel M.....	Washington College.....	Chestertown, Md.
Bond, John A.....	North Dakota State University.....	Fargo, N. Dak.
Bone, H. A.....	University of Washington.....	Seattle, Wash.
Burns, Edward M.....	Rutgers University.....	New Brunswick, N.J.
Burns, James M.....	Williams College.....	Williamstown, Mass.
Caggiano, Nicholas J.....	Niagara University.....	Niagara, N.Y.
Cagle, A. P.....	Baylor University.....	Waco, Tex.
Callen, E. Glenn.....	Nebraska Wesleyan University.....	Lincoln, Nebr.
Cannon, Mark W.....	Brigham Young University.....	Provo, Utah.
Carden, William R.....	Mary Hardin-Baylor College.....	Belton, Tex.
Carey, Kenneth J.....	St. Mary's University.....	San Antonio, Tex.
Carson, J. S. G.....	Randolph-Macon Woman's College.....	Lynchburg, Va.
Chapman, C. C.....	Loyola University.....	New Orleans, La.
Christensen, H. P.....	Colorado State College.....	Greeley, Colo.
Christenson, R. M.....	Miami University.....	Oxford, Ohio.
Cohen, Morris W.....	Clark University.....	Worcester, Mass.
Coleman, James K.....	The Citadel.....	Charleston, S.C.
Collins, Edward, Jr.....	Birmingham-Southern College.....	Birmingham, Ala.
Cooke, Edward F.....	University of Pittsburgh.....	Pittsburgh, Pa.
*Corbitt, Duvon C.....	Asbury College.....	Wilmore, Ky.
Cornelius, W. G.....	Agnes Scott College.....	Decatur, Ga.
Costello, (Rev.) Frank B., S.J.....	Seattle University.....	Seattle, Wash.
Cunningham, H. H.....	Elon College.....	Elon College, N.C.
Dauer, M. J.....	University of Florida.....	Gainesville, Fla.
David, Paul T.....	University of Virginia.....	Charlottesville, Va.
David, W. D.....	Evansville College.....	Evansville, Ind.
Davis, George L.....	Tennessee A. & I. State University.....	Nashville, Tenn.
Davis, J. William.....	Texas Technological College.....	Lubbock, Tex.
Dawson, Irving.....	Lamar State College of Technology.....	Beaumont, Tex.
Delavan, Wayne.....	Henderson State Teachers College.....	Arkadelphia, Ark.
De Vane, Carl E.....	Shaw University.....	Raleigh, N.C.
Dixon, Fred.....	Converse College.....	Spartanburg, S.C.
Dixon, James C.....	High Point College.....	High Point, N.C.
Donoghue, James R.....	University of Wisconsin.....	Madison, Wis.
Dougherty, Eleanor M.....	College of Great Falls.....	Great Falls, Mont.
Dowell, Arthur E.....	Indiana State Teachers College.....	Terre Haute, Ind.
Downey, Marvin.....	West Virginia Wesleyan College.....	Buckhannon, W. Va.

LIST OF PARTICIPATING POLITICAL SCIENTISTS—Continued

[An asterisk (*) indicates that the person submitted a statement along with his completed questionnaire. These statements are printed in alphabetical order following the list of participants in the poll]

Name	College or university	Location
Drake, Richard B.	Berea College	Berea, Ky.
Edwards, Marvin L.	Beaver College	Jenkintown, Pa.
Ellis, Ellen Deborah	Mount Holyoke College	South Hadley, Mass.
Epstein, Leon D.	University of Wisconsin	Madison, Wis.
Evans, William J.	Mississippi State University	State College, Miss.
Everest, Allan S.	State University College of Education	Plattsburgh, N. Y.
Farber, William O.	State University of South Dakota	Vermillion, S. Dak.
Fehr, Alex J.	Lebanon Valley College	Anville, Pa.
*Filey, Walter	State University of New York, Harpur College	Binghamton, N. Y.
Fleming, William	Ripon College	Ripon, Wis.
Flory, Raymond L.	McPherson College	McPherson, Kans.
*Fluno, Robert Y.	Whitman College	Walla Walla, Wash.
Ford, Clayton D.	The Principia College	Elsah, Ill.
Fortenberry, Charles N.	University of Mississippi	Oxford, Miss.
Fox, Geo. E.	East Tennessee State College	Johnson City, Tenn.
Frasure, Carl M.	West Virginia University	Morgantown, W. Va.
Fretz, J. W.	Bethel College	North Newton, Kans.
Funston, J. Arthur	Earlham College	Richmond, Ind.
Garlick, Geraldine	Linfield College	McMinnville, Ore.
Garner, Carl W.	Monmouth College	Monmouth, Ill.
Garvey, Dale M.	Kansas State Teachers College	Emporia, Kans.
Gassner, Julius S.	College of St. Joseph on the Rio Grande	Albuquerque, N. Mex.
Gaske, Robert	Willamette University	Salem, Ore.
Gathings, James A.	Bucknell University	Lewisburg, Pa.
Gibbs, Hubert S.	Boston University	Boston, Mass.
Goldschmidt, M. L.	Reed College	Portland, Ore.
Gomillion, C. G.	Tuskegee Institute	Tuskegee, Ala.
Goodall, Merrill R.	Claremont Graduate School	Claremont, Calif.
Graves, Wallace B.	Texas Wesleyan College	Fort Worth, Tex.
Greene, Lee S.	The University of Tennessee	Knoxville, Tenn.
Greenholt, Reginald	Lenoir Rhyne College	Hickory, N. C.
Griffith, Ernest S.	The American University	Washington, D. C.
*Griner, J. E.	Arkansas A. & M. College	College Heights, Ark.
*Gross, Franz B.	Pennsylvania Military College	Chester, Pa.
Grubbs, W. M.	Georgia State College	Atlanta, Ga.
Harper, Charles P.	Marshall University	Huntington, W. Va.
Harris, John S.	University of Massachusetts	Amherst, Mass.
Hartzog, S. A.	Lake Forest College	Lake Bluff, Ill.
Hathorn, Guy B.	University of Maryland	College Park, Md.
Hauptmann, J.	Park College	Parkville, Mo.
Hawkins, Glenn B.	Oklahoma State University	Stillwater, Okla.
Haywood, C. Robert	Southwestern College	Winfield, Kans.
Heflin, Woodford A.	Air University, USAF	Maxwell Air Force Base, Ala.
Helms, E. Allen	The Ohio State University	Columbus, Ohio.
Henderson, Richard B.	Southwest Texas State College	San Marcos, Tex.
Hendrickson, J. P.	South Dakota State College	Brookings, S. Dak.
Higgins, George A., S. J.	College of the Holy Cross	Worcester, Mass.
Hogan, Willard N.	State University College of Education	New Paltz, N. Y.
Holland, Lynwood M.	Emory University	Atlanta, Ga.
Horet, Thomas	New York University	New York, N. Y.
Horlacher, John Perry	University of Pennsylvania	Philadelphia, Pa.
*Howell, John M.	East Carolina College	Greenville, N. C.
Howard L. Vaughan	Tulane University	New Orleans, La.
Humes, D. Joy	Wells College	Aurora, N. Y.
Idle, Dunning	Western College for Women	Oxford, Ohio.
Idhe, Ira C.	Eastern New Mexico University	Portales, N. Mex.
Irons, George V.	Howard College	Birmingham, Ala.
*Jacobs, Clyde E.	University of California	Davis, Calif.
Jacobsen, Paul S.	Colgate University	Hamilton, N. Y.
Jadus, John A.	Alliance College	Cambridge Springs, Pa.
Jarvis, Chester E.	Gettysburg College	Gettysburg, Pa.
Jensen, Daniel D.	Greenville College	Greenville, Ill.
Johnson, Donald Bruce	State University of Iowa	Iowa City, Iowa.
Johnson, J. B.	Central Connecticut State College	New Britain, Conn.
Johnson, J. R.	Nebraska State Teachers College	Wayne, Nebr.
Johnston, Scott O.	Hamline University	St. Paul, Minn.
Jones, James G.	Glenville State College	Glenville, W. Va.
Joseph, Brother Alexander	Manhattan College	New York, N. Y.
Jordan, Gerald I.	Claremont Graduate School	Claremont, Calif.
Kaloupek, W. E.	University of North Dakota	Grand Forks, N. Dak.
Kapp, John R.	Iowa Wesleyan College	Mount Pleasant, Iowa.
Kariel, H. S.	Bennington College	Bennington, Vt.
Kelly, Mother Dorothy Ann, O. S. U.	College of New Rochelle	New Rochelle, N. Y.
*Kerr, Charles W.	Westminster College	Fulton, Mo.
Kinneman, John A.	Illinois State Normal University	Normal, Ill.
King, Spencer B., Jr.	Mercer University	Macon, Ga.

LIST OF PARTICIPATING POLITICAL SCIENTISTS—Continued

[An asterisk (*) indicates that the person submitted a statement along with his completed questionnaire. These statements are printed in alphabetical order following the list of participants in the poll]

Name	College or university	Location
Kirwin, Harry W.	Loyola College	Baltimore, Md.
Kleven, Bernhardt J.	Augsburg College & Theological Seminary	Minneapolis, Minn.
*Knapp, Austin C.	Central Michigan University	Mount Pleasant, Mich.
Kosiba, Peter J. J.	Lewis College	Lockport, Ill.
Kramer, Leonard J.	Hanover College	Hanover, Ind.
*Kriegel, Vitus A., Rev.	St. Vincent College	Latrobe, Pa.
Kunkel, Paul A.	Xavier University	New Orleans, La.
Larsen, Christian L.	Sacramento State College	Sacramento, Calif.
Lawson, John E.	University of Denver	Denver, Colo.
Legg, Keith R.	Bemidji State College	Bemidji, Minn.
Leiserson, Avery	Vanderbilt University	Nashville, Tenn.
Lewis, Virginia E.	Hood College	Frederick, Md.
*Lye, William F.	Ricks College	Rexburg, Idaho.
*Mahoney, E. J.	U.S. Naval Academy	Annapolis, Md.
Mailey, Hugo V.	Wilkes College	Wilkes-Barre, Pa.
Mantor, Lyle E.	Nebraska State Teachers College	Kearney, Nebr.
Martin, Curtis E.	University of Colorado	Boulder, Colo.
*Martin, Robert W.	Howard University	Washington, D.C.
Matterson, Clarence H.	Iowa State University	Ames, Iowa.
Mavrinac, Albert A.	Colby College	Waterville, Maine.
McBroom, James H., Jr.	David Lipscomb College	Nashville, Tenn.
McCandless, Carl A.	Washington University	St. Louis, Mo.
McClintock, Roy M., Jr.	MacMurray College	Jacksonville, Ill.
McCloskey, R. G.	Harvard University	Cambridge, Mass.
McCrocklin, James H.	Texas A. & I. College	Kingsville, Tex.
McDonald, Lee C.	Pomona College	Claremont, Calif.
McFarland, Daniel M.	Atlantic Christian College	Wilson, N.C.
McGee, N. W.	North Central College	Naperville, Ill.
McKee, Don	Upsala College	East Orange, N.J.
McKelvey, Raymond G.	Occidental College	Los Angeles, Calif.
McMahon, Matthew M.	St. Ambrose College	Davenport, Iowa.
Means, Gordon P.	Gustavus Adolphus College	St. Peter, Minn.
Merrill, M. R.	Utah State University	Logan, Utah.
Mesmer, Gerald, O.S.B.	St. Benedict's College	Atchison, Kans.
Millen, E. T.	Winona State College	Winona, Minn.
Miller, J. Erroll	Lincoln University	Jefferson City, Mo.
Moore, George F.	Concord College	Athens, W. Va.
Moore, Walden	Declaration of Atlantic Unity	New York, N.Y.
Morian, Robert L.	University of Redlands	Redlands, Calif.
Morris, Wentworth S.	Austin Peay State College	Clarksville, Tenn.
Muntz, Ernest G.	Union University	Jackson, Tenn.
Nance, J. M.	A. & M. College of Texas	College Station, Tex.
Nelson, W. H.	Rice University	Houston, Tex.
Noblitt, Harding C.	Concordia College	Moorhead, Minn.
Ogden, Daniel M., Jr.	Washington State University	Pullman, Wash.
Pailert, G. Charles	Le Moyne College	Syracuse, N.Y.
*Parry, Stanley (Rev.), C.S.C.	University of Notre Dame	Notre Dame, Ind.
Payne, Thomas	Montana State University	Missoula, Mont.
Peterson, Harold T.	State University of New York	Buffalo, N.Y.
Pfretzschner, Paul A.	Lafayette College	Easton, Pa.
Pinkerton, Herman	Tennessee Polytechnic Institute	Cookeville, Tenn.
Pollock, James K.	University of Michigan	Ann Arbor, Mich.
Poole, Bernard L.	Erskine College	Due West, S.C.
Pray, Joseph C.	University of Oklahoma	Norman, Okla.
*Prescott, Frank W.	University of Chattanooga	Chattanooga, Tenn.
*Prufer, Julius F.	Roanoke College	Salem, Va.
Purcell, Ralph E.	University of Delaware	Newark, Del.
Rader, Clifford R.	Morehead State College	Morehead, Ky.
Radway, Laurence I.	Dartmouth College	Hanover, N.H.
Reed, Bevington	Sul Ross State College	Alpine, Tex.
Reiff, Henry	St. Lawrence University	Canton, N.Y.
Reuss, F. G.	Goucher College	Baltimore, Md.
Reynolds, George F.	Buena Vista College	Storm Lake, Iowa.
Rice, P. M.	Kansas State University	Manhattan, Kans.
Riedel, J. A.	Union College	Schenectady, N.Y.
Riggs, R. G.	St. Cloud State College	St. Cloud, Minn.
Roberts, James S.	University of Nevada	Reno, Nev.
Robinson, George C.	Iowa State Teachers College	Cedar Falls, Iowa.
Robinson, William P.	Texas Southern University	Houston, Tex.
*Roche, John P.	Brandeis University	Waltham, Mass.
Rockwell, Landon G.	Hamilton College	Clinton, N.Y.
Roherty, James M.	Mount Mary College	Milwaukee, Wis.
*Rosenbaum, H. D.	Hofstra College	Hempstead, N.Y.
Roske, Ralph J.	Humboldt State College	Arcata, Calif.
Ross, Thomas R.	Davis & Elkins College	Elkins, W. Va.
Russell, Lois L.	Knoxville College	Knoxville, Tenn.
Saylor, J. R.	East Texas State College	Commerce, Tex.
Scott, David C.	Southwest Missouri State College	Springfield, Mo.
Schuhle, William	Manchester College	North Manchester, Ind.

LIST OF PARTICIPATING POLITICAL SCIENTISTS—Continued

[An asterisk (*) indicates that the person submitted a statement along with his completed questionnaire. These statements are printed in alphabetical order following the list of participants in the poll]

Name	College or university	Location
*Selman, Jackson W	Jacksonville State College	Jacksonville, Ala.
Seltzer, Richard W	Plymouth Teachers College	Plymouth, N.H.
Shao, Otis H	Moravian College	Bethlehem, Pa.
Sherman, Roy V	University of Akron	Akron, Ohio.
Shields, Currin V	University of Arizona	Tucson, Ariz.
Short, Lloyd M	University of Minnesota	Minneapolis, Minn.
Sister Esther Marie	Loretto Heights College	Loretto, Colo.
Sister M. Benedictus	St. Mary's College	Notre Dame, Ind.
Sister M. Edelwalda	Alverno College	Milwaukee, Wis.
Smithburg, Donald W	Illinois Institute of Technology	Chicago, Ill.
Spain, August O	Texas Christian University	Fort Worth, Tex.
Steinbicker, Paul G	St. Louis University	St. Louis, Mo.
Stevenson, George J	Emory & Henry College	Emory, Va.
Stewart, Robert B	Fletcher School of Law & Diplomacy	Medford, Mass.
Stratton, Owen S	Wellesley College	Wellesley, Mass.
*Stroud, Virgil C	A. & T. College of North Carolina	Greensboro, N.C.
Swain, J. E	Muhlenberg College	Allentown, Pa.
Taylor, Richard W	Coe College	Cedar Rapids, Iowa.
Thumm, Garold W	Bates College	Lewiston, Maine.
Temple, Wayne C	Lincoln Memorial University	Harrogate, Tenn.
*Thames, H. Stanley	East Central State College	Ada, Okla.
Truman, David B	Columbia University	New York, N.Y.
Turner, Henry A	University of California, Santa Barbara	University, Calif.
Uhl, Raymond	Arizona State University	Tempe, Ariz.
Van Eaton, A. E	Mankato State College	Mankato, Minn.
Van Dorn, Harold A	Kent State University	Kent, Ohio.
Van Putten, James D	Hope College	Holland, Mich.
Vande Vere, Emmett K	Emmanuel Missionary College	Berrien Springs, Mich.
Vloyantes, J. P	Pacific University	Forest Grove, Oreg.
Wadley, Frank K	Northwestern State College	Alva, Okla.
Walker, Kenneth R	Arkansas Polytechnic College	Russellville, Ark.
*Wallace, Lillian Parker	Meredith College	Raleigh, N.C.
Wayland, Francis F	Wagner College	Staten Island, N.Y.
Weaver, Michael R	College of Education	Brockport, N.Y.
Weber, William V	Western Michigan University	Kalamazoo, Mich.
*Weed, Frederic A	San Jose State College	San Jose, Calif.
Weller, LeGrand	Wofford College	Spartanburg, S.C.
Wells, Roger H	Bryn Mawr College	Bryn Mawr, Pa.
Welty, Richard C	Kansas State College	Pittsburg, Kans.
Wengert, E	University of Oregon	Eugene, Oreg.
Wengert, Norman	Wayne State University	Detroit, Mich.
Westra, John G	Calvin College	Grand Rapids, Mich.
*White, Howard B	New School for Social Research	New York, N.Y.
Wilber, Leon A	Mississippi Southern College	Hattiesburg, Miss.
Wilcox, Robert F	San Diego State College	San Diego, Calif.
Wiltsey, Glenn G	University of Rochester	Rochester, N.Y.
Wimberly, Carl	Wisconsin State College	La Crosse, Wis.
*Wise, Sidney	Franklin & Marshall College	Lancaster, Pa.
*Wolfe, George V	College of Idaho	Caldwell, Idaho.
Wood, Thomas J	University of Miami	Miami, Fla.
Wormuth, N. D	University of Utah	Salt Lake City, Utah.
Yates, Richard E	Hendrix College	Conway, Ark.
Yoder, Paton	Taylor University	Upland, Ind.
Young, Paul P	Texas Woman's University	Denton, Tex.

STATEMENTS ACCOMPANYING POLITICAL SCIENTISTS' QUESTIONNAIRES

NEWBERRY COLLEGE,
Newberry, S.C., July 5, 1961.

FEDERAL ELECTIONS HEARINGS,
Committee on the Judiciary,
Subcommittee on Constitutional Amendments,
The U.S. Senate,
Washington, D.C.:

STATEMENT IN AMPLIFICATION OF ANSWERS TO QUESTIONNAIRE TO POLITICAL SCIENTISTS

QUESTION 8. ELECTORAL COLLEGE PLAN OTHER THAN ONE SUGGESTED BY QUESTIONNAIRE

I would favor a combination of plans, as follows:

1. Retain the electoral college but not the electors as such.
2. Retain the principle of the influence of the States upon the choice of the President by assigning 2 electoral votes to each of the 50 States. The candidate receiving the most popular votes in any State would receive the two electoral votes.

3. Divide the remaining electoral votes in proportion to the popular votes cast for the candidates in the general election. For simplification in determining the fractional votes the fractions of votes should not be calculated beyond tenths. Example: In 1960 President Kennedy carried South Carolina by a vote of 198,000 to 188,000. On the suggested division he would receive 3.2 electoral votes to 2.8 for Mr. Nixon. He would also receive the two electoral votes assigned to the winning candidate and thus would have 5.2 electoral votes to 2.8 votes for Nixon.

4. An alternate plan would eliminate the principle of State influence by dividing the entire electoral vote of a State in proportion to the total votes cast in the general election. This plan would, in the case of South Carolina, yield the following result for 1960: President Kennedy, 4.1 votes to 3.9 votes for Mr. Nixon.

5. I would like to oppose by any possible means two suggested plans:

(a) Election of the President by popular vote with no regard to the States or the principle of State influence.

(b) Election of the President by so-called election districts especially set up for this purpose. I believe this is a scheme of political reactionaries to subvert the wishes of the American people. Unable to control either major political party or to win the last presidential contest this group is now coming forward with a "reform" which under certain conditions would give them a chance to influence the outcome of future contests in certain States.

Sincerely yours,

FRANK ASHLEY,
Chairman, Department of History and Political Science.

THE COLLEGE OF WOOSTER,
DEPARTMENT OF POLITICAL SCIENCE,
WOOSTER, Ohio, June 16, 1961.

Senator ESTES KEFAUVER,
Chairman, Subcommittee on Constitutional Amendments,
U.S. Senate, Washington, D.C.

DEAR SENATOR KEFAUVER: I am returning the questionnaire which you sent on June 7. I have answered as best I can—and yet I feel that some options are not given which should be given.

As Congress is presently constituted, I am opposed to the alteration of the present method of election of the President with the possible exception of the abolition of the office of elector. By this I mean that the Senate, with equal representation for each State, and the House, with representation from districts which have been established by State legislatures which are controlled largely by rural interests, makes the less populated States and the rural interests disproportionately represented in Congress. The only real refuge which the majority of the population which resides in the city has is in the electoral college system which allows the large urban centers to have their rightful say in the selection of the President. I believe that this system affords a sort of countervailing power between the rural and urban groups and, unless some system which would do essentially the same thing can be found, should be retained.

I hope that this is of some help.

Sincerely yours,

JOHN W. BAKER, *Chairman.*

THE CREIGHTON UNIVERSITY,
DEPARTMENT OF POLITICAL SCIENCE,
Omaha, Nebr.

The opinion which I have expressed represents what I consider to be the "ideal" constitutional amendment.¹ I realize, however, that it is highly unlikely that such a proposal could be adopted. As a "practical" compromise, therefore, I would favor any modification which would reduce the artificial electoral power of the smaller States and bring the selection of the President more in line with the actual voting populations of the several States.

RENE K. BEAUCHESNE.

WASHINGTON COLLEGE,
Chestertown, Md., June 20, 1961.

SENATOR ESTES KEFAUVER,
*Chairman, Committee on Constitutional Amendments,
U.S. Senate, Washington, D.C.*

DEAR SENATOR KEFAUVER: I am most grateful to you for having solicited my opinion regarding the electoral college system. In addition to having completed the attached questionnaire, I would like to make more extended observations on the subject.

It has long seemed to me that much of the debate over the electoral college is carried on in a vacuum. It is as though the issue should be resolved on the basis of abstract considerations (such as the unfairness of the arrangement which gives a State's entire electoral vote to a presidential candidate who may have mustered only a slim popular majority). I criticize this sterile approach because it fails to take into account the political consequences that would ensue from abolition of the electoral college system.

In my view, the most significant political effect of the present system is the commanding position it gives to the heavily populated States. The large number of electors to which each of these States is entitled tends to make presidential candidates reasonably sympathetic to the political positions they favor. Permit me to explain why I think this is desirable.

There are many elements in our political system that confer significant advantages on the rural, conservative portion of our population. The existence of gerrymandering is one. Others include the enormous power of the House Rules Committee, the threat and the use of the filibuster in the Senate, and the widely recognized functioning of a conservative coalition in Congress.

On the other hand, urban progressivism—supported largely by labor and racial and religious minority groups—has only the political effect of the electoral college system to balance the absurd power of conservatism. Must even this pitiful crumb be surrendered?

If the existence of the "bloc voting" feature of the electoral college system cannot be justified according to abstract logical principles, neither can the above-mentioned factors that benefit the right. If liberals are to give up the electoral college, they would be well advised to do so only as part of a package

¹ Professor Beauchesne answered "Yes" to question 4 concerning election of the President by national direct popular vote.

arrangement under which conservatives destroy their weapons, too. Otherwise, Negro rights, social welfare legislation, and organized labor will be in even worse shape than they now are.

Sincerely and respectfully,

DANIEL M. BERMAN,
Senior Political Scientist.

ASBURY COLLEGE,
Wilmore, Ky., June 12, 1961.

HON. ESTES KEFAUVER,
*Chairman, Subcommittee on Constitutional Amendments,
U.S. Senate, Washington, D.C.*

DEAR SIR: You may note that I have checked the questionnaire to indicate my preference for questions No. 3 and No. 7. Perhaps I should explain that I see no reason for keeping up the form of having electors to indicate the States' vote, but I do feel that something should be done to give proper recognition to the States as areas as well as population districts. For this reason I favor the plan suggested in No. 7.

Respectfully,

DUVON C. CORBITT,
Chairman, Division of Social Studies.

STATE UNIVERSITY COLLEGE OF EDUCATION,
DEPARTMENT OF SOCIAL SCIENCE,
Plattsburgh, N.Y.

In a democracy, election of the President by national direct popular vote is the ideal arrangement. However, in view of our traditions, I favor the arrangement in question No. 5 as being more realistic and attainable at this time, as well as being consistent with our recognition of the States in our senatorial representation.

ALLAN S. EVEREST.

HARPUR COLLEGE,
Binghamton, N.Y., June 17, 1961.

I am very much opposed to any tinkering with the methods of electing the President, so long as other changes which might redress the overrepresentation of less populous States and congressional districts in both Houses of Congress are not enacted simultaneously. My reasons were admirably summarized by President (then Senator) Kennedy in the 1956 debate on the electoral reform amendment. Imperfect though the present constitutional provisions may be, they do permit the voters in larger, urban and industrial States to exert some influence on public policy in national affairs. The proposed changes which would divide the electoral votes of individual States in some proportionate manner would have the regrettable tendency to encourage minor parties and to reward them in some instances with electoral votes. This would not only enhance the possibility of Presidents being elected by less than a majority of the electorate. It would almost surely promote a fission process in our party system, which has hitherto avoided the generally deleterious consequences of competition between a number of parties of nearly equal strength, visible in too many European countries.

Not until a good many of the "rotten boroughs" in most State legislatures have been eliminated and a more honest system of congressional redistricting has been worked out should there be any attempt made to draft a constitutional amendment altering the present method of electing the President.

WALTER FILEY,
Chairman, Department of Political Science.

WHITMAN COLLEGE,
DIVISION OF SOCIAL SCIENCES,
Walla Walla, Wash., June 15, 1961.

HON. ESTES KEFAUVER,
The U.S. Senate,
Washington, D.C.

DEAR SENATOR KEFAUVER: I would make one change in the present system. I would like to make sure that electors vote for the nominee of their party. I would therefore abolish the office of elector and have the State secretaries of state or other officials certify election results to Congress in terms of solid block of electoral votes based on the present system of counting such votes. Any political party could nominate candidates and voting would be for party candidates not electors.

I would even oppose this change if I thought it would open the door to other reforms.

My reasoning is as follows. The American representative system has built into it a number of factors which favor certain elements in the population. The total is a balance of interests. I do not say that this balance is perfect by any means. Nor am I certain that such perfection can be achieved. But notable now is the bias in favor of rural interests. The present method of counting electoral votes works in favor of the large States and the urban States, counterbalancing other factors in the system. I would not like to see that balance disturbed.

The only problem which concerns me is the potential danger of electoral collegians going "wild" in a tight race and attempting to use their technical power to "sell" an election. However, I believe that even this problem is only potentially a serious one. The whole spirit of constitutional custom is against independent voting by electors. Once the present "troubles between the South and North" are over, the problem may dissolve with them.

Thank you for asking my opinion on this topic. Good luck with a perplexing and very dangerous problem.

Yours sincerely,

ROBERT Y. FLUNO,
Professor of Political Science.

ARKANSAS AGRICULTURAL & MECHANICAL COLLEGE,
College Heights, Ark., July 11, 1961.

HON. ESTES KEFAUVER,
Committee on the Judiciary, Subcommittee on Constitutional Amendments,
U.S. Senate, Washington, D.C.

DEAR SIR: I enclose questionnaire together with this letter, which is my statement concerning the election of President.

My recommendation is that the President and Vice President be elected by a combination of electoral vote and popular vote. The candidate who receives the most votes in a State would receive the three electoral votes of that State which are provided for in the National Constitution. The remaining electoral votes of the State would be divided proportionately between all candidates in that State, in proportion to the number of popular votes received. The number of electoral votes, after deducting the three, would be computed to the nearest thousandth of a vote for each candidate, using each candidate's popular vote in the State as the numerator and the total State popular vote as denominator. This fraction would then be multiplied by the electoral votes remaining in that State after the three were awarded to the candidate with the most votes. The candidate who receives the most, or rather, more than half, the electoral votes would be declared elected. This last statement applies to the total when all States' electoral results are added.

Very truly yours,

J. E. GRINER, Chairman,
Social Science Division.

UNIVERSITY OF PENNSYLVANIA,
WHARTON SCHOOL OF FINANCE & COMMERCE,
Philadelphia, July 11, 1961.

Senator ESTES KEFAUVER,
The U.S. Senate,
Washington, D.C.

DEAR SENATOR KEFAUVER: Enclosed please find the answer to your political science questionnaire which I hope will still reach you before the deadline is in. After observing presidential elections for some years I feel that the most important change to be made as soon as possible would be the abolishment of the office of the elector. Another possible change which could be included in the same constitutional amendment would be a mathematical relationship between the population voting in some of the small States with only three electoral votes and the total number of electoral votes given to the large States. I do not feel at the present time prepared to make a definite proposal in that field, but I think some competent statistician could work it out with due consideration to the political conditions.

I would appreciate it if you would send me copies of the proposals which have been made to your subcommittee.

Sincerely yours,

FRANZ B. GROSS,
Visiting Professor of Political Science (Summer 1961),
University of Pennsylvania and Pennsylvania Military College.

EAST CAROLINA COLLEGE,
Greenville, N.C., July 3, 1961.

SUMMARY STATEMENT FOR NO. 8 OF POLITICAL SCIENTISTS' QUESTIONNAIRE

Since the President has become the popular representative of the people in fact, it seems desirable that he be elected by the most democratic procedure available; that is, by direct popular vote. If this change is not attainable—and I doubt that it is at this time—any of several alternate procedures that approaches the ideal would be acceptable.

JOHN M. HOWELL.

While I favor direct popular election of the President, I am strongly opposed to any change in the present system if direct popular election is not provided. I am particularly against the old Lodge-Gossett and the Mundt-Coudert plans. These are calculated to undermine the influence of the large industrial States in selecting the President. In view of the fact that non-urban populations possess disproportionate influence in Congress and the State legislatures, it is little enough for our urban population to enjoy greater influence in the selection of the Chief Executive. We will really be headed for national disaster if the Presidency is made captive to the same forces which usually dominate our legislative bodies.

CLYDE E. JACOBS,
Department of Political Science,
University of California, Davis, Calif.

WESTMINSTER COLLEGE,
Fulton, Mo., June 17, 1961.

Senator ESTES KEFAUVER,
Senate Office Building,
Washington, D.C.

DEAR SENATOR KEFAUVER: Since it is difficult for me to complete the Political Scientists' Questionnaire on constitutional amendments without qualifying each statement, it may be better for me to simply state my views in a letter.

The only reform that I would advocate strongly is to make the electoral vote automatic. The secretaries of state in each of the States, after tabulating the vote, would simply report that a given candidate had received a majority, and would be awarded the electoral vote of the State. I feel that there is no excuse for tolerating a system whereby individual electors may deviate from the expressed will of the people and the selection of the party.

There would be an advantage, it seems to me, in dividing the electoral vote in each State according to congressional districts and the two senatorial votes, at large. However, before this plan could be adopted, more control over the allocation of seats within the States would have to be insured, in order to prevent gerrymandering, etc. Rural-urban conflict, and the present over-representation of rural areas would have to be taken into account.

Election by a majority of the House and Senate, with each member having one vote, might be preferable to the existing system, in the event that no candidate receives a majority.

I have mixed feelings relative to many of the reform proposals made, and am not sure that we would be any better off with a proportional division system. I would not favor a direct, popular election.

Other reforms, relative to the election, such as those advocated by Senator Mansfield and others, seem more important to me than some of the proposals which involve constitutional amendments. I refer to the length of campaigns, absentee voting, uniform voting laws, reciprocal voting privileges in a presidential election, further limitations on campaign expenditures, or the nature of campaign expenditures.

I would like very much to have a digest of the proposals when the hearings have been completed.

Sincerely yours,

CHARLES W. KERR,
Department of Political Science.

CENTRAL MICHIGAN UNIVERSITY,
Mount Pleasant, Mich.

1. Ours is a Federal union of States, not a national State. So long as this remains true, presidential elections should be on a State-by-State basis.

2. This, in my opinion, is a "loaded" question since no provision is made for a qualified answer. In general, I would not favor elimination of the office of elector since our present system depends upon these officials to perform certain tasks. While they do little that is constructive in the process, they likewise do no harm and I do not favor change merely for the sake of change.

3. Our Federal union of States was created and adopted by the member States. Our entire Federal system is based squarely upon those member States. The present electoral voting strength of the States assures each of them at least a minimum voice in the affairs of the union. At the same time, the present system recognizes and allows for variations in population within reasonable limits because of the variations in number of U.S. Representatives from each, based on population. Nowhere in our system do we have precise popular representation, nor have we ever had such a situation. The best we can hope for is an approximation, and that is what we have under the present system.

4. The office of President is an office of the Federal Union. As such, the election of persons to the office should be and remain a matter for the States to control, as is now provided. There is no need to emasculate the States unnecessarily, and a shift to direct popular election would accomplish no gain. The times in our history when a true minority candidate has gained the office are extremely rare, and even in these instances the vote was so close as to indicate no real popular feeling in favor of either of the contending candidates. Conversely, the vast majority of our presidents have been the clear choice of the popular majority and have taken office in accordance with the popular will under our present electoral system. Since the principal objective is to place in office that person who is preferred by the majority, and since this has happened almost without exception throughout our national history, I can see no reason for shifting to direct popular election.

5. This is another "loaded" question, I think. An unqualified response to it cannot be made. In general, however, I feel that an arrangement of this kind would not affect the final outcome in most cases.

6. Here again is a proposal which, to me, is nothing more than change for the sake of change. As the situation now stands, the candidate who receives the popular majority also receives the electoral majority almost invariably. The 1960 election bears this out. So why reduce the political significance of the States merely for the sake of inconsequential statistical modifications?

7. In addition to my earlier comments in opposition to needless tinkering with an established system that consistently produces acceptable results, I would point out that every State in the Union is so districted for congressional purposes that the rural areas are over-represented. If anything, a shift to the district system for choosing electors would further distort results. This could well culminate in sufficient distortion of electoral votes to swing many elections in favor of the actual minority candidate in the popular voting. I see no point in change unless the new will likely be better than the old. I can see even less point in changes which could very well destroy the generally satisfactory results of the present system. Further, a change such as this could, and should, be accomplished by the States themselves under their power to provide for the naming of electors in such manner as they may prefer. As a matter of fact, this system was used by Michigan for one election in the 1880's but was quickly abandoned.

8. No additional comment.

9. The present method gives adequate recognition to both the important factors in our system of self-government. The members of the House of Representatives are popularly elected and thus may be expected to reflect the attitudes of their districts. By requiring that the vote be by States, the interests of the States themselves likewise are accorded reasonable protection. The system as it now stands is not perfect, of course, but it seems far more practical to me than other proposals which have been advanced from time to time.

10. No additional comment, but see No. 9 above.

AUSTIN C. KNAPP,
*Associate Professor of Political Science,
Department of History and Political Science.*

ST. VINCENT COLLEGE,
DEPARTMENT OF POLITICAL SCIENCE PRELEGAL PROGRAM,
Latrobe, Pa.

DEAR SIR: As to No. 4, I answered "No" because I feel that such an amendment would never be adopted. However, since the framers of the Constitution miscalculated on the nature of the office of President, brought about by political party system, I would favor a system of election based on population, rather than on States, because the President is now a strong political figure. This is also the reason for my answer to No. 10.

Sincerely yours,

Rev. VITUS A. KRIEGLER.

RICKS COLLEGE,
Rexburg, Idaho, June 12, 1961.

*Subcommittee on Constitutional Amendments, Committee on the Judiciary,
U.S. Senate, Washington, D.C.*

DEAR SENATOR KEFAUVER: Thank you for the opportunity which you provide for me to express my views on the proposed amendments to the electoral system of the United States. I should like to explain that I am a Canadian citizen, therefore only indirectly involved in your political processes. I do, however, take a keen interest in them. If my answers are of use to you, feel free to consider the enclosed questionnaire.

To explain a little further, I believe that the electoral college system is the only equitable way to give a federally operated presidential system just distribution of influence. Since the President represents all the people and all the States, he must obtain his election through some consideration of all the interests involved. I do, however, wish to see the States provide a proportional vote according to the voting strength of the leading candidates within each State. Only in this way, can a fair distribution of strength be maintained. Further divisions according to a popular direct vote would see the rise of splinter candidates and minority presidents, the retention of the present system would perpetuate the unrealistic disparity of the vote as seen in the past election.

I would appreciate receiving the digests of the proposed amendments which you described in the cover letter. These will be useful for future classroom discussions of the matter. Thank you for your interest.

Yours sincerely,

WILLIAM F. LYE,
Head, Political Science Department.

MEMORANDUM TO SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS

My thoughts on the matter of reforming the electoral college method of electing the President are succinctly summarized in the Lodge-Gossett plan which the Senate passed in 1950.

This plan would give recognition to minority parties in one-party States; encourage presidential candidates to appeal to the voting population in all States in campaigning for our highest elective office, instead of concentrating on the large and pivotal States; lessen the strategic powers of organized ethnic and ideological minorities which, historically, have been out of proportion; eliminate the inequities inherent in the general ticket plan and unit system of giving all of the States' electoral votes to the popular plurality winner.

I favor eliminating the present inequitable and outmoded constitutional arrangement of having the President chosen by the House, each State voting as a unit, if no electoral majority is attained.

The popular will would be more adequately represented by the device of election by a majority of the House and Senate in joint assembly with each member having one vote.

E. J. MAHONEY,
*Professor, U.S. Naval Academy,
Annapolis, Md.*

HOWARD UNIVERSITY,
DEPARTMENT OF GOVERNMENT,
Washington, D.C., June 27, 1961.

HON. ESTES KEFAUVER,
*Chairman, Subcommittee on Constitutional Amendments, Committee on the
Judiciary, U.S. Senate, Washington, D.C.*

DEAR SENATOR KEFAUVER: Thank you for your communication of June 7, 1961. I deeply appreciate your interest in knowing my views on reform of the electoral college. This is a very real problem—and a very complex problem—as you well know.

I regret that there has been no opportunity, as a result of the pressure of academic work at this time of year, for me to develop my thoughts for you as fully as I would like. However, I would like to emphasize briefly a few of the most important aspects of the problem, as I see it.

First, I am of the firm opinion that the constitutional provisions for electing the President of the United States should reflect the actual process which is followed. It would seem to be highly improper for sharp divergence to exist between the law and reality in such an important area.

Second, in my opinion whatever change is made in the system of presidential elections should reflect, as faithfully as possible, the principle of democracy.

Third, because of my commitment to democracy I feel that the most satisfactory method of presidential election would be by national direct popular vote.

Fourth, if direct election is not politically obtainable and the electoral college is retained, then the electoral vote should be divided in just proportion to the popular vote. There are groups, of course, which feel it is to their interest to continue the practice of not dividing the electoral vote. My own feeling is that the demands of democracy overbalance interest group considerations.

Fifth, in the course of reforming the electoral college I feel that every opportunity should be used to reduce as much as possible the problem of rural domination so characteristic of American politics. Here again justice, equality, and democracy demand an end to this problem.

Sixth, similarly the method of electing the President in the House of Representatives when no candidate receives a majority should be changed and made more responsive to the democratic principle of majority rule. Thus voting should be by individuals rather than by States, with each Member having one vote. In this connection it should be mentioned also that each Member of the

House should represent approximately the same number of people—that is to say the size of congressional districts should be more equally and equitably drawn—in terms of the population of the district.

Finally, there are many other things that I would like to call to your attention. Unfortunately time will not permit it. Again may I thank you for your kindness in providing me this opportunity to make my wishes known about this problem of grave concern to the entire Nation.

Faithfully yours,

ROBERT E. MARTIN,
Chairman, Division of the Social Sciences.

UNIVERSITY OF NOTRE DAME,
Notre Dame, Ind., June 26, 1961.

Senator ESTES KEFAUVER,
*U.S. Senate, Committee on the Judiciary,
Subcommittee on Constitutional Amendments.*

DEAR SENATOR KEFAUVER: I would like to comment on the apparently negative attitude reflected in my answer to the enclosed questionnaire. The burden of my position is that from the point of view of freedom and wisdom as well as from that of constitutional coherence, the system we now have is good. And it is better than any of the proposed alternatives. Let me simply state, without analysis, the reasons why I hold this position.

I. The principle of federation is at the basis of the present electoral system. The proposals for change either abolish this principle entirely or else introduce politically unviable complications into it.

(a) The absolute alternative to the existing system lies in the plebiscitary President. Political experience demonstrates the un wisdom of this.

(b) Modifications proposed in the present system incorporate a mathematical element into elections that are (1) unintelligible to ordinary voters; (2) susceptible of manipulation by the party in power.

II. Our political party structure is currently decentralized. This is a better thing than a nationally organized party structure. The English system works because it is accompanied by a true parliamentary relation between the legislative and the executive functions of government. A national party with a congressional system of presidential-legislative relations is impossible.

(a) The critical observation here is that the centralization of the presidential electoral process will predictably produce a centralization of the party system of both parties. If this occurs, the Congress will be dominated by the Presidency in the very electoral process itself, with a consequent destruction of the constitutional principle of checks and balances.

I suppose the central issue here is efficiency. It is no objection to our present system to say that it is clumsy and works only with a great amount of pushing and pulling. The separation of powers was intended to make legislation difficult, intended to insure wisdom in a context where impulse is more normal than wisdom. I suppose further that my deepest objection to tampering with the present electoral process is that every proposal I have seen is either centralizing or practically unviable. Our present procedures are quite efficient if freedom and wisdom are the standards of efficiency. They are quite clumsy if tidiness and tight organizations are the standards brought to bear.

Sincerely,

REV. STANLEY PARRY, C.S.C.,
Head, Political Science Department.

STATEMENT OF FRANK W. PRESCOTT, HEAD OF THE ADOLPH S. OCHS DEPARTMENT OF GOVERNMENT, UNIVERSITY OF CHATTANOOGA, CHATTANOOGA, TENN.

Pursuant to your request, this brief statement will accompany the "Political Scientists' Questionnaire," relative to pending proposals to change the existing method of electing the President and Vice President of the United States.

Answering the first question, I believe that a change in the present electoral college system is both desirable and expedient. But this should not be construed to mean that the present method of choice is so intolerable, "undemocratic," or otherwise undesirable that almost any change would be for the better.

On the contrary, I hold that the abolition of the electoral college together with a direct popular vote for President would be unwise, improvident and quite impracticable. It would be an irretrievable step toward a plebiscitary Presidency. Hence I am unalterably opposed to Senate Joint Resolutions 1 and 23, or any such cognate proposals.

I favor the continuance of the office of presidential elector and I can conceive of contingencies when the electors might possibly perform a useful function.

While the proportional division of each State's electoral vote according to the percentages of popular votes received by the candidates may have some superficial appearance of equity, such a plan in my judgment would tend to confuse the electorate (this is especially true in the case of Senate Joint Resolution 48) and have such collateral infirmities as the development of "splinter parties," and the possibility that the idea of proportional representation might be extended into congressional elections. This last assumption was advanced by Mr. Lucius Wilmerding in his book, "The Electoral College"; it is one of the most controversial points in the arguments of this author and his critics, the details of which need not detain us here.

Of all the proposals under consideration by your subcommittee, I am more favorably inclined toward the adoption of Senate Joint Resolution 12 for the following reasons:

(1) It is simple, direct, and would accomplish the desired reforms without drastic change in our constitutional system.

(2) It abolishes the general ticket, winner-take-all system which is the worst feature of our presently existing machinery, providing instead a system under which two presidential electors would be elected at large and the remainder in single-elector districts in each State established by the legislature. An attempt is made to prevent gerrymandering by the provision that the electoral districts shall 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. Such districts when formed shall not be altered until another census has been taken. Presumably this means the regular decennial Federal census and that the amendment, once adopted would be self-executing. One of the sponsors of Senate Joint Resolution 12 has stated that State legislatures should follow this constitutional directive. If they failed or refused to do so, then "Congress would have the power to step in and see to it that fair and equitable districts for electors are established." (See Congressional Record, May 29, 1961, p. A3832.) However, I find no explicit provision that Congress may enforce this article by appropriate legislation. If sanctions are to be applied, I would prefer them to be spelled out in the amendment itself.

(3) The plan regards the electoral college as the numerical counterpart of congressional membership; this in turn embodies the so-called Federal principle of equal representation in the Senate and the national principle of proportional representation in the House.

(4) The plan would give each voter in every State the same voting weight in the election of President.

(5) Among the several proposals advanced, it is claimed that Senate Joint Resolution 12 alone leaves the control of elections in the hands of the States where it belongs. However, the sponsor of Senate Joint Resolution 4 has stated that his amendment makes no change in the present system of State control of election machinery. (See Congressional Record, June 1, 1961, p. 8609.)

(6) Under the present system there is always a chance that the will of the people may be thwarted by fraudulent manipulation of the few votes necessary to tip the scales in winning the entire electoral vote in a closely contested pivotal State. Voting by single-elector districts would tend to localize such practices.

(7) The district plan of elections would tend to minimize the influence of small, tightly organized, and highly virulent minority organizations and pressure groups; in turn, the pressures by these groups upon policymaking in the major political parties would be curtailed.

(8) One of the worst features of the present system is that it puts the nomination of candidates and the fateful outcome of most presidential elections in the hands of the large, pivotal States. A man of outstanding ability is ordinarily "unavailable" for the nomination unless he resides in a State having a big bloc of electoral votes. Politicians from the larger States have monopolized the limelight in the presidential sweepstakes during the past 100 years. I would not assert that a change from the general ticket to the district system would alter the political balance of power overnight. But I would think that with the threat

of losing whole blocs of electoral votes being removed, leaders of both major parties will have a much wider range of choice than they do under existing conditions.

(9) Senate Joint Resolution 12 constitutes a major reform in the event of a deadlock in the electoral college. The present system of electing a President by the House of Representatives, with each State having one vote is grossly unfair to the most populous States. The new proposal provides that both the House and Senate in joint assembly, with each member thereof voting individually will choose a President from the three highest on the list; and if additional ballots are necessary, the choice on the fifth ballot will be between the two persons having the highest number of votes on the fourth ballot; election of the Vice President under such a contingency is decided in the same manner.

(10) My concluding observations are somewhat speculative. While the 1960 election was extraordinary in that the candidates of both major political parties campaigned in nearly all of the 50 States, an ancillary result of a change to the district system might well tend to nationalize every presidential election. The present system exercises a strong tendency to limit effective voter participation in certain of the "one party" States. The district system would probably invigorate the minority party in the States presently considered "safe," hence there would be every incentive to get out the vote in all of the districts. And the resultant activity would help to develop a viable two-party system. I believe this objective would be a good thing for the parties, for the several States, and for the country as a whole.

ROANOKE COLLEGE,
Salem, Va., June 12, 1961.

SUPPLEMENTAL STATEMENT ON FEDERAL ELECTION HEARINGS ON CONSTITUTIONAL
AMENDMENTS ON THE ELECTION OF PRESIDENT AND VICE PRESIDENT

(1) I favor No. 5 on the questionnaire.

(2) Abolish the meetings of the electoral college but apportion the electoral vote according to the number for each State in the Congress, between the two highest candidates in the presidential election.

(3) This would discourage running in elections by foolish and splinter candidates who have no possible chance.

I have taught political science here in the college for 40 years and have participated in politics for those years. The South, and we in the South, are a minority. We should have our proportionate share of control and no more, no less. I believe in majority rule and minority privileges, not rights. If there are minority rights then there cannot be majority rule.

JULIUS F. PRUFER,
Associate Professor of Political Science.

(Prof. John P. Roche of Brandeis University, Waltham, Mass., submitted as his supplemental statement the following article which appeared in the spring 1961 issue of *Dissent* magazine:)

THE ELECTORAL COLLEGE: A NOTE ON AMERICAN POLITICAL MYTHOLOGY

(By John P. Roche)

After every close presidential election, the stage is set for an inquest: one can count on debates, congressional investigations, learned letters in *The New York Times*, elaborate outbursts of anal scholarship, all concerned with the poor old electoral college. From the viewpoint of a practical liberal, this is so much time wasted: the only revision which could possibly be adopted by three-quarters of the States would be worse than what we now have. Conversely, the only sensible alteration in terms of democratic theory—direct election—would be butchered in the States in the unlikely event that it survived two-thirds passage in the House and Senate.

However, since these rites are scheduled for this year, there is one aspect of the electoral college that should be clarified. Clarification will hardly have any impact on either rhetoric or decision, but from a certain antiquarian passion I insist on laying some facts on the table. I am both tired of and annoyed at the

generally accepted myth that the framers of the Constitution, fearing the "mob," established a council of wise men to choose the President. Paradoxically this myth has been advanced both by lachrymose conservatives, bewailing our departures from the "prudential wisdom" of the fathers, and by opponents of the college who deplore the founders' undemocratic convictions.

First the institutional setting: under the prevailing States rights ideology of the period, members of the Continental Congress and the Congress under the Articles of Confederation were (except in Rhode Island and New Hampshire) selected by the State legislatures. The delegates to the Constitutional Convention were chosen in this fashion. But the manner of selection was not based on any fear of the masses—indeed, the most "radical" States were the most vigorous exponents of States rights—but on the conviction that these representatives were merely agents, ambassadors of the sovereign State governments. Thus to a States rights spokesman, a program incorporating direct popular election of Federal officials was immediately suspect as a derogation of State sovereignty. It was seen as a technique for end-running the State legislatures and loosing a new Leviathan.

The Madisonian model for the new General Government, submitted to the Constitutional Convention as the Randolph plan, utterly circumvented the State legislatures. The House of Representatives was to be popularly elected in the States with membership proportional to population, the House would choose the Senate, and the Senate and House together would pick the President. Only with reluctance did Madison later concede the State legislatures the right to nominate candidates for the Upper House with the Lower Chamber still exercising the right of selection. (It is odd that those who acclaim Madison the father of the "separation of powers" and "federalism" have overlooked his last-ditch fight for this universal system.)

Without tracing in detail the elaborate infighting that took place in the convention, I think it is safe to say that the selection and terms of the President was the most fought-over issue. (There was a note of irony in this since everyone present knew who the first occupant of the office would be.) Madison and his friends favored election for a fixed term by the National Legislature, the States rights caucus argued for election by State legislatures or executives, while James Wilson was almost alone in favoring direct public election, and in despair over the possibility of compromise even suggested an electoral college of 15 chosen by lot from the National Legislature.

The sticky issue was turned over to a committee chaired by Judge Brearley of New Jersey which finally on September 4, 1787, a bare 2 weeks before adjournment, came forward with roughly the present arrangement. To a body of working politicians, the merits of the plan were obvious: Everybody got a piece of the cake. First, the State legislatures had the right to determine the mode of selection of electors; second, the small States received a bonus in the form of a guaranteed minimum (three votes) while the big States got acceptance of the principle of proportional power; third, if the State legislatures agreed (as six did in the first presidential election), the people could be directly involved in the choice of electors; and, finally, if no candidate received a majority, the right of decision passed to the National Legislature with each State exercising equal strength. (In the Brearley proposal, the election went into the Senate, but a motion from the floor substituted the House; this was accepted on the ground that the Senate already—in its treaty and appointment powers—had enough authority over the executive.)

The framers were extremely practical politicians—and by this time fatigued and eager to get home—so the electoral college entered the Constitution with little debate. No one seemed to think well of it and what evidence there is indicates that the fathers assumed that once George Washington had finished his tenure as President, the electoral college would cease to produce majorities and the Chief Executive would be chosen by the House. George Mason observed that the selection would be made in the House 19 times in 20 and no one seriously disputed his point. The common knowledge that Washington was to be the first President seems to have muffled debate on the section in the State-ratifying conventions—in traditional American fashion, the delegates settled for immediate certainty and were prepared to let the future take care of itself.

In short, the framers in their wisdom did not endow the United States with a college of cardinals. The electoral college was neither an exercise in applied Platonism nor an experiment in indirect government based on elitist distrust of the people—it was a jerry-rigged improvisation which has subsequently been

endowed with a high theoretical content. As David Hume emphasized in his "Of the Rise and Progress of the Arts and Sciences," "there is no subject in which we must proceed with more caution than in [History], lest we assign causes which never existed and reduce what is merely contingent to stable and universal principles."

HOFSTRA COLLEGE,
Hempstead, N.Y., June 20, 1961.

HON. ESTES KEFAUVER,
U.S. Senate Committee on the Judiciary,
Subcommittee on Constitutional Amendments,
Washington, D.C.

DEAR SENATOR KEFAUVER: As my comments on the enclosed questionnaire indicate, I am much concerned that the contemplated changes in the constitutional arrangement be kept from aggravating one of the great imbalances of the system of representation and instead be changed to offset these imbalances. I have reference to the deeply entrenched overrepresentation of rural territories in State and Federal schemes.

As I have come to understand the system of electing a President, its most important function in that regard has been to compensate for the rural domination of State and Federal legislatures by locating electoral decision in those States which, taken all together, comprise a majority of the electoral college vote. In this way the otherwise underrepresented majority of the urban-industrial States can at least provide a counterbalance in our political system.

I do not take the logic of my position so far as to suggest that popular vote, pure and simple, should be the mode of election. I do feel that there are yet to be derived very many virtues from the Federal system, but I am constantly surprised at the reiterated proposals of Senator Mundt and his favored district plan. I know that the Senator from South Dakota is mortally afraid of the urban masses. My feelings, on the contrary, are that it is time the interests of the urban-industrial majority were recognized in the Constitution with somewhat the same tenderness as those of the vanishing rural American.

Sincerely,

H. D. ROSENBAUM,
Acting Chairman, Political Science Department.

JACKSONVILLE STATE COLLEGE,
Jacksonville, Ala., June 29, 1961.

Senator ESTES KEFAUVER,
Committee on the Judiciary,
Subcommittee on Constitutional Amendments,
Washington, D.C.

DEAR SENATOR KEFAUVER: The principal object of any bill proposing to change the method of electing the President should be the elimination of the present unit vote system, whereby the entire electoral vote of a State is cast for whichever candidate has the largest number of popular votes in the State. The evils of this system are apparent in every presidential election.

The direct popular election of the President would accomplish the above objective in the most democratic way possible and this plan appears to be the fairest method which could be adopted to elect the President. It would, of course, require the establishment of uniform national voting qualifications, a matter presently left to the determination of the several States separately.

The adoption of the proportional division plan would divide the electoral vote in each State, but at the same time this plan has the serious disadvantage that it would encourage the growth of splinter parties which might in time conceivably undermine our present two-party system. Unless the proportional plan included a proviso limiting the divisions of a State's vote between the top two candidates only, I would not wish to consider it.

The adoption of the district system plan would under conditions which exist in most States result in some division of the State's electoral vote between the two leading candidates in a State. This proposal is not as democratic as the direct popular election plan but it could be achieved with a minimum amount of change in the American constitutional system, that is, it would allow the States the same relative weight that they now have in the election of a President and it

would also leave control of the suffrage to the States. In my opinion the district system plan which was widely used at one time in this country is distinctly superior to the existing method of electing the President.

JACKSON W. SELMAN,
Associate Professor of Political Science.

THE AGRICULTURAL AND TECHNICAL COLLEGE OF NORTH CAROLINA,
DEPARTMENT OF SOCIAL SCIENCES,
Greensboro, July 3, 1961.

Hon. ESTES KEFAUVER,
U.S. Senate, Washington, D.C.

DEAR SENATOR KEFAUVER: The following is supplementary to your Political Scientists' Questionnaire:

To Question No. 2: The office of elector today serves no useful purpose. What is more, it may be used to thwart the will of the people as was attempted in a few States in the 1960 election.

To Question No. 3: I am in favor of retaining the present electoral voting strengths of the States if it is the fairest means of population distribution for presidential voting.

To Question No. 5: I favor some system of proportional division whereby the votes of all the people would be counted. I am much concerned about the 28 or 32 million people whose votes count for naught.

Please send me a digest of the hearings of the Subcommittee on Constitutional Amendments. Further, I would be glad to receive any material from your committees or from your office which might help me as a political scientist.

Yours very truly,

VIRGIL C. STROUD.

EAST CENTRAL STATE COLLEGE,
Ada, Okla., June 14, 1961.

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

DEAR SIR: 1. I would appreciate receiving the copies of the proposals for amending the process for election of the President and Vice President mentioned in your letter of June 7.

2. With regard to Question 10 in your Political Scientists' Questionnaire, as my answer indicates I do feel that the joint session of Congress, with each Member having one vote, would be an improvement over the present method of having the President and Vice President elected separately by House and Senate, and the one-State-one-vote provision now in effect. However, I also feel that it would be a further improvement if the requirement for an absolute majority of the electors for election by the electoral college were abandoned, and plurality election made possible. The possibility of political fragmentation could be reduced by a requirement that the winner in the electoral college would still have to receive some minimum percentage of the vote, perhaps 40 percent or 45 percent.

In my opinion this would have two beneficial results. One, the possibility of having the presidential election thrown into Congress would be reduced. Election by Congress is clearly contrary to the principle of executive independence under the separation of powers, and is at best an expedient. Second, plurality election by the electoral college would help the Mississippi and South Carolina politicians give up their perpetual pipe dream of throwing the presidential election into Congress and force them to face political reality. The latter would be the main practical effect, since few elections in our history, if any, would have been affected by a plurality rule.

3. Allow me as a political scientist to express appreciation for the respect shown for the opinion of the profession.

Sincerely yours,

H. STANLEY THAMES,
*Associate Professor of Government,
Head, Department of Government.*

ADDITIONAL STATEMENT

1. A system which has worked so well in practice should not be discarded merely because it seems a little illogical.

3. The system is weighted in favor of the smaller and more rural States. This has a stabilizing effect similar to the granting of two Senators to any State regardless of size.

5. Introduction of proportional division of votes would be a step in the direction of the splinter-party system of continental Europe which paralyzes government.

7. Single-elector districts would be an invitation to gerrymandering and should be avoided at all costs.

9. I should favor referring a disputed (or tied) election to a joint meeting of the House and Senate.

10. Voting should still be by States, after a State-representation caucus. The superior experience of the Senators would be beneficial in the caucus.

I should prefer to have no changes at all if there were any question of calling a Constitutional Convention. Twenty evil spirits might rush in while one was trying to sweep out one small imp.

LILLIAN PARKER WALLACE,

*Head, Department of History and Political Science,
Meredith College, Raleigh, N.C.*

SAN JOSE STATE COLLEGE,
San Jose, Calif., June 12, 1961.

HON. ESTES KEFAUVER,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR KEFAUVER: I have enclosed the Political Scientists' Questionnaire. The only change that I favor in electing the President is the abolition of electors, but the retention of the present electoral vote system. This is a plan once advocated by the late Senator George Norris of Nebraska. I think it is important to keep the electoral college because it is only here that the urban voter is not always out-voted by his country cousins.

I left question 1 unanswered. The only reason I hesitate to favor an amendment of the Norris type is my fear that an amendment might open up other undesirable projects.

Very truly yours,

FREDERIC A. WEED,

Head, Department of Political Science and Public Administration.

NEW SCHOOL FOR SOCIAL RESEARCH,
GRADUATE FACULTY OF POLITICAL AND SOCIAL SCIENCE,
New York, N.Y., July 6, 1961.

SENATOR ESTES KEFAUVER,
*Chairman, U.S. Senate Committee on the Judiciary,
Subcommittee on Constitutional Amendments, Washington, D.C.*

DEAR SENATOR KEFAUVER: Thank you for sending me the questionnaire which you addressed to all department heads of the American Political Science Association. May I take the liberty of saying that I am afraid the question is put in terms which are too formal to really get to the problem?

I have been very much disturbed by the directions taken in presidential elections. It is not, however, the electoral college which bothers me or the way in which the votes may be counted. It is rather the problem of how a citizen may learn to vote. Madison Avenue and all the various agencies would seek to give the voter an image which may or may not correspond with the reality make it extremely difficult for a serious person to participate in a process of rational choice.

It seems to me that the Congress ought to explore the problems of rationality. Could you not study legislation which will modify irrational appeals? Why should it not be possible to eliminate "spots" by demanding a minimum time for political broadcasts? I do not think that there can be an appeal to reason in 30 seconds. I do not have in mind a complete program of legislation to supplement the suggestion. I just made it because I think you could do valuable service to the American people indeed if it were shown—and shown compel-

ingly—that a presidential election is not always what it is intended to be or what it claims to be.

Sincerely yours,

HOWARD B. WHITE,
Acting Dean and Chairman of the Political Science Department.

FRANKLIN AND MARSHALL COLLEGE,
DEPARTMENT OF GOVERNMENT,
Lancaster, Pa., June 12, 1961.

DEAR SENATOR KEFAUVER: I am quite willing to concede that the present system has an urban bias. But it seems to me that this is perfectly proper so long as we have a Senate with two representatives from each State, regardless of size and a House of Representatives which, for a variety of reasons, has a rural bias.

May I deal with one other aspect of this problem. Time and again, students of electoral college reform attempt to analyze past elections in terms of what might have happened had another system (such as Lodge-Gossett) been used. This misses the point completely. The real question is—what type of candidate would each party have nominated, what would have been the platform emphases, and what issues would have been emphasized in the campaign if the alternative electoral system had been employed.

Furthermore, with all the shortcomings of our present two-party system, it seems to me it is a better arrangement than that which would result from any of the proposed reforms I have seen.

Too many of the critics of the present system are either wittingly or unwittingly trying to further reduce the role of executive power, the political strength of our urban areas, and what little party government we presently enjoy.

Very truly yours,

SIDNEY WISE,
Associate Professor.

ATTACHED STATEMENT TO POLITICAL SCIENTISTS' QUESTIONNAIRE, FEDERAL ELECTIONS HEARINGS, MAY-JUNE 1961, U.S. SENATE COMMITTEE ON THE JUDICIARY, SUBCOMMITTEE ON CONSTITUTIONAL AMENDMENTS

I favor the plan proposed by James MacGregor Burns, Professor of Political Science at Williams College, in the New York Times Magazine, December 18, 1960.

Professor Burns' main proposals are:

(1) To abolish electors, but to retain the electoral vote unchanged. (This, by the way, a proposal made as early as 1934 by the late Senator Norris of Nebraska.)

(2) To abolish the provision that the winning presidential (or vice presidential) candidate must have a majority of the electoral votes, thus permitting a plurality to suffice.

Professor Burns points out, in my opinion correctly, that this would not encourage a multiparty system, as long as in each State the entire electoral vote goes to the presidential (or vice presidential) candidate who has won a plurality in the State.

I am opposed to any proportional system for dividing the electoral vote and to the district system. The reasons opposing such proposals are convincingly listed in the letter sent to the New York Times by 10 social scientists of national renown, and printed in the issue of May 17, 1955. In this letter it is also pointed out that any change in the electoral vote provisions could be considered only if simultaneously new Federal provisions guaranteeing actual equal representation of urban and rural areas in the House of Representatives were passed—otherwise the influence of rural interests at the expense of urban interests would be further extended, in particular if the district system were introduced for selecting presidential electors.

GEORGE V. WOLFE,
*Professor of Political Science,
The College of Idaho, Caldwell, Idaho.*



