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PROPOSING AN AMENDMENT TO THE CONSTITUTION
OF THE UNITED STATES RELATING TO THE ELECTION
OF THE PRESIDENT AND THE VICE PRESIDENT

GOVERNMENT

Storage

HEARINGS
BEFORE THE
COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

FIRST SESSION

ON

H.J. Res. 681 and Similar Measures

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE
UNITED STATES RELATING TO THE ELECTION OF THE PRESI-
DENT AND VICE PRESIDENT

JUNE 17, JULY 15, 22, AND 24, 1969

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HEARINGS
BEFORE THE
COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS

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PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO THE ELEC- TION OF THE PRESIDENT AND VICE PRESIDENT

TUESDAY, JUNE 17, 1969

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D.C.

The committee met, pursuant to call, at 10:30 a.m., in room H-313, the Capitol, Hon. William F. Colmer (chairman of the committee) presiding.

The CHAIRMAN. Mr. Celler, you are here this morning, in spite of all the political activity going on up in New York, to try to establish a new system for election of a President.

The committee will be glad to hear from you.

(H.J. Res. 681 follows:)

[H.J. Res. 681, 91st Cong., first sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States relating to the election of the President and Vice President

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

"ARTICLE —

"SEC. 1. The people of the several States and the District constituting the seat of government of the United States shall elect the President and Vice President. Each elector shall cast a single vote for two persons who shall have consented to the joining of their names as candidates for the offices of President and Vice President. No candidate shall consent to the joinder of his name with that of more than one other person.

"SEC. 2. The electors of President and Vice President in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that for electors of President and Vice President, the legislature of any State may prescribe less restrictive residence qualifications and for electors of President and Vice President the Congress may establish uniform residence qualifications.

"SEC. 3. The pair of persons having the greatest number of votes for President and Vice President shall be elected, if such number be at least 40 per centum of the whole number of votes cast for such offices. If no pair of persons has such number, a runoff election shall be held in which the choice of President and Vice President shall be made from the two pairs of persons who received the highest numbers of votes.

"SEC. 4. The times, places, and manner of holding such elections and entitlement to inclusion on the ballot shall be prescribed in each State by the legislature

thereof; but the Congress may at any time by law make or alter such regulations. The days for such elections shall be determined by Congress and shall be uniform throughout the United States. The Congress shall prescribe by law the time, place, and manner in which the results of such elections shall be ascertained and declared.

"Sec. 5. The Congress may by law provide for the care of the death or withdrawal of any candidate for President or Vice President before a President and Vice President have been elected, and for the case of the death of both the President-elect and Vice-President-elect.

"Sec. 6. The Congress shall have the power to enforce this article by appropriate legislation.

"Sec. 7. This article shall take effect one year after the 21st day of January following ratification."

STATEMENT OF HON. EMANUEL CELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. CELLER. Mr. Chairman and members of this distinguished committee, I appear this morning to request an open rule, with 6 hours' debate, on House Joint Resolution 681, which proposes to amend the Constitution to provide for direct popular election of the President and Vice President of the United States.

Mr. Chairman, Thomas Jefferson said way back in 1823 that our system of election of President and Vice President "was the most dangerous blot on our Constitution and one which some unlucky chance will soon hit." The danger that Jefferson pointed out is even more grave today. The uncertainties, the imponderables in the last presidential election emphasize the need for a change.

The CHAIRMAN. Mr. Celler, if you will permit me to interrupt you right there, I promise I will not do it any more.

Mr. CELLER. That is perfectly all right.

The CHAIRMAN. But your quote there of Thomas Jefferson—he said a great many things, and another quote that I remember which I just wanted to particularly get across to the distinguished chairman of the Judiciary Committee, and I think this is a direct quote, was that—

There is no danger I apprehend so much as the consolidation of our Government by the noiseless and, therefore, alarming instrumentality of the Supreme Court.

Now, the gentleman deals with the Supreme Court so much that I just wanted to throw that out to him and also to remind those who are very conscious of the activities of the Court these days that he had some very strong views on that question, too.

Now, the gentleman does not have to comment on that.

Mr. CELLER. Of course, no man, Jefferson or anybody else, is always right.

The CHAIRMAN. And that was the point I was trying to make here. Thank you.

Mr. CELLER. But I would say as far as Jefferson is concerned, 99 times out of 100 he was right.

We on the Judiciary Committee, as Ben Franklin stated at the close of the Constitutional Convention on September 17, 1787, "cannot help expressing a wish that every member doubt a little of his own infallibility."

Mr. O'NEILL. Do you want to speak up, Mr. Chairman, please?

Mr. CELLER. Yes, sir. "Cannot help expressing a wish that every member doubt a little of his own infallibility."

Thus we are not, we members of the Judiciary Committee, that infallible as to state that House Joint Resolution 681, is perfect, but we do believe it contains the least inequities and is the least objectionable of all plans considered, and we did consider a plethora of plans, among them the so-called District plan, the proportional plan, the automatic plan, and the direct vote, and combinations of all four.

We came to the decision that the Direct Voting plan was, indeed, the least objectionable of all.

The final vote in the committee for this resolution now before you was 29 to 6. It was a prepondering vote of the committee. Indeed, if you will note the resolution, 25 members of the committee have co-sponsored it with me. The reform we seek is timely and wise. It is anachronistic to preserve the electoral college system. It is outmoded, it is ill-suited to our times.

Permit me to quote another very distinguished gentleman in history Edmund Burke, in a classic speech for reform in England said before the House of Commons: "A wise government will know the best time and manner of yielding what is impossible to keep."

Most well-intentioned statesmen, most worthy institutions, be they civil, religious, or educational, know that the present system of the election of a President and Vice President is not in the best interests of the Nation and should no further be maintained.

Thus, Congress must start to weed out the distressing system that can be the catch basin of much evil, as I shall point out.

A number of distinguished members of the committee are here this morning, among them our distinguished ranking member of the Republican side, Mr. McCulloch, who will support the bill. We have Congressman Rogers, of Colorado, Congressman Mann, of South Carolina, Congressman Dowdy, of Texas, Congressman Hutchinson, of Michigan. I understand Mr. McClory has just entered the room.

I want to pay tribute to Mr. McCulloch who has been most painstaking, most dedicated in consideration of this difficult problem.

Our present electoral system was born at a time when this country's population was only 4 million, of which 700,000 were Negro slaves, and more than 2,300,000 were white women and children. Only about 100,000 people lived beyond the Appalachian Mountains. Only five cities had a population in excess of 10,000 souls. Horseback, wagon, stagecoach, boat, and foot were the main modes of transportation.

To go from Boston to New York was a journey of from 3 to 6 days; from New York to Philadelphia, 2 or more days; newspapers usually were distributed on a weekly basis; had limited circulation; and contained mostly local news.

Small wonder that such an election apparatus applicable to a horseback and buggy age becomes ill suited to a TV and jet age.

The existing electoral system is familiar, of course, to all of you. Until recent years, it has not really prompted significant, widespread outcries for reform. However, several elections, and particularly the most recent presidential election, underscored the potential instability of the existing procedure. The possibility of a deadlock and vacancy of uncertain duration in the principal office of this Government has

posed substantial dangers that many Americans, regardless of party or region, agree must be eliminated. To a large extent, our presidential election system lacks constitutional sanction, and relies on the individual States and their electors to operate in accordance with the prevailing understanding of our citizens.

For example, under the Constitution, the States are not even required to hold elections to choose presidential electors. As a matter of fact, until the late 19th century, many States had the electors appointed by the State legislatures; they were not the result of elections by the citizenry.

There remains the ever-present possibility that States or electors will depart from custom and exploit their constitutional independence. The risk that electors may substitute their own will for the will of the people is of grave concern to many, particularly in view of the most recent exercise of an elector's independence which was sustained by both Houses of Congress this year.

As long ago as 1826 a Senate select committee described the anachronistic presidential elector in the following manner:

They have generated into mere agents in a case which requires no agency, where the agent must be useless if he is faithful and dangerous if he is not.

In addition to elector infidelity, a potential crisis in our presidential election system also occurs if the electoral college fails to produce a majority for one candidate and the final decision for electing a President and Vice President falls on the Congress.

Under the 12th amendment, each State delegation may cast but one vote in the House of Representatives, and an absolute majority of all the States is required to elect a President from among the three leading candidates. The Vice President will be selected from among the two leading candidates by the Senate, each Senator having one vote, and an absolute majority, again, being required to elect.

Under this system it is possible that a President and Vice President would be of different political parties. Under the rules adopted in 1824 in the Adams-Jackson election in the House, no vote can be cast by a State whose vote is evenly divided. You would have difficulty in obtaining a majority of all the States as required by the 12th amendment, and 26 States now, of course, is a mandatory majority. Some State delegations today are evenly divided between Republicans and Democrats.

Such a contingent election in the House has occurred twice in our history; in 1800 between Thomas Jefferson and Aaron Burr, in 1824 between John Quincy Adams and Jackson. In each case the event is remembered for a lengthy deadlock, intrigue, and an appearance, if not the reality, of political deals. As a matter of fact, in the 1824 election, John Quincy Adams was lowest in the popular vote of the four leading candidates. The others that received substantial votes were William Crawford, Henry Clay, and Andrew Jackson. But all the candidates had an inveterate grudge against Jackson. He was the maverick that came out of the west, Kentucky. They all thought he had woolly reform ideas. There was an inveterate hate against him, particularly on the part of Clay.

These four were the highest of those who received votes from the citizenry of the Nation. Crawford had a stroke. He was eliminated. The vote then was between Clay, John Quincy Adams, and Andrew Jack-

son. Clay hated Andrew Jackson and threw his support to John Quincy Adams. The result was that Adams was made President, although he was a minority President. There is a case where the loser became the winner. Henry Clay, as a result of the deal, was made Secretary of State. Thereafter, John Quincy Adams was caricatured as a Clay President. His administration could not be deemed successful, and was not successful, and he was not reelected. He had all manner and kinds of troubles because of the fact that he was a minority President elected President.

I need not go into the Aaron Burr-Jefferson situation. There, too, history tells us of alleged intrigues and deals. It was never proven that Jefferson was part of the deal, but the one vote cast by Baird, the Congressman from Delaware, was the deciding vote, which elected Jefferson over Burr. Thereafter, Baird received every manner and kind of preferment and patronage. As I said, it was never proven that Jefferson himself was part of the deal, although Baird in his diaries, in his speeches, gloated over the fact that he had received so much preferment from Jefferson.

The prospect of a contingent election in the House under the precarious constitutional structure now provided, troubles many thoughtful citizens. There is also widespread concern over the disparity existing today between the number of electoral votes allocated to the respective States pursuant to decennial censuses and the number of their citizens and actual voters. Our system allocates electoral votes to the States in numbers which are not truly proportionate, either to population or to actual voter turnout.

Regardless of population, each State is entitled to two electoral votes and one electoral vote for each Congressman (at least one) allotted to the State. This gives tremendous disproportion to the value of an electoral vote. Let me read you some figures with reference thereto and with reference particularly to these so-called bonus votes that each State has.

Alaska, with a population of 226,000, has three electoral votes, one for every 75,000 people. But New York, with a population of 16,782,000, has 41 electoral votes, only one for every 390,000 people, as against Alaska's one for every 75,000 people.

On a population basis, then, Alaska receives electoral votes of better than five times the rate of New Yorkers. The ratio was high for all other small States as well: Nevada, one electoral vote for every 95,000 people; Wyoming, one for every 110,000; Vermont, one for every 130,000. It is low for all the other large States: California, one for every 393,000; Pennsylvania, one for every 390,000; Illinois, one for every 388,000. The cumulated effect of this small State advantage may be gaged from the fact that New York, for example, with a population of 16,782,000, has 43 electoral votes, whereas Alaska, Nevada, Wyoming, Vermont, Delaware, New Hampshire, North Dakota, Hawaii, Idaho, Montana, South Dakota and Rhode Island, with a combined population, all of them, of only 6,364,000, also have a total of 43 electoral votes, the same as the State of New York.

Another inequity results from the "winner take all" system which wastes the loser's votes within a State. As you know, in the case of

winner take all, the winner gets all the votes of the State and the majority votes are lost.

That has caused at times very serious difficulties. Some argue that small State voters benefit from the fact that each State is entitled to three electoral votes regardless of how few its citizens, while others maintain that large State voters benefit from the unit rule whereby such States are able to award large blocs of electoral votes. Whatever group of States is actually advantaged, it is inconsistent with our principles that the votes of some citizens should be worth twice as much or more than the votes of other citizens. Neither argument can justify such a Presidential electoral system that is consistent with the principle of one man, one vote.

The factors which I have just outlined, Mr. Chairman and members of this distinguished committee, separately and in combination, contribute to the most serious potential flaw of our present system, that is, the possible election of a President who is not the first choice of the voters. Indeed, this has actually occurred three times in the 46 presidential elections held to date: John Quincy Adams, 1824; Rutherford B. Hayes, 1876; Benjamin Harrison, 1888. All were popular vote losers yet all were elected President. To argue that only three misfires out of 46 is a good record is unconvincing. A workable solution guaranteeing against such misfires is presently available. Why should we choose a second-best system?

Only the direct election plan can eliminate all of the basic deficiencies in our present electoral system. Alternative reform plans such as the proportional method, the district method or the automatic electoral vote plan may meet some of the present deficiencies, but each one would continue the risk of electing a candidate who was the popular vote loser, a risk, I might add, which increases the closer the population election results become.

In addition, other proposals have been offered to employ features of the various plans in combination. These tend to complicate our present system and only perpetuate the hazards of electing a candidate who is not the popular candidate. To encapsulate the glaring objections in our present system, let me unfold five real dangers:

1. The possibility that the winner of the popular vote may not be elected;
2. The faithless elector may frustrate the will of the voters;
3. Undemocratic aspects of a contingent election of the President in the House with each State casting one vote;
4. Distortions of voting power due to bonus votes to smaller States which inflate electoral strength beyond their population on the one hand, and the winner take all system on the other; and
5. The possibility of deadlock and a prolonged vacancy in the office of President of the United States.

I repeat, the direct voting plan eliminates all of these five objections.

With your permission, Mr. Chairman, I now wish briefly to outline the main provisions of the proposed amendment. First, House Joint Resolution 681 contains the customary provision that the proposed new article to the Constitution shall be valid only if ratified by the legislatures of three-fourths of the States within 7 years after it has been submitted to them by the Congress. The purpose of the article

of amendment is to abolish the electoral college and to substitute the direct, popular election of the President and the Vice President. It provides for a runoff election between the two pairs of candidates who receive the highest number of votes if none of the candidates receives at least 40 percent of the popular vote.

Second, the proposed amendment provides that the President and Vice President shall be voted for jointly only, as candidates who have consented to the joining of their names.

Third, under the new article of amendment the voters for President and Vice President in each State shall have the same qualifications as are required for persons voting therein for the most numerous branch of the State legislature, except that each State may adopt less restrictive residence requirements and the Congress may establish uniform residency requirements for voting in presidential elections. In other words, Congress has the reserve power.

Fourth, the times, places, and manner of holding the presidential election and any runoff election and entitlement to inclusion on the ballot shall be prescribed in each State by the legislature thereof, except that Congress is empowered to make or alter such regulations. The Congress is specifically empowered to determine the days on which the original election or any runoff election is to be held.

Moreover, the Congress is authorized to prescribe the time, place, and manner in which the results of such presidential election shall be ascertained and declared. The Congress is specifically empowered to provide for the case of the death or withdrawal of any candidate before the election and for the case of the death of both the President-elect and Vice President-elect.

Finally, the amendment provides that the direct popular election system would take effect 1 year after the 21st day of January following ratification.

The hearings before the Judiciary Committee indicated that such diverse organizations as the AFL-CIO, the U.S. Chamber of Commerce and the American Bar Association have all united in support of the direct popular election method. I have been in Congress for a great many years. I know of no case or no bill where you had the unified support of such diverse groups as the American Bar Association, AFL-CIO, or the U.S. Chamber of Commerce representing business, large and small, and the labor organizations that I have mentioned. Yet they have all agreed not only to support this bill but to go out into the highways and byways after it is passed by the Congress and urge the voters in the various States to ratify this constitutional amendment.

National opinion polls reflect substantial sentiment throughout the Nation for direct nationwide popular election of our Chief Executive. The Gallup poll indicates 80-percent approval throughout the country. The Harris poll indicates 79-percent approval of the direct method.

If the House approves this proposed amendment it will mark the first time since 1803 that the House of Representatives will have approved an amendment to restructure our presidential election system. The direct plan will conform presidential election procedure to the ideals of representative government, not simply for the next few elections but, I confidently believe, for generations to come.

Efforts have been made sporadically to make changes in the electoral system but apathy has set in, such apathy as to cause all efforts to die. I am convinced that there will be no apathy setting in here if we can get a rule and the House passes the bill. I am convinced also that the Senate will pass the amendment and it will go on to the States. What is more I think that with sufficient public enlightenment on the part of many throughout the length and breadth of the Nation who are farseeing and who will devote a great deal of time to this effort—and I have assurances from the American Bar Association and the other organizations mentioned that they will go out into the grassroots, as it were, roll up their sleeves and work for this amendment—that this amendment will pass.

I urge the Committee on Rules to grant an open rule so that the House may consider House Joint Resolution 681 and that we be given the privilege of debating it for 6 hours.

The CHAIRMAN. Thank you, Mr. Celler.

Mr. Celler, you ask for an open rule. I think that is commendable. You did not say how much time you wanted, did you?

Mr. CELLER. Six hours.

The CHAIRMAN. Six hours? I am sorry; I did not hear.

Mr. Celler, I think we can all agree that there should be some amendment, some reform in the electoral college system, but in just what form that should take there seems to be considerable divergence of opinion. We do agree that there should be some reform. I think we must bear in mind here that on the floor, if we pass something, it should be something that would eventually be adopted by the States. Of course, when this system was set up, what the Founding Fathers had in mind apparently was that each State would select the number of electors based upon its representation in the Congress and that the smaller States as well as the larger States would have a voice in the selection of this important office of President and Vice President.

This partly was based on the fact that the concept in those days, when State sovereignty meant something, was that the smaller States as well as the larger ones would be taken care of and, therefore, it rested in this process.

It takes two-thirds vote for the House, two-thirds vote of the Senate to adopt this with the popular consent of democratic government. I assume that the two bodies being made up of politicians, and this is what we all are, there would be a better likelihood of the Congress adopting this popular concept than there would be of the States. Once you pass it in the House, I wonder if the distinguished gentleman from New York, chairman of the committee, doesn't have some apprehension in spite of the statements that he has made, that the smaller States, being more zealous of their rights and desiring to adhere to the original concept, would be inclined to ratify this popular concept?

The gentleman mentioned a number of States there which I shall not attempt to reiterate, some dozen or more, that feel they have a better protection under the electoral college system than they would have under this popular voting system. I am wondering if he doesn't happen to have, in spite of the fact that these organizations to which I referred might go out into the bylands and attempt to whip up support for this bill, a fear they might not succeed.

Does the gentleman care to respond to that any further?

Mr. CELLER. Yes, sir, I would be glad to respond.

It is a very good question that you propound and must be answered.

I have no fear on that score. You notice 29 members out of 35 of the Judiciary Committee have no fear on that score. Otherwise they would not have voted for the direct plan. Twenty-nine out of 35 is a goodly portion of those men that are representing districts all over the country. I say have no fear. There is an old Russian saying, "You will never know the forest if you fear the wolves." I don't fear. I know the forest and I am quite sure the smaller States as well as the larger States will join in ratifying. It might be interesting to know—

The CHAIRMAN. Would the gentleman yield right there?

Of course, the Senate is made up of two representatives from each State. They represent the whole State whereas in the House, as on your committee, you have possibly, and I am sure that is true, a larger representation from the larger States and from the urban centers.

Mr. CELLER. Well, you spoke of the Senate. Let us see what some of the Senate is saying. One of the Senators from Alaska proffered the direct voting method, Senator Gravel. Senator Inouye of Hawaii approved it. Senator Bible of Nevada approved it. Senator Church of Idaho approved it. Messrs. Mansfield and Metcalf of Montana approved. Senator McIntyre of New Hampshire approves. Senator Burdick of North Dakota approves. Senator McGovern of South Dakota approves. Senator Pell of Rhode Island approves. Senator Aiken of Vermont approves. Senators Smith and Muskie of Maine approve.

I don't know if you want to call Washington a small State, but both Senators Magnuson and Jackson of Washington approve, and Senators Hatfield and Packwood of Oregon approve. Also Senators Randolph and Byrd of West Virginia, and so forth. We have quite a number of Senators already pledged and they are from small States approving this bill.

There have been quite a number of sponsors of Senate Joint Resolution 1 in the Senate. It was approved by Senators Aiken, Bible, Burdick, Byrd, Church. Also 41 Members of the Senate approved the direct election plan in Senate Joint Resolution 1. A good many of these were from the smaller States.

The CHAIRMAN. Mr. Celler, you said they approved it?

Mr. CELLER. They sponsored it.

The CHAIRMAN. The Senate has not acted on it?

Mr. CELLER. Not yet. They are waiting for action on the part of the House.

The CHAIRMAN. I understand that. My point is that I assume there would be, as usual, considerable debate in the Senate. And the fact that these gentlemen whom you have named have indicated that they would go along with such a plan, maybe when they get to hearing from constituents some may change their positions on it when it comes to a question of vote. I am just exploring the possibilities here.

Mr. CELLER. Those men are no different from the members of the Judiciary Committee, and we debated very long and deliberately on this subject. There were diverse views expressed and finally, after hearings, 29 of us came to the view that this is the best that can be secured. We all felt that the old system has got to go, that it is inher-

ently defective and can produce grave dangers for the safety of the Nation. The direct election method was adopted since it cured, more decisively than any other plan offered, the deficiencies of the present system.

The CHAIRMAN. Let us review this briefly. Your bill, or resolution, is for the popular election concept. Yet your bill provides that a candidate for the Presidency and Vice-Presidency has only to obtain 40 percent of the vote. If you are going to make it democratic I am wondering why you don't go the whole way and provide as is provided in these other States? In both branches of the Congress they have to receive a majority. In other words, you are basing this on a plurality rather upon a majority.

I would be interested if the gentleman would comment further on that.

Mr. CELLER. We felt that 40 percent was a sufficient mandate from the country. It is interesting to note that President Nixon, who said, incidentally, he would accept any proposal the Congress adopts, in the first instance indicated he favors the so-called proportionate plan which provides for a runoff and that 40 percent was used in the runoff. If the runoff is all right in the second instance, it ought to be all right in the first instance. It provides 40 percent likewise.

It is interesting to note how many of our Presidents, had less than 40 percent. Adams only had 30 percent and Polk had 49 percent, Taylor had 47 percent, Buchanan 45 percent, Lincoln 39 percent, Hays 48 percent, Garfield 48 percent, Cleveland 48 percent, Harrison 47 percent, Wilson 41 percent, Truman 49 percent, Kennedy 49 percent. Nixon in the last election only had 43 percent. We figured that 40 percent would be sufficient to indicate a real mandate from the country.

The CHAIRMAN. One of your complaints about the present system, Mr. Celler, is that you elect minority Presidents, minority so far as the popular vote is concerned?

Mr. CELLER. We do that now.

The CHAIRMAN. That is what I say, that is your complaint—one of your complaints.

Mr. CELLER. It does not—

The CHAIRMAN. Why don't you go to 50 percent?

Mr. CELLER. Or the other way around. We are worried that the popular winner could lose.

The CHAIRMAN. I didn't get that.

Mr. CELLER. The difficulty is really that the popular winner can lose today. That is what we are worried about. We want to remedy that. The popular winner could never lose under this proposed plan.

The CHAIRMAN. Still, under this plan you could elect a minority President so far as the vote is concerned, popular vote is concerned?

Mr. CELLER. He would have more votes than anybody else.

The CHAIRMAN. I understand that. You say the same thing about the present system, he gets more electoral votes?

Mr. CELLER. If you require more than that, you encourage a runoff. We are trying to prevent a runoff if we can.

The CHAIRMAN. I would say that I like that provision. At least you would have a runoff.

Mr. CELLER. Usually we don't require a majority in elections. We don't always require a majority in elections.

The CHAIRMAN. I think most States do in the election of its representatives to the Congress.

Another thing that I would like some further comment on, if the gentleman sees fit to respond, and that is that the resolution provides, as I recall, that the several States can adopt statutes providing for the qualification of votes, electors.

Isn't there a possibility it would give the voters of one State an upper hand over another State?

Mr. CELLER. Not necessarily.

The CHAIRMAN. Unless you had some uniformity of qualifications for voters? As one of your committee members has stated, why should a voter from Georgia, I believe was the way he put it, be able to vote at 18, and one from your State of New York 20 or 21?

Mr. CELLER. We don't want to touch the question of teenage voting. There are a number of resolutions before our committee to amend the Constitution allowing teenagers to vote. I think Georgia and Kentucky allow those at 18 to vote. Alaska and Hawaii allow them to 19 and 20. That is all. All other States require a voter to be 21.

I doubt very much, considering the temper of the times, campus disorders, and rebellion of youth, that you are going to make much progress in getting teenage voting.

The CHAIRMAN. Let us suppose, for instance——

Mr. CELLER. We felt that was a matter that would muddy the waters and we leave that to the States.

The CHAIRMAN. Just to follow that——

Mr. CELLER. It raises another very serious objection to this proposal. We also want to be practical, pragmatic on this.

The CHAIRMAN. Follow that on a little further. Suppose Georgia, which has approximately a fourth of the vote of New York, should decide that, in order to carry more weight for their State in the selection of the President, they would reduce their voting age to 12 or 15. Would they not then have a decided advantage over the other States?

Mr. CELLER. That is utterly unrealistic, 12. No State is going to do anything like that because——

The CHAIRMAN. I said 15.

Mr. CELLER. Because they would have a vote for State officers, Governor, Lieutenant Governor, attorney general, and Members of Congress. Your State wouldn't reduce the vote to 12 or 13. That is utterly unrealistic.

The CHAIRMAN. I don't think they would.

Mr. CELLER. My State——

The CHAIRMAN. There is that possibility under your system. So far as voting for the State officers is concerned, if I remember your resolution correctly, the States would have the right to differentiate between the qualifications of voters for the Presidency and those for State offices.

Mr. CELLER. I doubt it very much.

The CHAIRMAN. Am I correct about that?

Mr. CELLER. I believe on page 2, line 10, we have the following:

SEC. 2. The electors of President and Vice President in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature——

In other words, it has to be allied to State offices as well.

The CHAIRMAN. What do you mean, then, by saying that the Congress can regulate that?

Mr. CELLER. We read further:

except that for electors of President and Vice President, the legislature of any State may prescribe less restrictive residence qualifications and for electors of President and Vice President the Congress may establish uniform residence qualifications.

The CHAIRMAN. In other words, New York could say that anyone who had been in the State 30 days could vote for the President?

Mr. CELLER. That is the story today. Residence is quite different from other qualifications.

The CHAIRMAN. Right.

Mr. CELLER. This is a national election and you are in the country and it is the President who operates in the whole country, not in the State. Therefore, many States have less stringent requirements for the voting of the President. Thirty States, I think, have less stringent requirements for the voting of the President than they have for their own State officers even today. We don't want to interfere with those 30 States.

The CHAIRMAN. Don't you think it should be uniform?

Mr. CELLER. I think in a matter of that sort it should be left to the States but if States get too far out of line on residence, then Congress can step in under reserve power.

The CHAIRMAN. You had other plans submitted to your committee, as I recall. One was the plan sponsored by the gentleman from Texas, Mr. Dowdy, who I see is present here. Under an open rule, I wonder if the gentleman had considered or would give us the benefit of his learned opinion as to whether that particular concept or substitute could be offered as an amendment in the nature of a substitute.

Mr. CELLER. I am inclined to believe it could. That is why I asked for an open rule on the constitutional amendment. I think the members of the House should be untrammelled in this regard. It is too important to have restrictions.

The CHAIRMAN. Mr. Smith?

Mr. SMITH. Thank you.

Mr. Celler, along the lines of what Mr. Colmer just asked, you had two other plans, the district plan approach and the proportional plan approach. Under an open rule, for record purposes, is it your understanding that they would both be in order?

Mr. CELLER. They would what?

Mr. SMITH. They could both be offered as amendments?

Mr. CELLER. I am inclined to believe they would.

Mr. SMITH. Have you checked with the Parliamentarian?

Mr. CELLER. No, I have not, but I give that as my own opinion.

Mr. SMITH. The staff here did check because you cannot have amendments in the second degree, one amendment to a substitute, and it is my understanding that he has advised they both would be in order under an open rule. That is agreeable with you, is that correct?

Mr. CELLER. That certainly is; yes, sir.

Mr. SMITH. Just one other question. I was quite impressed with the statement made by Mr. McClory on the method of ratification, whether

it should be done by the State legislature, or by a State convention. I am certain that your committee did a tremendous amount of work on this report and I commend them for it.

I get the impression from reading the report that it may be ratified a little more rapidly if done by a State convention system rather than by the State legislatures. What is your thought on that?

Mr. CELLER. You may remember that in our history only one constitutional amendment as ratified by that rule, by State convention. That was the repeal of the 18th amendment. I think there was a little bit of politics involved in that one. When Roosevelt insisted on that method I was in the House. There was great controversy whether it should be adopted by this method. His views prevailed. He was afraid that the legislatures would not be responsive to change and felt that the people would be more likely to respond to the change.

I don't think that that situation is present throughout the country now, in view of the Gallup poll which shows over 80 percent of the Nation behind this measure. I think the legislatures would be responsive here and that we don't need the constitutional convention method which is rather a cumbersome procedure. I think it is preferable to require that the State legislature consider the direct election since they must eventually consider the implementing legislation. Moreover, there is no real advantage in providing for ratification by convention since, in the first instance, the State legislatures themselves will have to provide the means of choosing delegates to the convention. Thus, the State legislatures must confront the advisability of ratification in any case.

Mr. SMITH. You don't anticipate that this will be approved before the 1972 presidential election; do you?

Mr. CELLER. It is possible.

Mr. SMITH. Pretty tough?

Mr. CELLER. It is not likely. That is shaving it awfully close.

Mr. SMITH. It would be pretty difficult for a special session of a legislature to accomplish that?

Mr. CELLER. It is unlikely that would happen.

Mr. SMITH. I assume we all would like to have it happen by that time.

I think that is all I have, Mr. Chairman.

The CHAIRMAN. Mr. Madden, any questions?

Mr. MADDEN. I want to commend your committee for bringing this legislation out. What was the vote of your committee?

Mr. CELLER. Twenty-nine to six?

Mr. MADDEN. Twenty-nine to six?

Mr. CELLER. Yes, sir. Purely bipartisan. No politics involved in this at all.

Mr. MADDEN. The only unfortunate thing was that legislation of this type was not passed 50, 60, 70, or 80 years ago. The country might be different today.

I can go back, although I am not as old as a lot of Members around here, but I remember reading about the election of 1900. The people had absolutely nothing to say about the nominee in that convention. On the Republican side, William Jennings Bryan was out talking to the people. Had we had a system like this before 1900, McKinley, in

1896, would never have been nominated because the bosses nominated McKinley and not the people. Of course, we don't like to go into those old days when the railroads and the banks and a couple more powerful interests ran the country. We won't go back to that but we might be out of this hole we are in today on gigantic tax loopholes of the special privileged groups if we had a Congress that sparkplugged this kind of legislation 60 years ago.

Could I get the Chairman's attention, please?

Then we just come along in that same convention and it was a great President, people's President, who wanted to be nominated that year and didn't have a chance. They were afraid that Teddy Roosevelt might be running for Governor of New York if they didn't get rid of him, so they pigeonholed him and made him Vice President. McKinley was assassinated and Teddy Roosevelt stepped in. The people for the first time really had a President when Teddy Roosevelt stepped in by accident, because of assassination.

Then we come to Baltimore. Harmon and William Jennings Bryan, some outstanding nationally known figures, were candidates. But the politicians, bosses—now I am talking about Democrats and Republicans—the politicians over in Baltimore, in the smoke-filled rooms, got behind and traded and jockeyed around and they nominated fortunately a great President. They nominated Woodrow Wilson. He was unheard of before the convention, practically unheard of as far as the Nation was concerned. The people had nothing to say about who they should vote for for President.

I think that the most glaring example of all of this history, for this bill to pass, to be enacted, was the Harding convention where you had Gen. Leonard Wood and you had, I think, Governor Harmon of Ohio and a couple more outstanding statesmen. The politicians in the smoke-filled rooms finally, after days of bickering, turned up with somebody from the bottom of the barrel. That was Harding.

That is what the people got, Teapot Dome, veterans scandals and disgraceful situations. Politicians nominated him.

This is the greatest piece of legislation, and it should have been passed 60 years ago, that this Congress has had an opportunity to consider.

There is Harding. There was a shining example of why a bill like this would have prevented all those scandals and probably—nobody was interrupting when the chairman was asking several questions.

The CHAIRMAN. The chairman apologizes.

Mr. MADDEN. Thank you very much.

We got Harding and they went up to Massachusetts and got probably an unknown man, and the only one thing he did in public life was to stop a police strike in Boston. They put him in as Vice President. He was President after the death of Harding. I don't think the wheels of progress did anything but go back and back and back—nothing but special interests running the country under Harding, Coolidge and Hoover.

But poor old Hoover, when he went in, Harding and Coolidge had the country wrecked. Hoover was helpless. The country economically was in the doldrums, no buying power, nothing but the stock market making money and the fat cats making money and the people had no

money to buy what the industries manufactured, and we almost ruined our Nation by the greatest depression and panic in all history.

That is what brought about the panic, nothing else; the people had nothing to say about the nomination of Harding or Coolidge. I don't know about Hoover's election. I think Hoover had a great deal of ability but the country was ruined when he took it over and he didn't have a chance.

Then we might come down to more modern times when the people had nothing to say whatsoever about the nominee. That was the Goldwater nomination. Poor old Rockefeller and these fellows that went out to fight in San Francisco discovered that the money interests had delegates practically solid and they didn't have a chance. The people had nothing to say about that nomination when Goldwater was nominated. I am not saying Goldwater was not qualified to be President. I am just saying that the people absolutely would never have nominated Goldwater that year, I mean the rank and file of the Republican Party.

Mr. SMITH. Would the gentleman yield?

This bill does not change what the gentleman from Indiana is talking about. We will still have to have our conventions, wouldn't we?

Mr. MADDEN. I am talking about the electoral college. I am talking about legislation that should eliminate the bosses from controlling conventions. Also that is going to have an effect eventually on revolutionizing the elections of Presidents so the American people will have something to say about that.

Mr. SMITH. Will this joint resolution do that?

Mr. MADDEN. Yes; it will lead up to that.

I know that the Judiciary Committee is making—

Mr. MARTIN. How do you nominate the President?

Mr. MADDEN. Pardon me for interrupting.

You can go with that convention. I think that when this legislation is put on the floor of the House, we are going to get down to some brass tacks so that we can get legislation that the people might have a little say about who gets elected President of the United States. I am not going to talk about the last convention held in Chicago, but, nevertheless, I think if the people had a lot more to say, a lot more to really go in and know who they are voting for, that is what I would like to see. Let the people have a choice, and let five or six States couple up and connive and probably go out and wreck this legislation when it gets to the various State legislatures. I think all these facts should be brought out and let the American people know the real backward method we have of selecting Presidents of the United States.

I want to commend the committee for the great job they have done.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Celler, we are all impressed by the gentleman's statement, the gentleman from Indiana, and I am sure that many of us agree about the manner of selection of these nominees.

Would your resolution correct this?

Mr. CELLER. Of course, I think the gentleman's statement is a wise one, but I think that our resolution does not concern conventions but it would give a greater weight, I think, to the citizens who vote. The system suggested would give greater weight to the citizens who vote

than does the present system. In that sense, I agree with the distinguished gentleman from Indiana. It might be that the elections might have been changed because of that.

The CHAIRMAN. Your resolution does not?

Mr. CELLER. Specifically it does not.

The CHAIRMAN. Announce nominees by the parties?

Mr. CELLER. It does not.

The CHAIRMAN. Mr. Anderson?

Mr. ANDERSON. I thank the chairman for the statement earlier in this session. I introduced a bill calling for direct elections so I guess to some extent my conclusions are on a prejudged case a little bit. I think the reasons that you have given certainly lend some very impressive support to that position.

I have no questions.

The CHAIRMAN. Mr. Delaney?

Mr. DELANEY. Mr. Chairman, I would like some things for my own knowledge.

Do you think that this will encourage splinter parties?

Mr. CELLER. I don't think it will encourage splinter parties. Our present system didn't discourage splinter parties. Witness what happened with Wallace. I don't think it would. I don't think it would encourage splinter parties. We only allow, permit 40 percent. I think that would have a likelihood of discouraging splinter parties. To make it larger you would have the desirability of some to have their finger in the pie so they could make some deals. Therefore, there would be encouragement of splinter parties. That is why we brought it down to 40 percent.

Mr. DELANEY. Has there ever been a case where the House has passed the constitutional convention and the States have not ratified it?

Mr. CELLER. You mean where there were amendments proposed and not ratified?

Mr. DELANEY. Right.

Mr. CELLER. There were amendments proposed by Congress but not ratified by the States. Not on this subject but on different subjects.

Mr. DELANEY. On different subjects?

Mr. CELLER. Yes, sir.

Mr. DELANEY. What do you think of the opportunity of the States ratifying this one?

Mr. CELLER. I am convinced the States will. Questions were asked about small States. For example, in the polls that were taken, here are five small States that had three electoral votes. Two bonus votes. The poll in Vermont showed 60.9 percent of the voters favored the direct election method; in Nevada, 62.5 percent favored direct elections; in Wyoming, 55.5 percent; Delaware, 53.8 percent; and Alaska, 50 percent.

Mr. DELANEY. Let me ask you about back in Truman's time; I forget how many States kept him off the ballot. You have a provision in already that the Congress may act. How would the Congress act and how can we prevent States from keeping a candidate off the ballot?

Mr. CELLER. We have to pass special legislation that would follow. We would have to—

Mr. DELANEY. Why didn't you make it mandatory in this bill that the candidates of any major party, or any party that has a national convention, automatically would go on the ballot?

Mr. CELLER. We have the reserve power. I think it would be well to leave it to the States first.

Mr. DELANEY. What if they are not in session, are we going to call Congress back in session to order a State to put candidates on the ballot?

Mr. CELLER. I don't believe we have to do that.

Mr. DELANEY. What would you have done in 1948?

Mr. CELLER. I don't think we have to do that. I think that the States would fall in line.

Mr. DELANEY. Did we have that right before when we didn't use it, or what?

Mr. CELLER. We had no right.

Mr. DELANEY. This is a new right the Congress has never had before?

Mr. CELLER. Yes, sir.

Mr. DELANEY. If it is a right that it is granting to us, why don't you spell it out in the bill and make it mandatory?

Mr. CELLER. I think it is well to leave this to the States in the first instance, and then if the States do not act properly, we can use the whiplash on the States. I don't think we should do it in the first instance. As I said, I think we should leave that to the States.

Mr. DELANEY. Mr. Colmer talked about uniformity. At the present time you have four States, as you said, that give voting rights to those under 21. Why didn't you come in with something uniform in this bill? Would an amendment for 18-year-olds be eligible in this bill?

Mr. CELLER. We have quite a number of resolutions providing for teenage voting. I think that should be considered separately and distinct from this proposal.

Mr. DELANEY. Why?

Mr. CELLER. I think it would raise lots of questions and people might be inclined to vote against the whole package if we had that in. It was the Judiciary Committee's wisdom, they felt it would be wise to leave that out. You cannot put everything in and then try to get it all through. This is a giant step we are taking, and I think if we add that we are going to add something which is highly controversial. The thought was it would be better to leave it out. What is the real need here? There is no real ground swell for teenage voting except on the part of some impetuous young people.

In New York we had a constitutional convention and we rejected the idea of teenage voting only last year, and many States have rejected it. The legislatures rejected teenage voting. Quite a number of them. It is not prevailing throughout the country at all. There are certain groups that are agitating for it. American Legion agitates for it. They have their non sequitur, you are old enough to fight, you are old enough to vote.

In many States, if you are old enough to marry, that is, and assume the responsibility of marriage, you ought to have the vote. Yet, in many States they allow you to marry when you are 14.

Mr. DELANEY. In New Hampshire?

Mr. CELLER. They all say if you are paying taxes you should be permitted to vote. A lot of teenagers, 14, 15, pay taxes. For that reason should they be allowed to vote? The qualifications of a soldier, for example, are quite different from the qualifications, good qualifications, of a voter. Instant obedience and the prohibition against dissent are the real qualities of a soldier. He cannot question the orders of a captain; he has to agree without argument. Those are not the qualifications of a voter. He should have the right to dissent. He should have the right to argue. So, in my book, all of those arguments are non sequiturs. That idea is now growing stronger and stronger in the Nation. That militates against the idea of teenage voting.

Mr. DELANEY. Why did you come up with a 40-percent rule? What is wrong with the simple plurality that we use to elect Members of Congress?

Mr. CELLER. It is not a mandate. I think we ought to have some number in there. Some of the Members of the House debated we should have 45 or 49 or 48 percent. We felt 40 percent was sufficient. The President in his apportionment plan in the runoff provides 40 percent. Incidentally, if he provides for a runoff in the second instance, why shouldn't we have the runoff in the first instance? He says 40 percent.

Mr. DELANEY. With regard to the dates of setting elections, does Congress now set the presidential election?

Mr. CELLER. Yes, sir.

Mr. DELANEY. So there is no change as far as that is concerned?

Mr. CELLER. That is right.

Mr. DELANEY. You don't set the date then for a runoff election? That must be done by a congressional act at a later date?

Mr. CELLER. There are lots of things we have to do to supplement this resolution, if ratified by the States.

Mr. DELANEY. Let me state an opinion. I think that we have terrific inequity in the present system we use as far as election day. I think it is wrong to close the polls in New York and Massachusetts and the eastern seaboard 3 hours before we close them in the Western States and California, or 5 hours before you close them in Hawaii. I think that is positively wrong. I think you give a decided advantage to the party that happens to be in the swing at that particular time. I hope that you will give some thought to the system they use in other countries, where you would have all States start voting at the same time and all the States would end voting at the same time and probably carry it over a 2-day period.

Mr. CELLER. There are several bills offering that. Senator Goldwater offered one in the other body providing for a uniform 24-hour voting period which would cover that situation you referred to.

Well, I promise the gentleman we will address ourselves to that.

Mr. DELANEY. That is all, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Martin?

Mr. MARTIN. Yes.

In view, Mr. Chairman, of the distinct possibility that sufficient States will soon have issued a call for a national constitutional convention, would there be any merit in waiting on action on this matter so that it could be taken up by a constitutional convention?

Mr. CELLER. Of course, that is an entirely different proposal. Thirty-four States must ratify that resolution; 33 have ratified. I don't know

whether or not there will be 34. There is tremendous agitation against that proposal which originated in the fertile brain of the distinguished Senator from Illinois. His idea was to get some sort of a constitutional amendment to obliterate and erase the decision called one man, one vote. His was an overkill. The resolution provides for a general constitutional convention at which all, everything in the Constitution would be open for amendment and you would have, to my mind, a veritable donnybrook fair in a case like that. He has opened a can of worms there, it strikes me. I certainly wouldn't want to have this proposal mixed up with the idea of a general constitutional convention. It would get lost in that proposal.

I don't know what in the world would happen if we had a constitutional convention where every conceivable subject would be relevant and could be considered by the convention. You will notice that Senator Ervin, of North Carolina has viewed with apprehension that concept and has now offered a bill, S. 623, which seeks to limit the consideration by the delegates of that constitutional convention to have one subject, and that he provides in that that every delegate to the constitutional convention shall be under oath, under oath, and he shall not consider anything else but the matter of one man, one vote. I don't know what good that oath would be. I don't know how constitutional that would be. It is very perplexing and one would have to embrace a counsel of despair envisioning what would happen in those circumstances.

In view of the uncertainties involved. I certainly would deplore combining this proposal with that.

Mr. MARTIN. If the constitutional convention were held, and unless their actions were restricted to a specific subject, they could most certainly take up this matter?

Mr. CELLER. May I ask how could you offer proscription to a constitutional convention?

Mr. MARTIN. You were talking about Senator Ervin and his legislation.

Mr. CELLER. I don't think—I have the most profound respect for Senator Ervin but I don't think he is right in this regard. I think that I know enough about the Constitution to say that you couldn't possibly restrict the subject that could come under a constitutional convention. Everything would be in order. I cannot conceive of it otherwise. You couldn't possibly restrict a man——

Mr. MARTIN. According to the press, there is a strong possibility that one more State will call for a constitutional convention?

Mr. CELLER. That is the unfortunate part of the situation. I think most reasonable men would disagree with that idea of the constitutional convention. To my mind it is as irritating as a hangnail. It is damn irritating.

Mr. MARTIN. It is a fact of life; there is a possibility of it.

One other question.

Section 2, article 4 of the Constitution states the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Under your proposal, as has been brought out in some of the questions, where Georgia allows voting at 18 and many other States at

21 or different ages, aren't you abrogating this section 2 here of the Constitution?

Mr. CELLER. In Georgia it has been held constitutional, 18-year-olds.

Mr. MARTIN. No, but I am talking about the Federal Constitution here. That brings the same privileges to all citizens. In your proposed constitutional amendment, with the national election of the President and Vice President—

Mr. CELLER. Different ages would not violate that provision and it has been so held.

Mr. MARTIN. You are putting it in one ball of wax here when you are providing for a national direct election of the President and Vice President. It seems to me there might be a little conflict with section 2 of the Constitution.

Mr. CELLER. I doubt it very much. That is a chance we have to take. I don't think that there is—forgive me for saying I don't think there is too much merit in that.

Mr. MARTIN. You are not granting this same privilege to all citizens because in one State they can vote at age 18 and others at 19 and others at 21.

Mr. CELLER. It is true today and it has been passed on by the Supreme Court as being perfectly proper.

Mr. MARTIN. Yes, but we have had an electoral college system. Now you have a different concept of the election under this proposed national direct election.

Mr. CELLER. This still allows the qualifications to be set by the States. The States in their wisdom can set those qualifications. It has not been upset. It has been passed upon innumerable times by the Supreme Court and held proper. I can not go beyond that.

Mr. MARTIN. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Sisk?

Mr. SISK. Mr. Chairman, just one point.

I note a variety of views and I notice many members of your committee apparently had some additional views. But one member, the gentleman from Illinois, Mr. McClory, raised the question of lowering the required percentage to 35 percent. The basis of his argument, as I understand it, and I assume he will have something to say before the committee on it, is that this would reduce the likelihood of splinter parties.

You indicated that by going to 40 percent you were eliminating the possibility of splinter parties. I don't quite follow the two discussions. Do you feel that the lower the percentage the least likelihood of splinter parties? It seems to me that you reach the point where you encourage splinter parties.

Mr. CELLER. It may be, if you go down too low. I think 40 percent would be a sufficient mandate on the part of the people. I don't think you should go lower than that.

Mr. SISK. Actually, wouldn't the higher percentage reduce the likelihood of splinter parties? At least it seems to me it would. Maybe I am looking at it the wrong way. I am not sure of this.

Mr. CELLER. A higher percentage might encourage it.

Mr. SISK. On the basis that they could have a greater opportunity of throwing it into—

Mr. CELLER. Wheeling and dealing.

Mr. SISK. Your opinion is, then, that the 40 percent, at least within your judgment and the judgment apparently of the majority of the committee, was the magic figure or the nearest?

Mr. CELLER. That is right. The President's figure of 40 percent, too. In his runoff.

Mr. SISK. I understand that was his recommendation.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Quillen?

Mr. QUILLEN. Thank you, Mr. Chairman.

I apologize for being late this morning. Maybe I missed some of the main points which have been presented. I would like to ask Mr. Celler if in the committee hearings you discussed the possibility of someone who might not even be qualified for President being elected?

Mr. CELLER. There are constitutional qualifications, age, and so forth.

Mr. QUILLEN. I found that a recent Supreme Court decision just handed down says that the House has no right other than the constitutional provisions as to membership in this body.

Mr. CELLER. Is that quite right? I think it said that the threshold of the House would be limited to consideration of the constitutional qualifications, which were three: Age, residence, and citizenship. It didn't say that the House could not after admission expel. It simply said that you couldn't refuse admission or refuse a man taking the oath if he had those qualifications.

Mr. SISK. I have not read the decision and I only read the newspaper report back in my district.

On the other hand, the specific question with the three TV networks, with the impetus which could be placed on a national candidate, was that we could possibly have a President of the United States elected by this media alone, taking away—

Mr. CELLER. If the man is not qualified, you mean intellectually or deformed or had a stroke or what?

Mr. SISK. Well, many qualifications being considered. I don't mean age limit or nationality or citizenship. I mean those qualified to be President of the United States. What I am trying to say, Mr. Celler, is this—

Mr. CELLER. The only qualifications are found in article 2. Congress may determine, no person except natural-born citizens or citizens of the United States at the time he adopts the Constitution shall be eligible for the office of President, nor shall any person be eligible for this office who has not attained the age of 35 years and been 14 years a resident within the United States.

There is, of course, the possibility after he is elected for removal, impeachment, and so forth.

Mr. SISK. That is true. I think this procedure has a lot of popular appeal. I always have the horror that these TV networks could place somebody on a white charger and elect him President of the United States.

Mr. CELLER. I suppose it is within the realm of possibility.

Mr. SISK. Then we would have a small group of people electing a President rather than the people electing a President, even though it is on a direct vote.

Mr. CELLER. I don't think that you could get a man of the type that you mentioned elected President. There would be such an outcry on the part of the voters that would make it impossible for his election. I have faith in the voters. I think you have faith. You have been elected a number of times. You have faith in your own voters. I have faith in my voters. These men have faith in their voters. The collective number of voters throughout the country are men who want to do the right thing in the election of their President. I cannot conceive of a man being so inadequate, as you probably envisage, to ever be elected to the highest office of the country. It is unrealistic.

Mr. SISK. I would hope not, Mr. Celler.

Mr. CELLER. I hope so, too.

Mr. SISK. I certainly have faith in my voters and I want them to continue to have faith in me. I have a lot——

Mr. CELLER. They have faith in you, I am sure.

Mr. SISK. I have a lot of fear when we throw open the doors that we might create another monster without the safeguards protected in our present system. I believe in electoral reform. I think we should have something. Whether this is the solution, I don't know. I am really groping.

Mr. CELLER. It has been very difficult, extremely difficult to plumb the depth of this subject. We members of the committee labored long and the hearings occupied many, many pages. This is the record of the hearings of all and sundry having any knowledge of the subject, and we had any number of executive sessions and we winnowed this down to what we have before you now.

It is not perfect. I said that in the very beginning. I do not say that you could get anything perfect. It is impossible to get a perfect bill on this. It is so complex, it is very difficult.

Mr. SISK. Would the gentleman yield momentarily?

Mr. QUILLEN. Yes.

Mr. SISK. There is one question I neglected to ask you. The question has been raised about the idea of 18-year-olds voting in the States, and about the idea of setting national standards as against State standards. I am inclined to agree with the position that the States should be left the power to set standards. My question of the distinguished chairman of the Judiciary Committee is: Would an amendment specifically authorizing 18-year-olds to vote be considered to be germane to this amendment?

Mr. CELLER. I am inclined to believe it would.

Mr. SISK. You think that a point of order would probably not lie against it on the basis of germaneness?

Mr. CELLER. I would make the point of order, but I do not think I would be sustained.

Mr. SISK. I thank the gentleman for yielding.

Mr. QUILLEN. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Young.

Mr. YOUNG. No questions, Mr. Chairman; thank you.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Chairman.

I would like to admit from the outset that my first thought was that I was a staunch supporter of this popular election of President, but the

more I studied, the more reservations I now have. I want to bring up some of these reservations with you at the present time.

My two main objections—and I think the two main objections that the committee found—were this matter that the elector could break faith with the people who elected him or who chose him back in his district and vote for somebody else. No. 2 was a question of throwing the election into the House and having one vote per State. I think these are the two primary objections to the present system. Maybe you might have more, but I think these are the two primary objections. Is that true?

Mr. CELLER. Those are the two primary, but there are more than that.

One other objection was the idea of the winner could lose, as the loser could win.

Mr. LATTA. With the electoral college system choosing by the States, that was always a possibility, but I do not think this raised any real serious question in the minds of the people as did the two points I just mentioned.

Since we are dealing with the highest office in the land, I question whether or not we ought to throw out the baby with the bath water, whether or not we shouldn't attempt to correct these minor deficiencies we have already alluded to.

Let me just ask you this question. This was raised by one of the professors at Bowling Green State University when we were discussing this matter: How could you possibly have a recount for President of the United States, the highest office? Take U.S. Senator, we have a recount; for House of Representatives we have provisions for a recount, for Governor we have provisions for a recount, and I find nothing in here where a candidate, Candidate X, says "I was gyped, they did not count the votes properly in Ohio and Indiana and Illinois, and some of these other States, and I want a recount." How do you answer this objection to your proposal?

Mr. CELLER. On page 10 of the report you will find at the bottom the following:

Another objection made to the direct popular election method is that it would involve endless vote-counting disputes that could delay the final election outcome for a long period of time. The committee, after considering this objection, also found it unpersuasive. The present system, in which a few popular votes can shift large blocs of electoral votes and possibly change the outcome of an election, would seem to provide far greater incentive for fraud and recountings. In the committee's view the counting problems that may be present under direct election are similar to those that exist under any system of election, whether direct or indirect. They have been effectively dealt with in popular elections of other officials and the committee is persuaded that appropriate Federal and State legislation can deal with such problems under a direct popular election system. In this connection, the committee finds the statement of William T. Gossett, president of the American Bar Association, persuasive:

"* * * The vote counting problems which are likely to be encountered under [direct election] such as recounts, fraud, challenged ballots and the like, are really no different in kind from those that exist in the election of a Governor or U.S. Senator. Any system of direct election requires an accurate, rapid and final vote count. These requirements have been satisfied in the direct election of officials at other levels of government, and we see no reason why they cannot be satisfied in a direct election for President. In the larger States millions of votes are now cast and counted in statewide elections held in areas of thousands of square miles.

"There are now procedures in the various States for certifying the results of popular elections for other offices which could be adapted to a system of direct election of the President."

Mr. LATTA. Actually, you admit there is no provision in your amendment for a recount and the objections raised are valid. You are saying that if you really want a recount—if the gentleman will follow me—you have said in effect that if you want a recount for President of the United States you have got to go back to the States and go through the State procedure, which is a very costly thing. For instance, in Ohio you have to put up x number of dollars per precinct in order to have a recount. Now, when you are talking about a presidential election you are talking about an election in 50 States. The cost Mr. Chairman, would be prohibitive. You certainly must admit that.

Mr. CELLER. The cost would be prohibitive, but in section 4 of the bill we provide the Congress shall prescribe by law the time, place, and manner.

Mr. LATTA. Just by holding the election.

Mr. CELLER. In which the results of such election shall be ascertained and declared. So that we have the reserve power in the Congress to cover that very situation.

Mr. LATTA. Certainly, when I read that—we are not going to read in any more than what you said. But certainly declaring somebody elected, making an announcement is one thing but when you are talking about recounting ballots you have another situation. I think this is a valid objection.

Mr. CELLER. May I point out another section, section 6: "The Congress shall have power to enforce this article by appropriate legislation."

That is a basket clause that gives us wide ranging powers and I think covers that very thing that you mentioned.

Mr. LATTA. I assume you have given this problem thought in your committee?

Mr. CELLER. Yes.

Mr. LATTA. Just how would you provide by legislation—it would have to come out of your committee—how would you provide for a recount for President of the United States? Would you require the person who was asking for a recount of the votes to put up x number of dollars per precinct to get a recount?

Mr. CELLER. I would not want to commit myself to the wisdom of such legislation at this juncture. I would want to give it study. The Judiciary Committee would have to give mature deliberation to a matter of that sort, as it always does. Suffice it to say in two sections here we have the reserve power to cover that situation. I do not want to state exactly what form that legislation would take now, but we have that power. I do not think in a constitutional amendment you want to detail it with every conceivable provision.

Mr. O'NEILL. Would the gentleman yield?

Mr. LATTA. Yes.

Mr. O'NEILL. I recall as chairman of the Election Committee for the Congress a Mr. Mackie, I believe his name was, from Georgia, as a Member of Congress did not have the right to get a recount down in Georgia, and there is no provision for a Member of Congress in the

State of Iowa to get a recount. So certainly you ought to have something in the law.

Mr. CELLER. Well, I think we have the right under this general provision that I have read to implement this legislation, with proper legislation to cover recounts and the manner in which elections are held and votes counted. It is as plain as a pikestaff that we have that power. What form that power will take is something for future deliberation. It is there, it is inherent in this bill.

Mr. O'NEILL. Suppose the party in power wins the election and then you come before a special session asking for a recount, I would say it would be with great reluctance that the party in power would give a recount. Why don't you spell it out like we have in our State laws, in our constitutional offices, where I think you have to be closer than one-half of 1 percent of the total vote.

Mr. CELLER. I do not think we should clutter, encumber a constitutional amendment with details of that sort. I think it suffices if we give this power to Congress and if this resolution of amendment is ratified, we will then have to address ourselves to all these questions that have been propounded this morning as implementing legislation.

Mr. O'NEILL. Thank you.

Mr. LATTI. Now, just for the record, though, let us go back. I think you are arguing both ways—or the argument has been made both ways. First off, you read me from the report, page 10, at the bottom of the page, about this objection and the persuasiveness of the argument put forth by the American Bar Association. In that argument put forth by the president of the American Bar Association, he goes back to the States. That is your argument. He says:

There are now procedures in the various States for certifying the results of popular elections for other offices which could be adapted to a system of direct election of the President.

Now, you are arguing that this is not apropos, that we ought to go back to this section 6 in your proposed amendment and say the Congress ought to do that and they have the power to do that. So it seems like you are arguing both ways.

Mr. CELLER. I don't think so.

Mr. LATTI. You think the States ought to do it and the Congress ought to do it. Now, which way do you want it?

Mr. CELLER. I say the States could have that power but Congress could oversee what the States have done. If the States have acted honorably and judiciously and effectively, Congress would not need to do it. But if the States have not acted in that way, Congress would then act of its own accord. In other words, this is a reserve power and we oversee what the States do. If the States do not do what is right, we have to then pitch in and do what is right. That is the whole story.

Mr. LATTI. Since we are talking about recounts and costs, I think it is necessary to bring up the fact that you provide for a runoff here where one candidate does not get 40 percent of the national popular vote. Now, a presidential election in the United States is a very costly thing. Did your committee take into consideration the cost of a runoff to the States involved?

Mr. CELLER. I do not think there will be many runoffs.

Mr. LATTI. But did you provide for it?

Mr. CELLER. In almost all the elections of President except one, there is only one President who was elected with less than 40 percent. Every single President, 45 elections, were elected with over 40 percent.

Mr. LATTI. So why do we need the 40 percent? The question was raised across the table here, why not a simple plurality? Following your argument that you were just making, then why have the 40 percent? Why not have a simple plurality? The prospect is there, is it not, when you provide for it?

Mr. CELLER. Yes. But the Judiciary Committee felt that we would have to have some sort of strong mandate from the country. Less than 40 percent would not be a sufficient mandate. You are speaking for the entire Nation here, and I think you must have at least 40 percent so that the man who enters the office of President will have some real backing behind him. If you have less than 40 percent, he is not really and truly endorsed by the entire Nation wholeheartedly. That is the trouble. That was the trouble with John Quincy Adams. He had trouble because he was a minority President and he faced that difficulty all the time.

Mr. LATTI. Let me bring your attention to section 2. I would like to have you explain this to me because I have read this a dozen times and still do not understand it. It says:

The electors of President and Vice President in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature—

That says "shall have the qualifications." Then you say:

except that for electors of President and Vice President, the legislature of any State may prescribe less restrictive residence qualifications * * *

It seems like in the first part you give them the power, and then you take it away.

Mr. CELLER. Only in that one exception, only with reference to residence qualifications.

Mr. LATTI. If that is it, then that leads me to my next question: If you are just leaving it as far as residence you are then providing for carpetbaggers to go from one State to another and become electors.

Mr. CELLER. That is up to the States. The States would not permit that.

Mr. LATTI. They would not? They have permitted one man to go from one State to another and run for Senator. So what is the difference? Running for an elector or running for the U.S. Senate, what is it?

Mr. CELLER. If they allow that for the election of President, Congress will step in and check it immediately, because in the next sentence we give the right to Congress to establish uniform qualifications.

Mr. LATTI. Yes. You say, "Congress may establish uniform residence qualifications." That leads me to wonder whether or not Congress, in view of the thinking in the past several years, whether or not they ought to abolish State lines and let these fellows run as electors in any of the 50 States regardless of residence.

Mr. CELLER. You wouldn't want that, would you?

Mr. LATTI. I certainly wouldn't.

Mr. CELLER. I don't think that is possible here.

Mr. LATTA. I certainly know of individuals that might. We are writing an amendment to the Constitution of the United States not for today, but for tomorrow and tomorrow and tomorrow.

Mr. CELLER. You mentioned electors. We have no electors here. We have abolished electors.

Mr. LATTA. Beg pardon?

Mr. CELLER. We do not have electors.

Mr. LATTA. We are not talking about the House of Representatives.

Mr. CELLER. You said electors can vote in any State. You mean the citizen. You mean the voters.

Mr. LATTA. Right.

Now, one other thing. I know the bells have rung and probably this is nit-picking, but I consider the Constitution of the United States, second to the Bible, the most important document that I read and I do not like this language where you say in section 3 "The pair of persons". You say, "The pair of persons having the greatest number of votes"; that is awful.

Mr. CELLER. Mr. Hutchinson is the author of that one.

Mr. HUTCHINSON. No, I am not, I am not.

Mr. CELLER. Mr. McCulloch—

Mr. LATTA. It seems to me you ought to be able to come up with better language.

Mr. CELLER. Do you want to answer that?

The CHAIRMAN. Gentlemen, we are trying to finish with this witness because we are going to have to go downstairs.

Mr. CELLER. I don't see anything wrong with the language. It is a question of semantics, maybe. You may want another word there, but they are a pair.

Mr. LATTA. That is all.

Mr. O'NEILL. It will show that our age is not as picturesque as the age of the 1780's.

Mr. CELLER. What is that?

Mr. O'NEILL. Our age is not as picturesque in language as the language of the 1780's.

The CHAIRMAN. Have you finished, Mr. O'Neill?

Mr. O'NEILL. I have.

The CHAIRMAN. Mr. Celler, if I understand you, you expect to leave town this afternoon. You are going to New York?

Mr. CELLER. I have to vote in New York.

The CHAIRMAN. All right. Now, it is obvious we cannot finish this hearing on this matter today.

I had hoped that we could finish, but we have this quorum call, and we do have to go into executive session. So we will just have to notify you with respect to the next session we will hear you.

The committee will go into executive session.

(Whereupon, at 12:49 p.m., the committee went into executive session.)

Mr. Latta. I certainly know of individuals that might be
arriving an amendment to the Constitution of the United States for
today, but for tomorrow and tomorrow and tomorrow.
Mr. Latta. For tomorrow? (He looks at the clock.) He has no other business.

Mr. Latta. He has no business.
Mr. Latta. We do not have a vote.
Mr. Latta. He has not taken the House of Representatives.
Mr. Latta. For said election can vote in any State? On the subject.

Mr. Latta. I am meeting today.
Mr. Latta. I think.
Now, one other thing I know the bells have rung and possibly
this is all passing, but I consider the Constitution of the United
States, second to the Bible, the most important document that I know
and I do not like this language where you say in section 1, the
part of persons. You say, "The part of persons having the right
number of votes." That is wrong.

Mr. Latta. Mr. Latta is the author of that one.
Mr. Latta. I am not.
Mr. Latta. Mr. Latta is the author.
Mr. Latta. It seems to me you ought to be able to read the

Constitution. Do you want to answer that?
The Constitution, I understand, we are going to sign with the
the same meaning to have a uniformity.
Mr. Latta. I am not a lawyer, but I am a citizen, and I am
question of the Constitution, and I am a citizen, and I am

Mr. Latta. I am not.
Mr. Latta. I will show that one of his not is a citizen, and
Mr. Latta. I am not.
Mr. Latta. I am not.

Mr. Latta. Our age is not as old as the age of the
age of the 1780.
Mr. Latta. I am not.
Mr. Latta. I am not.

The Constitution, Mr. Latta, if I understand your report to
down in the report, I am going to say, I am
Mr. Latta. I am not.
The Constitution, Mr. Latta, if I understand your report to
down in the report, I am going to say, I am

I had hoped that we could finish, but we have this question, and
we do not want to have any more so soon, so we will just pass it over.
The committee will be interested in the session.
Mr. Latta. I am not.

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO THE ELEC- TION OF THE PRESIDENT AND VICE PRESIDENT

TUESDAY, JULY 15, 1969

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D.C.

The committee met at 11 a.m., in room H-313, the Capitol, the Honorable William M. Colmer, chairman, presiding.

Present: Messrs. Colmer (chairman), Madden, Bolling, Young, Pepper, Matsunaga, Smith of California, Anderson, Martin, Quillen, and Latta.

Staff present: Mr. Laurie C. Battie, counsel; Mr. Robert D. Hynes, Jr., minority counsel.

Mr. COLMER. I understand Mr. Celler was anxious about this resolution.

Mr. McCulloch, in the interest of time the committee will hear from you, but we would appreciate it if you would notify Mr. Celler that we expect to hear from him further.

Mr. McCULLOCH. Thank you very much, Mr. Chairman.

Mr. Chairman, of course you will recall that there was a lengthy hearing on the first day at which Mr. Celler, the chairman of the Committee of the Judiciary, testified throughout the period.

I had prepared my statement in view of that lengthy testimony and, therefore, my written statement will be brief.

STATEMENT OF HON. WILLIAM M. McCULLOCH, A U.S. REPRESENTATIVE FROM THE STATE OF OHIO

Mr. McCULLOCH. I would like to begin by saying it is almost impossible at this time to shed new light on the subject of electoral college reform. There are few defenders of the status quo. It is time that the House work its will.

On May 16, 1969, for the first time in history, a congressional committee reported the direct-election proposal as an amendment. The vote of the House Judiciary Committee was overwhelming: 29 to 6. That vote cut across party lines. The six votes against the direct-election proposal were cast by three Democrats and three Republicans. The membership on that committee is, as I recall, 15 Republicans and 20 Democrats. So I am pleased this morning to join with the chairman of the Judiciary Committee in requesting an open rule providing for 6 hours of debate.

I have been of the opinion that it serves a useful purpose in matters of great importance, such as fashioning an amendment to the Constitution, that every knowledgeable person who desires to speak should have an opportunity to speak on the proposal of electoral college reform, a question which is no simple issue. We proceeded in hearing this matter before the committee in accordance with that principle. The committee held 10 days of hearings and 7 days of executive sessions in order to study the problem and report a proposal.

I believe that the House should consider the direct-election proposal because it alone can engender the enthusiasm and the support necessary for ratification. The direct-election proposal for the election of the President is recommended by the American Bar Association, the AFL-CIO and the Chamber of Commerce. It is favored by 81 percent of the American people, according to a Gallup poll.

Of all the plans—and to me this is so important—of all the plans, only the direct-election plan cures all the defects of the status quo. It alone guarantees that the “winner” wins and the “loser” loses. It alone treats all voters equally. It alone subscribes to the principle of “one man, one vote” in presidential elections. All other plans stop short. All other plans are incomplete.

The direct-election plan is not only the best, it is the most feasible. Electoral college reform has been a topic of much concern in the Congress since 1797. Reform has failed because of the kinds of reforms proposed. We tried the district plan—and failed. We tried the proportional plan—and failed. We tried both those plans together—and failed.

Those attempts had to fail.

I am fearful that if we embraced any of those plans that failed in the past they would again fail in the future. Constitutional amendments do not come easily. Article V places a heavy burden on reform lest one faction disadvantage another. The district plan and the proportional plan are special-interest plans. They do not serve all the people. They frankly render unto the small States more than is their due. But enacting constitutional amendments is not a shell game. The history of these reforms proves that. Sooner or later, the special interest is uncovered—and the reform fails.

Not until May 16, 1969, did a committee report a resolution that eliminated both of the competing inequities in the present system—the unit rule which favors large States and the bonus votes which favor small States. At last, on that day, at least in the committee, factionalism failed and fairness triumphed.

Of course, the direct-election proposal is not favored by everyone. In this representative Republic seldom, if ever is anything favored by everyone, and I guess that is the greatness and strength of our Republic. So it is here. Some liberals find the direct plan second to the automatic plan. Some conservatives find it second to the district plan. But often the merits of a proposal can be seen in the nature of its opposition, and that is true here.

The direct-election plan is neither a liberal plan nor a conservative plan. It is neither a Democrat plan nor a Republican plan, but a plan which serves the common good of our Nation, a plan molded by the

principles of representative government, a plan not simply for the next few elections but a plan designed for the foreseeable life of our Republic.

I end as I began. We have studied these proposals since I have been in Congress, for more than 20 years, and it seems to me at long, long last we have fashioned a resolution in the House Judiciary Committee which can be adopted by both the House and Senate and be ratified by the required number of States.

I hope this committee reports a rule so that this resolution may be taken before the House and then before the people who, as I have said, so desperately want to amend our Constitution.

Mr. COLMER. Thank you, Mr. McCulloch. You have finished your statement and you agree with Mr. Celler on the time and the nature of the rule, the open rule?

Mr. McCULLOCH. I do, sir, and I agree on the time, sir.

Mr. COLMER. Which is?

Mr. McCULLOCH. Six hours.

Mr. COLMER. There are a number of proposals, Mr. Dowdy has one, Mr. Poff has one, I understand, and possibly others.

Have you given any thought to whether these proposals would be germane if offered under an open rule?

Mr. McCULLOCH. We have concluded that under an open rule that they would be germane.

Mr. COLMER. Does that carry with it as far as you are concerned not raising a point of order as to germaneness?

Mr. McCULLOCH. As far as I am personally concerned, yes, I think that the time has come when we sweep away any technicalities other than those which are essential for order in our parliamentary practices so that we can reach the merits of this proposal which is, as I have said, of so much interest to the people, who are expecting the Congress to act in this matter.

Mr. COLMER. Well, I was directing my question to you as the representative of the minority on the committee and, while I recognize that you cannot control Members who might want to offer an amendment, I was in hopes that you would say that you would resist any move to raise points of order on the question of germaneness.

Mr. McCULLOCH. Mr. Chairman, if I neglected to say that, that I shall do, because I think that the House should work its will on this matter in accordance with the schedule that this committee and the leadership wish to set them.

Mr. COLMER. Mr. Smith.

Mr. SMITH. Yes.

Could you refresh my mind—I believe we discussed it, but I do not remember—what the administration did do—

Mr. McCULLOCH. I shall be glad to tell you.

The President said that he would support any method adopted by the Congress which achieved at least basic reform. Maybe even language stronger than that.

Here is his statement so that there will be no mistake about it whatsoever, Mr. Chairman, because this is so important.

I am quoting from the President's message on electoral reform which is dated February 20, 1969, and I quote:

I have not abandoned my personal feelings stated in October and November 1968, that the candidate who wins the most popular vote should become President.

And later on he sets forth three objectives.

He says, and I quote:

But I am not wedded to the details of this plan or any other specific plan. I will support any plan that moves toward the following objectives:

First, the abolition of individual electors.

Second, allocation to Presidential candidates of the electoral votes of each State and the District of Columbia in a manner that may more closely approximate the popular vote than does the present system.

Third, making a 40-percent electoral vote plurality sufficient to choose the President.

And I would like to say at this point, we considered the number of votes that a candidate for President should have in order to be declared elected President. We considered 35 percent, it was not agreed to. We considered 45 percent, it was not agreed to. And, of course, we considered 40 percent, and that is where the strength lies.

Mr. SMITH. Did the administration submit a bill? That is what slipped my mind.

Mr. McCULLOCH. The administration did not submit a bill.

Mr. SMITH. Did they submit something as suggested either the district plan or another? I have some recollection but I do not know what it was.

Mr. McCULLOCH. Only these objectives which I read. And I would be glad to say to this committee that I introduced each of the three proposals that I have discussed. Those resolutions and similar ones were before the committee and were argued in all of their facets during this long period of hearings which we had.

Mr. SMITH. That is all, Mr. Chairman.

Mr. COLMER. Mr. Madden.

Mr. MADDEN. I want to commend the ranking member of the judiciary for his concise and simple explanation of this problem, and also the work of the committee in bringing out this legislation, because I think there is no more important legislation confronting this session of Congress than this legislation pertaining to the election of the Chief Executive.

That is all.

Mr. COLMER. Mr. Anderson.

Mr. ANDERSON. I would like to commend the gentleman from Ohio on his statement as one who himself offered the direct-election plan in the form of legislation earlier in this session. Of course, I am pleased to know that we agree on this important issue. There are a great many additional views I notice in the report that accompanies this bill.

Did anyone mention what the vote was in the committee on the reporting of this?

Mr. McCULLOCH. The final vote was an unbelievable 29 to 6, with only three members of the majority voting against it and only three members of the minority voting against it.

Mr. ANDERSON. Thank you.

Mr. COLMER. Mr. Quillen.

Mr. QUILLEN. Do you see any real danger, if this proposal becomes law, of the television networks controlling and electing a President of the United States?

Mr. McCULLOCH. I have no great fear that sort of thing would happen. And I might say this, that I have such faith in the Congress of the United States that if it once happened, the guidelines would be so stiff and rigid and effective that it would never be tried again.

Mr. QUILLEN. You do not think someone on a "white charger" could come out as a candidate for President and be picked up by the media and elected President of the United States?

Mr. McCULLOCH. Of course, you know Presidents of the United States in my time have been elected by reason of the fact that they rode that proverbial white charger that you named. Sometimes those on white chargers caught the imagination of the people, and sometimes they did not.

But almost, without exception, if not entirely without exception, when a person takes on the duties and responsibilities of the Presidency of the United States, the chief of state of the most powerful country in the world, he takes on a respect and an attitude which almost invariably enables him to meet the occasion.

Mr. QUILLEN. Well, admittedly that is true and I, of course, know that the media would not do this deliberately. But you know you can spotlight a certain instance, a certain attitude, and it is very popular and it rides with a sweeping wave. Then when it is over it dies. But during the sweeping wave period it is possible to elect somebody who possibly would not make a good President of the United States.

Mr. McCULLOCH. Almost anything is possible, but it would be highly unlikely.

Mr. QUILLEN. You see, on the west coast the elections are still going on while on the east coast they have concluded. And the media then takes the computer and say that certain people have won and the people on the west coast have a chance to vote for that person.

Mr. McCULLOCH. I agree, and I think that is possibly a dangerous condition and is something to which the Congress should address itself without delay. However, that problem does exist today to a lesser degree.

I repeat, it is my opinion that is something to which the Congress should address itself.

Mr. QUILLEN. I am in complete agreement there, and I think the Congress should address itself to that problem in connection with this measure. This is because it would be more likely—

Mr. McCULLOCH. Mr. Quillen, I agree with your feelings about this matter. However, I do not think that this great document of ours, the Constitution, should take on what would ordinarily be statutory matters to which we can address ourselves quickly and effectively.

Mr. QUILLEN. Well, as I said, it would be more likely under this plan and I realize it would take several years for this to become final and the change of the Constitution, but it would be more likely under

this plan in a popular election that the west coast would have an opportunity to swing any election that we might have.

Mr. McCULLOCH. I admit the possibility of what you are saying. But all through our changing history, we quickly met the possibilities of wrongdoing and improper result. I think I said once before that it has been observed that new occasions teach new duties. As we get instantaneous transmission of sound and almost that rapid transportation of individuals, these are problems which we, I think, can adequately solve.

Mr. QUILLEN. Well, that I am in agreement with. We can adequately deal with it, but when is the committee going to come forward with a recommendation in this regard?

Mr. McCULLOCH. I think the moment that the need became apparent after we finally see what form of a constitutional amendment we get. I believe the chairman would act quickly. And we have a delaying effect in the last section of the resolution so that we can enact necessary legislation. By the way, legislation to expand the time for voting in Presidential elections to a 24-hour period, and to provide that such period shall be uniform throughout the United States, was introduced on April 22, 1969, by Senator Barry Goldwater.

Mr. QUILLEN. Our Founding Fathers were very wise. They could foresee things that might take place in the future because out of the past comes the future. These are safeguards, and our electoral college is a safeguard against something that might happen, as we are discussing. So, therefore, if you change one method it seems like these protective safeguards should likewise fall in place.

Mr. McCULLOCH. Well it is my opinion that in large part this proposed amendment to the Constitution will do just that. Of course, we all remember that at the time the Constitution was adopted in 1787, as I recall, education was not so widespread as it is today, and it was thought that only certain people with superior education and intellect and training should vote. But we have long since ceased to follow that theory.

Mr. QUILLEN. I wonder, Mr. McCulloch, and again let me congratulate you—I am not taking exception to your viewpoints at all—but what would have happened, Mr. McCulloch, back in 1801 when Thomas Jefferson and Aaron Burr, when the election was thrown into the House of Representatives? When on the floor of the House, when the debate was going on, someone said if you want a crook, if you want somebody unsound, then elect Aaron Burr. But the Members of the House responded and Thomas Jefferson was named President of the United States.

Mr. McCULLOCH. Such crises—

Mr. QUILLEN. So Thomas Jefferson was elected. What would have happened to the future of this country had Aaron Burr been elected President of the United States?

Mr. McCULLOCH. You know, my good friend, we are trying to prevent such a crisis from ever happening again, and that is one of the urgencies of the situation.

By the way, with reference to your previous question, I wish to point out that section 7 of the resolution would provide the Congress

and the States with sufficient time to legislate on these various problems such as the times for the election. Section 7 provides:

"This article shall take effect one year after the 21st day of January following ratification."

I assure you that there is no partisanship involved.

I never talked with the President on this amendment. No one ever talked to me on behalf of the President, and this is the provision that will give the Congress of the United States, with all of its broad powers, time to pick up legislatively all of these things or any of these things that need to be picked up that we do not want to write or should not want to write into the Constitution.

We tried to foresee as much as possible in all of those days that we had it in committee. And the attendance was very, very good, by the way.

Mr. QUILLEN. Well, the debate on the Floor of the House in that particular instance cost Alexander Hamilton his life over here in a little churchyard in Virginia because of a duel.

Who had the most popular votes, Jefferson or Aaron Burr?

Mr. McCULLOCH. Well, counsel tells me it is difficult, if not impossible, to say who had the most popular support because at that time the electors were directly selected by State legislatures in 10 of the 16 States.

Mr. QUILLEN. Neither received the majority of votes and, therefore, it was thrown in the House of Representatives under the same constitutional provision that we are discussing now.

No one can argue that the popular votes, the most popular votes, is a popular thing. On the other hand, I have certain reservations and they are difficult to express.

Mr. McCULLOCH. Well, I think perhaps every citizen who is a student of history has some feelings like that.

And in this country we have seldom, if ever, found the approach that was perfect. But I cannot keep from saying, that as you know practically every elected official, including Members of the House and Members of the Senate, and almost every legislative body in any political subdivision in America, with only two or three exceptions, is elected by popular election. The man who in the final count gets one more valid, uncorrected vote becomes the official spokesman, even if he has only 15 percent of the vote.

Mr. QUILLEN. That I cannot argue with. But that particular election is held at the same time. There is no difference in the hour involved in the election.

The Presidential election is held with a variance of time, such as exists between the various areas of the country, and that is, if that were corrected, and I think the distinguished gentleman and the chairman really have that in mind later, and I will not pursue this further.

But to refresh your history, in that election in the House of 1801, the deciding vote was cast by the congressman from the district which I represent, William Charles Coles Claiborne. Jefferson was elected by one vote. Claiborne was elected to Congress at age 22 and he had to overcome that obstacle of age. He addressed the House and the House agreed to accept him at age 22 even though the Constitution

required an age of 25. I guess when you say you leave it up to the House you are in good hands.

Mr. McCULLOCH. I found over a period of years, while occasionally we are not perfect, it is one of the best legislative bodies that the world has ever known.

Mr. QUILLEN. Thank you, Mr. McCulloch.

Mr. COLMER. Mr. Pepper.

Mr. PEPPER. I want to commend the able gentleman from Ohio and also the distinguished chairman of the committee for having done such a fine job on what I regard an essential issue. It has been a difficult task and you performed it with great excellence.

I am strongly for this proposal because I agree with the able gentleman that it is the best that has been proposed, but I also want to express the hope that this able committee will, when this matter is concluded, concern itself with what is implied in the question of my friend from Tennessee, the question of the money, the use of money in election campaigns in the United States today.

In the last presidential election, I know our candidate, it was not any secret, did not have money enough to make the TV appearances and do the other things that were necessary. Almost whole States had to be abandoned because he did not have the money to carry it on.

Under the old system the concentration of money and the use of media in the pivotal States could accomplish the same result that the able gentleman feared might be accomplished by appealing to the whole electorate in the country. But the millions it now costs to carry on the presidential campaign, we know the advantage the candidates have, the money to use the TV, radio and press, direct mail and billboards, and all of that sort of thing. And where you do have requirements about financial reporting, it is often taken very lightly as in the last presidential campaign. The people were entitled to know before the election how much the respective candidates spent.

But the winning party did not file the financial report the law clearly calls for and the other party did file prior to the election. But the people did not have the opportunity to know, even if it would influence the decision, how much the respective parties did spend.

In a State like mine, and mine is the ninth largest State in the Union, to get elected Governor or Senator costs a million dollars. In other States larger amounts. Where is that million coming from and it costs something like \$20 million, I don't know how much they spend, in the presidential campaign.

Now, you have dealt with this critical subject of how to elect a President. I hope your committee will go into this matter of trying to see if there is some way we can adequately safeguard against the excessive use of money at all levels of government.

Mr. McCULLOCH. Thank you for your complimentary remarks. As I recall, and am advised, that legislation is now before the House Administration Committee, and while we would not run away from this subject, we have a very great deal of work to do.

Mr. PEPPER. Presidential campaigns would come before your committee, would they not, all campaign expenditures? If that is the appropriate committee, I address it to them.

Mr. COLMER. Mr. Latta.

Mr. LATTI. First of all, I want to commend you for the excellent statement today and for all the work that the chairman and the rest of the members have put on this important resolution.

Let me say that I introduced one of these joint resolutions pertaining to a popular vote, and since that time, the more study I have given it the more reservation I have with it.

I want to raise a couple of questions that have been raised about your resolution here.

For the most important office of the land, you do not provide for any kind of a recount. I wonder whether or not your committee gave this any thought.

Mr. McCULLOCH. Yes. The authority for all of that kind of activity is left to the Congress of the United States. And on page 3, lines 7 through 9, it says:

The Congress shall prescribe by law the time, place, and manner in which the results of such elections shall be ascertained and declared.

I repeat the Congress of the United States would have complete latitude to provide for these details within the framework of this proposed constitutional amendment. And again, that relates to section 7, which delays the effective date.

Mr. LATTI. What you are saying is your committee acknowledged that there might be a problem here that should be considered. But you pass it on to another day to let the Congress itself, at some future time, settle this. Do you not think that on such an important question maybe it ought to be settled now while we are considering this? These things do not come easy, as you have said, you have been talking about it for 20 years. I do not think we ought to wait until such a time as the crisis is upon us before we settle it.

I merely point this out to you. I know it is something not in the bill and I hope it will be discussed on the floor and some thought given to it.

Mr. McCULLOCH. Since you are the good legislator that you are with very important experience in the Ohio Senate, I think that I might properly say that as for some of the details which are almost as important as the constitutional amendment itself, we tried, in accordance with the course of practice ever since the Constitution was initially adopted, to refrain from making the Constitution a statutory declaration of will. And I really believe that the Congress has it within its knowledge and its desire and power to provide for all of these things that need to be provided for.

Mr. LATTI. Let me comment also on this runoff provision that you have in this bill. You say the resolution requires 40 percent to be elected. There you raise the question of a runoff for President of the United States, which in and of itself might present an election crisis or a period of indecision after our general election in November. And I just cannot conceive of a runoff election in the United States with all the indecision that would prevail at such a time. I am one of those who believe that we should not have any figure. The winner on the second Tuesday after the first Monday in November with the most votes ought to win, regardless of whether he has 39.99 percent of the vote or 40 percent. Just to draw a line and say that he has to have 40 percent just does not seem to make sense to me.

Mr. McCULLOCH. If I might, Mr. Chairman, I should again like to comment on this objection, and it is a valid one. The committee has spent considerable time in discussing it.

After thorough debate we finally came to the conclusion that 40 percent was a good sound number. We tested 35, we tested 45; and we tested the simple plurality.

Now, you know we have the same prospect or the same possibility of a near miss under our present system.

I would like to recall for this committee the election return in 1960 in the State of Illinois with 10 million people where the difference was only 8,000 votes. Now, you know it is possible for the people who have ability in this field to draft the legislation to determine how these recounts can proceed with accuracy, with honesty, and with speed.

Now, I am mindful of the experience in 1962 in Minnesota where they could not determine who had been elected Governor until March. Such delay would be a regrettable if not an intolerable situation, perhaps even a crisis as Mr. Latta has pointed out. But you know, legal delays sometimes are without excuse, but when the pressure is there by enough people to get a result in accordance with law that is in the best interest of the country, it does not take 6 months for the courts to move in such fields.

Mr. LATTA. I respectfully suggest to my good friend that these are the things that we are trying to prevent. The mere fact that you pointed out they happened in 1960 in Illinois, and you also forgot Texas, that is what we are trying to prevent. I think we ought to take the measures to prevent them in the future.

I am taking too much time.

There is one other thing I want to point out and I hope your committee will take up. I think you are doing half the job in this. I think you ought to take up the matter of having a direct primary and have the individuals that you are going to be voting for in the fall submitted to the people. I think the people ought to select who they are going to vote for in the fall. I think you have only done half the job and I think you ought to take up the rest of it.

Mr. McCULLOCH. We are glad to have a recommendation in that field.

Mr. COLMER. Mr. Matsunaga.

Mr. MATSUNAGA. Thank you, Mr. Chairman.

As I understand it, there are two principal objections to the present system of electing our President and Vice President. One is in case of inability to elect a President, the election is thrown into the House of Representatives wherein each State, regardless of population, would get one vote. This would eliminate that?

Mr. McCULLOCH. Oh, yes.

Mr. MATSUNAGA. The second objection that was raised by the chairman of your committee in testimony was that less than a majority of the voters participating in an election would elect or could elect under our present system a President and Vice President.

Now, by inserting your 40-percent figure you have not eliminated that objection.

Mr. McCULLOCH. So far as determining who is elected when there is an election with two candidates for President—

Mr. MATSUNAGA. But if there are three candidates?

Mr. McCULLOCH. The chairman's objection, as I recall, was that, under the present system the loser in the popular-vote count could be the winner and the winner of the greatest number of popular votes could be the loser.

Mr. MATSUNAGA. I realize that, but then the fact that 40 percent, or 40 and a fraction percent, could elect a President and not 50 and a fraction of the total cast votes. This bothers me somewhat. Of course, you testified that you did play with the figures of 35 and 45, but you did not talk of the figure of 50, a simple majority.

Mr. McCULLOCH. We were trying to prevent third parties from gaining disproportionate leverage. And I repeat, you know, none of us appear to be too concerned that we are elected by far less than a majority of the total vote.

Mr. MATSUNAGA. Now, there is some concern among those who represent smaller States, as in my case representing one of the smaller States of the Union, Hawaii, where if a direct election is effected, such as you propose here, then the candidates for President and Vice President will completely ignore the smaller States and concentrate their efforts in the bigger States.

Could not there be some sort of compromise, wherein the majority of the votes within a State would determine how the total votes of that particular State would go, so that the candidates would pay a little more attention to the smaller States?

Mr. McCULLOCH. Of course, you know, under the present system, the incentive to apply great pressure to the populous States does not give you a thousand votes or 5,000 votes or even 10,000. The winner takes all. So it is entirely possible that someone might want to come to the State of Hawaii, where he could get 35,000, than take the risk in Illinois where the vote is fairly evenly divided.

This is not an open and shut thing. Vermont can provide as big a majority for X as Illinois can. That is not possible today.

Mr. MATSUNAGA. Under the present system, the electors, under the electoral system, still actually cast the vote for the President. Will this bill eliminate that?

Mr. McCULLOCH. It will.

Mr. MATSUNAGA. Why the use of the term electors?

Mr. McCULLOCH. This is equivalent to the word "voter." We discussed that at great length and we selected the term from the Constitution.

Mr. MATSUNAGA. I realize that. Why do not we change the Constitution in other areas where the term "electors" is used, because it is confusing. The fact is that we are eliminating the electoral college by this proposal and still using the term "electors."

Now, take a look at section 1. You start out with "the people of several States * * *" and on line 5 you use the term "elector."

Section 2 you use the term "electors of President and Vice President shall have certain qualifications." I think we ought to use the term "voter" here.

Mr. McCULLOCH. That was my initial feeling, but let me refer to article I, section 2, of the Constitution, which I think is an indication that we would have to do a major job of amending the Constitution to meet the suggestion that you have. And the less change that we can

propose in amending the Constitution, a task which has proven to be so difficult—properly so—in the past, the better.

Section 2 of article I provides that the House of Representatives shall be composed of Members chosen every second year by the people of the several States. And that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

The same is true for senatorial elections. The 17th amendment says:

The electors in each State shall have the qualification requisite for electors of the most numerous branch of the State legislature.

Mr. MATSUNAGA. I realize that, Mr. McCulloch. But what I am saying here is that inasmuch as the questions which I am now raising will continue to be raised, why do not we make the necessary change in other sections of the Constitution at the same time that we are making this change?

Mr. McCULLOCH. Maybe the answer is an elementary one: we do not wish to disturb and further confuse people when they are discussing this matter after it is finally referred to the States by the Congress. When you have dug through it and you are satisfied that there is no conflict in the meaning of any of the words as they appear in the Constitution, which we have—

Mr. MATSUNAGA. In line with that, the term "people of the several States" also is used in other sections of the Constitution and you have left it here. But actually it should be the citizens of the several States, for the reason that the people would include those permanent aliens, for example, who are ineligible to vote. Yet there would be some question by the use of the term "people" in the Constitution of the United States that I am a "people" although I am an alien resident that I should not be denied the right to vote.

Mr. McCULLOCH. I repeat, although those words may be confusing, as they first were to me and some of the members of the committee, we finally concluded that the public interest in getting a constitutional amendment adopted would be better served leaving those things that have stood the test of 170-some-odd years than to get into an action that would only create further controversy.

Mr. MATSUNAGA. I understand.

Mr. McCULLOCH. While I am not advocating this, if ever there comes a constitutional convention when it is thought that the entire Constitution should be made letter perfect, of course, I would be on your side.

Mr. MATSUNAGA. Now, the people of the several States and the District constitute the seat of government. Now, you completely omit Americans and I say Americans, U.S. citizens in Guam, in American Samoa and I am not too sure about Puerto Rico and the Virgin Islands. Are not they American citizens being denied the right to vote for the President of the United States?

Mr. McCULLOCH. They have have no right to vote for the President today. They are unincorporated territories. The Constitution does not apply to them. And this is again one of those things that might jeopardize the chances for ratification.

Mr. MATSUNAGA. We are talking about extending the doctrine of one man, one vote, and these Americans dwelling on American soil, why should not it be simple enough just to put the people of the sev-

eral States and write in there "territories of the United States and the District." This would be a simple amendment.

Mr. McCULLOCH. I think in terms of words and phrases that is right. But I think it would not help in the ratification of the amendment.

Mr. MATSUNAGA. Is the gentleman overlooking the fact that they participate in the nomination of the President and Vice President? Why, if they participate in the nomination, should they be denied the right to vote for the person they nominate?

Mr. McCULLOCH. The chairman advises me, with his always adequate fund of knowledge and experience, that the party machinery makes the rules by which they participate in the nomination.

Mr. MATSUNAGA. That is correct. But the operation is of the party system, although not prescribed by the Constitution, and come within the provision of the Constitution for the purpose of nominating candidates to be elected under the provisions of the Constitution.

Mr. McCULLOCH. As I recall, there was no testimony to support such proposal before the committee. And the committee voted down the amendment. The chairman may wish to comment.

Mr. MATSUNAGA. Was there a proposal made within the committee for such an amendment?

Mr. CELLER. We discussed the matter, but I would say the question is highly controversial. I am getting calls now, after the event, not during the time we had our hearings, with reference to granting a vote to the people of Puerto Rico. I am, on the other hand, getting a great deal many letters opposing a vote. It is a very controversial matter which has raised a very, very great deal of questions.

Mr. McCULLOCH. I am advised that Mr. Kastenmeier, a member of the committee, offered the amendment.

Mr. MATSUNAGA. In the case of Puerto Rico there might be some controversy. But what about Guam and American Samoa?

Mr. CELLER. I do not know. I cannot answer that.

Mr. MATSUNAGA. Somehow I do not seem to like that term "pair." Could you find a better word than "pair"?

Mr. McCULLOCH. I should like to answer that. You know in choosing that word we spent a very great deal of time in discussion, and the word that we sought to substitute for it, whatever it was, always ended up with more opposition than support. And while "pair" is not the most elegant descriptive word in the language, we finally came to the conclusion that as a matter of law it was the best that could be done.

Mr. MATSUNAGA. If it was spelled differently, I would suggest pineapple.

In section 5 on page 3, on line 13, you use the term "both." Now, that would seem to inject some confusion as to whether or not both the President-elect and Vice-President-elect ought to die before this provision becomes effective. Now, should that not be for the case of the death of the President-elect or the Vice-President-elect?

Mr. McCULLOCH. We came to the conclusion that this is the only problem not completely taken care of by the 20th amendment.

Mr. MATSUNAGA. So this is in the event of both.

Now, in section 7 you speak of the effective date as 1 year after the 21st day of January following ratification. Perhaps this might be

provided for statutorywise, but would not a proviso there, except that it shall not effect the term of office of the President and Vice President then in office, clarify the application or nonapplication of the law?

Mr. McCULLOCH. It is my belief that it would apply. And repeating what I said, it was hoped that this would give the Congress of the United States time to work its will on implementing legislation under section 6 of the bill. The States, because there may be the necessity of passing some new election laws, will also need time.

Mr. MATSUNAGA. No; I do not think you caught my question. My question was exactly the reverse. That makes it specific that it does not apply to the President and Vice President then in office.

Mr. McCULLOCH. Well, you know, I would have to answer that that would cause a very great deal of difficulty and would evoke charges of partisanship and protection and the like.

Mr. MATSUNAGA. I am speaking legalwise.

Mr. McCULLOCH. We discussed this effective date delay for some time. There was a general desire that the amendment should be effective as soon as possible. But there will be technical problems. So we have section 7.

Mr. COLMER. Mr. Latta?

Mr. LATTI. No questions.

Mr. COLMER. Mr. Pepper?

Mr. PEPPER. I would like to have the attention of the chairman and the distinguished minority member.

Mr. COLMER. We want to hear Mr. Celler, but if you will confine it to one witness we will appreciate it.

Mr. PEPPER. I will ask the able gentleman from Ohio. In section 5, the proposed amendment provides that Congress may by law provide for the case of the death or withdrawal of any candidate for President or Vice President before a President and Vice President have been elected, and for the case of the death of both the President-elect and Vice-President-elect.

I was going to suggest that, would it be desirable to put "disability" right after "death" in line 11, because you can imagine a man being stricken down by paralysis or a stroke, or injured by an accident of some sort and becoming totally disabled, and yet it would not be a death or withdrawal. The man might even be unconscious.

Mr. McCULLOCH. Mr. Pepper, I would like to say that I suggested that amendment in committee and it was not agreed to. I am advised by Congressman Poff that under the rule that we hope to get from your committee he hopes to give the House the opportunity to indicate its choice.

Mr. PEPPER. That answers the question and if that is the attitude of the chairman, I would like to know that when he comes back, Mr. Chairman.

Mr. COLMER. Is there anything further, Mr. McCulloch?

Mr. McCULLOCH. Thank you very much.

Mr. COLMER. There were a couple of questions I wanted to develop, but we are running out of time and a quorum. We are going to have to get your distinguished chairman back up here. I know he has other important duties so I shall defer any questions I might have of Mr. Celler.

The questions when you were here before had not been finished, but it looks like we have about lost our quorum here.

Any questions of Mr. Celler?

Mr. CELLER. Have I any questions?

Mr. COLMER. Are there any questions of Mr. Celler?

Mr. PEPPER. Would you agree to what we said a while ago that you would not object to an amendment adding the word "disability"?

Mr. CELLER. I am not saying that I would not object. I would like to listen to the argument on the floor. I am inclined to agree with it. There is a provision in the Constitution with reference to disability.

The question is whether you want to do it by constitutional amendment or by statute.

Mr. COLMER. Mr. Celler, I think you have observed—if we did bring you back here needlessly—that there is considerable reservation about your resolution in spite of the unanimity with which you reported it out. So maybe you have profited somewhat by coming back anyway. We shall not detain you any further.

It is obvious that we are not going to be able to finish this today and we have a number of other witnesses, some people who expressed a desire to express opposition to the question.

The committee will stand adjourned.

Mr. CELLER. I hope we can get prompt action on this bill. We have been working on this since the first of the year and a great many others are in favor of it, organizations, the American Federation of Labor and the United Chamber of Commerce and other organizations.

Mr. COLMER. Mr. Celler, the chair is aware of that. I am sure that there certainly has been no disposition yet to stall this matter. We have set it down on several occasions. On the other hand, I can see no reason for rushing it. It has been in the present position now for about 150 or more years. I do not know any particular rush about it.

Mr. CELLER. Mr. Chairman, may I know the adjourned date of your next meeting? We have a Judiciary Committee meeting on Thursday, it is a very important bill that is coming up.

Mr. COLMER. We will not call you back on Thursday.

Mr. MADDEN. I wonder if we could not set a date because I think, and I know many Members—the vast majority of the Members of the House—have been inquiring about this legislation. I think you were up here about what, 3 weeks ago?

Mr. CELLER. You have had the matter since May 16.

Mr. MADDEN. I think we could hold hearings Friday, or we could hold hearings next Tuesday.

Mr. COLMER. How about tomorrow?

Mr. MADDEN. Tomorrow would be all right with me.

Mr. COLMER. If the committee is agreeable, we can meet tomorrow. It is difficult to keep a quorum.

Mr. MADDEN. I wonder if we could inform the chairman of the Judiciary Committee that we would hear him next Tuesday?

Mr. COLMER. If that is agreeable for the gentleman from Indiana and the gentleman from New York.

Mr. BOLLING. The gentleman from New York has completed his testimony, I believe.

Mr. COLMER. The committee will go into executive session.

(Whereupon, at 12:15 p.m., the committee was adjourned.)

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO THE ELEC- TION OF THE PRESIDENT AND VICE PRESIDENT

TUESDAY, JULY 22, 1969

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D.C.

The committee met at 10:40 a.m. in room H-313, the Capitol, Hon. William M. Colmer, chairman, presiding.

Present: Messrs. Colmer, Madden, Bolling, O'Neill, Sisk, Young, Pepper, Matsunaga, Smith of California, Anderson, Martin, Quillen, and Latta.

Staff present: Laurie C. Battle, counsel; and Robert D. Hynes, Jr., minority counsel.

The CHAIRMAN. The committee will please come to order. The committee meets to hear testimony on House Joint Resolution 791. I believe we completed the hearings on the direct election of the President. We have this morning Congressmen Dowdy and Dennis, authors of House Joint Resolution 791.

Mr. Dowdy, why don't we hear from you first?

Mr. Dowdy, will you take your time here and tell us what is involved in your resolution and why you do not go along, as a member of the Judiciary Committee, with the majority of that committee on the reform of the Constitution or the change of the Constitution which seems to be so widely advocated today?

STATEMENT OF HON. JOHN DOWDY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Dowdy. Mr. Chairman, I appreciate the chance to advance to this committee the thoughts of some of us who are fearful of the proposal advanced by the majority of the Judiciary Committee in presenting the direct-election proposal for the election of a President.

I, for one, still consider that the authors of the Constitution of the United States were the greatest political minds ever assembled at one time. They drew upon their own experience and the 6,000-year experience of mankind's search for liberty and produced the Constitution of the United States. It has served us well. We have grown from a small, weak country to the most powerful in the world; probably, outside of the Roman Empire, the most important and strongest nation that ever existed in the history of man.

The proposal advanced in this direct election will destroy federalism, our federal system in the United States. We might as well face that. Maybe that is what we want to do. I don't think it is. We have

had a great deal of talk over the past several years about "one man, one vote." If you will read the direct-election proposal, you will find that it provides one man will have one and a half votes as far as electing the President of the United States is concerned.

There is a great deal of talk about a majority of the votes; that the person who gets the majority of the votes ought to be elected. The bill provides that 40 percent of the voters can elect a President. That means a man could be elected President of the United States who was bitterly opposed by three of five voters. The 40 percent would elect. Each of their votes would be equal to one and a half votes for the opposition.

Someone at the last hearing asked about the newspapers, radio, and television, and the apparent affect their predictions and their early announcement of votes in the eastern part of the United States would have on the votes that come in in the western part of the United States. There was some mention about that having a greater effect under direct elections. The comment was made that Congress should pass a law that they couldn't make announcements; that would require a constitutional amendment, too, I should think, because it would be a form of censorship on the news.

If we had the direct election as proposed in the committee bill, it would destroy federalism. We would go very obviously to the situation that is existing in France today, a multiplicity of parties, and it wouldn't be at all improbable, certainly not impossible, that enough parties would grow up in various parts of the country to deny a candidate even the 40 percent that the committee bill so generously allows.

I am talking about the committee bill right now because I want to show the reason, first, that the bill, as proposed would not take care of the questions that have arisen, and then that the proposal of Mr. Dennis and myself would do so.

As I have stated, these giants who wrote our Constitution did a good job. We haven't had any of the so-called constitutional crises which have been prophesied in half of the elections we have had in the last number of years—nearly all of my life. During my life we have had several Presidents of the United States.

They devised a federal system of two Senators for each State and Representatives in our body according to population. They provided that same proportion of votes for the election of the President should apply to the States.

If we will go along with this direct election, it will be a further advancement of the proposals that we hear from time to time, that the States ought to be deprived of their two Senators. It will back up that argument, and I doubt that the Senators of the United States will like that too well. I think they like their positions and wouldn't care to give over half of our Senators to five or six States.

This destruction of federalism is one of the big objections I have to the committee bill.

Furthermore, in a number of elections we have had accusations of fraud in certain of our States. One time Texas has been involved and the city of Chicago gets involved, and some of the other large cities, too.

At the present time such fraud is limited in the effect to only one State. If we have a direct election with popular vote which carries with

the 40 percent, fraud in any particular city, county or State would affect the vote of the whole United States.

In the election in 1960, had it been on a direct vote—and anyone who is inclined to try to get fraudulent votes or miscount the votes or misreport the votes in a precinct, it wouldn't have been difficult to change the 60,000 votes that have been counted of the millions cast to alter the vote in that election.

Under the district plan which we are advancing, fraud in a district would apply, at the most, to only three electoral votes. There are 538 electoral votes, I believe, in all. Fraud could affect only three votes, a little over one-half of 1 percent of the vote and it would isolate the effect of fraud in an election whereas, if we have a direct election, fraud in a district might change the vote of the entire United States.

The statement has been made that it was an unbelievable vote in the Judiciary Committee of 29 to 6. Really, it was unbelievable to me when I heard it because I had sat during the executive meetings in writing up the bill and the many, many members who expressed their dislike or doubts about the bill indicated to me that perhaps the writers of this provision of the Constitution had more intelligence than we have been recently giving them credit for.

Someone questioned the use of the word "pair" in the committee bill. I expect that during the sessions on writing up the bill there was more time spent on trivial things like that than there was on the material parts of the bill.

I would say that there was more discussion about the use of the word "pair" in the bill than there was about all of the substantive alternates, amendments, and substitutions with regard to the subject of the bill.

Apparently discussion was had that a direct election bill was going to be reported and arrangements were made and carried out at the time.

Another one of the problems that arises under the direct-election bill, if it were to become a part of the Constitution of the United States—you know, we have right now in the United States all the States but four have a voting age of 21. One State has a voting age of 20. Another State has a voting age of 19 and two States have a voting age of 18.

The bill leaves it within the judgment and in the province of State legislators to set the voting age for their States—set them as it applies under the State constitution.

Under the national competition which would arise in the States were the direct election amendment adopted, this natural competition would cause the various States to want to get as many votes as they could within their States to further effect the election of the President. It is not unreasonable to assume that a given State would reduce the voting age within its State to give that State more votes in the election of the President. They might reduce it to 15 and there is no end to it.

In fact, somebody, when I was talking about this, made the comment to me, "well, it might get down to the point where a pregnant woman would be entitled to two votes." Of course, that is taking it to an extreme, but we have got to face the facts of what could happen under this bill.

Under the district plan as advanced by Mr. Dennis and I, and others, this question wouldn't come in because each State would have the same number of electoral votes toward the election of the President as we have at the present. That is, considering reapportionment after each national census.

Comment was made the other day about the effect, the greater effect that television, newspapers and so on would have upon the election of a President in a direct-election vote over that by electoral vote as we propose. I think probably that fear was not greatly overemphasized and the truth of the matter is, I think the reason there is so much apparent support by the people for a direct election plan is the one-sided presentation of this particular issue to the American people. They have only heard one side and, of course, when you say "one man, one vote," it sounds beautiful but they don't go on and say that one man's vote equals one and a half votes from the other side.

I have covered some of the big objections, as I see it, to the direct-election vote.

Now, this proposal Mr. Dennis and I have made—he and I had separate bills on the electoral vote, by the district method of electing a President of the United States, which I conceive to be the thing that the Founding Fathers had in mind when they wrote the Constitution—Mr. Dennis and I got together and reconciled our district method of electing the President and introduced House Joint Resolution 791, which is before you. In this we do away with electors. I did not do that in my bill but there has been considerable agitation about unfaithful electors. We have had six or eight of those in the history of this country. They didn't affect the election and I don't think they ever would have, but we eliminated the electors in this bill and provided for setting up electoral districts in each State which should be compact and of substantially equal number of voters and let each electoral district in each State have one electoral vote, and each State have two electoral votes, as their Senators, and then the election officials of each State would submit to the proper official here in Washington the vote of the entire State, and the vote of each electoral district, for each candidacy.

We provided a presidential candidacy, a President and Vice President—just one candidacy—that the vote provided by each candidacy will be submitted and the one receiving the most votes within the State shall receive two electoral votes for that State; that the votes by district within a State shall be submitted for each candidacy and the candidacy receiving the plurality of votes in a given electoral district which could be the same as a congressional district or not, as the State legislature determines—each one of those districts would receive one electoral vote.

We further provide in the bill that in the event a presidential candidacy does not receive—well, first, we will provide the candidacy receiving a majority of the electoral votes should be the President and Vice President. If no candidacy receives a majority, then the con-

tingency election would be in the Congress, a joint session of the Senate and House of Representatives with each Member receiving one vote. We provide that the three candidacies shall be voted on. That is very much like the present Constitution, and if neither one of the three receives a majority of the whole vote of the House and the Senate, then the second vote they would choose between the two candidacies that received the highest vote in the first vote of the House.

This bill will make it possible for the States to still have their own election laws while the committee's bill would make it necessary that we have a complete set of Federal election laws which would necessarily have to provide a procedure for election contests and who shall vote and how the voters will be registered and the many things presently left up to the States.

We make a further provision in the bill that the States will still have the right to prescribe the qualifications for voters within States, which is the same as the present law. Those who are eligible to vote for the most numerous branch of the State legislature, and we put in a provision that a legislature of a State may prescribe less restrictive qualifications for voting for presidential candidacies. Some States have already made such provision and this has not been questioned, but this would remove a constitutional objection to that.

We make a provision in the bill further that Congress may provide by law for the case of the death, disability, or withdrawal of a candidate on or before the time of an election under the article, and when there is a tie vote in the popular vote in a State in an electoral district which affects the number of electoral votes received by presidential candidacy. Some contingencies have already been taken care of in the Constitution about the death of a President-elect and we put this in to take care of things that have been overlooked in the past.

I would be glad to answer any questions about this bill or about anything further that has been developed about the other bill.

I don't have as much affection as some do for our present system of electing Presidents. I realize, and it has been my belief for a long time, that there should be some tightening up of the electoral process. I don't think we should throw the baby out with the bath water, as the committee has proposed. I can't emphasize enough that I think Jefferson, Hamilton, Madison, Washington, Franklin, and those other giants in our history gave a great deal of thought to this, and it has worked well, and I believe that our proposal won't go contrary to our heritage and our history, as would the committee's proposal.

The CHAIRMAN. Thank you, Mr. Dowdy.

Mr. Dowdy, I don't know that I can add anything to your testimony. I am impressed with your theory. I just happen to be one of those who does not necessarily subscribe to the thought that in order to have progress we must necessarily have change. I know, that, as a result of the last presidential election, there seems to have grown up a popular wave of thought that the way to do this thing is to throw the whole electoral system, as propounded and written by our forefathers, out of the win-

dow and just have a popular election. I think you and your associates of like mind have done a splendid job in trying to point out that this is an effort to get some reform and I agree with you that we should have some reform, some change, but not simply change for change's sake.

I cannot attempt to recapitulate your whole testimony, but first I think you point out that there is some necessity for maintaining the electoral system. You just don't abolish that as the committee resolution would do. You rather maintain that.

Mr. DOWDY. We feel that it has worked well and that a few changes would make it work better.

The CHAIRMAN. The main change that you make is, instead of one State casting an entire electoral vote upon the majority—

Mr. DOWDY. That is the winner-take-all and we changed that to the districts.

The CHAIRMAN. In other words, in Texas, if your district went for Humphrey—as I believe your whole State did in the majority—but John Doe's district adjoining yours went for Wallace and then the next district represented by Jim X went for Nixon, each of those candidates would get their vote, but the State, the two statewide votes representing the two Senators, would go for Humphrey since he carried the State; is that correct?

Mr. DOWDY. That is correct, and to give you an example—now, this may not be right, but I think it is—of course, Humphrey carried Texas with a plurality of around 40 percent. I forget whether it was a little less or a little more.

Mr. YOUNG. I think it was just about 30,000 votes. It was much less than 1 percent.

Mr. DOWDY. So he got Texas' 25 electoral votes. Under the district system, Mr. Humphrey would have gotten Texas' two votes for the Senators and, as I recall—

The CHAIRMAN. Who would?

Mr. DOWDY. Mr. Humphrey. And I may not be exact on these district numbers, but I believe he would have gotten 13 electoral votes for districts, making him 15. Nixon carried nine districts—I think this is right—and Wallace carried one district. This is interesting. For the United States as a whole, Humphrey lost districts in States he carried and carried districts in States he lost. That balanced exactly. He would have gotten the same number of electoral votes in the United States under the district plan as he got under the present plan.

However, Mr. Nixon lost 12 more districts than he carried so he would have gotten 12 less electoral votes and Mr. Wallace carried 14 or 15 districts in States that he lost, and lost two or three districts in States he carried. Anyway, he would have gotten 12 more electoral votes than he did.

Nixon would have gotten 12 less, and Mr. Humphrey would have gotten exactly the same. For instance, in the last election it wouldn't change in any appreciable amount.

The CHAIRMAN. The resolution before us, as I stated a moment ago, would obliterate the electoral college system as conceived by the

Founding Fathers. That system, as I understand it, was based upon both a Federal and a national basis. The Senators representing the Federal concept—that is, each State having two Senators—and the Representatives representing the national system, they being apportioned according to the population of the several States.

Now, this would do away with that federal system entirely.

Mr. Dowdy. I believe it would. As I say, we might as well look at it and see if that is what we want.

The CHAIRMAN. Very well.

Now, under the popular concept, Mr. Dowdy, one of the things that has disturbed me ever since this started was that the advocates of the popular system are continuously harping on the fact that this would be a popular election and would reflect the will of the people. And yet they provide in this resolution that a minority should elect the President. I have been unable to follow that line of reasoning.

Mr. Dowdy. That seems to go against the one man, one vote—one man, one and a half votes.

The CHAIRMAN. Which is what they base it on. Some of us are not too wedded to it, but that is aside from the issue.

If it is going to be a popular election and the President is going to be elected by the people as a whole on a popular basis, then it seems it should require 50 percent plus one vote in order to elect the President.

That seems to me to be the weakness in this system.

Now, there is another thing that some of us are concerned about, perhaps on a biased basis, and possibly I am one of those. That is that the smaller States—which, incidentally, are not confined to the southern section of this country—would suffer by the system as provided in this resolution. As I tried to point out to both Mr. Celler and Mr. McCulloch, if some correction is desired and if that is the goal, then they had better proceed on a practical basis and bring out something here for the Congress to pass that would be practical.

Now, if my memory serves me correctly, there are 13 of these so-called smaller States.

Mr. Dowdy. There are more than 13, but if 13 of them say no, you are not going to get a constitutional amendment. I mean if 13 of the States won't say yes you are not going to get a constitutional amendment.

The CHAIRMAN. I am coming to that.

It takes two-thirds here in the Congress to pass any resolution amending the Constitution and then it takes three-fourths of the States to ratify in order to have it adopted. So it seems to me that if those advocates of the present resolution are overlooking a rather important factor here and that is the practical means of obtaining the desired objective. If the gentleman cares to comment on that any further, I would be very much interested.

Mr. Dowdy. There is no doubt that is right. In fact, there are about 12 or 15 States that would have their influence on the election of the

President enhanced by the adoption of the popular vote proposal; 12 or 15, somewhere in that neighborhood. The other 35 or so States would have their influence in the election of a President decreased by the adoption of this amendment, so it would appear to me that even if this were a proposal, the direct election were a proposal that I could favor, or would favor—and I don't at all—I would try to get something—realizing that we do need some changes—that would have a chance of being enacted.

Now, this emotion, or whatever it is, that has caused the direct election to seem so wonderful, when the State legislators get to looking at the thing coldly and with reason, they are going to see that it is false and, in my opinion, they won't adopt it. The statement was made here by some witness that the U.S. Chamber of Commerce was all out for this direct election. Well, that was only half true.

The chamber of commerce has said that they would like to see a direct election, or the district plan, and they would take no choice between them. I think when their members look into it they will decide they have but one choice and that is the district plan.

A statement was made about the American Bar Association being all out for the bill, but actually that was a very close decision on the part of the American Bar Association. They are not 100 percent for it by any means and they will not have the support for it that was claimed before this committee and probably has been claimed for it on the floor of the House.

The CHAIRMAN. I wonder if the gentleman would, when he revises his statement here, as he has the privilege to do, spell out in some detail, enumerate those States that in his judgment would be adversely affected by this system?

Mr. DOWDY. I didn't put that in because I understood someone else would. I believe it appears in the committee report, in the minority views.

Yes, I have it, and I will incorporate it in my statement. It is on page 45 of the report of the Committee on the Judiciary on House Joint Resolution 681, on page 45 of that report in the minority views of Mr. Hutchinson. The 15 States that would gain political power and the 34 States and the District of Columbia that would lose political power. I will incorporate that at this point.

The CHAIRMAN. That will be fine.

(The document follows:)

IF PRESIDENTS ARE ELECTED BY POPULAR VOTE: EFFECT ON STATES

15 STATES WOULD GAIN POLITICAL POWER

State	Electoral votes	Percent of U.S. total	1968 popular vote for President	Percent of U.S. total	Gain in share of votes for President (percent)
New York.....	43	7.99	6,962,000	9.49	1.50
California.....	40	7.43	7,252,000	9.89	2.46
Pennsylvania.....	29	5.39	4,748,000	6.47	1.08
Illinois.....	26	4.83	4,620,000	6.30	1.47
Ohio.....	26	4.83	3,960,000	5.40	.57
Michigan.....	21	3.90	3,306,000	4.51	.61
New Jersey.....	17	3.16	2,875,000	3.92	.76
Florida.....	14	2.60	2,188,000	2.98	.38
Massachusetts.....	14	2.60	2,332,000	3.18	.58
Indiana.....	13	2.42	2,124,000	2.90	.48
Missouri.....	12	2.23	1,810,000	2.47	.24
Wisconsin.....	12	2.23	1,692,000	2.31	.08
Minnesota.....	10	1.86	1,589,000	2.17	.31
Washington.....	9	1.67	1,304,000	1.78	.11
Connecticut.....	8	1.49	1,256,000	1.71	.22

34 STATES AND DISTRICT OF COLUMBIA WOULD LOSE POLITICAL POWER

Texas.....	25	4.65	3,079,000	4.20	0.45
North Carolina.....	13	2.42	1,587,000	2.16	.26
Virginia.....	12	2.23	1,360,000	1.85	.38
Georgia.....	12	2.23	1,250,000	1.70	.53
Tennessee.....	11	2.04	1,249,000	1.70	.34
Maryland.....	10	1.86	1,235,000	1.68	.18
Louisiana.....	10	1.86	1,097,000	1.50	.36
Alabama.....	10	1.86	1,044,000	1.42	.44
Iowa.....	9	1.67	1,168,000	1.59	.08
Kentucky.....	9	1.67	1,056,000	1.44	.23
Oklahoma.....	8	1.49	943,000	1.29	.20
South Carolina.....	8	1.49	667,000	.91	.58
Kansas.....	7	1.30	873,000	1.19	.11
West Virginia.....	7	1.30	754,000	1.03	.27
Mississippi.....	7	1.30	655,000	.89	.41
Colorado.....	6	1.12	807,000	1.10	.02
Arkansas.....	6	1.12	610,000	.83	.29
Nebraska.....	5	.93	537,000	.73	.20
Arizona.....	5	.93	487,000	.66	.27
Utah.....	4	.74	423,000	.58	.16
Maine.....	4	.74	393,000	.54	.20
Rhode Island.....	4	.74	385,000	.52	.22
New Mexico.....	4	.74	327,000	.45	.29
New Hampshire.....	4	.74	297,000	.40	.34
Idaho.....	4	.74	291,000	.40	.34
South Dakota.....	4	.74	281,000	.38	.36
Montana.....	4	.74	274,000	.37	.37
North Dakota.....	4	.74	248,000	.34	.40
Hawaii.....	4	.74	236,000	.32	.47
Delaware.....	3	.56	214,000	.29	.23
District of Columbia.....	3	.56	171,000	.23	.32
Vermont.....	3	.56	161,000	.22	.34
Nevada.....	3	.56	154,000	.21	.35
Wyoming.....	3	.56	127,000	.17	.39
Alaska.....	3	.56	83,000	.11	.45

1 STATE WOULD HAVE NO CHANGE

Oregon.....	6	1.12	820,000	1.12	
U.S. total.....	538	100	73,360,000	100	

Remembering the philosophy of the judicial activists, I do not exaggerate nor do I raise up a boogymen when I warn that the price of the system proposed by the committee is complete Federal control of the process by which we choose our Presidents, leaving no role to the people of the States. Another of the foundation stones of our Federal Republic is being removed.

EDWARD HUTCHINSON.

The undersigned concurs in the foregoing views:

DAVID W. DENNIS.

Mr. DOWDY. I am going to make this point as a political thing but, after all, that is our business.

In our present system we have people who are interested in politics in their districts and in their States and they work for their candidates and they take some pride in carrying their State or their districts for their candidate.

Now, if we are going to take all of the people in one congressional district, and bury them in the votes of the entire United States, whether their district is carried by a few votes or lost by a few votes, if it is all wiped out, we are going to lose a lot of the interest people take in the elections because they will say, "My votes are going to be buried in New York City's votes, or California's votes, or somewhere else.

"Everything we worked for in our district will be lost in the Houston or Dallas votes."

This will take the personal interest away from the people who work for our election and work for the people they believe will make the best officials in the area.

I think that would go further toward a disinterest and make it more possible for the man on the white charger who was mentioned here in the hearing the other day to take over, and it would make it easier to result in a dictatorship in the United States. It would enhance the feeling or the thought—and I think all of us are old enough to see we have come a long way from the time when we were youngsters when this was not true, but today anybody who is elected President seems to take on the trappings of royalty, which leads to dictatorship, and I think that that should be held down as much as possible and the President should have the same constituency as the Members of the Congress and the Senators of the United States and he will, under the district system, but under the popular system he has a different constituency and Congress would lose even more of the power that has already been taken by the executive and the judicial branches of our Government.

The CHAIRMAN. I do not want to take too much of the time here. Thank you for your statement. I think you are on the right track.

Mr. DOWDY. Thank you, sir.

The CHAIRMAN. I think we make a grave mistake to just throw the whole system overboard in order to accomplish something that frankly is practical to accomplish under the existing political situation.

Mr. Smith, do you have any questions?

Mr. SMITH. I have three brief subjects I would like to go into with you.

You mentioned in your opening statement that you thought some State might reduce the voting age to 16, in one or more States, and that could control or change the election. They can do that now. How do you figure that out? Did you say something like that?

Mr. Dowdy. That is true. Under the popular vote it is proposed by the Judiciary Committee the more votes a State has, the more effect it would have on the election. Presently a State can reduce—Texas, for instance, has 25 electoral votes, our voting age is 21—we could reduce the voting age to 15, 16 or 18 and we would still have 25 electoral votes. In the popular election the total vote the State cast would have that much more control on the outcome of the national election, and reducing the voting age would give that many additional popular votes.

Mr. SMITH. In your bill, page 4, "if no presidential candidate receives a majority"—I suppose you mean 50 plus one of the electoral district votes of the State, including the Senators—

Mr. Dowdy. The entire United States.

Mr. SMITH. "Then from the presidential candidates having the three highest number of electoral votes, the Senate and the House of Representatives," and so forth, "shall ballot and elect the President." Couldn't somebody get 40, and somebody 39 and somebody 39 and somebody 5 percent and that third person be elected President under your bill?

Mr. Dowdy. I do not think there is any probability the man with 5 percent would be selected. But the present Constitution says select from the first three. In our bill we say drop the low man on the second vote.

Mr. SMITH. Suppose the low man with 5 percent was very much disliked by 95 percent of the people but there were not enough electoral votes because there were five candidates, suppose that person is elected President by the loss of memory of we Members of the House of Representatives and the Senate, or influence, or whatever it might be.

Mr. Dowdy. I think that possibility is so far-fetched that it shouldn't be considered. The man that got 5 percent of the electoral votes probably would not get more than that on the votes cast in the joint votes of the House and Senate on the first ballot. On the second ballot he would be dropped and the choice would be made between the two receiving the most votes.

Mr. SMITH. In the State of California the districts represented by Congressman Utt, Congressman Lipscomb, and the gentleman from California here are usually carried for the Republican candidate by a rather large majority. Those votes are the ones that elect that individual to the State of California, if he is elected. So in that district if we win for the Republican candidate by 120 or 125 thousand and in mine by 32 and in Glenn's by 35 or something, those extra votes that we worked so hard to get for the Republican candidate for Governor, President, and Vice President, would diminish down to one vote in that district.

Mr. Dowdy. And the two State votes.

Mr. SMITH. We all understand that if the State carries it then there are two Senate votes. But all of our efforts would go down the drain so far as carrying the State of California in that instance is concerned.

We might as well quit working for it. That is very serious to me because I am not sure I approve of the proportional plan or, I think, of the district plan. I do not want to vote against the best interests of my own party.

Mr. Dowdy. This point you raise will balance. You will find districts for the Democratic candidacy that are just as topheavy. I would say you find such in most any of the large cities.

Mr. SMITH. Speaking of the State of California, in the last election that is not true. There were no Democratic districts that carried by anywhere near the percentages of some of our Republican districts.

Mr. Dowdy. I am talking about the whole country and not just one State.

Mr. SMITH. I am talking about California. I am trying to get that cleared up, because that is where I vote and that is what I represent. That could happen. It would have an effect.

Mr. Dowdy. It would have an effect but far less than it does under the present system.

Mr. SMITH. We run year-round headquarters in my district. I keep three open all year long for the party. We raise the money for the party. We keep the headquarters going with the workers, with a precinct organization and phone services. We work on it all the time. So we hope it pays off.

I am worried by the thought that all of our efforts would be in vain. Some of the districts just use television in the last 6 weeks and vote for whoever they think is the prettiest candidate.

Mr. Dowdy. I have said before, that the proposal we made is not perfect, but there is nothing in politics that is perfect. We think that the district plan is less imperfect than any of the rest and the direct election plan is the worst.

Mr. SMITH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Sisk.

Mr. SISK. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Martin.

Mr. MARTIN. I have no questions.

The CHAIRMAN. Mr. Young.

Mr. YOUNG. Mr. Chairman, I want to commend my colleague from Texas for his usual concise and firm statement of position. I have taken it upon myself to read your bill and I must say I am certainly impressed with it. Although we Democrats carried Texas, it was by a relatively few votes, and I do not think that the minority ought to get zero. It is just not a very good thing. Whatever you have broken down, whether district or electoral college representatives and that sort of thing, you still have the possibility of a lopsided majority where the person gets the electoral vote without the popular vote.

Mr. Dowdy. No, I do not think that is very probable. Of course, you have a possibility but you are still not going to have somebody elected that got only 40 percent of the vote.

Mr. YOUNG. I would concede it would not be as probable under the present system. Let me ask you this: Why don't we just completely disregard a runoff?

Mr. Dowdy. You are talking about the popular vote?

Mr. YOUNG. Yes.

Mr. DOWDY. Under the district plan if a State wanted to have a runoff, it could. The objections that were raised in the Judiciary Committee to a runoff in the popular election were fully discussed.

Mr. YOUNG. If you permit me, I do not understand. If a State wanted to have a runoff it could, but how could that happen if all the States did not have a runoff?

Mr. DOWDY. Under the present system the States have their own election laws.

Mr. YOUNG. Say Texas decided to have a run-off between the two highest candidates and none of the other 49 States did, I do not quite understand that.

Mr. Chairman, I was asking why the whole procedure seems to disregard any foregone conclusion, any possibilities of a runoff in the presidential election. Mr. Dowdy said the State could have it if the State wanted to. I asked him to fit that in. Say just one State, the State of Texas, is having the runoff, and none of the other 49 are having it.

I don't understand that.

The CHAIRMAN. I do not understand that either, Mr. Dowdy.

Mr. DOWDY. My observation was that if the State wanted to have a runoff in a district or in the State—I have not briefed this—I don't believe there is anything that would prevent them from doing it. I have reference to the district plan; the popular election plan makes its own provisions.

The CHAIRMAN. You mean in a presidential election?

Mr. DOWDY. In a presidential election.

Mr. QUILLEN. I do not see how they could do it.

Mr. DOWDY. I have not briefed it, but they have the election on the Tuesday after the first Monday in November, but I do not know anything that prevents a runoff.

Mr. YOUNG. The thing that concerned me about the committee bill is that, apparently in an effort to do away with a person being elected by less than a majority of the votes, it then abandons the position by adopting the 40 percent.

It seems to me if you are going to do it you ought to go ahead and have a runoff and let us insure that whoever is president of this country has more than 50 percent of the vote.

Mr. DOWDY. I feel the same way. If we are going to have a direct election, it ought to be on a 50 percent plus one vote. There was some discussion of that in the committee. You asked about the objections to it, as I said about my bill and the others, there is no political system that is perfect. The objection to it was that if you have a run-off in the presidential election, and be it in December and cold weather in part of the country and people could not get out and vote and that sort of thing, to me that is not much of an argument. We have runoffs in our primaries in Texas, and in the runoff election there is a great deal lesser number of folks voting usually.

It might rain hard on the runoff date or it might be too hot for people. We have changed the dates, so this is not too influential. Or they think, "my vote won't count." The further argument was made in the committee, if a person gets 40 percent of the vote and the other gets 25 or 30 percent the man that got 40 percent will get the majority in the runoff anyway. That has been proved many times to be false.

The most recent time I know of is the mayor's election in Los Angeles. One may got 43 percent of the vote and one man got 25 percent and the man with 25 percent got elected overwhelmingly.

Mr. YOUNG. That happens often.

Mr. DOWDY. I know it happens many times. I gave that as the recent example of what happened. The man that got 40 percent of the vote and the other got less, the man with the lesser vote will be elected in the runoff. That is not necessarily so, but it often happens. The argument in committee was that the man with 40 percent would surely be elected in a runoff.

Mr. YOUNG. I have no further questions.

The CHAIRMAN. Mr. Quillen.

Mr. QUILLEN. Mr. Dowdy, with a general election being held in November, as it is, and if each State had an opportunity to have a runoff, you would not have a President by January.

Mr. DOWDY. Yes.

Mr. QUILLEN. Maybe I have not examined the mechanism and, as you said, you had not really, either. I am not concerned with that as much as I am the original bill. If someone on a white charger took off and became President of the United States, he could easily be the wrong man.

Mr. DOWDY. Sure, with 60 percent of the people being bitterly opposed to him, he could still be President of the United States under the committee bill.

Mr. QUILLEN. I think we need some safeguards. I appreciate the opportunity of hearing your suggestions. I am eager to hear the others which will be presented here.

Mr. DOWDY. Mr. Quillen, I might say I believe it was your questions that I am answering.

Mr. QUILLEN. I agree with you.

Mr. DOWDY. I think it was you that was asking the questions that I tried to answer here.

Mr. QUILLEN. You really did, and I appreciate it.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pepper.

Mr. PEPPER. Mr. Dowdy, I want to commend you for the study you have given to the subject. You have undoubtedly made a very valuable contribution to the learning on the subject.

Mr. DOWDY. I have been interested in a revision or an improvement in the electoral system since prior to the time I have been in Congress. Since I have been here I have reached the conclusion, finally, in my own mind, that the district system was the preferable one.

Mr. PEPPER. You referred to the fact that under the present system and under the committee proposal, a man could be elected President with only 40 percent of the vote.

Mr. DOWDY. Yes, sir.

Mr. PEPPER. Isn't President Nixon President with only 43 percent of the popular vote?

Mr. DOWDY. He is and we have had a good many Presidents who have been elected—I don't know, 14 of 15—have been elected with less than a majority of the popular vote. Yet he came into office with

a majority and often a handsome majority of electoral votes. The electoral votes are distributed over the Nation and he has a nationwide constituency rather than perhaps an isolated constituency that he could have under the popular vote system. Is it clear what I have said?

Mr. PEPPER. Yes. Would you say that an aggregation of a number of States around the country which happened to give an electoral majority is a nationwide mandate?

He may not get that, but in 10 or 15 States. That electoral majority—I have forgotten how many it is, but relatively few States have a majority of the electoral votes.

Mr. DOWDY. It is a dozen or so. It is distributed over the country. Under the direct election system, only a half dozen States could elect the President.

Mr. PEPPER. Do I interpret your proposal correctly that you would, in substance, give one electoral vote to a congressional district or electoral district as they might be selected?

Mr. DOWDY. That is right.

Mr. PEPPER. And that vote would be counted?

Mr. DOWDY. Yes.

Mr. PEPPER. In my State, we have 12 congressional districts. Assuming the congressional district was the base, then there would be 12 electoral votes that would be given to the candidate according to how he received them.

Mr. DOWDY. And two for the State.

Mr. PEPPER. Assuming that the congressional districts were the base, and assuming they were accumulated on the popularity and population basis, isn't that substantially equivalent to a popular vote? Isn't that substantially the same as the popular vote?

Mr. DOWDY. I think it would even out to be, though some districts would be carried heavily and others not so heavily. That would even out.

Mr. PEPPER. But you do retain the two votes.

Mr. DOWDY. That is right.

Mr. PEPPER. They do go, according to your plan, by a majority of the State vote.

Mr. DOWDY. That is correct or rather, a plurality.

Mr. PEPPER. Have you given thought to how the present system works and how your system would work in respect to States where there is a rapid population change? For example, my State and California and others have had population growth. If you use the congressional district as a base, we have now 12 congressional seats. I think it is generally assumed that our population increase is such that by 1970 we will probably have maybe two or three more congressional seats.

Assuming there was considerable population increase between 1960 and the presidential election in 1964, the presidential election in 1964, if you used the congressional district as the base, did not reflect any increase in our population. We had a material increase in population between 1960, when the last census was held, and 1968. Yet if you used the congressional district as a base we would get no credit for that large population increase.

In the election of 1972, that would be the first time. In other words, the 1972 election would have two presidential electors where there has been a population increase of sizable character for which we received no credit under the congressional unit base or plan. Isn't that true?

Mr. DOWDY. That is true but it is also true as to the number of Congressmen for the State. As I said twice already, there is no political system that is perfect. Whatever we do you are going to find imperfections in it. I just believe the district plan has less imperfection.

Mr. PEPPER. I am much impressed by your point that if there was an election contest in a State it might affect the outcome of the whole election. Isn't that possible under the present system?

Mr. DOWDY. It is, but you have a contest just for a State. Under a direct plan you would have to have a nationwide recount or contest. The Congress would have to pass election laws, including election contests, and we would get into a whole new area of legislation that we ought not to get into.

Mr. PEPPER. In my State, and I do not know whether it is true in your State or other States, to get any relief the candidate has to show that the change that would occur from a recount would have affected the results of the election.

Mr. DOWDY. That is right.

Mr. PEPPER. He would have to show, if there were a thousand votes, that the election was so close that those thousand votes would change it.

Mr. DOWDY. You find a thousand votes might affect the election in Florida, but if you had a nationwide election and you had a thousand votes in Florida and 20,000 in Chicago, and so many thousand in some other large city, you would have to have a nationwide contest. The Congress would have to legislate to authorize election contests of that character. There are no laws for it now. We get into situations that we ought not to be in.

A district election could be contested, or a State election could be contested under State law, but when you contest nationwide you have to have something else.

Mr. PEPPER. I do not quite follow you. In the election of Hayes in 1876, the electoral contest in that State was Florida, and it related to that area. We were talking last year about the possibility of an election contest in Chicago and how it might affect the outcome of that presidential election. If we had a nationwide popular vote, I do not see that the contest would occur anywhere other than the place where the alleged irregularities occurred. You would not have a nationwide recount just because somebody alleged that in Florida there were some votes improperly cast.

Mr. DOWDY. You would have this situation. This is votes illegally cast in Florida and some other States and the total of them.

Mr. PEPPER. That would be a separate contest. You would not bring all of them in one suit. I would think it was like a statewide contest now, if in one county of my State somebody alleged an error in the vote you would have an election contest there. You can combine them in one suit, I suppose, but I do not know whether it would be wise to do that.

Mr. DOWDY. That is the point I am trying to make. I do not think we have had an election contest in the presidential race. Election contests have usually gone on races that involved a county or district within a State. We are getting into something new now. It is possible.

Mr. MATSUNAGA. If the gentleman would yield, I might point out that, in Hawaii in the 1960 elections, by the first count Mr. Nixon carried Hawaii and on the basis of fraud in one precinct a recount was ordered and Mr. Kennedy took Hawaii on the recount. Will this be possible under your proposal?

Mr. DOWDY. Under my proposal that would be.

Mr. MATSUNAGA. Recount by districts or by States.

Mr. DOWDY. Yes. It would still be the State which would have its votes to cast, and each State would be able to test in its own courts its election machinery.

Mr. MATSUNAGA. You say in section 7 that in the event of a tie the Congress is authorized to provide such laws.

Mr. DOWDY. This would be applicable where a State reported a tie to the Congress. When the State election official reports the votes by district and reports a tie; if there was a tie the State could under its own election machinery determine that before they send it in, if they wanted to.

Mr. MATSUNAGA. Supposing there is a tie in the district, under your bill could the State report half a vote for one candidate and half a vote for the other candidate?

Mr. DOWDY. No, the State does not report half a vote. It reports the total votes cast in the district.

Mr. MATSUNAGA. It does not determine the electoral votes cast?

Mr. DOWDY. No.

Mr. MATSUNAGA. It just reports the number of votes cast in each district?

Mr. DOWDY. That is right, for each candidacy.

Mr. MATSUNAGA. And the Congress determines what the number of electoral votes would amount to for each candidacy.

Mr. DOWDY. That is right.

Mr. PEPPER. I have just one more question, Mr. Chairman. Under your plan, Mr. Dowdy, would it be possible for a candidate to receive a majority of the electoral votes other than the Senate votes, and yet have received a minority of the popular vote?

Mr. DOWDY. Let me see if I understand. If a person could receive a majority of the electoral votes of the district—

Mr. PEPPER. That is right, and receive only a minority of the population of the State.

Mr. DOWDY. Of the population of a given State.

Mr. PEPPER. Yes, of a given State.

Mr. DOWDY. I suppose it would be possible but not very probable.

Mr. PEPPER. I can imagine a situation in some districts which might be overwhelmingly Democratic or Republican, somebody might get 80 percent of the vote and that would mean one electoral vote. It seems to me possible under your plan that somebody might get a majority of the district electoral votes and a minority of the popular votes.

Mr. DOWDY. This would be possible. Let us take a State that has two districts, if the candidacy carries 60 to 40 in one district, and loses

another district 51 to 49, each one would get one electoral vote, but the man that received the majority from that State would get three electoral votes and the other candidacy would get one electoral vote from the State. It balances out.

Mr. PEPPER. Thank you very much.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Mr. Dowdy, I would like to have you comment on this matter because I have not heard it commented on during the hearings before this committee. I am wondering what the committee bill would do to the interest of the individual citizen in voting in a presidential election. We do have a difficult time getting people interested in voting throughout the United States. This is a big problem, a great percentage of the people fail to turn out. I think the reason they fail to turn out is because they say, "my vote doesn't mean anything." You have so many voters in a congressional district or a State and they say, "my vote doesn't mean anything." I am wondering what you are going to do to the interests of this individual citizen when you make it overall and his vote becomes one of 60 or 70 million votes. He will say, "my vote doesn't mean very much."

Mr. DOWDY. I commented on that earlier.

Mr. LATTA. I am sorry, I was not here then.

Mr. DOWDY. People interested in political races, in the election of a President, they work hard in the district or State for their candidate to get people out to vote. If you are going to bury their efforts in the total votes of the United States, they are going to lose their interest and you are going to have less interest developed in our election. That is the way I commented on it.

Mr. LATTA. I am glad you commented on it because this is a very serious problem.

Mr. DOWDY. I think what I have in mind is demonstrated by what I have said.

Mr. LATTA. You do have a certain amount of cohesion and interest within a congressional district that I do not think you have in any other voting district.

Mr. DOWDY. That is exactly right. I think you get more people to vote with this. They will say, my vote will show up here, because my district, the electoral or congressional district I live in, will show because we will have an electoral vote in Washington when they count up the votes there. The little vote I cast down here in one of my little counties, they will not think their few votes will be buried in an avalanche of votes from New York City.

Mr. LATTA. I thank the gentleman.

The CHAIRMAN. Mr. Madden.

Mr. MADDEN. I heard your testimony when you stated on the breakdown of the votes of the district and on the breakdown of the votes under the other system did not change anything. Wasn't that what you said?

Mr. DOWDY. In the last election I said it did not materially change.

Mr. Humphrey's electoral vote would have been identical.

Mr. MADDEN. Under your system and under the present system; is that right?

Mr. DOWDY. That is right.

Mr. MADDEN. Did you go further in some of these States as to what would have been the result had it been a district vote of the people? Would that have changed it any?

Mr. DOWDY. No; not under the committee bill in this election.

Mr. MADDEN. It would not have changed it anyway, whether it would be like the committee bill or the district bill, like your bill, or like the present system under the breakdown that was made. There were no changes under all three systems; is that right?

Mr. DOWDY. That is right, in the 1968 election.

Mr. Madden. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Matsunaga.

Mr. MATSUNAGA. Thank you, Mr. Chairman.

One of the biggest problems I think, Mr. Dowdy, you pointed out, and I am glad you did, is the creation of voting interest in any election. I am inclined to feel that you are on the right track here. As was pointed out, in district elections you have greater interest because a voter feels that he has a greater say in the district than within the State and then within the national scene. You may have the compromise acceptable to two-thirds of the Congress and three-fourths of the State legislatures.

Mr. DOWDY. We hope so.

Mr. MATSUNAGA. I am not saying that, but there are certain features which I think need to be polished a bit. I am inclined to feel that you may have a compromise solution.

Mr. DOWDY. Of course, we would be glad for any improvements that can be made in the bill. Even at best, as I said, it would not be perfect, but nearer so than anything else.

The CHAIRMAN. Thank you, Mr. Dowdy.

Mr. DOWDY. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Dennis, in the interest of continuity, since you are a cosponsor of the Dowdy bill, we will hear you the first thing Thursday morning.

Mr. DENNIS. I will be here, Mr. Chairman.

The CHAIRMAN. Mr. Poff, Mr. Hutchinson, and any others who want to be heard will please be present.

The committee will stand adjourned until Thursday morning at 10:30.

(Whereupon, at 12:05 p.m., the committee was recessed to reconvene at 10:30 a.m., Thursday, July 24, 1969.)

Mr. Mammox. Will you go further in some of these States as to what would have been the result had it been a matter vote of the people? Would that have changed it any?

Mr. Lowrey. No, not under the commission bill in the election.

Mr. Mammox. It would not have changed it in any way, whether it would be the commission bill or the district bill?

Mr. Lowrey. I think it would be the same, but I am not sure. There were no

changes in the election, is that right?

Mr. Mammox. That is right in the 1890 election.

Mr. Mammox. That is all, Mr. Chairman.

Mr. Mammox. Mr. Chairman.

Mr. Mammox. I think you, Mr. Chairman.

One of the biggest questions I think, Mr. Chairman, you pointed out

and I am glad you did, is the question of voting interest in any elec-

tion. I am inclined to feel that you are on the right track here. As was

pointed out in the district election, you have greater interest because a

color line that he has a greater say in the district than within the

State and that within the national scope. I do not have the compari-

sons, according to the results of the census, and these things of the

State, I believe.

Mr. Lowrey. I suppose.

Mr. Mammox. I am not saying that, but there are various features

which I think need to be pointed out. I am inclined to feel that you

are in a very good position.

Mr. Lowrey. Of course, we would be glad for any improvement that

can be made in the bill. I am at least, as I said, I would not be per-

haps not so much as any other.

Mr. Mammox. Thank you, Mr. Chairman.

Mr. Mammox. Thank you, Mr. Chairman.

The Chairman. Mr. Chairman, in the interest of convenience, since you

are a sponsor of the Dowsy bill, we will hear you the first thing

Thursday morning.

Mr. Dowsy. I will be there, Mr. Chairman.

The Chairman. Mr. Poll, Mr. Hollister, and any others who want

to be heard will please present.

The committee will stand adjourned until Thursday morning at

10:30.

(Adjourned at 12:30 p.m. the committee was recessed to recon-

vene at 10:30 a.m. Thursday, July 24, 1909.)

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RELATING TO THE ELEC- TION OF THE PRESIDENT AND VICE PRESIDENT

THURSDAY, JULY 24, 1969

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, D.C.

The committee met at 10:30 a.m. in room H-313, the Capitol, Hon. William M. Colmer (chairman) presiding.

Present: Messrs. Colmer (chairman), Madden, Delaney, O'Neill, Sisk, Young, Pepper, Matsunaga, Anderson of Tennessee, Smith of California, Anderson of Illinois, Martin, Quillen, and Latta.

Staff present: Mr. Laurie C. Battle, counsel, and Mr. Robert D. Hynes, Jr., minority counsel.

The CHAIRMAN. The committee will please come to order.

Mr. Dennis, the committee will be pleased to hear from you this morning, but before you begin if I may have the attention of the committee, I was in hopes that we could finish this hearing today. We have a number of witnesses. If the committee will stay with us, we will try to do it. Otherwise, we can come back tomorrow or the next day or Monday or let it go over until Tuesday. It will be up to the committee.

Mr. Dennis, you may proceed.

STATEMENT OF HON. DAVID W. DENNIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. DENNIS. Mr. Chairman and gentleman of the committee, I appreciate the opportunity to appear before this distinguished committee. Inasmuch as I have already submitted a written statement here and Mr. Dowdy has already testified, we being coauthors of House Joint Resolution 791, I will not read the statement in full. I hope you gentlemen will. I will try to summarize the points we have in mind and possibly dwell on two or three of them and attempt to answer any questions you gentlemen might have.

(The following prepared statement was submitted for the record:)

TESTIMONY OF HON. DAVID W. DENNIS ON HOUSE JOINT RESOLUTION 791 (ELECTORIAL REFORM)

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before this distinguished committee.

Mr. Dowdy of Texas and I are among the six members of the Committee on the the Judiciary—three Democrats and three Republicans, who filed minority views when our Committee reported out H. J. Res. 681.

The other members of this minority were, and are, Mr. Mann of South Carolina and Mr. Flowers of Alabama, among the Democrats, and Mr. Poff of Virginia and Mr. Hutchinson of Michigan, among the Republicans.

Mr. Dowdy and I had both presented District Plan resolutions—Mr. Dowdy's was H. J. Res. 313 and mine was in the form of an amendment which I offered in the Judiciary Committee and which is printed in connection with my individual views in the Committee Report—and we therefore decided to collaborate on a District Plan resolution which might be presented to this Committee and which also might be offered as a united effort by way of a substitute amendment, when this matter comes to the floor.

This has now been introduced as H. J. Res. 791, and copies of this resolution are before you.

Briefly, H. J. Res. 791 is what might be called an automatic type of District Plan resolution. That is to say, in our resolution, we abandon the office of elector, and electors as individuals, but we retain the electoral vote.

We assign to each State a number of electoral votes equal to its representation in the Congress—its representation in the Senate and in the House of Representatives.

Two of those votes are automatically assigned to the presidential candidacy—that is, a ticket with a candidate for President and a candidate for Vice President—which gets the majority of the popular vote in the State.

The remaining votes go by electoral district, one vote to each presidential candidacy which gains the popular majority in that particular electoral district.

Each State will be divided into electoral districts which shall be compact, of contiguous territory, and of as nearly as possible equal population. These districts may coincide—so long as these qualifications are met—with the Congressional Districts in the State.

A majority of the electoral votes, gained in this fashion, shall elect the President and the Vice President. If no candidacy receives an electoral majority, election shall be made by a joint session of the House and Senate, with the members voting as individuals. A majority of the total membership shall be necessary to elect. The first ballot, in such a case, shall be between those candidacies having the three highest totals of electoral votes. If no majority is obtained on the first ballot, the second ballot shall be between the *two* candidacies receiving the highest number of votes on the first ballot. This drops the low man, and the second ballot, at the latest, will elect.

Mr. Chairman, and gentlemen, it is our submission that the District Plan :

- (1) Will accomplish the changes which are desirable ;
 - (2) Will do so—unlike the plan for direct nationwide popular vote—without disturbing or denigrating our Federal system ;
 - (3) Will be most readily ratified by the legislatures of the several States.
- The reforms required, as we see them are :
- (1) To bind the "faithless elector" ;
 - (2) To provide an improved method for contingency election in the event of failure to obtain an electoral majority.
 - (3) To end the winner-take-all feature of the present electoral system.

It is our submission that the District Plan, which we present, accomplishes these goals.

There will be no more faithless electors because electors are abolished, and electoral votes will go automatically to the winners of the popular vote in the several States or electoral districts.

For the present contingency election by the House of Representatives voting as States, we substitute election by a joint session of the Congress, composed of two elected and representative bodies, voting as individuals.

No longer will the winner of the popular vote within a State pick up all the electoral marbles—he will pick up, by virtue of his Statewide victory, just two electoral votes. The remaining electoral votes of the State will go as go the several electoral districts within the State.

New York and Chicago will no longer determine who gets all of the electoral votes of the States of New York and Illinois ; up-State and down-State sentiment will also be reflected in and by the allocation of the district electoral votes.

The direct nationwide popular vote, we believe, would tend to unduly favor the populous urban areas.

A sufficient numerical majority in a few highly populated and urban areas might, under that system, be sufficient to narrowly carry a popular national elec-

tion although the winning candidate ran well behind in perhaps three-fourths of the geographical area of the country.

Such a winning candidate, we think, might tend to be a sectional or a class leader, rather than a truly national leader.

There is such a thing, we think, as a concurrent or Constitutional majority, as well as an absolute or numerical majority.

We are still a union of Federal States, and James Madison, the father of the Constitution, wrote that the district system of Presidential election was "mostly, if not exclusively, in view when the Constitution was framed and adopted".

Direct nationwide popular vote leads almost inescapably, we believe, to national election laws, at least for Presidential elections, and, by practical consequence, for other elections also.

Thus one more mark of Federalism is gone, and the States of the union, for the purposes of Presidential elections, are reduced to practical nonentities.

H.J. Res. 681, the Committee bill, moreover provides for a run-off election in the event no candidacy receives 40% of the popular vote. This means, in such a case, going through two national election campaigns, with all the expense and effort that this entails; it holds forth a possibility of nationwide recounts and election contests, with consequent delay, and it can result in the ultimate election of a candidate who was originally opposed by over 60% of the voting public. In our judgment this run-off provision is one of the most objectionable features of the Committee bill, H.J. Res. 681.

Along these lines it has been noted by *U.S. News and World Report* that 33 of the 50 States and the District of Columbia will lose political power if a system of direct, nationwide popular vote for the Presidency is adopted.

Because political leaders in the States realize this, a recent poll and survey by UP International reveals that only 6 State legislatures can be counted on at present to ratify a direct popular vote amendment, while at least 12 of the State legislatures definitely oppose it. It takes only 13 States to block ratification.

In view of all the foregoing it is, Mr. Chairman and members of the Committee, our respectful conclusion and submission that the District Plan of electoral college reform is the plan which best reflects the views of the Founders and best preserves our Federal system; it is a plan which—without doing violence to the Federal system—accomplishes the reforms which we all seek, and it is the plan which has the best practical chance for ultimate ratification.

Thus political theory and practical politics go hand in hand to urge the District Plan method of electoral reform; and it is our intention to offer our measure, H.J. Res. 791, as a substitute for the Committee bill, H.J. Res. 681, at the appropriate time and in accordance with the rule which this Committee may adopt.

Mr. DENNIS. As Mr. Dowdy has already said, our bill, House Joint Resolution 791, is a district plan approach to this problem, and what it basically provides is to retain the electoral vote and abolish the office of elector, and electors as individuals. The electoral votes will be assigned to each State according to its representation in the Senate and in the House of Representatives. Two of those votes will be assigned to the presidential candidacy—which candidacy will include the candidates for President and Vice President—which obtains the greatest number of votes in the State as a whole, and the others will go according to the candidacy which obtains the greatest number of votes in each electoral district. These districts can be the same as the congressional districts provided they meet the requirements we have placed in the bill of compactness and population, and so on.

The effect will be that it is perfectly possible for one set of candidates to have the two votes at large and have the other electoral votes go in different ways as the different districts go.

Then we provide that if no candidacy receives a majority of the electoral votes that the election shall be thrown into a joint session of the House and Senate where the voting will be by Members voting as individuals, and the vote, as we have proposed it under the bill, will be

between the high three on the first ballot, but the low man will be dropped if there is not an election, so there will only be two on the second ballot and there will always be an election on the second ballot.

Somebody brought up the question whether there should be only two to begin with. The Constitution has three at the present time and I would be perfectly willing myself to accept an amendment to that effect, although under our bill we would never go into prolonged balloting because the low man drops in any case after the first ballot.

You gentleman might be interested in the fact that James Madison discussed that particular point, and one thing we think is good in our plan, we think we accomplish the reforms we are all interested in without departing from the system laid down by the Founding Fathers. Mr. Madison discussed in a letter written to a friend in 1823 this matter of whether there should be two or three in the event the election went to the House and Senate—and, incidentally, he was favoring in this letter that kind of runoff in a joint session of the House and Senate—and he said :

Of the different remedies you propose for the failure of a majority of electoral votes for any one candidate, I like best that which refers the final choice to a joint vote of the two Houses of Congress, restricted to the two highest names on the electoral lists.

Then he goes ahead and says :

It might be a question whether the three instead of the two highest names might not be put within the choice of Congress, inasmuch as it not infrequently happens that the candidate third on the list of votes would, in a question with either of the two first outvote him, and, consequently, be the real preference of the voters. But this advantage of opening a wider door and a better chance to merit may be outweighed by an increased difficulty in obtaining a prompt and quiet decision by Congress with three candidates before them, supported by three parties, no one of them making a majority of the whole.

I believe our bill, by providing the low man drops after the first ballot and you always get an election on the second ballot, meets Mr. Madison's point, but I don't care if it is two or three.

The reforms we want to accomplish, it seems to me, gentlemen, are first, to get rid of the so-called faithless elector. He has never been a practical problem but he has existed. Secondly, to provide an improved method for a contingency election in the event of failure to obtain an electoral majority. And third, to eliminate the winner-take-all feature of the present electoral system.

There is no question but that our district bill accomplishes all three of those things and it is our submission that it does it without tearing down the Federal system as set up in the framework of the Constitution by the Founding Fathers.

It is my notion one of the great drawbacks of the direct nationwide popular vote is that it practically takes the States out of this business. You are going to have to have national election laws as far as the Presidency is concerned, and I think you will have to have national election laws about all the rest of them because you can't have things varying from State to State. I think you will have to have national age standards and national residence standards and so forth, and the States will not play the role they now play.

The next thing is that the nationwide popular vote will favor unduly the urban districts. We have populous districts from here to Boston

and I think under a nationwide direct vote if a man would carry a few of those areas big enough he could win and run behind in three-fourths of the geographical areas of the country. Whether he would really be a national leader rather than a sectional or class leader would be questionable.

In that connection, if the committee please, I have here an editorial from the Indianapolis Star of June 22, 1969, which has some interesting figures on that representation. They point out that in the 1968 election 54.6 percent of all the votes were cast in nine States embracing 12 of the largest cities, and that the vote in those States was largely determined by the vote in those 12 cities, and that in Illinois, for example, more than half of the total State vote usually is cast in Cook County. It goes on to say that the result is that political machines in 12 cities in nine heavily populated States can pile up pluralities so big that the votes in the rest of the country would not matter in a nationwide popular election.

They go on to quote several remarks that John F. Kennedy, then Senator of Massachusetts, made in opposition to direct popular elections in 1956. With the committee's permission, I would like to make this editorial a part of the record.

The CHAIRMAN. Without objection it will be included at this point in the record.

(The editorial follows:)

[From the Indianapolis Star, June 22, 1969]

TO AVOID BOSS CONTROL

In the Senate lies the best hope for initiating a step toward sensible revision of the Electoral College, since it has in its Judiciary Committee a bill which would allot electoral votes on a district-by-district basis.

The House Judiciary Committee has reported out a bill which would abolish the Electoral College and substitute direct popular election of the president and vice-president. This would be the wrong way to go for a number of compelling reasons.

One is that direct popular election would make a fundamental change in the structure of the government. In 1956 Senator John F. Kennedy (D-Mass.), later President, pointed to this in defending the Electoral College against similar proposals. Direct popular election, he said "while purporting to be more democratic, would increase the power of and encourage splinter parties, and I believe it would break down the federal system under which most states entered the Union, which provides a system of checks and balances to insure that no one area or one group shall obtain too much power."

The point Mr. Kennedy made about splinter parties is another of the reasons direct popular election would be wrong. We have seen in the recent example of the French election how proliferation of splinter parties can confuse the issues of an election, dilute the strength of major parties and cast doubt on the mandate of the vote. Under the Electoral College system splinter parties are inconsequential. In direct popular election they can be spoilers.

A handful of states could control the election of the president and vice-president by direct popular vote, and this is a point which many Americans seem to miss. This may have been what was in John Kennedy's mind when he referred to "a system of checks and balances to insure that no one area or one group shall obtain too much power."

Under the present Electoral College system with the practice of casting each state's electoral vote in a bloc, a handful of the most populous states are regarded as pivotal. It is almost impossible to be elected without winning most of them. But they are *only pivotal*—winning all of them by whatever margin is not enough. It is still necessary to win a substantial number of the rest of the states.

In a nationwide direct popular election a handful of states could *elect* the president and vice-president, regardless of what happened in the rest of the country.

This was pointed out in a recent article by Dr. George Comfort, professor of political science at Butler University. He noted that in the 1968 election 54.6 percent of all the votes were cast in nine states embracing 12 of the largest cities. These states were California, Illinois, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio and Pennsylvania.

The vote in these states was largely determined by the vote in the 12 big cities. In Illinois, for example, more than half of the total state vote usually is cast in Cook County alone.

The significance of this is that political machines in 12 cities in 9 heavily populated states can pile up pluralities so big that the votes in the rest of the country would not matter in a nation-wide popular election.

Under the Electoral College system this does not happen because the influence of the big city vote stops at the state line. The candidates who seriously hope to be elected must pay attention to virtually all of the states. In a direct popular election they could concentrate their attention on the few most populous ones with the biggest cities. The rest would not matter.

"Today, we have a system which—in all but one instance throughout our history—has given us presidents elected by plurality of the popular vote," said John Kennedy in his 1956 Senate statement. "Nevertheless, it is proposed to exchange this system—under which we have, on the whole, obtained able presidents capable of meeting the increased demands upon our executive—for an unknown, untried, but obviously precarious system which was abandoned in this country long ago, which previous Congresses have rejected, and which has been thoroughly discredited in Europe."

That statement is just as pertinent and just as true in 1969.

The Electoral College system which we have is a sound and successful system. It could be improved by doing away with state bloc voting, which the district-by-district bill would accomplish. This is what should be done.

Mr. DENNIS. We feel this is still a union of States, Mr. Dowdy and I think, and we think there is something besides a small numerical majority that constitutes a constitutional majority. The Chief Justice says you don't represent trees, you represent people, but actually you do represent sections as well.

If I can go back to James Madison again, I have already quoted what he said about the runoff process, but he also endorsed the district system. He says in this letter of August 23, 1823, to his friend George Hay:

I agree entirely with you in thinking that the election of Presidential electors by districts is an amendment very proper to be brought forward at the same time with that relating to the eventual choice of President by the House of Representatives. The district mode—

And this is what we are advocating today, gentlemen—

was mostly, if not exclusively, in view when the Constitution was framed and adopted; and was exchanged for the general ticket and the legislative election as the only expedient for baffling the policy of the particular States which had set the example.

So we have a pretty good authority for this district system. The Founders of the Constitution advocated it as long ago as 1823.

Now, it also seems to me, although this is not an essential part of the bill, that the committee bill as drawn does have this runoff provision. If no candidacy receives 40 percent of the popular vote you have to go through a complete rerun of a national election, with all the expense and physical effort and exhaustion that entails, and you might be tied up and not know who the President is for a long period

of time. Our bill uses the representative bodies which are here and which Madison advocated to solve the situation if that should arise.

Our final point is that of course you have to ratify whatever is done by two-thirds vote of the Congress, and it takes three-fourths of the States to ratify it, and I feel it is going to be difficult to convince three-fourths of the States, particularly the small States, that they should ratify this nationwide direct popular vote.

There was a recent report on that in the U.S. News & World Report that pointed out that 34 States lose political power under the direct nationwide popular vote plan.

I have a poll taken in May by the United Press and run in the press at the time. The figures I have on page 4 of my written statement were not accurate. I will give you the correct figures from this poll:

If Congress decided to abolish the Electoral College and elect the President by direct vote, the legislatures of 38 States would have to give their approval. But a preliminary survey indicated today only 12 States, at most, now firmly favor the idea.

By contrast, it would take negative votes in only 13 States to veto such a proposed constitutional amendment. And the same survey indicates there are already ten States where that would probably happen.

The outlook comes from interviews with legislative leaders made in all 50 States by United Press International. The composite picture is this:

only three States are solidly behind direct election and only nine more show a noticeable preference for the plan.

six States estimate the plan has no chance in their legislatures and sentiment in four others is running against direct election.

in the remaining 28 States the issue is either too divided or undeveloped to make a judgment.

So at that time, according to the poll, you had three States for the direct election plan and nine leaning toward the plan; six States against and four leaning against the plan, and you only have to have 13 against it, and these views are those of State legislators that have to buy this thing under the committee's bill.

So it is our submission that this district plan which Mr. Dowdy and I have advocated will correct the things we want to correct and it will do it in a manner which might be adopted and it will do it without destroying the federal system, the constitutional setup, which we have lived with pretty successfully for 200 years.

So it seems to us that political theory and practical politics for once march hand in hand and that this is the bill that should be adopted by the Congress.

Thank you.

The CHAIRMAN. Thank you, Mr. Dennis, for both a brief and excellent statement.

What you are saying, and one of the things that impresses me about this whole thing, is that there is good reason, if not necessity, for changing the present system for the election of a President. But you are also saying that as a practical matter we should approach it through the district plan or some plan other than the popular direct election plan, otherwise we will wind up where we were without any change in the present system.

I was also impressed by your statement that both former President Kennedy and James Madison had advocated this, and as I under-

stand it the present occupant of the White House also favors some alternate plan than the one that your committee has brought out. So when we get down to the practicality of the thing that always enters into the political situation, you would seem to have a very good point.

Any questions, Mr. Smith?

Mr. SMITH. I don't want to prolong this, but I would like to ask your opinion, and I am speaking of California. In 1961 we redistricted. We got eight new congressional seats. We are supposed to have 414,000 in each district and the 13th Congressional District had five counties and about 320,000.

Then we had the Supreme Court one-man, one-vote decision and we had to redistrict in 1967 based on the 1961 census and, of course, with 4 million additional people in California between that time we could not comply with the one-man, one-vote rule. So we did the best we could but now the 13th Congressional District, where Vandenberg and other activities have come in, has gone from 320,000 up to better than 650,000 in actual population. We had to add 80,000 people to that district to comply with the Court's decision.

Based upon this growth in California—we have 5 million more now than in 1961—there are three districts out there that can carry for one candidate by better than 200,000 votes. There are at least eight or 10 others that would carry for the other candidate by a difference of between 5,000 and 10,000 votes. Assuming nobody is elected, wouldn't those eight or 10 districts for one candidate, B, have eight or 10 votes against three for the opposite candidate where the total majority was 200,000 in the three districts and in the eight districts less than 10,000?

Mr. DENNIS. Of course you will have some problems under any bill. One thing is you have your two at large votes to help to carry the State, and I assume gradually you will get your districts more or less equally divided as to population.

As a matter of fact, Nixon would have been elected in 1960 under the district plan, so I don't think overall it would have hurt your party much, but generally speaking it will have the effect that Chicago can't decide Illinois and New York City can't decide New York, and personally I think that is all right.

Mr. SMITH. If it is 40 percent for one candidate, 40 percent for another, and 20 percent for another, the first vote, if everybody votes according to instructions in their district, it will still come out on the first election as 40-40-20 unless the electors change their votes.

Mr. DENNIS. Under our bill there are no electors, only the electoral vote.

Mr. SMITH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Madden.

Mr. MADDEN. I was interested when you were narrating and reading the statement of James Madison. I don't see how his interpretation back in the early 1800's would apply to what we are faced with today in this country. Back in those days I think about 80 percent of the population of this country were on farms in rural areas and today I think the figure is that 71 percent of the voters live in metropolitan areas. So James Madison would not be in a position to have any practical ideas on the situation as it is in 1969.

Mr. DENNIS. I couldn't quite agree with my good colleague on that. We both come from the State of Indiana and I certainly agree

that conditions have changed and that we have to take those things into account, but when it comes to the Constitution of the United States I cannot agree that James Madison has become irrelevant. I can't go along with you on that, Ray.

Mr. MADDEN. I don't think Mr. Madison back in the 1830's could visualize what the situation would be today with 71 percent of the people living in metropolitan areas. We have 200 million people in this country.

Mr. DENNIS. If you want a situation where you can take all of Indiana's votes by carrying Lake County, I am frankly against it. Others of us downstate will get a few in our district and we get a balance, and that is what we want.

Mr. MADDEN. I agree with you but when you have 71 percent of the people living in the cities I think you had better give all the voters something to say about how the country is run. It will probably get worse. As you know, under this farm subsidy plan all these big farmers have been buying up land and buying up land and chasing tenants off and the subsidy amounts to \$3.5 billion a year for idle land. So we will get a situation that will make the electoral process worse instead of better. And with all the people coming in the cities because of the big farmers buying up land, it will put it out of balance more. I think that should be taken into consideration. Maybe this new agricultural subsidy recommendation of the President's will eliminate some of that so it won't be so highly overbalanced by these big outfits buying up the land and chasing tenants off and being paid by the Government for idle land. We might eliminate some of that with a new agricultural subsidy program.

Mr. DENNIS. Those who want the nationwide popular election would revolutionize the voting system.

Mr. MADDEN. That is all, thank you.

The Chairman. Mr. Anderson of Illinois.

Mr. ANDERSON. I have no questions. Thank you. I think the gentleman has addressed himself in a scholarly manner to a difficult question.

Mr. DENNIS. Thank you.

The CHAIRMAN. Mr. Delaney.

Mr. DELANEY. No questions.

The CHAIRMAN. Mr. Martin.

Mr. MARTIN. In your statement you refer to electoral districts rather than congressional districts. Under your plan would an electoral district be different from a congressional district?

Mr. DENNIS. They could be different or they could be the same. On page 3 of the bill it says:

Electoral districts within each State or the District shall be, insofar as practicable, of compact territory, and shall be of contiguous territory, and shall contain substantially equal numbers of inhabitants.

There is no reason why they couldn't be congressional districts if they meet those requirements. My feeling is they probably should be.

Mr. MARTIN. Would you base this on the last census or an estimate?

Mr. DENNIS. We say:

Electoral districts in a State or the District shall be reapportioned following each decennial census, and shall not thereafter be altered until another decennial census of the United States has been taken.

Of course, that last part is not essential but the idea was to give some continuity.

Mr. MARTIN. That is what the gentleman from California, Mr. Smith, was getting at. The election in 1980 is immediately before a census is taken, so you have a 10-year lapse in changes of population up or down; it would not actually reflect the number of people in the district.

Mr. DENNIS. Under the bill as drawn that is true, you would have the 10-year lapse. The thinking was there was some advantage in having some continuity in congressional districts and congressional representation, but it is not an essential point so far as I am concerned.

Mr. MARTIN. Maybe we should have at least a head count every 5 years, as has been proposed.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. O'Neill.

Mr. O'NEILL. Let me say this: You made reference to political machines in the cities. Other than Chicago, the political machines are a myth. There are far more political organizations in the small towns controlled by your party than by the Democratic Party. The bulk of the people today, as Mr. Madden said, are in the metropolitan areas and they pay the taxes.

Going on your bases, you say you can't conceive, and the polls show you can't conceive, of this present bill being ratified. How can you substantiate the fact you think your bill would be ratified?

Mr. DENNIS. The reason I believe my bill would be ratified is because I believe that in 50 States and 50 State legislatures there are probably more people today in favor of my approach than yours on this matter. I have been a State representative.

Mr. O'NEILL. You have statistics in polls. I could not conceive of your bill being ratified. If at the present time 10 States in the Union control enough electoral votes to elect a President, you could take those 10 States that will not go along and States like Rhode Island and States predominantly Democratic will not give you the tremendous advantage that the Republican Party would have under your bill.

Mr. DENNIS. Let us not make it a partisan matter.

Mr. O'NEILL. Your bill is a partisan bill.

Mr. DENNIS. It is a bipartisan bill.

Mr. O'NEILL. You may think it is bipartisan.

Mr. DENNIS. One may view it in a different way, depending on where he lives, but as a political matter I think anything that is done will have a hard time being ratified by three-fourths of the States, but certainly I think our bill has a better chance than the other.

Mr. O'NEILL. The practical matter is that there has been an awful lot of newspaper comment on this legislation, a lot of debate, and a lot of hearings before the Judiciary Committee and before the Rules Committee and, you and I both being practical, I don't think your bill has a chance of being ratified, but you don't think the other bill has a chance of being ratified.

Mr. DENNIS. Of course, we won't know until it is tried out.

Mr. O'NEILL. That is all.

The CHAIRMAN. Mr. Quillen.

Mr. QUILLEN. Mr. Chairman, I would like to make the observation that I think the Founders of our Constitution were wise and learned men, and I think they had a great foresight in foreseeing not only the great development of this country, but the safeguards necessary to protect the system that they created.

With that in mind, admittedly some revision of our election system should be undertaken, but we must not overlook the safeguards conceived by our Founding Fathers.

Mr. DENNIS. I agree.

Mr. QUILLEN. That is all.

The CHAIRMAN. Mr. Sisk.

Mr. SISK. Mr. Chairman, let me commend Mr. Dennis and Mr. Dowdy on this proposal, and let me say—and I hate to quibble with my good friend from Massachusetts, Mr. O'Neill—I would hope we don't get into a partisan squabble on this. I think the gentleman testifying realizes there is need for some changes in the election of a President; is that right?

Mr. DENNIS. I agree.

Mr. SISK. We can say in many ways that the direct popular election is the fairest and best. The thing that is causing me concern is this thing of 40 percent. I am becoming increasingly concerned whether we should permit 40 percent of the people to elect the President, who may be vigorously opposed by 60 percent, and we would be stuck with him for 4 years. For that reason I am intrigued with your proposal.

I don't like to say this from a partisan standpoint, but during the last 40 years in election after election the majority of the districts have consistently voted Democratic, so we could say that retaining the present system would be best for the Democratic Party. Assuming that a district voted partywise as it has in almost every special election in recent months, all except one the Democrats have carried, and let us say the city of New York or the city of Los Angeles is heavily Democratic—which it is not necessarily, but if it were—then all the districts that are Republican would go Republican and the districts that are Democratic would go Democratic. I really do not see a partisan issue in this area, do you?

Mr. DENNIS. I agree with you.

Mr. O'NEILL. Will the gentleman yield?

Mr. SISK. Yes; I will yield to my colleague.

Mr. O'NEILL. You are being blind to the fact that time alters all the conditions.

Mr. SISK. Maybe I am being blind, but I can't quite rationalize in the light of the conditions that exist. In election after election over the past 30 or 40 years, if we are putting it on a district basis—and I think they call it electoral districts, but I think congressional districts in essence are what we are talking about—

Mr. DENNIS. That is right.

Mr. SISK. And looking at the record—

Mr. O'NEILL. All you have to do is check the statistics on the number of Democrats in Congress whose districts have been carried by Republicans.

Mr. SISK. You mean in presidential elections?

Mr. O'NEILL. Yes.

Mr. SISK. I know in California, for example, we had 21 districts carried by Democrats—talking about congressional districts—and 17 by Republicans, and I think the districts carried for President would have been pretty much the same.

Mr. O'NEILL. There is an issue that has not been raised. In practically every State when they are having a redistricting, there is an agreement of minds. Massachusetts is an overwhelmingly Democratic State, but it is a very independent State. In 16 of the last 20 years, we have had an overwhelmingly Democratic legislature with veto power, and we sit down and agree there will be seven Democrats and five Republicans. We are only an example of many other States operating the same way. On the basis you are arguing, you can be sure there will not be a breakdown like that, because you have your eyes on the next presidential election, and in a State like Massachusetts under the one man, one-vote rule, we can redistrict the State to wipe out the whole Republican delegation without any question at all. You are bringing into the realm of politics the presidential elections of following years, and you can't get out of politics in this matter.

Mr. SISK. I appreciate the gentleman's comments. I brought this up primarily for enlightenment. I have great respect for my friend from Massachusetts, but I am not convinced that his argument holds water. I appreciate the discussion, Mr. Chairman.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. Let me commend Mr. Dennis on a good statement.

I have reservations about your plan, just as I have reservations about the committee plan. Have you given any thought to how many people might vote in the United States under your plan as opposed to the committee plan? This is of great concern to me because I think it is a shame in the United States when we elect a President we have so few voting percentagewise. When I campaign I run into the argument by people who don't vote that "my vote doesn't mean anything."

Under your plan, if you limit it to a congressional district, I think you might have more people voting all over the United States, and I think regardless of political implications the thing we want to do when we are amending the Constitution is to get more people rather than fewer people engaged in the election of a President of the United States. I wonder whether you have given this matter any thought?

Mr. DENNIS. It certainly seems to me that the effect of our plan should be what you say, it ought to encourage people to vote more because their vote in an obvious way would count more, and I think the tendency should be in that direction.

I can't say I have given this any study or have any statistics on it.

Mr. LATTA. I think this is very, very important, and I have failed to see anything written about this in any of the reports or in any of the polls. I know it is very popular to say, "I am for the popular election of a President." That sounds real good until you look at the political aspects of it, and this is what the press has failed to do in discussing this. I think they are doing a tremendous disservice to our system by not examining this whole aspect of the election of a President. I think this is one of the real shortcomings of the committee bill.

Mr. DENNIS. I would agree. I think it tends to dilute it.

Mr. LATTA. That is all.

The CHAIRMAN. Mr. Young.

Mr. YOUNG. No questions.

The CHAIRMAN. Mr. Pepper.

Mr. PEPPER. Mr. Dennis, under the present system if a presidential candidate and a vice presidential candidate got a plurality—you are from Indiana—say in the last election Mr. Nixon and Mr. Agnew got a plurality of the popular vote, they got the whole electoral vote of Indiana, didn't they?

Mr. DENNIS. That is right.

Mr. PEPPER. You would change it from a plurality to a majority?

Mr. DENNIS. That is a mistake, sir.

Mr. PEPPER. In the last two paragraphs, on the first page of your statement, you say: "Two of those votes are automatically assigned to the presidential candidacy"—that is, a ticket with a candidate for President and a candidate for Vice President—"which gets the majority of the popular vote in the State.

"The remaining votes go by electoral district, one vote to each presidential candidacy which gains the popular majority in that particular electoral district."

Is that your response?

Mr. DENNIS. That is not my intention. In the printed statements, gentlemen, both of those words in the last two paragraphs on page 1 are misprints. It should read "plurality" and not "majority."

The actual wording of the proposed bill says: "The presidential candidacy which receives the greatest number of popular votes in a State shall receive two of the electoral votes of such State for each electoral district in which a presidential candidacy receives the greatest number of popular votes."

Mr. PEPPER. It should be plurality?

Mr. DENNIS. That is right. I appreciate your calling that to my attention. I meant to mention it because it is a misprint.

Mr. PEPPER. Now, then, the two electors who represent the two Senators in a State under your plan are chosen in the same way that all the electors of a State are chosen now, that is, by a plurality?

Mr. DENNIS. That is right.

Mr. PEPPER. You do not change the present system with respect to those two?

Mr. DENNIS. That is right.

Mr. PEPPER. So under that system the minority does not get any more representation with respect to those two votes under your system than the minority gets under the present system?

Mr. DENNIS. That is right, but they have a chance to pick up some of the district votes.

Mr. PEPPER. In each district you choose the elector by a plurality?

Mr. DENNIS. That is right.

Mr. PEPPER. You choose the elector in the several districts the way the electors for a whole State are chosen under the present system, by plurality?

Mr. DENNIS. By a plurality in the district.

Mr. PEPPER. So the minority in a district does not get representation under your plan any more than a minority gets representation under the present plan?

Mr. DENNIS. I do not get any electoral vote in that district. That is right.

Mr. PEPPER. So in respect to giving the largest possible opportunity to every citizen to have his vote counted you do not make any improvement in principle over the present system.

Mr. DENNIS. I think we make a considerable improvement. I will grant you that you can go further if you want to but certainly you make an improvement when you break it down to the district level. Now, if I live in downstate Illinois, I do not necessarily elect any elector if Chicago goes the other way but I have a pretty good chance to do that under the district plan, so I think you certainly improve the situation.

Mr. PEPPER. But the minority in a district where the elector is elected does not have his vote counted. It is only the plurality who gets the elector.

Mr. DENNIS. A plurality by districts.

Mr. PEPPER. Would you say it is or is not possible under your plan that a majority of the electors of a given State might be elected by a minority of the population of the State?

Mr. DENNIS. It would go according to the way a State goes, the two votes, and the others according to the way each district goes. I suppose that is possible under certain circumstances.

Mr. PEPPER. Thank you. That is all.

The CHAIRMAN. Mr. Matsunaga?

Mr. MATSUNAGA. Mr. Dennis, I notice that even in your proposal you do not intend to extend voting rights for the presidency to many Americans who live on American soil, namely Guam, American Samoa, et cetera. Do you have any objection to an amendment which would bring franchise to these Americans—and they are all full-fledged Americans, as you know—except for the right to vote for the President?

Mr. DENNIS. I do not think I would have any objection outside of the fact that it seems to me it is a somewhat different field. I query whether we should get it into this one which is already perhaps complicated enough.

Mr. MATSUNAGA. There was a time when those in the District of Columbia were denied the right to vote for the President. We have extended that. You see no difference between an American residing in the District from an American residing in Guam, Puerto Rico, the Virgin Islands, or American Samoa, do you?

Mr. DENNIS. I don't know that I do. I have not given the subject any study, to be frank about it. It seems to me, though, that perhaps it deserves another measure with hearings on that topic.

Mr. MATSUNAGA. In the use of the term "electoral districts," would it not be wise in your bill to use the term "Capital" for the "District of Columbia" and "district" for "electoral districts"?

Mr. DENNIS. The way we did it was to capitalize "District" when we meant the District of Columbia and use a small "d" otherwise.

Mr. MATSUNAGA. Speaking verbally you cannot see capital "D" and small "d."

Mr. DENNIS. There is a certain problem there. I think we followed the models that exist.

Mr. MATSUNAGA. On page 3 in line 1 you say "the district shall be insofar as practicable of compact territory," and you then say "and shall be of contiguous territory and shall contain substantially equal number of—," et cetera.

Take Hawaii. It is not possible to be contiguous if you consider the waters in between as international waters, as we legally do in the case of Hawaii.

Mr. DENNIS. I am not sure. Perhaps they would apply the word "contiguous" as applicable in this situation. In most places I suppose you would have a problem in the use of the word "contiguous."

Mr. MATSUNAGA. There is no judicial interpretation of "contiguous" here because the question has not come up yet.

Mr. DENNIS. It ought to mean contiguous land territory. You are more of an authority on that than I.

Mr. MATSUNAGA. Otherwise I would not raise the question.

Again you refer to the electoral districts. Did you intend that the congressional districts shall be electoral districts? By your bill you tend to create electoral districts as opposed to congressional districts.

Mr. DENNIS. I think that would depend on the situation. You should have electoral districts which meet these requirements, and if your congressional district meets those requirements of compactment, contiguity, and so on, then there is no reason why a congressional district and the electoral district could not be one and the same.

Mr. MATSUNAGA. Under the Celler bill passed in the last Congress there is this requirement of contiguity, compactness, et cetera, almost the exact language. Under the one-man, one-vote rule this would be required.

Would it be better to just say congressional districts shall be the electoral districts?

Mr. DENNIS. I would think that would be a practical solution in a great many cases and I would have no real objection to it.

What we were trying to do is to be sure we defined the requirements. If your congressional district meets the requirements there is no reason why it could not be an electoral district, also.

Mr. MATSUNAGA. I suppose you realize by now, after having heard my questions, that I am inclined to favor a system such as this, but if you mean by your bill to create an entirely new electoral district separate and apart from the congressional district then I would be opposed to it.

The great draw your bill has is to fit into the existing political setup. I am not speaking now on a partisan basis, but this is a setup of States and congressional districts.

Mr. DENNIS. I see no reason why a congressional district should not be able to qualify.

Mr. MATSUNAGA. I have no further questions.

Mr. ANDERSON. I commend the gentleman for having put in a lot of time and effort on a very difficult subject. If we make a comparison between the plan contained in your bill versus the present system, would you say there would be less chance, about the same chance, or a greater chance that a future election might have to be decided by Congress?

MR. DENNIS. I don't think it will, probably—and I am not an authority on this—change the situation a great deal. I do not think that will happen under any system except where you have an exceedingly close election. If you have an exceedingly close election it is likely to happen under almost any system. That is my opinion.

MR. ANDERSON. I certainly tend to concur. That being the case, if it is the case, it would seem to me that, in addressing ourselves to the problems we thought we might face last fall, there would be far less chance of constitutional crisis or turmoil if the decision by Congress were limited to the top two candidates rather than the top three. I think the bill would be considerably strengthened if that were the case.

MR. DENNIS. As I said a moment ago, that would be an amendment personally acceptable to me and I would have no objection to that. We do avoid a long tieup because you will have a decision on at least the second matter. I have no argument with that.

MR. ANDERSON. For those of us who believe truly in a strong two-party system, if it were in fact limited to the top two, that in itself might prove some discouragement to fragmentary political efforts in the United States.

MR. DENNIS. That is probably true.

MR. LATTA. One question for clarification. You answered in response to the question by Mr. Anderson about the possibility of throwing this election under your plan into the House of Representatives. I could not quite follow you because you have 435 House seats. You give an extra two votes per State, which makes 535. You cannot possibly come up with a tie.

MR. DENNIS. It is not the House of Representatives. It is a joint session.

MR. LATTA. I am talking about basing it on congressional districts; you have 435. You add two more for the Senators from each State.

MR. ANDERSON. There are three counties.

MR. DENNIS. If nobody got the majority of the electoral vote if you had two candidates—

MR. LATTA. Under your plan are you saying you have to have a majority?

MR. DENNIS. Of the electoral vote, yes; just as we do now. We still have an electoral vote under this plan. If nobody gets a majority of the electoral vote, instead of its going to the House as it now does you would go to a joint session where you vote by individual.

MR. LATTA. That is all, Mr. Chairman.

MR. YOUNG. Was the cost to the various States brought out in your hearings if a general election were held in this country?

MR. DENNIS. If it was I do not remember. I know it is expensive.

MR. POFF. It was not.

MR. YOUNG. That is all.

MR. DENNIS. I would like to make part of the record this UP poll of the State legislators.

The CHAIRMAN. Without objection it will be included in your statement.

(Information referred to follows:)

(By Robert J. Taylor)

WASHINGTON (UPI)—If Congress decided to abolish the electoral college and elect the President by direct vote, the legislatures of 38 States would have to give their approval. But a preliminary survey indicated today only 12 States, at most, now firmly favor the idea.

By contrast, it would take negative votes in only 13 States to veto such a proposed constitutional amendment. And the same survey indicates there are already 10 States where that would probably happen.

The outlook comes from interviews with legislative leaders made in all 50 States by United Press International. The composite picture is this:

Only three States are solidly behind direct election and only nine more show a noticeable preference for the plan.

Six States estimate the plan has no chance in their legislatures and sentiment in four others is running against direct election.

In the remaining 28 States the issue is either too divided or undeveloped to make a judgment.

The CHAIRMAN. Thank you very much, Mr. Dennis.

Next we shall hear from Mr. Poff.

STATEMENT OF HON. RICHARD H. POFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. POFF. Mr. Chairman, I think I should first apologize that I have no prepared text. Second, I shall be as brief as my conscience will permit.

Third, it would be well to capsule my position before I attempt to explain it in depth.

I favor electoral form. If my choice were limited to the present system and the popular vote system, I would support the popular vote system.

But, Mr. Chairman, my choice is not so limited, and I do not prefer the popular vote system principally because I feel earnestly that it will not achieve electoral reform, and this because it cannot successfully be merchandised among the States.

That leaves me a choice of the two principal alternatives; namely, the district plan and the proportional plan. I strongly favor, and have since I was a student in law school, the district plan. Specifically I endorse the Dowdy-Dennis district plan as it is now structured, with possibly one minor amendment to which I shall address myself in a moment.

If the Dowdy-Dennis plan fails, I shall be prepared to offer what might be an agreeable compromise. I repeat, however, that I hope it will not become necessary for me to offer my substitute.

Now, by way of explanation, in an effort to systematize the analysis of this issue, and it is an extremely complex issue, I have undertaken to compartmentalize it in four separate areas and to identify each with one question.

The first question is—does the present system need to be changed?

Second, if so, what, specifically, is wrong with the present system?

Third, which of the new systems proposed would best solve the problems inherent in the old system?

Finally, which of the new systems proposed can best be sold to the several States?

Answering the first question first: yes, I think the present system does need to be changed. Let me just cite a few examples to tell why I think so.

It is easy to assume, I suppose, that because our system has been tested so long and fails so little that no change is necessary. It is true that the system has always furnished the Nation a President, but it is not true that the Nation's system has never faltered. Fifteen times the winner has received less than a majority of the popular vote. Three times the winner has received fewer popular votes than his principal opponent. Twice the system failed to give the Nation a President until the House of Representatives had done what the voter properly should have done. And on one occasion the system failed to give the Nation a Vice President until the Senate did what the voters should have done.

Against a backdrop of 46 presidential elections that handful might not seem very impressive. But more impressive, I suggest, is the catalog of near failures which the present system has exposed this Nation to.

On 15 occasions a shift of less than 1 percent of the popular vote would have made the popular vote loser the President of the United States.

On seven occasions a shift of less than 1 percent of the popular vote in several key States would have thrown the election into the House and the Senate. Yes, I think the system does need to be changed.

Specifically what is wrong with the system? Well, I suggest, gentlemen, that what is wrong is not so much conceptual as functional. The concept originally came from the great compromise of 1787, and its spirit is translated into this system under which we have been operating since that time. However, functionally what is wrong is what has been loosely called the winner-take-all system. That is another term for the general-ticket system.

The winner-take-all system did not originate in the Constitution. The winner-take-all system was devised by the several States after the rise of the political-party system. You will recall that the Constitution empowered the individual States to decide the manner in which electors would be appointed, and after political parties began to grow it soon became obvious to the dominant political party in each State that the best way to promote its own growth was to adopt the winner-take-all system so that it would effectively cancel all minority votes in that State.

Ultimately all of the States in self defense were obliged to adopt the winner-take-all system, so let us be plain about it—it is not the Constitution which is primarily responsible for the functional frailty of the present system. It is, rather, the several State legislatures.

Specifically what is wrong under this winner-take-all system? We might make a long inventory, but principally I suggest that first of

all what is wrong is that it gives disproportionate power to the big States.

Let me explain in more definitive detail. Eleven States today jointly have a majority of the 538 electoral votes in the electoral college system. It is possible then for 11 of the largest States in the Union to elect a President under the present system.

Second, the present winner-take-all system, I think, places disproportionate power in the individual voter in the big State. Let me explain that if I can.

Professor Banzhof has undertaken to define voting power as the power the individual has by changing his vote to change the outcome of the election. Well, if that definition is valid then the voter in the State of New York, which has 43 electoral votes, has a voting power with a multiplicity factor of 43 and the individual voter in a State like Virginia, which has 12 votes, has a voting power with a multiplicity factor of 12.

Another frailty under the winner-take-all system, I suggest, is that it places disproportionate power in the hands of the tightly organized, highly disciplined, swing-vote elements in the large cities of the large States.

Another frailty of the winner-take-all system has already been explained, I think, rather fully. I will pause to identify it again—namely, that it tends to place a premium on vote fraud. As long as a few votes in some remote precinct have the power to change the total vote in the State at large and thereby effect a large prize of electoral votes, electoral fraud will be attractive.

One final fault and I will leave that point. I think clearly the present system does indeed discourage voter participation in the “sure” States, and if I may in a moment I will try to elaborate on the point which Mr. Latta so well made in that area.

It also has been said here, but again only to identify the problem, in addition to the problems inherent in the winner-take-all system there are three constitutional faults which, no matter which system might be chosen, ought to be cured. One of those is the faithless elector. We have had seven elections where electors were faithless to the commitment they were assumed to have undertaken when their names were placed upon the ballot.

Second, the present system now permits, through the mechanisms, for the contingency election in the House and Senate, the Nation to have a President of one party and a Vice President of another party.

Finally, and this has not been referred to, I think, the Constitution fails adequately to provide today for the case of the death of both the President-elect and the Vice-President-elect before inauguration.

All the plans suggested cure all three of those constitutional faults, and all three would in one measure or another improve the winner-take-all system. The popular plan would improve it by abolishing the electoral college and electoral votes.

The proportional plan and the district plan would cure it in the one case by requiring that the total electoral votes in a State be divided on the one hand pro rata on the basis of popular votes earned, and on the other, as Mr. Dennis just explained, on the basis of individual dis-

tricts and the State at large. Therefore all the plans, I think, would cure in one degree or another the major problems we want to attack.

The argument has been made against the district plan and the proportional plan that they will not absolutely guarantee that the winner of the popular vote will be the winner of the electoral vote and, therefore, President of the United States. Mathematically, this is true.

The argument has also been made against the direct plan that it will not guarantee absolutely that the winner will be a majority president.

Conceding that this is true, is that any reason why we should abandon all effort at reform? I suggest that it is no reason, but on the contrary it illustrates the need to try to do the proper thing. What we need to do is to try to select the plan which best solves most of the problems and which can most likely receive the ratification of three-fourths of the States.

The next question I suggested was which of the plans can best be sold to the legislatures.

As already has been said, you will have to convince 38 State legislatures, and that means both bodies of each, to act affirmatively to support whatever proposition the Congress proposes. Conversely that means that 13 States by either acting negatively or simply by refusing or failing to act at all can defeat any proposition that Congress proposes.

There are 99 legislative bodies in the 50 States of this Nation. It seems unrealistic to me to believe that in those 99 there will not be 13, one each in a different State, which will not either fail to act or will act and act negatively on a popular-vote system. Here is why I think so.

I think so because I am persuaded by the figures contained in the UPI survey quoted by my colleague, Mr. Dennis. As a practical pragmatic proposition, I am persuaded because the small States are convinced that they have a voting power advantage in the present system.

Whether or not they have a power advantage in the present system is absolutely irrelevant. They are convinced that they have the power, and moreover they are convinced that they are entitled both in the electoral college and in the Senate to have the same power as the large States.

Therefore I say it is unrealistic to expect that you will have the support of a sufficient number of the small States to ratify a popular vote proposition.

It is possible that none of the plans, including the Dennis-Dowdy plan, will receive a two-thirds vote in the House. On that occasion I will be prepared to offer a substitute which I have strung together in the hope that it might be something of an acceptable compromise, and it is just that, a compromise. It is a joinder of several parts. It partakes in part the district plan, in part of the direct plan, and in part of the proportional plan. Let me see if I can explain briefly what the essential parts of this are.

First, the vote in each State would be divided. The electoral vote in each State would be divided proportionately according to the share of the popular vote which the candidates win in a State. If any presidential candidacy earns a majority of those electoral votes then they would be elected President and Vice President.

If no candidate earns a majority then two possible contingency mechanisms would become operative. The first contingency mechanism would provide that the candidacy receiving the greatest number of popular votes, at least 40 percent, would become the President and Vice President. Then if there were none receiving such number, the second contingency mechanism would become operative and that would provide that the election would be decided in the House and the Senate sitting jointly with each Member casting one vote, the choice being confined to the two top candidates in the electoral college.

A majority would be required to elect and two-thirds of the constitutional membership of each House would be necessary for a quorum.

I think I should pause parenthetically at this point to say that I would be obliged to offer an amendment to the Dennis-Dowdy bill with respect to the contingency mechanism because I happen to share the concern that was raised by my colleague from California, Mr. Smith, at the last hearing. He made the point that if a third candidate were on the ticket in the House and in the Senate it might create some unpredictable problems, and I suggest that the best proof of what he says has a historical antecedent. In the election of 1824 Mr. Jackson won the most electoral votes. Mr. Adams won the second largest number of electoral votes. Mr. William Crawford was third. Henry Clay was fourth.

Under the Constitution the choice was confined to the top three; namely, Jackson, Adams, and Crawford. If you all remember, Adams, who won a minority of both the popular votes and the electoral votes, and both less than Jackson, was elected President. But had Henry Clay been third in the electoral college he might very well have been elected President of the United States, and I say that for this reason—Henry Clay was then Speaker of the House of Representatives. So I add my voice to that of Mr. Madison and others who have spoken on this subject and opt in favor of limiting the choice in the contingency mechanism to the two top candidacies.

Mr. Chairman, I shall conclude in just a moment. I regard the direct plan faulty in many respects, but I shall not attack it frontally. But I shall, if I may, address myself to one of the chief problems in the plan, and that is the runoff contingency mechanism. My fears are twofold here. First, as soon as the general election is concluded and the votes are tabulated, if one candidacy fails to receive 40 percent then will begin the wheeling and dealing. That may or may not be desirable. I happen to feel there is a great danger there, particularly if there should be a proliferation of the party system, as there might very well be under a popular vote plan.

Second, I am concerned about the time schedule involved in that proposal. We now have our elections in early November and our inaugurations in late January. The time interval is not very long. I suggest that in the first election there will be contests and challenges based on fraud, defective ballots, errors in the tabulation of the votes, and when those challenges are made they have to be resolved.

Under the laws of most States they have to first run the gauntlet of an administrative appeal procedure which is rather time consuming in some areas. Also in most States, after all administrative remedies have been exhausted, there is still access to the courts. I need not

say here how long it sometimes takes to decide an election contest in the courts of the United States.

Well, after all those disputes and contests and challenges have been resolved with respect to the general election you run the risk that the same thing may happen after you have held a runoff election. I say this would take a rather long time. It could if there were a very close election be almost impossible to resolve in the present time frame. So it seems to me this would dictate at least two consequences—first, that the Congress itself would have to write national standards for local election machinery, standards for casting the ballots, standards for counting the ballots, standards for certifying the ballots, and, yes, standards for resolving the disputes and contests.

The second consequence seems just as clear, and that is that the general election would have to be moved back at least into the month of August or you would never meet the constitutional deadline for seating the new President.

We may be prepared to adjust our election machinery in that way, but if we are I think we should face it before we start down the road.

There are other weaknesses in the popular vote plan, but because of time I shall not undertake to articulate them but rather submit myself to questioning.

The CHAIRMAN. Thank you, Mr. Poff, for a very excellent and very learned and very knowledgeable statement. I am sure that the committee has been impressed with the evidence of the study that you have given to this very important matter.

I just hope that the House will give you the attention that this committee has given you when you address the House.

There is some rumor that your President might be considering you for the Supreme Court. I would welcome that with reservations—that is, that we would lose the benefit of your services here.

Mr. Poff, of course you favor our rule. You think this matter ought to go to the floor. Is that correct?

Mr. Poff. Yes, I do, Mr. Chairman, but you rendered me almost speechless by your gracious statement.

The CHAIRMAN. I assure you it is a sincere statement.

Mr. Poff. I am sure it is.

The CHAIRMAN. Do you have any recommendation about the time? I think both the chairman and the ranking minority member of your committee has suggested 6 hours with an open rule.

Mr. Poff. Mr. Chairman, I am sure that those in control of the time on both sides of the aisle will, as they always have in the past, undertake to apportion the time fairly between the proponents and the opponents and those who have alternatives to suggest. I would rather think that a constitutional amendment of this breadth, scope, and consequence ought to have 2 days of formal debate.

Whether we conclude in 2 days or not I anticipate it will require a full week to deal with all of the amendments which are likely to be offered.

The CHAIRMAN. I am sure that the gentleman from his experience would agree that the real time and the real debate will be under the 5-minute rule and the amendments made there. I agree with you that

it is of such magnitude that there should be ample debate, but generally under general debate we do not get too much attention.

At any rate, if I understand the gentleman, he goes along with that suggestion?

Mr. POFF. Yes, I do, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Smith, questions?

Mr. SMITH. I simply join with you, Mr. Chairman, and I am sure the other members of the committee, in commending you on your knowledgeable and able presentation.

Is your resolution the administration resolution or your own?

Mr. POFF. No; it is not.

Mr. SMITH. What did the President finally decide? Was an administration resolution ever actually introduced?

Mr. POFF. The President said that he favored the proportional system with a runoff mechanism. He did say in addition, however, that he was prepared to support whatever the Congress proposes before the State legislature.

Mr. SMITH. Then we do not have any actual administrative direct proposal?

Mr. POFF. No. My proportional system in the initial phase is the closest approach to the President's recommendation as I understand it.

Mr. SMITH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Madden?

Mr. MADDEN. No questions.

The CHAIRMAN. Mr. Martin?

Mr. MARTIN. Dick, one point I brought up with Chairman Celler when he was here. What about the possibility of a constitutional convention which would deal with this subject? You need only one more State.

Mr. POFF. I believe the gentleman is mistaking two different types of constitutional conventions. The Constitution provides for the possibility of a constitutional convention to propose amendments to the Constitution, and, on the other hand, for a constitutional convention in the several States to consider ratification of a constitutional amendment proposed by the Congress. If the gentleman has in mind the latter of the two, such a constitutional convention would have to be called by the States individually after the Congress proposes it if the Congress required that procedure in the proposal.

Mr. MARTIN. Thirty-three States have asked for one now, as I understand it.

Mr. POFF. Thirty-three States have asked for a constitutional convention to propose amendments.

Mr. MARTIN. Then this subject might be dealt with if one other State approves it. Then this subject might be dealt with by that convention?

Mr. POFF. No, sir; it could not. It could be proposed but not ratified.

Mr. MARTIN. It could not be ratified by the convention?

Mr. POFF. It would have to be ratified by constitutional convention in the States called by the States after the Congress had so provided in the proposed amendment submitted to the States.

Mr. MARTIN. In the committee proposal of the direct or popular election of the President, do you not think there is a bit of inequity where the Federal Government is more or less setting it up on this basis—that one State would allow people of age 18 to vote, another 19, another 21, and so forth, and that should be dealt with?

Mr. POFF. The fact that the amendment proposed by the committee majority deals with the question of residence illustrates the point I tried to make earlier: that it would be necessary under a popular-vote system for the Congress to write national election standards.

Why the committee majority decided to omit the age factor I am not prepared to say. However, I believe the chairman feels, and I would not want to put words in his mouth, that the question of a standard for age in presidential elections, involving as it does a constitutional amendment, should be treated separately from this issue.

I hope I have fairly reflected his sentiment.

Mr. MARTIN. I went back over his answer to the same question I propounded to him. I checked what the reporter wrote and he indicated it should be left up to the States as it is now.

Mr. POFF. That is what I have just said. However, the gentleman's point is well taken. It illustrates another of the weaknesses that I did not have an opportunity to discuss. If we go to a direct system and the States have the option, as they do now under the Constitution, of fixing the voter age at whatever level they choose, there will be a race to the legislature to reduce the voting age in many of the States because the lower the voting age the more voters each State will have and the more voters each State has the greater the voting-power clout in a presidential election.

The gentleman has anticipated a very real problem.

Mr. MARTIN. That is all, Mr. Chairman.

Mr. DELANEY. No questions.

Mr. QUILLEN. I would like to relate a story in compliment to you. After William Charles Coles Claibourne had been seated as a Member of Congress, born in Virginia and a Virginian native although transplanted to Tennessee, after he made his plea on the floor of the House, from the gallery ran Mr. Webster and John Marshall outside and said to all of their friends, "His statement was logic on fire."

Your statement I would like to say is the same.

Mr. POFF. I thank my colleague.

Mr. O'NEILL. Is there any time limit on ratification by the States?

Mr. POFF. The proposal will fix 7 years.

Mr. O'NEILL. What about now?

Mr. POFF. There is none unless Congress fixes it.

Mr. O'NEILL. Then does the State have the right after a determined number of years to retract the vote?

Mr. POFF. Yes, sir. I believe the gentleman will find his own State has retracted ratification of constitutional amendments proposed in the past.

Mr. O'NEILL. Thank you.

Mr. LATTA. I have no questions. I want to commend the gentleman for a tremendous statement. He covered the points very well.

Mr. SISK. In the opinion of the gentleman from Virginia, a regular open rule is all that is necessary to permit consideration of, let us say,

such substitute as he might have or the Dennis substitute or amendments that have heretofore been discussed? There is no special rule or special provision needed for substitutes or amendments that have been discussed or as possible alternatives? Is that right?

Mr. POFF. I thank the gentleman for asking that.

The CHAIRMAN. If the gentleman would yield, I have discussed that matter with the Parliamentarian and his answer is in the affirmative, that it is an open rule and the suggested amendments or substitutes would be in order.

Mr. POFF. I suggest to the chairman and the members of the committee in addition, however, that as in the past it might be the will of the committee to dramatize one possible substitute and that the best way to do so would be specifically to make it in order in the body of the rule the committee writes. That is not, as the chairman has said, necessary because I am confident that both substitutes are in order. However, if the committee were so disposed, I believe it would help to bring the issue into focus, and this should benefit the cause of national understanding of the issue.

Mr. SISK. I thank the gentleman. I would also like to commend Dick for a very fine statement, as he always does on legal matters.

The CHAIRMAN. Mr. Young?

Mr. YOUNG. I also would like to congratulate my friend from Virginia.

Of course, you could also dramatize the whole thing by having a closed rule.

Mr. PEPPER. The able gentleman always makes a lucid, able, and eloquent lawyer-like presentation. I have one question of the gentleman: What would you think about taking the direct election proposal of the committee and substituting for the 40-percent provision in the committee proposal your proposal of having an election by the House and the Senate by a majority vote probably of those elected in that same election?

Mr. POFF. I think there would be a material improvement on the popular plan and it might very well be acceptable to some who would otherwise reject the popular vote.

Mr. PEPPER. You very ably pointed out the problem of having a second runoff. On the other hand many of us are not very happy with the 40-percent provision in the committee amendment. If we had the direct election that would cure all the problem about the minority not being represented and heard and at the same time it would establish what is fair.

Mr. POFF. That is right. Their representatives will act.

Mr. DELANEY. What Congress? Congress is seated January 3. Suppose there were a change in Congress? Would you take the new Congress or the—

Mr. PEPPER. I had in mind the newly elected Congress. So far as possible I would let the decision be made by the newly elected Congress.

Mr. DELANEY. That would limit us to time between January 3 and January 20 under the present setup.

Of course, none of these will get through, anyway. I don't see a chance of any of this going through.

Mr. PEPPER. You could use the election. After all, the election occurs early in November. We are just sworn in, but constitutional amendment could recognize the eligibility of the Members to vote after they were duly elected.

Mr. POFF. If the gentleman would yield, my amendment specifically does just that. I am glad the gentleman raised the point.

In response to another important point made by the gentleman from Florida, I do not defend the 40-percent feature in the popular vote plan. Yet, if we leave it at a majority on the national election we might as well understand we have condemned the two-party system to death. It will proliferate the parties to an extent that would not be acceptable in this country. I refer to a majority of the popular vote.

The CHAIRMAN. Mr. Matsunaga?

Mr. MATSUNAGA. I, too, wish to join my committeemen in commending this gentleman from Virginia. I felt as though I was back in law school and I automatically started taking notes. It shows I have not been out of law school too long, perhaps.

There is one suggestion you made, moving the election to August. Is this contrary to what we are trying to avoid, for example, moving the inauguration from March to January, and having a lameduck President after an election in August until January.

Mr. POFF. You said that beautifully and that is exactly the point that I hoped would be inferred from what I said. I agree with you.

Mr. MATSUNAGA. Of course, today we can do much better with the tally of votes, et cetera.

Mr. POFF. Yet the tally is not the delay factor. Rather it is the slow grinding wheels of the judicial process.

Mr. ANDERSON. I, too, want to commend the gentleman on a very outstanding statement.

I have no questions.

The CHAIRMAN. Thank you, Mr. Poff.

When we convene we would like to finish.

Unless there is substantial objection from the committee, I would recess the committee until 2 o'clock.

AFTERNOON SESSION

The CHAIRMAN. The committee will be in order.

Mr. Hutchinson, you have been very patient for a long time. We will be glad to hear from you at this time.

STATEMENT OF HON. EDWARD HUTCHINSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. HUTCHINSON. Mr. Chairman, it has been a very interesting time and very informative.

Mr. Chairman, let me say at the outset that it is always difficult for me to follow the distinguished gentleman from Virginia in any matter, but it is usually my lot to do so in the Judiciary Committee, as the roster is made up. The gentleman always, and understandably, presents whatever he wants to present in a very erudite and scholarly manner and I can't undertake to equal him.

The CHAIRMAN. I am sure you can take care of yourself.

Mr. HUTCHINSON. If all I intended to do was to add cumulative testimony to what Mr. Poff said, I would not take the time of the committee. I do feel, however, that my own views are just a little bit different, and I think I understand that the function of this committee at present is to gain a feeling of the breadth of possible substitutes to the proposal reported by the Judiciary Committee, with a view to properly affording ample time for presentation of the substitutes on the Floor.

So let me say at the outset that I certainly favor the open rule, and the 6-hour time I would leave to the judgment of others as to whether it is ample or not. I certainly think it is not too much. I think that in order adequately to make a record on the substitutes that may be offered, certainly 6 hours will be required. Amendments can be debated under the 5-minute rule; but to lay out in the Congressional Record the real thrust of the argument, I don't think 6 hours is too much. I would not ask for anything less. If the committee thought generously that there should be 2 full days of debate, as Mr. Poff suggested, and I would agree with that, and, if that took 8 hours instead of 6, I wouldn't think that was too much either.

Mr. Chairman, I introduced the other day H.J. Res. 825, which admittedly is nothing more than an automatic proposal. As alternatives to the direct election, we have been discussing a district proposal; there is a proportional plan proposal that some people favor; and I think there is a third proposal; namely, the automatic plan.

The automatic plan simply does away with the electors as persons but retains the electoral vote. In H.J. Res. 825 I also deal with the matter of a contingency election. I avoid making any decision either as between the district plan, the proportional plan, or the winner-take-all plan, and the reason I avoid that is because that power is already constitutionally provided for. If the States wanted to set up a district plan they could do so without any need to amend the Constitution, and I would prefer to leave it that way, not that I am wedded in any way to the winner-take-all proposal—I am not—but I feel as a constitutional matter, we should not undertake to grant again a power which has already been granted.

If the people of the several States wanted to provide a district plan for the choice of electors, they can do it under the present Constitution. The political parties, if that is what they wanted, could get the State Legislatures to provide that system. The Council of State Governments seems to me to offer an organization through which the several legislatures could work out a district plan without any need further to amend the Constitution in that regard.

The Constitution of the United States is a grant of power, as I understand it. And I might say, Mr. Chairman, that I think we ought to begin to be rather cautious about some of the wording that we put into the Constitution. I think we have learned through experience—in the last few years particularly, but probably through all generations—that whenever you put something into the Constitution you provide a tool, some words, which the Supreme Court must interpret. So when you put something into the Constitution, in effect, you are turning the matter over to the Supreme Court, and the Supreme Court has said in recent years the Constitution is what it thinks it is,

and nobody seems to dispute that. So I think we ought to be cautious in adding to the Federal powers in this or any other field without a serious concern with what we are doing.

I wrote some separate views with regard to the committee proposal. They are found on pages 37 to 45 of the committee report. In my views I pointed out two or three specific breakthroughs, as I call them, in Federal power. I say sincerely—and I don't think I am an alarmist—that I feel that if the committee's proposal were to become the law of the land as a part of the Constitution, we are providing the tools by which the whole election machinery of the country will be Federally controlled by the Congress. I will not dwell on this since it has been mentioned before. Sure, on the face of it the Congress would only have to enact election laws regarding the Presidency. But as a practical political matter the political parties in every State are anxious, of course, when they have a presidential election, to elect their whole ticket from top to bottom, and in order to do that you would find the State legislatures would make their State laws conform to whatever Congress required in regard to the Presidency. In the end it would be the Federal Government—not the States—controlling the election laws of the country. Maybe this does not disturb you. It does not disturb some people. It disturbs me because a Federal system is a system that is built up with a lot of checks and balances. I don't like to see these checks and balances destroyed.

It has been argued that the people under the present system do not elect the President. Well, they do elect the President. In every State they elect the President. I think a confusion has grown up because in electing a President the people act as citizens of the State and not as citizens of the United States. They presently choose electors. Under an automatic plan they would simply direct the casting of the electoral vote of that State. The power lies with the people. They elect the President. They have been electing the President all through the history of the Republic.

The problem of the faithless elector has been mentioned. But really the electoral college has never failed. Nevertheless it is bothersome. We can make that correction without changing the philosophy or the system. We can do away with the electors as persons and we can retain the electoral voting system and preserve a federal system in this country. If we do away with the idea that it is the people of the several States who make this choice as to the Presidency, if we do away with that, we are simply knocking out one of the remaining underpinnings of the federal system, and I don't want that to happen. I think it is part of our heritage and we should preserve it. I think we can make the changes that seem to be indicated in the federal system without destroying the system. The committee proposal destroys the system. The committee proposal in that respect is revolutionary. I don't think we need to go that far.

It is argued that under the winner-take-all system—and I am not defending it particularly—that the minority of the people in each State lose their vote. The argument is that in a close election, say in the State of Michigan with 21 electoral votes, if one party carries the State, it takes all 21 votes. The great minority of voters, which were maybe only 10,000 less than the majority, are disfranchised. I don't

think that is a valid argument. The same thing happens with regard to everybody who votes for you and for me in every congressional district. The people who vote for us have their votes count so far as a Congressman is concerned. The people who voted for another candidate, arguably were disfranchised too. That is not a valid argument, and it is not valid with respect to the Presidency either. The people of the State, all of them, vote to direct the manner in which that State's electoral votes shall be cast, and everybody's vote counts. As a matter of fact, it could be said that the winner-take-all system is really the closest thing to one man, one vote that you can get because it is statewide. Every man's vote counts in determining how the decision in that State shall be made.

With regard to the contingency election system, my resolution, House Joint Resolution 825, would provide that any candidate for President, to be elected, would have to have a majority of the electoral votes, just as he does today. If, however, it should develop that nobody got a majority, then, instead of providing for a runoff election, I would look at the popular vote, and if I found a candidate got more than 40 percent of the popular vote in a situation where nobody got a majority of the electoral votes, then I would give the election to him.

Then, if neither of those tests survived, I would then turn the matter over to what I call a national assembly, made up of the Members of the House and of the Senate. I would give each Senator and each Representative a vote, and I would provide that a majority of the whole number of Senators and Representatives being present, a choice would be made between the two persons having the highest number of electoral votes for President. I would provide that the Members of Congress, acting as a national assembly, would vote just as we vote for a Speaker in the House. Whoever got the most votes, a quorum being present of the whole national assembly, would be declared the winner. It would be a single vote. I think it is important that at this point in time to make the election of a President as easy as possible. Here is a situation where the people have failed to elect in an electoral college. Here is a situation where not even 40 percent agree on a candidate, and a simple choice of the House and Senate, acting together as a national assembly—and I will explain why I use that term in a minute—would determine the winner.

The reason I use the term "national assembly" in my proposal is that I am fearful that if we use the phrase "joint convention" the Senate would go back to its own Chamber to deliberate by itself and the House would deliberate by itself, much in the same manner as last January when we had to decide how to handle the vote of the faithless elector. The Senate went back and acted separately even though we were supposedly in joint convention. So I would call it a national assembly to assure that all the men and women sitting in either House of the Congress would sit together and make the decision as a single body.

I submit this proposal as illustrative of another substitute to indicate to you the scope of the issues that will be presented on the floor with regard to this very fundamental question.

I don't think I should take up any more of your time. I shall be glad to respond to any of your questions.

The CHAIRMAN. Thank you, Mr. Hutchinson. We all appreciate your thoughts and labors and contribution to this very important subject.

Mr. Smith, any questions?

Mr. SMITH. No.

The CHAIRMAN. Mr. Martin?

Mr. MARTIN. No.

The CHAIRMAN. Mr. Sisk?

Mr. SISK. No questions.

The CHAIRMAN. Mr. Pepper?

Mr. PEPPER. No questions.

The CHAIRMAN. Any questions by anybody?

(No response.)

The CHAIRMAN. Thank you, Mr. Hutchinson.

Mr. HUTCHINSON. Thank you.

The CHAIRMAN. We will now hear from Mr. Evans.

STATEMENT OF HON. FRANK E. EVANS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. EVANS. I appreciate this opportunity to appear before this committee. I will be very brief, Mr. Chairman, because you have been hearing people for many days and I don't want to be repetitive.

I would begin by saying I originally introduced a resolution calling for a direct vote, together with many other Members of the House and Senate, and as I listened to the questions of retaining the electoral college, I feel not only personally about it but I feel the American people feel strongly about it, that the original purpose of the electoral college no longer exists.

I think we realize that the history of electing a President indicates it was to facilitate the getting together of the original colonies, the original States, and the States that came in thereafter, giving each State a defined voice in the election of a President and Vice President.

I submit much time has passed since the reasons for this electoral college came into existence. The only reason I can think of to preserve the electoral college is to preserve what to some of us may be an advantage State by State. I submit, Mr. Chairman and members of the committee, if this is the only remaining valid reason for retaining the electoral college, it should fall on its face because no person's vote or State's vote should be more important than any other person's or any other State's vote in the election of the only national officers we have, the President and the Vice President.

It was said the other day that there would be a loss of interest on the part of the voters and a fall off in the total votes cast in a direct presidential election, and I think this is not true. I think the history of our presidential elections shows we have more votes during the presidential elections than otherwise.

It has been suggested that if we go to a district system, that this would increase the votes' interest. I submit this is not correct because each voter would be voting for one vote, an electoral college vote. In my State his vote would be one-one hundred and seventieth of one-five

hundred and thirty-fifth of the vote for the President of the United States.

One reason why I support the committee resolution that has been proposed is because I am firmly convinced, whether you come from South Carolina or Colorado or Maine or Michigan or California, that the majority of the people have for years been believing erroneously that they actually have been casting a vote for the President and the Vice President, and it is only after the election is over and you get into the technicality of counting electoral votes that this machinery comes in their mind, but when they go to vote I believe the majority of the American people believe they are casting a vote for the President and Vice President without any intervention of an agency of any kind, which the electoral college is.

For this reason I strongly support the resolution that has been given the committee. And I will join others in hoping that you will give it plenty of time for debate, and 6 hours seems to be certainly a minimum. I would also hope it will be open for a matter as important as this. I think every point of view should be considered.

I want to thank the chairman and the members of the committee for having given the consideration you have to every point of view. Thank you very much.

The CHAIRMAN. Thank you very much, particularly for that last statement. This committee gets very few statements like that.

Any questions of Mr. Evans?

(No response.)

Mr. EVANS. Thank you.

(The following statement was submitted for the record:)

STATEMENT OF CONGRESSMAN FRANK E. EVANS (COLO.) BEFORE THE HOUSE RULES
COMMITTEE ON THE SUBJECT OF ELECTORAL REFORM

Mr. Chairman, in a free country such as ours, it is right that the citizens themselves directly select our President and Vice President. While the drafters of our Constitution had their reasons for placing this responsibility upon a body known as an "Electoral College", there is no reason now for a continuance of the intervention of these electors between our people and the choice of our President.

Some people believe that electing our President by a direct popular vote will operate to the disadvantage of rural or less populated states. Some believe the opposite, that it will weaken the larger and more populous states. I do not believe there is a proper basis for either fear. A free nation stands or falls on the agreement that the majority shall govern with due regard to the Constitutional rights of the minority. Under these circumstances, both the majority and the minority of our voters must have the confidence of knowing that the vote of every individual person is the equal of the vote of every other person, rich or poor, city or country, black or white.

Believing firmly in these principles, and with the uncertainties of an electoral college majority during the last election, I joined numerous other members of the House in introducing a resolution calling for the direct election of our President and Vice President.

Recently the Judiciary Committee of this House voted three to one in favor of the principle of a direct Presidential election.

Therefore, let us act now by placing H.J. Res. 681 before the House for its approval, for I feel certain that it will receive more than the required two-thirds vote of approval.

I urge your favorable consideration and swift action on this most important legislation.

The CHAIRMAN. Mr. McClory, we were hoping we could dispose of this matter this afternoon, and I understood you to say you would only speak about 4 minutes. You are not limited to that, but you may proceed.

**STATEMENT OF HON. ROBERT MCCLORY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ILLINOIS**

Mr. MCCLORY. Thank you, Mr. Chairman.

I want to commend the committee for having this hearing and giving consideration to an open rule for at least 5 or 6 hours in order that we can consider on the floor of the House, in open debate, this most important legislative measure.

If the committee will direct its attention to page 19 of the report they will see that I expressed some additional views. These additional views are in support of the resolution as reported, but also with the suggestion that it could be improved by some amendments.

I am fearful of the 40-percent requirement for the election of a President. I am fearful of the contingency of a runoff election. I think nothing caused greater fear on the part of the committee than what to do in the case of a runoff election. Should we have another general election? When should we have it? How long will it take to resolve such an election?

The substitutes for the general runoff election were really inconsistent with the idea of a popular election of a President. So this caused grave concern. It is my recommendation we reduce the requirement to 35 percent. I am told by those who have studied this problem that such an amendment would reduce the possibility of a runoff election from one in 100 to one in 1,000.

The second amendment I will propose is that the constitutional amendment be ratified by State conventions. I know it has been suggested that the practicalities are such that we should propose a district plan or some other plan because the State legislatures will not approve the popular plan. I think that is a genuine fear. But I know that at least 80 percent of the people want the right to elect the President of the United States. Therefore, I am suggesting we leave the ratification up to State conventions. The people will see that the conventions are held promptly, and in my opinion this would be the most expeditious manner of securing ratification of the amendment by three-fourths of the States.

There was only one other amendment for which we used this mode. That was the amendment to repeal prohibition, and I imagine the same consideration entered the minds of the Congress at that time. The people wanted it repealed and we had about the speediest ratification of a constitutional amendment in our entire history.

Therefore, I am extremely anxious that we have an open rule for the purpose of considering these amendments. I think that the popular election of the President should be favorably voted for by the Congress and expeditiously ratified by State conventions.

Thank you very much. I have used 4 minutes.

The CHAIRMAN. You might take an additional minute if you wish.
Mr. MCCLORY. Thank you.

The CHAIRMAN. I assume you offered your amendments in committee?

Mr. McCLORY. Yes; and the amendment to reduce 40 percent to 35 percent lost on a tie vote. The other amendment on State conventions lost on a vote that was not as close, but it had wide support in the committee.

The CHAIRMAN. Any questions?

(No response.)

The CHAIRMAN. Thank you, Mr. McClory.

Mr. McCLORY. Thank you.

The CHAIRMAN. Without objection, the statement of Congressman Pollock will be made a part of the record at this point.

(The statement follows:)

STATEMENT OF CONGRESSMAN HOWARD W. POLLOCK BEFORE THE HOUSE RULES COMMITTEE, JULY 22, 1969

Mr. Chairman and members of the House Rules Committee:

There can exist no doubt that a change in the electoral system for selection of the President and Vice President must occur.

You have before you today for consideration a proposal which would eliminate the electoral system of today and substitute a method whereby the President and Vice President would be chosen by a direct popular election.

I do not agree that the direct popular vote is the best and fairest method of selection of President and Vice President. If we go to the direct popular vote, a candidate need carry only the population centers of the country to become President, without regard to regional differences or State preferences.

Gentlemen, I represent a State with fewer than 300,000 citizens. Nonetheless we are jealous of our rights as citizens to cast a meaningful ballot for our President and Vice President, and we want our collective decision recorded and individually considered. Many of our interests are not those of the Nation's urban centers; however, our interests deserve separate consideration. They could also be the interests of nearly three-fourths of the other States and yet be disregarded in a direct popular vote procedure. For example, under the direct popular vote system a President could actually carry only 13 States and win the election regardless of the vote or the choice of the other 37 States.

Ten years ago Alaska joined the Union of sovereign States with all the rights and privileges enjoyed by the older States.

When the Union was formed, those States with smaller populations were guaranteed certain protections to safeguard their sovereign integrity, such as equal representation in the United States Senate in contradistinction to the population representation in the United States House of Representatives. This was carried one step further when the lesser populated States were also given a number of electoral votes for President of the United States equal to the number of their Senators and Representatives.

The direct popular vote would violate these guarantees and abolish the right of State decisions in the national composite of determining the President. As was stated during the Senate debate on this same subject in March 1956 by the then Senator from Massachusetts, John F. Kennedy—and I quote—"On theoretical grounds it seems to me it (the direct popular vote) would be a breach of the agreement made with the States when they came into the Union. At that time it was understood that they would have the same number of electoral votes as they had Senators and Representatives."

The concept that guided the drafters of the United States Constitution was that each State was to be a separate and fully independent element in the Union as a whole.

The direct popular vote would deprive the lesser populated states of this separate and independent element of identity. I am absolutely convinced, should this proposal pass the House, that it would never be ratified by the required three-fourths of the states. The legislatures of the less populated states could not in good conscience vote for this measure—for a vote so cast would effec-

tively disfranchise the constituents of that state from the selection of the President and Vice President.

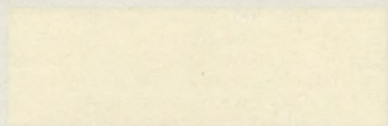
Accordingly, I have filed H.J. Res. 405, which I feel will protect the original guarantees to the sovereign states in the national complex, while at the same time resolving the obvious basic shortcomings of the present electoral system. It would establish a so-called district electoral system. My resolution retains the concept of the electoral vote but does away for the electoral college. Each state would have a total number of electoral votes equal to the total number of Senators and Representatives to which the state is entitled in Congress. The resolution provides that the winner of a plurality of votes at the district level would receive the one electoral vote for the congressional/electoral district, instead of the present "winner-take-all" system at the state level, while at the same time providing two additional electoral votes to the candidate with the greatest statewide vote.

In electing the President and the Vice President, the voter would cast a single vote for both the candidates as the "presidential candidacy." The electoral votes for each district and state would be automatic according to the votes cast. The popular vote and electoral vote would then be transmitted to the President of the Senate as at present, but would be reported by both district count and by state totals.

I am hopeful that you will grant a rule, allowing a change in the electoral system to reach the floor of the House. But I hope that this rule proposes the district plan, rather than that of the direct vote. If your collective decision is to pass the direct vote proposal to the floor, I would attempt to introduce an amendment in the Committee of the Whole House in the nature of a substitute to replace everything after the enacting clause with the provisions of my district plan contained in H.J. Res. 405 accordingly. I ask for a ruling by the committee finding that H.J. Res. 405 is germane as an amendment.

The CHAIRMAN. The committee will now stand adjourned.
(Whereupon, at 2:50 p.m., the committee adjourned.)







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