

IN THE SENATE OF THE UNITED STATES.

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Mr. MORTON submitted the following

REPORT:

On the 10th day of March, 1873, the Senate of the United States adopted the following resolution:

“Resolved, That the Committee on Privileges and Elections be instructed to examine and report, at the next session of Congress, upon the best and most practicable mode of electing the President and Vice-President, and providing a tribunal to adjust and decide all contested questions connected therewith, with leave to sit during vacation.”

In pursuance of the authority and instructions contained in this resolution, the Committee on Privileges and Elections have had the subjects under consideration, and submit the following report, embodying the conclusions at which they have arrived.

PRESENT MODE OF ELECTION.

The existing provision in the Constitution of the United States for the election of the President and Vice-President is in the following words:

“Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.” (Art. II, sec. 2.)

“The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose

immediately, by ballot, the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the 4th day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for this purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States." (Amendments, Art. XII.)

PROPOSED AMENDMENT.

As a substitute for the foregoing provisions, the committee propose the following joint resolution.

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

"ARTICLE—.

" I. The President and Vice-President shall be elected by the direct vote of the people in the manner following: Each State shall be divided into districts, equal in number to the number of Representatives to which the State may be entitled in the Congress, to be composed of contiguous territory, and to be as nearly equal in population as may be; and the person having the highest number of votes in each district for President shall receive the vote of that district, which shall count one presidential vote.

" II. The person having the highest number of votes for President in a State shall receive two presidential votes from the State at large.

" III. The person having the highest number of presidential votes in the United States shall be President.

" IV. If two persons have the same number of votes in any State, it being the highest number, they shall receive each one presidential vote from the State at large; and if more than two persons shall have each the same number of votes in any State, it being the highest number, no presidential vote shall be counted from the State at large. If more persons than one shall have the same number of votes, it being the highest number in any district, no presidential vote shall be counted from that district.

" V. The foregoing provisions shall apply to the election of Vice-President.

" VI. The Congress shall have power to provide for holding and conducting the elections of President and Vice-President, and to establish tribunals for the decision of such elections as may be contested."

VII. The States shall be divided into districts by the legislatures thereof, but the Congress may at any time by law make or alter the same.

In support of the proposed amendment, the committee submit the following observations:

THE ORIGINAL THEORY.

The theory of the electoral college was, that a body of men should be chosen for the express purpose of electing a President and Vice-President, who would be distinguished by their eminent ability and wisdom, who would be independent of popular passion, who would not be influenced by tumult, cabal, or intrigue, and that in the choice of the President they would be left perfectly free to exercise their judgment in the selection of the proper person. And in order to secure more perfectly the independence of the electors, the Constitution provides that they shall vote by ballot in the electoral college so that it might not be known to each other or to the country how they voted. The idea was that a small body of select men could be more safely intrusted with the election of President and Vice-President than the whole body of the people.

The members of the convention in 1787 started out with the idea that the President and Vice-President could not be safely chosen by the people of the United States. The theory of democratic government was then so imperfectly understood that it was not deemed safe to trust the mass of the people with the election of the Chief Magistrate; and when they finally agreed to vest the election in electors chosen for the express purpose, it was deemed a great stride toward popular government.

It was objected to leaving the election of President to the mass of the people as one community, that it would result in consolidation—that the smaller States would be swallowed up by the larger. It was further objected that in such an election the slave States would be shorn of their power, because their slaves could not vote and the masters could not vote for them. The idea of interposing an electoral body between the chief magistracy and the people had come down from ancient times, and had its origin in aristocratic forms of government, where the nobility elected the sovereign or chief magistrate.

The first plan in the convention of 1787 was that Congress should elect the President, and when the idea of an electoral college was first discussed, it was proposed that the electors themselves should be appointed by Congress, but it was afterward determined to leave the choice of electors to the legislatures of the several States, in order to make the Executive independent of the legislature, and preserve the power of the States, which was as near as they were willing to bring the presidential election to the people.

THE LESSON OF EXPERIENCE.

Now that democracy is better understood, and popular government has been more thoroughly tested, we have learned that large electoral bodies can be more safely trusted than small ones; that while it may be possible to corrupt small bodies, it is impossible to corrupt large ones, and that the danger of tumult, which was ever present in the minds of the framers of the Constitution, arises chiefly from the exclusion of the masses from power, and conferring it upon a few.

That the candidates for electors should be pledged in advance to vote for particular persons was not only not contemplated by the framers of the Constitution, but was expressly excluded by their theory. They

were to be independent, not influenced by previous committals or engagements, so that when they came together they could deliberate with perfect freedom for the best interests of the Republic. How completely this theory has been overturned in practice for more than seventy years we need not recite. For more than seventy years the electors have been pledged in advance to vote for particular persons for President and Vice-President. They themselves have been nominated as candidates for electors upon express pledges or understandings, which, although not binding in law, have been effectually binding upon them in public opinion, insomuch that an elector who would violate the understanding upon which he was nominated, and vote for the opposite candidate, would be rendered infamous, and visited with every form of indignation that society could invent.

So powerful have been these obligations, that I believe scarce an instance is known where electors have violated these pledges.

A DANGEROUS AND USELESS SYSTEM.

The more complicated the machinery is, whether in politics or in the arts, the more liable it is to get out of order. In the complex system of electing a President which we now have, contingencies may arise which cannot be foreseen, which may lead to civil war and disaster. The simpler the machinery of Government, the more easily it is understood and the less liable to accident.

Not only has the result been that the electors are not left free to select a President and Vice-President, they being in all instances pledged in advance, but it has unquestionably been a blessing that this has been so, for experience has demonstrated that small bodies of men intrusted with such vast powers as the choice of the Chief Magistrate of the Republic are liable to the arts of corruption, cabal, and intrigue, while the great body of the people cannot be reached in that way.

Mr. Benton once declared that "the only effectual mode of preserving our Government from the corruptions which have undermined the liberty of so many nations is to confide the election of our chief magistrate to those who are furthest removed from the influence of his patronage; that is, to the whole body of American citizens." His patronage would be ample to reach every elector in every State, but it cannot reach the whole body of the people. This danger has in effect been avoided by pledging the electors in advance to vote for particular persons. But this pledge in advance defeats the very purpose for which the electoral college was created, and converts it into a body of agents, who are to execute their powers according to strict instructions given before their appointment.

The electoral colleges have turned out to be wholly useless. Every reason given for their original establishment has absolutely failed in practice. But while they are powerless for good, they may be potent for evil. In their election errors may easily be committed, and in very many instances have been. While nobody would mistake the name of Grant or Greeley, changes in the names on the long list of electors may occur from errors in printing or fraud sufficient to reverse the vote of a State.

AN UNNECESSARY RESTRICTION.

One great objection to the present electoral system is that it absolutely circumscribes the power and the rights of the individual voter. He cannot now vote for the man of his choice for President, but must

vote for electors. There may be two sets of electors, representing two different parties before the people, but he may not be in favor of either, and would prefer to cast his vote for a third; yet he has no power to do it. It would be impossible for him alone in the State in which he lives to put candidates for electors in the field who would vote for the man of his choice. That can only be done by an organized party, which may have no considerable vote in the State in which he lives, though it may be strong in other States. As an illustration: In 1856, thousands of men in the Southern States were absolutely deprived of the right of voting for President and Vice-President, because no electoral ticket for Frémont and Dayton had there been put in the field.

In effect, the electoral system absolutely deprives the voter of his power to vote for men of his choice for President and Vice-President, unless there are enough of his way of thinking in the same State to meet in convention and nominate electors to represent their views. Such a system can scarcely be called free or republican. No system deserves that name which does not enable the individual voter to cast his vote for the men of his choice whether anybody else in the same State votes for them or not. The electoral system makes the convention or caucus indispensable in all cases and everywhere, for the individual voter cannot give effect to his vote, or give to it moral or political significance unless there are others who will act in concert, that is, in convention with him in the nomination of candidates for electors.

AN ELECTION BY STATES, NOT BY THE PEOPLE.

Under the present system it is entirely possible that the President may be elected by a comparatively small minority of all the votes of the nation. He may carry enough States to give him a majority of the electoral votes by an aggregate majority not exceeding fifty thousand votes, and his opponent may carry the remaining States by such majorities as to give him perhaps half a million majority of the whole vote of the people. The present mode of choosing the President is, though not generally so called, an election by States.

It had its origin in the idea of preserving, as nearly as possible, the equality of the States in the election of the President, and this for the protection of the small States. But let us look at the question from a distance of ninety-five years and with a population of over forty millions. Under the present apportionment, the electoral votes of ten States out of thirty-seven may elect a President, and as, under the practical working of our institutions, the vote of each State is cast solidly, it is the same as if the people of these ten States had voted unanimously for the same man, a thing which will be likely never to happen.

FAIRNESS OF THE AMENDMENT.

By the proposed change each State will have as many votes in the election of President and Vice-President as it has now. Each State will be divided into as many districts as it has Representatives in Congress; each district to have one vote in the election of President and Vice-President, and the vote of that district to be counted in favor of the candidates for President and Vice-President who have the largest number of votes in it. Each State will have two presidential votes at large, to be given to that candidate who has the largest number of votes in the whole State, thus preserving the autonomy of the States, and their State character in the presidential election.

This plan is greatly in favor of giving due weight to the small States; for under the present system the vote of each State is cast solidly for a single candidate for President, so that it has happened, and may happen again, that the solid vote of one of the large States, which may be determined within itself by a small majority of the popular vote, will be decisive of the election, as in the case of New York in 1845, when the small vote of five thousand, drawn off by Mr. Birney, resulted in giving the whole electoral vote of that State to Mr. Polk, and elected him over Mr. Clay; whereas, if the vote of the people had been given by districts, New York would have been divided, perhaps nearly equally, so that it might give but one or two votes for the general majority for the President.

INJUSTICE OF VOTING BY STATES.

In this argument we have said nothing as yet concerning the intrinsic injustice, under the present system, of requiring the vote of a State to be cast solidly. In the great State of New York one party may have a majority over the other of but one thousand, which carries with it the vote of the whole State, the one thousand thus in effect silencing the voice and suppressing the wishes of more than two million people. This result preserves the power and autonomy of the State as a municipal body, which is unnecessary and pernicious in the election of a President; but it is destructive of the principle of representation, impairs the nationality of the presidential election, and makes it more completely an election by the States. Under the working of the present system the election of President is made more completely an election by States than was even intended by the framers of the Constitution. As before stated, they intended that the electoral colleges should be free deliberative bodies, the members of which, after full consideration, were to cast their votes for whom they pleased, so that the electoral vote of a State might be divided up between three or four persons. But in practice it has turned out that the electors are pledged in advance to vote for particular persons for President and Vice-President, and the whole set of electors pledged to vote for the same persons are elected, so that the vote of each State is given *in solido*, and the President is in effect elected by the States.

But if the President was elected by the votes of the people in districts, a part of the districts in a State might vote for one person and a part for another, so that the election would have less of a State character and be more national. The framers of the Constitution, intending that the electoral colleges should be deliberative bodies, of course did not expect them to vote solidly for President, but to divide up as deliberative bodies are apt to do; and therefore, in dividing up the vote of the people of the State by having the President elected by districts, we are but carrying out their notions.

ITS ORIGIN.

It is somewhat curious to note in this connection that while the doctrine of State sovereignty has been generally insisted upon as a protection to the smaller States, yet this particular feature of it has been preserved and strengthened by the large States at the expense of the small ones. As before stated, the electors were at first generally chosen by districts in States that did not choose them by their legislatures, but this practice was broken up, more particularly by the action of Virginia

and Massachusetts, at a time when they were the two leading States, because it tended to divide and destroy their power in the presidential election. When their votes were to be cast solidly, the vote of the whole State being thrown as a unit, it is obvious that they were of greater consideration than under a system which might divide them up between the contending candidates. We have seen in recent elections with what anxiety the result has been looked for, in New York and Pennsylvania for example, because their votes being cast *in solido* would be likely to determine the result, but if the votes of those States might have been divided up by the people voting directly for President in districts, the case would have been quite different.

ITS UNFAIRNESS ILLUSTRATED.

An examination of the working of the electoral college for the last fifty years will prove beyond all question that in a number of cases the will of the majority has been completely defeated; that if the majority is represented in the result of a presidential election it is quite as much the result of accident as of the natural working of the machinery; that the final result produced by the electoral machinery has not within fifty years approached as near as within 10 per cent. of being a true representation of the will of the people as expressed in their votes, and in a number of instances has departed from it over 30 per cent.

The following statement of the result in the different presidential elections from 1872 back to 1844 will establish the truth of what we have said :

In 1872 General Grant received 55 per cent. of the votes of the people; in the electoral college he received 81 per cent.

In 1868 General Grant received 52 per cent. of the popular vote, and 73 per cent. of the electoral vote.

In 1864 Mr. Lincoln received 55 per cent. of the popular vote, and 91 per cent. of the electoral vote.

In 1860 Mr. Lincoln received only 40 per cent. of the popular vote; he received 59 per cent. of the electoral vote.

In 1856 Mr. Buchanan received only 45 per cent. of the popular vote; he received 59 per cent. of the electoral vote.

In this election Fillmore received 25 per cent. of the popular vote, and only 2 per cent. of the electoral vote; but fourteen of his friends were elected to Congress.

In 1852 Pierce received 51 per cent. of the popular vote, and 85 per cent. of the electoral vote.

In 1848 General Taylor received 47 per cent. of the popular vote, and 56 per cent. of the electoral vote. At this election Mr. Van Buren received about 10 per cent. of the popular vote, and received no electoral vote; but three of his friends were elected to the House of Representatives.

In 1844 Mr. Polk received not quite 50 per cent. of the popular vote. He received 62 per cent. of the electoral vote.

To illustrate the operation of the district system, we will consider the comparative results of the elections for President and for members of Congress, in the four States of Pennsylvania, Ohio, Indiana, and Illinois, from 1860 to 1872.

These States voted solidly for Mr. Lincoln in 1860, casting 74 electoral votes. At the same election they returned 66 members of Congress, of whom 24 were democrats.

In 1864 the same States cast 76 electoral votes for Mr. Lincoln again,

and elected the same year 68 members of Congress, of whom 16 were democrats.

In 1868 the same States threw 76 electoral votes solidly for General Grant, and elected 68 members of Congress, of whom 22 were democrats.

In 1872 the same States again voted solidly, giving 85 electoral votes to General Grant, and elected 77 members of Congress, of whom 25 were democrats.

In these four States the democratic strength, as compared with the republican, has been about as 9 to 10, but under the operation of the general-ticket system they had been wholly unrepresented in the electoral college; but in the House of Representatives, under the district system, they have had an average of nearly one-third of the members.

Take the State of New York alone for the same period. In 1860 New York cast her 35 electoral votes solidly for Mr. Lincoln. At the same time she elected 33 members of Congress, of whom 9 were democrats. In 1864 she again cast her 33 electoral votes solidly for Mr. Lincoln, and at the same time elected 31 members of Congress, of whom 11 were democrats. In 1868 she cast her 33 electoral votes solidly for Mr. Seymour. The State was carried for Mr. Seymour by his overwhelming majority in the city of New York, about the character of which grave charges were made, but of which the committee expresses no opinion; but the rest of the State, unaffected in their districts by this large majority in the city, returned 18 out of the 31 members of Congress, who were opposed to Mr. Seymour, thus showing conclusively how the voice of the people of New York outside of the city had been stifled in the presidential election by the city majority, operating through the general-ticket system. In 1872 New York cast her 35 electoral votes solidly for General Grant, at the same time electing 33 members of Congress, of whom 9 were democrats.

THE DISTRICT SYSTEM WOULD PREVENT FRAUD.

Under the present system, the State, voting solidly, there is great temptation to fraud. Where the condition of parties is nearly balanced in a State, a successful fraud may determine the vote of the whole State. This puts the whole votes of States in the hands of the large cities. The material with which to perpetrate frauds predominates especially in large cities, such as New York, Philadelphia, Boston, Baltimore, Cincinnati, Saint Louis, and New Orleans. Under the district system the frauds in the large cities would only affect the vote in the district in which they occurred, and could not, in their consequences, extend to the vote of the whole State. But under the present system the successful city fraud may determine the vote of the whole State.

Where the fraud will only affect the vote of a single district, the temptations to commit it are greatly diminished. Men will not take the risks and incur the expense of committing a great fraud to carry the vote of a single district, which they would do if the result of the fraud was to determine the vote of the whole State, and perhaps secure the election of a President.

THE LEGISLATURES NOW CONTROL THE APPOINTMENT OF PRESIDENTIAL ELECTORS.

The Constitution provides that—

“ Each State shall appoint, in such manner as the legislature thereof

may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress."

The appointment of these electors is thus placed absolutely and wholly with the legislatures of the several States. They may be chosen by the legislature, or the legislature may provide that they shall be elected by the people of the State at large, or in districts, as are members of Congress, which was the case formerly in many States; and it is no doubt competent for the legislature to authorize the governor, or the supreme court of the State, or any other agent of its will, to appoint these electors.

This power is conferred upon the legislatures of the States by the Constitution of the United States, and cannot be taken from them or modified by their State constitutions any more than can their power to elect Senators of the United States. Whatever provisions may be made by statute, or by the State constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated. In the early presidential elections the electors were chosen in many States by the legislatures, and as late as 1824, in Delaware, Georgia, South Carolina, Louisiana, New York, and Vermont, they were chosen by the legislatures, and South Carolina continued this practice up to the war of the rebellion.

Therefore, under the Constitution as it now stands, it is in the power of any legislature to repeal all laws providing for the election of electors by the people, and take such election into their own hands. It may be said this is not likely to be done; but the answer is that it may be and that it has been done; and who can tell what may be the future exigencies of parties and politicians, or what they may not do? As has been already remarked, South Carolina chose electors by her State legislatures up to the period of the rebellion, and at all presidential elections prior to 1852 the electors were variously chosen—some by the legislatures in joint convention; others by the two houses, where they were divided in politics, acting separately and dividing the electors between them by contract. Other States chose electors by the general-ticket system; others again by the single-district system; and still others by the double or triple district system, that is, dividing the State into a smaller number of districts than there were members of Congress, and choosing two or three electors in one district. These heterogeneous methods, setting at defiance the popular will, long ago established the necessity for a uniform constitutional rule upon this subject, and nearly every eminent American statesman, within fifty years, has urged its adoption.

NO TRIBUNAL OR LAW TO DECIDE CONTESTS.

It will thus be seen that the mode of choosing the electors is placed entirely beyond the power and jurisdiction of the National Government; and whatever disorders, irregularities, or failures in the appointment of electors may occur in any of the States, they are entirely without remedy or redress upon the part of the Government of the United States. All of the States now, by the enactments of their legislatures, provide that the electors shall be chosen at large by the qualified voters of the State; but in no State, we believe, is there any legal provision made for the settlement of any contest that may arise in regard to such election. Though the election of electors may have been marked by the most

monstrous and palpable frauds, entirely subverting the will of the people, or though a large portion of the people may have been prevented from voting or controlled in their action by violence and disorder, yet, so far as we know, there is not in any State any provision for settling such a contest and setting aside fraudulent returns. Every State provides by law for contesting the elections for governor and other State officers and members of the legislature, but no provision is made for contesting the election of electors; and whatever returns shall be made up, although produced in whole or in part by fraud or violence, must stand, and the vote be counted upon them, if returned in time.

PERILS IN THE FUTURE.

There is imminent danger of revolution to the nation whenever the result of a presidential election is to be determined by the vote of a State in which the choice of electors has been irregular or is alleged to have been carried by fraud or violence, and where there is no method of having these questions examined and settled in advance—where the choice of President depends upon the election in a State which has been publicly characterized by fraud or violence, and in which one party is alleged to have triumphed and secured the certificates of election by chicanery or the fraudulent interposition of courts. Such a President would in advance be shorn of his moral power and authority in his office, would be looked upon as a usurper, and the consequences that would result from such a state of things no man can predict. But it may be compared to what has so often occurred in history, where the successor to the crown in a monarchy was believed by a large part of the nation to be illegitimate, or not to be rightfully entitled thereto under the laws or usages of the nation. We have seen how in all ages there have been numerous bloody and destructive revolutions arising from such causes, and the conviction on the part of the people that the reigning monarch was not entitled lawfully to the crown. It is the part of wisdom in a monarchy to avoid such contingencies, if possible, by settling definitely the rightful descent of the crown; and in republics there ought to be such machinery of government provided that it would seem to be impossible that any man should ever reach the presidential chair who was not legitimately chosen thereto.

THE PRESENT METHOD OF COUNTING.

The Constitution provides that Congress may determine the time of choosing the electors and the day on which they shall meet in the several States and cast their votes, which day shall be the same throughout the United States. It further provides that "the electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same State with themselves. They shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted."

THE HOUSES MERE WITNESSES.

The Constitution provides that the President of the Senate shall be the depositary of the electoral votes of the States, and that he "shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted." It has been generally conceded that this means that the two houses shall be present in their separate characters, and not as a joint convention; that they cannot act and vote as one body; that the two bodies cannot deliberate and act as separate bodies in each other's presence; that they are simply brought together to witness the result of the opening and counting of the vote as reported by the President of the Senate. The fact that tellers have been generally appointed by the two Houses in no wise affects the question, for they are mere facilities to actually count and make record of such votes as the Vice-President hands to them for that purpose.

THE WISCONSIN VOTE IN 1857.

Such had been the understanding and practice, apparently without question, until 1857. When the electoral votes were counted that year in the presence of the two houses, an objection was made by a member of the Senate to receiving and counting the vote of Wisconsin, because the record showed that the electors in that State had not met and cast their votes on the day prescribed by law, and upon which the electors in all the other States voted. The objection, it would seem, should have been fatal, for the Constitution expressly declares that the electors shall meet and vote upon the same day in all the States, and the history of this clause shows that great importance was attached to it by the framers. But the President of the Senate, Mr. Mason, declared that the objection was out of order, and that nothing was in order but to open and count the electoral votes returned, and the vote of Wisconsin was counted, after which he stated the result of the vote, and declared James Buchanan and John C. Breckinridge elected President and Vice-President of the United States. Motions were then made to correct the count and exclude the vote of Wisconsin, all of which he decided out of order, and that the business having been accomplished for which the two houses had assembled, he declared the meeting dissolved, and at the head of the Senate returned to the Senate Chamber.

Upon the retirement of the Senate, an elaborate debate took place in the House, in which a variety of opinions was expressed, but the better one seemed to be that the two houses had no jurisdiction over the matter of counting the electoral votes either jointly or separately, and that the decision of the president of the Senate was final. So the matter was dropped. The Senate, upon re-assembling in its chamber, began the consideration of the subject, and after a long debate, with about the same result, it was dropped.

It seemed to be a necessary conclusion from these discussions that it was a *casus omissus* in the Constitution, and that the power of the President of the Senate to count the vote resulted *ex necessitate rei*, from the failure of the Constitution to give to the two Houses any jurisdiction over it; but they were to be present at the counting as solemn witnesses of its accuracy and result. In that case the vote of Wisconsin was not important because Messrs. Buchanan and Breckinridge were elected whether it was received or not; but if it had so happened that the election depended upon the vote of Wisconsin; that by counting it Fremont and Dayton would have been elected, or by rejecting it Buchanan and Breckinridge would

have been elected, the question being left to the decision of the President of the Senate, Mr. Mason of Virginia, he would have had the result of the election in his own hands. His decision either way might have resulted in civil war or revolution. Had he rejected the vote and elected Mr. Buchanan he would undoubtedly have been supported by his party and sustained by the letter of the Constitution; while, on the other hand, it would have been insisted that that provision of the Constitution was merely directory; that the vote of Wisconsin was not forfeited because it was cast one day after the time fixed by law, as the failure to vote at the proper time was occasioned by a snow-storm which prevented the assembling of the electors, and that Mr. Buchanan was therefore fraudulently elected; and the danger of a revolution would have been imminent.

But suppose that when the objection was made to counting the vote of Wisconsin it had been entertained, and the decision of it referred to the concurrent vote of the two Houses, taken separately, as now provided by the twenty-second joint rule? The Senate was then strongly democratic and the House republican. The Senate would in all probability have decided that the vote of Wisconsin should be rejected, and the House that it should be received. Their failure to agree would have resulted in the contingency we have supposed, in throwing the election of the President into the House of Representatives, in which Maryland, carried by Mr. Fillmore, and which had been carried by the know-nothings in the election of members of Congress in 1854, would, under the twenty-second joint rule, have held the balance of power, and Mr. Fillmore, with but one vote in the House to begin with, would very probably have been elected President.

A DANGEROUS POWER.

Upon the hypothesis that the President of the Senate has the power to open and count the electoral votes, and that the two Houses are to be present merely as witnesses, and have no jurisdiction over the subject, either jointly or separately, everybody must perceive that it is a vast and dangerous power to repose in the hands of one man, especially when he may be ardently devoted to the fortunes of a great party, or when he may be personally interested, sitting as a judge in his own case; for it has happened six times in the history of our Government that the President of the Senate has opened and counted the votes for himself, either for President or Vice-President. In 1797 John Adams, as Vice-President, opened the votes for himself and declared himself elected President. In 1801 Jefferson, as President of the Senate, opened and counted the votes for himself when he and Burr were the candidates for President. In 1821 Vice-President Tompkins, as President of the Senate, opened and counted the votes for himself, he being a candidate for re-election; and in 1837, Mr. Van Buren, then Vice-President, counted the votes for himself as President and declared himself elected. In 1841 Richard M. Johnson, then Vice-President, opened and counted the votes for his re-election as against Mr. Tyler, the opposing candidate; and in 1861 Mr. Breckinridge, then President of the Senate, opened and counted the votes for himself as a candidate for the Presidency.

Clearly the framers of the Constitution did not contemplate that the President of the Senate, in opening and counting the vote for President and Vice-President, should exercise any discretionary or judicial power in determining between the votes of two sets of electors, or upon the sufficiency or validity of the record of the votes of the electors in any

State; but that he should perform a merely ministerial act, of which the two Houses were to be witnesses and to make record. But the exercise of these high powers may devolve upon him *ex necessitate rei*, and whatever decision he may make between the two sets of electors or upon the sufficiency and validity of the record of the votes—whether on the evidence of the right of the electors to cast votes, or whether they have been cast in the manner prescribed by the Constitution—his decision is final.

The action of the two Houses in 1821 in regard to counting the vote of Missouri is no exception to this view of the power of the President of the Senate, for the question in that case was not as to any irregularity in regard to the electoral vote of Missouri, but whether Missouri was at that time a State in the Union and entitled to participate in the presidential election at all, which was also the question in the election in 1817 in regard to Indiana, and in 1869 in regard to Georgia.

The President of the Senate may, indeed, be impeached for high crimes and misdemeanors, should he grossly violate his duty and thus fraudulently count or reject electoral votes; but that would not amend the record which had been made, undo the wrong, help the presidential candidate who may have been cheated out of the office, nor protect the nation from disorder and civil war.

If it should happen, upon the recurrence of any one of the cases we have been considering, that the decision of the President of the Senate should determine the result and give the Presidency to the candidate who would otherwise have been defeated, or throw the election into the House of Representatives, where the candidate who had been rejected by the people should be elected by the vote of the States, all can understand the imminent peril in which the nation would be placed.

In 1801, when Mr. Jefferson, as President of the Senate, counted the vote as between himself and Aaron Burr for President, it turned out to be a tie-vote, and had there then been a question or contest in regard to a single vote, such as exists to-day in regard to several, he might have decided himself elected, and the nation would have been without redress. Such a temptation, springing lion-like upon a man of less patriotism and weaker virtue, backed by a great party, in a season of high excitement, might have proved fatal to the peace of the nation.

THE TWENTY-SECOND JOINT RULE.

We now come to the consideration of the twenty-second joint rule of the two Houses, adopted in 1865, in regard to the counting of the electoral vote. This rule was undoubtedly the result of a conviction in Congress of the necessity of providing some method for avoiding the dangers we have been discussing; but it was certainly adopted without much consideration, and with a view apparently of furnishing an additional safeguard against receiving electoral votes from States that had been in rebellion. But it is general in its character, is applicable to all the States, and will continue in operation until it is amended or repealed.

It is, in our judgment, the most dangerous contrivance to the peace of the nation that has ever been invented by Congress—a torpedo planted in the straits, with which the ship of state may at some time come into fatal collision. This rule provides, among other things, that when the vote shall be counted in the presence of the two Houses:

“If, upon the reading of any certificate, any question shall arise in regard to counting the votes therein certified, the same having been stated by the Presiding Officer, the Senate shall thereupon withdraw, and said question shall be submitted to that body for its decision; and

the Speaker of the House of Representatives shall, in like manner, submit said question to the House of Representatives for its decision; and no question shall be decided affirmatively, and no vote objected to shall be counted, except by the concurrent votes of the two Houses; which being obtained, the two Houses shall immediately re-assemble, and the Presiding Officer shall then announce the decision of the question submitted, and upon any such question there shall be no debate in either House; and any other question pertinent to the object for which the two Houses are assembled may be submitted and determined in like manner.?"

A TEMPTATION TO INJUSTICE.

By this rule it is provided that whenever an electoral vote is objected to, the Senate shall retire to its Chamber, and each House shall separately consider the objection, and the vote shall not be counted unless the two Houses concur to that effect. If the two Houses disagree, the vote of the State is lost. This may result in a tie, or in the election of the candidate who would otherwise have been defeated, or in preventing either of the candidates from having a majority of all the votes and thus throwing the election into the House of Representatives. Each House is to decide the question without debate, in a summary manner, without investigation and without adjournment. Here is a powerful temptation to the House of Representatives by non-concurrence to throw the election into its own body, and thus, perhaps, secure the election of a candidate who may have been overwhelmingly beaten at the polls. The two Houses may be under the control of different parties, as in 1857, led by politicians, ambitious, exasperated, and thirsting for power, who are thus enabled by a mere non-concurrence to defeat an election by the people and seize the administration of the Government into the hands of their party.

"Lead us not into temptation" is a part of the Lord's prayer, and here is a mortal temptation spread in the pathway of a defeated party by which they may snatch victory from the jaws of defeat at the very last step in the tedious process of electing a President. The substance of this rule is that, in the eleventh hour, in the last stage of the proceedings for the choice of the chief magistrate, a formal objection made to the electoral votes of a State suspends the count, and makes the right of the people of that State to a voice in the election to depend upon the affirmative concurrent vote of the two Houses, which, in the exigency of parties, may not be obtained, however small the merit of the objection.

THE RULE UNREASONABLE.

To us the proposition seems very plain that the Constitution confers upon Congress no power, whether by statute or joint rule, to make the right of the people of a State to participate in the presidential election to depend upon such a contingency. If the rule were reversed, and provided that the vote of a State should be counted unless the two Houses concurred in its rejection, it would be far more reasonable and far less dangerous. It would be much more logical to require the concurrent action of the two Houses to reject the vote of a State in favor of which the presumptions of the law should lie, than to make its admission depend upon the concurrence of the two Houses, as if the presumption of the law were against its fairness and legality. Logically, it would seem that the objection made to receiving the vote of a State, to be

valid, ought to be sustained by the vote of the two Houses, but under this rule the objection is assumed to be good unless overcome affirmatively by the vote of the two Houses, thus expressly placing it in the power of one House to reject the vote of a State.

The rule is an invitation to partisans to make captious and factious objections. It makes the concurrent action of the two Houses necessary where it should not be; and, to sum up its perilous absurdity, its "monstrous illogic," its dangerous unconstitutionality, it places it in the power of a defeated party, which may happen to have a majority in either House, to defeat an election by the people, and to take the chances of anarchy, or of a victory, by throwing the election into the House of Representatives.

But it may be said that neither House would take the responsibility of refusing to concur in counting the vote of a State, unless the objection to it were well founded. This is not the history of parties or of parliamentary proceedings. It is not the history of parties that they will voluntarily surrender an advantage, though tainted with odium and injustice, or that their representatives in the legislature will; for it is a law of parties to obtain all the power possible, and to yield no advantage except upon compulsion or for compensation.

But this extraordinary provision by which either House is empowered to reject the vote of a State in the election of a President, is created by a joint rule of the two Houses. The Constitution provides that "each House may determine the rules of its own proceedings;" that is, the mode of conducting its business and doing those things which, by the Constitution and laws, it has a right to do. But surely this clause does not give the two Houses the power by a joint rule to enable either House to disfranchise States by rejecting their electoral votes. The provisions of this rule, to have any validity, must be embraced in a law duly enacted, which has been submitted to the President for his approval; and, even as a law, it would be the most fearful enactment on the statute-book, conferring as it does upon either House the power to block the wheels of government and plunge the nation into anarchy. It was the purpose of the framers of the Constitution to make the executive and legislative branches so far independent of each other that the existence of the one would not depend upon the consent or action of the other; but here is a rule, a mere parliamentary rule, which gives to either House a fatal negative upon the election of a President by the people. A power so vast and dangerous certainly cannot be created as a mere rule of proceeding.

CONGRESS IS NOT A CANVASSING BOARD.

The proposition that Congress has power to sit as a canvassing board upon the electoral votes of the States, admitting or rejecting them for reasons of its own, subverts the whole theory by which their appointment was conferred upon the States; makes Congress the judge of the election and qualifications of President and Vice-President, and, by the operation of the twenty-second joint rule, gives that power to each House separately, as in case of its own members. There is no such express power given to Congress in the Constitution, nor is it necessary to carry out any express power therein given, and its exercise would be in direct conflict with the known purpose of the framers to make the executive and legislative departments as nearly independent of each other as possible.

The act of 1792, which is still in force, provides that the electors shall

meet in each State and cast their votes on the first Wednesday in December, and that they shall be chosen within thirty-four days before that time, leaving no room between the two periods for a contest as to their election before any tribunal, and making it impossible that Congress should, in any way, pass upon the regularity or rightfulness of their election. When they had cast their votes on the first Wednesday of December, they were *functus officio*, and could never meet again, either to correct a mistake or for any purpose whatever. It is obvious that it was not contemplated by the framers of the Constitution that after the electors had met and cast their votes, and had become *functus officio*, there was any tribunal that could inquire into the rightfulness or regularity of their election and set aside their votes. The framers of the Constitution seem not to have anticipated the possibility of two sets of electors, each claiming to cast the vote of a State, or of irregularities or frauds in the choice of electors, which would warrant the rejection of their votes. It was clearly a *casus omissus*, and one of the imperfections of a new scheme of government which could not, in fact, have been perfect unless its framers had been infallible.

If it were admitted that the twenty-second joint rule is constitutional, or that the two Houses by their joint action could reject the vote of a State upon objection being made, the inquiry would be presented what could the two Houses do? The Constitution requires that the votes in the several electoral colleges shall be sealed up and sent to the President of the Senate, and that the certificates thus sealed up shall not be opened except in the presence of the two Houses, and the vote shall *then* be counted. Clearly, the authority of the two Houses, putting the most liberal interpretation upon the clause, would be confined to the determination of mere questions of form—whether the lists were properly made out as required by the Constitution, or properly certified as required by the law. There would be no time, opportunity, or place for the investigation of any questions of fact, or the determination of any matter not appearing upon the face of the papers. Although the election of the electors in a given State may have been a monstrous fraud, patent to the whole world and known to each member of the Houses of Congress, yet clearly they have no power, time, or opportunity to investigate the fact, and must *then* count the fraudulent votes if it shall appear in due form upon the papers.

THE PLURALITY RULE PROPOSED.

By the present provision of the Constitution there can be no election of a President except by a majority of all the electoral votes, and if no candidate receives such majority the election is thrown into the House of Representatives, where the choice is to be made between the three highest candidates, the character and consequences of which will be hereafter considered. By the amendment proposed, the candidate receiving the highest number of presidential votes will be elected, although he may not have a majority of all the presidential votes; and the election in every case is final. In other words, it adopts what is known as the plurality rule, and only requires that the successful candidate shall have a majority over any other one.

There is no virtue in a majority vote over a plurality vote, where the majority is the result of compulsion, as by requiring a second election between the two candidates having the highest vote at the first. In that case the persons whose votes are changed to one or the other of

the two candidates may do it as a choice, upon compulsion, between what they regard as two evils.

The adoption of the plurality rule does not at all interfere with the other principle, that the majority should govern. The majority may always govern, if it chooses to act together; but the people cannot be compelled to form themselves into a majority. They vote for whom they please, or they may refuse to vote at all; and if they vote with a full knowledge that the candidate receiving the highest number of votes shall be declared elected, it is impossible to see how their rights have been infringed.

If one candidate has a majority, undoubtedly he should prevail; but if he has not a majority of all the votes, but has a majority over any other candidate, he should prevail over any other candidate, because the voters have been left free in the exercise of their suffrages to vote for whom they pleased or not to vote at all, and it is expedient that there should be some choice, and that the election should be final. Where, in order to secure a majority of all the votes for one candidate, a second election is required, and the voters are confined to two or more candidates having the highest number of votes, great opportunities and inducements are presented for corruption, and corruptionists then know just where and how to work to secure their triumph.

APPROVED BY EXPERIENCE.

The staple argument in favor of requiring a majority of all the votes to elect, and against the plurality system, has been that the officer elected by a majority of all the votes carries with him a greater moral force and authority than one elected by a plurality. From experience in the different States of this Union under the plurality rule for a century past, we are able to say that this argument is wholly speculative, and is destitute of all force in practice. A President elected by a plurality of all the votes in a fair election would carry with him the whole moral power of the office, and be regarded by the nation as completely the President, morally and legally, as if he had received a majority of all the votes.

But if a President who had been in a minority at the polls, having received fewer votes than another candidate or other candidates, should be made President by the artificial machinery of the electoral college, or the arbitrary and anti-republican rule of an election by the States in the House, as was the case with Mr. Adams, he would be shorn of moral power and be regarded by the nation as only a technical President.

It is not to be denied that the Vice-Presidents Johnson, Fillmore, and Tyler, who by the death of Presidents, elected by the people, have become acting Presidents of the United States, have not carried with them the respect and moral force which belong to those who were elected directly, from the fact that they have become Presidents by the operation of law and not by the direct votes of the people. But the moral force of Presidents Lincoln, Buchanan, Taylor, and Polk was not impaired because they had only received a plurality of all the votes cast at the polls.

The plurality system has been tried in all the States but four for State officers, members of Congress, members of the legislature, and all subordinate officers, and has worked well.

The argument on the other side is, that no man should be President who does not receive a majority of all the electoral votes. There is no

moral force in this position, unless that majority of electoral votes should represent a majority of the votes of the people; but a majority of the electoral votes, by the peculiar machinery of the election, may represent only a small minority of the whole number of votes cast by the people.

The present system seems designed to defeat the popular will as far as possible, and provides for the election of a candidate who may have received but a minority of the votes of the people.

Where the plurality system is adopted, and the people vote directly for candidates, and not for electors or intervening agents, every man casts his vote with a knowledge that the candidate who receives the most votes will be declared elected. There can be no inducement, therefore, to scatter the vote with a view of throwing the election into the House, as there may be under the present system; and every voter will have strong inducement to give his vote for the best man, knowing that the result of the election is to be final.

In the States where the election of governor and other State officers by the direct vote of the people is conducted on the plurality system, it happens in a majority of cases that the officers elected actually get a majority of all the votes cast, but where they do not receive a clear majority it nearly always happens that their vote approaches very closely to a majority, and is generally a fair expression of the wishes of the people; and we have never known a case of the election of governor or other important State officers who had not received one-third of the votes, as was the case with Mr. Adams, in 1825, who was made President through the machinery of the election in the House.

Whatever objection may exist to the plurality system, where the people vote directly for candidates for President and Vice-President, must prevail with tenfold force under the electoral system, for under the electoral system it is quite possible, and even probable, that the man may have the majority of electoral votes who is largely in the minority in the popular vote. Under the plurality rule no man can be elected who has not received more votes than any other candidate; but under the present system a man may be chosen President who receives the smallest number of votes, by means of the electoral college or throwing the election into the House.

It may be further remarked, that while there can be no election of President under the present system except by a majority of all the electoral votes, yet the electoral colleges themselves in the several States are, and have been from the first, chosen upon the plurality system, and are not in any case required to have a majority of all the votes cast in the State.

ELECTION BY THE HOUSE.

The Constitution provides that when the vote is counted in the presence of the two Houses—

“The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately by ballot the President. But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice.”

ITS DANGEROUS CHARACTER.

That this provision for electing a President is fraught with danger to the nation will scarcely be denied by any.

It is matter of history that the election of Mr. Jefferson by the House of Representatives in 1801 came near making shipwreck of the Government and involving the nation in civil war. Nothing prevented that result but the patriotism of several members of the House who voted, against their principles and their party, for Mr. Jefferson, to relieve the nation from the great peril in which it was placed. Again, in 1825, when Mr. Adams was elected by the House, the proceedings became odious to the nation, and drew upon all parties concerned an unpopularity from which they never recovered.

The objections to this constitutional provision for the election of a President need only to be stated, not argued.

First. Its manifest injustice. In such an election each State is to have but one vote. Nevada, with its 42,000 population, has an equal vote with New York, having one hundred and four times as great a population. It is a mockery to call such an election just, fair, or republican.

Again, this plan of election furnishes the grandest opportunities for corruption, cabal, and intrigue. Where the delegation of a State is equally divided, it is in the power of one venal member, by the change of his vote, to control the vote of the State. Such charges were rife in both the election of Mr. Jefferson and that of Mr. Adams; and the great and patriotic Clay never recovered from the charge that, as a member of the House, he cast his vote and influence for Mr. Adams, and afterward became his Secretary of State.

ITS UTTER UNFAIRNESS.

In the election of a President in the House of Representatives under the present apportionment, each State having one vote, forty-five members out of the two hundred and ninety-two may make the election, as follows: Delaware, Nebraska, Nevada, and Oregon have each one member, and four members would cast the votes of those four States; Rhode Island and Florida have each two, and four members would cast the votes of those States: Minnesota, New Hampshire, West Virginia, Vermont, and Kansas have each three members, and two votes in each, or ten members; in all five, would cast the votes of those five States; Arkansas, California, and Connecticut have four members each, and three in each, or nine in all, may cast their votes; Maine and South Carolina have each five members, three of whom in each, or six in both, may cast their two votes; Maryland, Mississippi, and Texas have each six members, and four in each, or twelve in all, may cast the vote of those three States. This makes nineteen States, or a majority of the States in the Union, and forty-five members may cast their votes and elect a President of the United States against the wishes of the other two hundred and forty-seven members of the House of Representatives. Again, these nineteen States have an aggregate population by the census of 1870 of a fraction over eight millions of people, while the remaining eighteen States have an aggregate population of about thirty millions. So that nineteen States, having scarce more than one-fifth of the entire population of the United States, may elect a President in the House of Representatives against the wishes of the other four-fifths; and this, by courtesy, has been called republican Government!

Such a combination and result as above exhibited may not be likely to occur; but they are possible under the present system of electing a President in the House of Representatives by a majority of States; and no system admitting such possibilities should be tolerated. In 1825 it did happen that Mr. Adams was elected in the House over General Jackson, who had received a larger proportional majority of the popular vote than has any President elected since that time; and who had also a large plurality of the electoral votes.

There is always danger to a country in an injustice in its institutions, and the danger increases as the injustice is aggravated.

When the smallest State is made equal to the largest in the choice of the President of the United States, the gross inequality becomes offensive, and must become dangerous to the country whenever the power is exercised. Surely every patriot who looks forward with anxiety to the future peace and perpetuity of the Republic, must earnestly pray that it may never again be exposed to the trial of electing a President by the House of Representatives under the present provision of the Constitution; and, most of all, should the small States ask to be delivered from the exercise of a power so grossly unequal and offensive.

Another absurdity in the election of a President by States in the House of Representatives is found in the fact that the election is to be had by members elected two years before, without reference to the election of President. The issues upon which they were elected to the House may have passed away, or the politics of the country may have changed entirely within two years, so that the members elected two years before that may not represent the sentiment of the country at the time the presidential election takes place.

If there is any use in having a president elected every four years, it is that the public sentiment of the country may find expression; that a man may be chosen to represent that sentiment; but when the election is committed to the members of the House, who were elected two years before, and whose political sentiments may have been expressly repudiated at the last election, we can understand how completely this system is calculated to baffle and defeat the popular will.

THE TIME OPPORTUNE FOR CHANGE.

We point out to the Senate and to the country dangers that lie in the pathway of the nation, contingencies, some of them not remote, but near and probable, which threaten the country with revolution and the government with destruction, and urge that the path of duty is the path of safety; that now, in a time of peace and political calm throughout the nation, we should address ourselves to the removal of these perilous obstructions that were hidden to the eyes of our fathers, but have been brought to our knowledge by observation and experience.

CONCLUSION—THE PROPOSED CHANGES.

In conclusion, we would say that if the system of electoral colleges is to be continued, some means should be devised by which the election of these electors in the States may be contested, so that if it has been controlled by fraud or violence, or if there be two sets of electors, each claiming the right to cast the vote of a State, there may be some machinery or tribunal by which fraudulent returns could be set aside or corrected, and the contending claims of different sets of electors be settled in advance of the time when the vote is to be finally counted, and

by which the President of the Senate may no longer be left to exercise the dangerous powers that seem to be placed in his hands by the Constitution, nor the two Houses of Congress by the operation of the twenty-second joint rule. Patriotic men of all parties must rejoice that General Grant was re-elected by so large a majority that the electoral votes of Louisiana and Arkansas were unimportant to the result, for without intending here to express any opinion in regard to those votes, we must be permitted to say that they were surrounded by such circumstances and attended with so much doubt in the public mind that the peace of the nation would have been imperilled if the result of the presidential election had been determined by them.

The plan of dispensing with the electoral colleges and electing the President directly by the vote of the people seems to be a remedy for many of the evils and dangers to which we have referred; but even then some tribunal should be appointed to settle contested and doubtful results in districts or at the disputed polls, and this tribunal should be removed as far as possible from the control of excited parties. It has seemed to us inexpedient to attempt to establish such a tribunal in an amendment to the Constitution, and we therefore recommend that Congress be clothed with power to establish such tribunal by law. Whatever tribunal might be created, would require much consideration in regard to details and method of operation, into which it is not important that we should now attempt to enter.

As to the districts into which it is proposed to divide the States for election purposes, the plan presented invests Congress with the same power over this subject which it now has over the representative districts in the States, leaving to the States first the formation of such districts, but giving to Congress the power at any time to alter or establish them. We propose that the election for President and Vice-President shall be conducted under the authority of the United States and by the machinery to be provided by Congress. The election of the Chief Magistrate is the most important act which the people can be called upon to perform, and it is expedient that it should be conducted in every State under uniform laws and methods. Nevertheless, under the amendment proposed, it would be in the power of Congress, should it see proper, to adopt the machinery of the States in the conduct of the election.

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