

SENATOR FROM WEST VIRGINIA

REPORT

OF THE

COMMITTEE ON PRIVILEGES AND ELECTIONS

RELATIVE TO

THE CONTEST OF HENRY D. HATFIELD v. RUSH D. HOLT
FOR A SEAT IN THE UNITED STATES SENATE
FROM THE STATE OF WEST VIRGINIA

TOGETHER WITH

THE MINORITY VIEWS OF MR. HASTINGS, MR. AUSTIN,
AND MR. DICKINSON, AND INDIVIDUAL VIEWS
OF MR. JOHNSON



MAY 13 (calendar day, JUNE 19), 1935.—Ordered to be printed

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1935

SENATOR FROM WEST VIRGINIA

MAY 13 (calendar day, JUNE 19), 1935.—Ordered to be printed

Mr. GEORGE, from the Committee on Privileges and Elections,
submitted the following

REPORT

[Relative to the contest of Henry D. Hatfield versus Rush D. Holt for a seat in
the United States Senate from the State of West Virginia]

In the West Virginia primary election of August 8, 1934, Rush D. Holt was declared the nominee of the Democratic Party and Henry D. Hatfield, the nominee of the Republican Party, for the office of United States Senator. In the general election on November 7, 1934, Rush D. Holt received 349,882 votes and Henry D. Hatfield, 281,756 votes. The secretary of state duly made return of the election of Rush D. Holt to the Governor, who issued a certificate in due form, certifying the election of Rush D. Holt to the Secretary of the United States Senate, before the beginning of the Seventy-fourth Congress, which convened January 3, 1935.

On April 18, 1935, Henry D. Hatfield presented his petition in the nature of a protest and contest to the Senate of the United States, alleging the election of Rush D. Holt to be void and praying the Senate to declare the seat vacant and the petitioner, who received the next highest number of legal votes cast in the November election, 1934, the duly elected Senator. This petition was referred to the Committee on Privileges and Elections.

Subsequently a number of citizens of the State of West Virginia presented to the Senate a memorial, alleging that the election of Rush D. Holt was void and that the State was without its proper representation in the Senate. The memorialists also prayed the Senate to declare the seat vacant in order that the Governor of West Virginia might fill the vacancy as provided by law. This memorial was referred to the Committee on Privileges and Elections.

The petition of Henry D. Hatfield and the memorial of the several citizens of the State of West Virginia allege that the said Rush D. Holt was born June 19, 1905, and will not be 30 years of age until

June 19, 1935, and is therefore disqualified to become a Member of the Senate by virtue of the provisions of article I, section 3, paragraph 3, of the Constitution of the United States.

It is also alleged that the primary election laws of West Virginia require each candidate to file a certificate as to his eligibility and good faith in seeking office, among other qualifying facts. In the primary election of August 1934 it is averred that such certificate was filed in the office of the secretary of state of West Virginia by the said Rush D. Holt, but that the certificate was not acknowledged before a notary public of the county in which it purported to have been executed. It is insisted that the statement of Rush D. Holt, contained in his qualifying certificate, "I am eligible to hold the said office", was not a true statement for the reason that he was not on that date eligible to the office of United States Senator for which he certified himself to be a candidate and also that he could not subscribe to the further statement that he was a candidate for the said office "in good faith."

At the hearing held by your committee June 1, 1935, Henry D. Hatfield and the memorialists were represented by counsel; Rush D. Holt appeared in person. It was admitted that the said Rush D. Holt was born June 19, 1905; that during the political campaigns preceding both the primary and the general elections his correct age was repeatedly stated to the voters of West Virginia. It is not in dispute that the question of his ability to fulfill the constitutional requirement as to age was raised and freely and openly discussed in the newspapers and in public political meetings throughout the State of West Virginia. It was with the full knowledge that the said Rush D. Holt was not in fact 30 years of age on November 7, 1934, and would not become 30 years of age until June 19, 1935, that the voters of West Virginia elected him a Senator in the November election of 1934. It appeared without dispute that the said Rush D. Holt has not presented himself to the Senate as a Senator-elect and has not been sworn and taken his seat as a Senator from the State of West Virginia. On the contrary, the said Rush D. Holt announced his intention to present himself for the purpose of qualifying as a Senator when he had become 30 years of age, to wit, on June 19, 1935.

At the outset, your committee is of the opinion that the acknowledgment of the certificate required by the primary election laws of West Virginia before an officer who was not in fact an officer of the county in which the certificate purported to have been executed is of no consequence. It appears that the acknowledgment was taken before an officer of the State and that the certificate was not in fact executed in the county stated in the caption thereof. No objection whatever was made to the certificate prior to the primary election and the name of the said Rush D. Holt appeared upon the Democratic ticket as a candidate for the United States Senate. No exception whatever was taken to the placing of the name of Rush D. Holt upon the ballot as the candidate of the Democratic Party in the general election of November 1934.

Also, your committee is of the opinion that the statements made by the said Rush D. Holt in such certificate were not intended to mislead and did not in fact mislead voters of West Virginia. At most the candidate was merely stating his conclusions of law based upon facts correctly stated by him to the voters of West Virginia.

Also, that the said Henry D. Hatfield, by virtue of his having received the next highest number of eligible votes for United States Senator in the general election held in and for the State of West Virginia in November 1934, is not the duly elected Senator from the State of West Virginia. The rule is well settled that in election cases the ineligibility of a majority candidate for a seat in the Congress gives no title to the minority candidate or to the candidate receiving the next highest number of votes. See *Jones v. Mann* (40th Cong.); Rowell's Digest 220, 2 Bartlett 475; *Cannon v. Campbell* (47th Cong.), Rowell's Digest 391.

The ultimate question raised by both the petition and the memorial is: As of what date is the age qualification for a Senator provided for in article I, section 3, paragraph 3, of the Constitution to be determined? That is,

- (1) Does it apply to the date of election; or,
- (2) Does it apply to the date of the beginning of the term of office for which the Senator was elected; or,
- (3) Does it apply to the date the Senator-elect is sworn and takes his seat?

Article I, section 3, paragraph 3, of the Constitution reads as follows:

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The quoted paragraph is a sentence of two clauses joined by the conjunction "and." The first clause or sentence completely provides for the qualifications of age and citizenship in a Senator, not in a Senator-elect or a candidate for the senatorial office. Had the sentence ended here, it would clearly appear that the age qualification could not be made to apply to the date of election. A second clause was added clearly providing for habitancy "when elected." The proper grammatical construction would seem to be that the words "when elected" modify the word "person" in the first clause only as the subject of the second sentence or clause. In other words, they have no relation to the verbs "shall not have" and "been" in the first clause. The proceedings of the Constitutional Convention upon the clause under consideration, attached hereto as "Exhibit A," strongly indicate, as the language of the clause itself implies, that the qualifications of age and citizenship relate solely to actual and not potential senatorship.

In the opinion of your committee, the qualifying words "when elected", appearing as they do in the center of the second separate clause, relate only to habitancy.

It may be suggested that the date of election is nevertheless controlling, because a Senator-elect becomes a Member of Congress on the day of his election and must have fulfilled all of the requirements provided in paragraph 3 before that date. If a Senator-elect became a Member of Congress at the time of his election, it would have been wholly unnecessary to insert the words "when elected" in paragraph 3, since all of the qualifications therein provided for automatically would have attached at the date of election. The language of the clause itself precludes the suggestion that a Senator-elect becomes a Member of the Senate at the time of his election. See *Hammond v. Herrick* (Clarke and Hall Contested Elections, H. R. U. S., p. 287).

As a Senator-elect obviously does not automatically become a Member of Congress at the beginning of the term of office for which he was elected, no substantial reason can be found in the Constitution why his qualifications of either age or citizenship should be measured at that time. The thoroughly considered report of the House Committee on Elections in *Hammond v. Herrick*, supra, is in point:

Our rule in this particular is different from that of the House of Commons; it is also better, for it makes our theory conform to what is fact in both countries, that the act of becoming in reality a Member of the House depends wholly upon the will of a person elected and returned. Election does not, of itself, constitute membership, although the period may have arrived at which the congressional term commences. * * * Neither does a return necessarily confer membership. * * * Neither do election and return create membership.

In cases arising under article I, section 6, of the Constitution, which provides against a member of Congress holding another office under the United States, the House of Representatives has uniformly held that a Representative-elect does not necessarily become a Member of the Congress on either the date of election or of the beginning of the term of office for which the Representative was elected.

Section 6 provides for a fourth qualification in a Representative. The specific time as of which this qualification must be met is not stated, but since "no person holding any office under the United States shall be a Member of either House during his continuance in office", it necessarily follows that this fourth qualification must be met at the time of the commencement of actual membership in either House. It has never been held, so far as your committee is advised, that the fourth qualification contained in article I, section 6, of the Constitution, must be met by a Member-elect of either House of Congress either on the date of his election or on the date of the commencement of the term to which he was elected. Again, the fourth qualification is to be determined as of the date when the Senator-elect becomes in fact a Senator. The date on which a Senator-elect presents himself to the Senate of the United States, is sworn, and takes his seat, should be determinative of the age qualifications of article I, section 3, paragraph 3, of the Constitution.

The first clause of section 3, article I of the Constitution changed by the seventeenth amendment, provides:

The Senate of the United States shall be composed of two Senators from each State, chosen by the people thereof, for six years; and each Senator shall have one vote.

The second clause of section 3, article I (which follows immediately), directs that after the Senators—

shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year; of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year.

The first section of the twentieth amendment to the Constitution reads:

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

While the Constitution provides for the senatorial term of 6 years, it is obvious, we think, that a Senator-elect is not from the beginning of the term to which he is elected a Senator in the Congress within the meaning of clause 3, section 3, of article I. While the Senate is a continuing body, the Senate as a body and not as individual members thereof "shall be the judge of the elections, returns and qualifications of its" members, and a majority of the Senate "shall constitute a quorum to do business" (art. I, sec. 5, clause 1, of the Constitution).

When, as in this case, the qualifications of a person to "be a Senator" shall be called in question, the inquiry logically would seem to be whether such person is then qualified under the Constitution, or specifically, under clause 3, section 3 of article I thereof. Where, as in this case, the Senator-elect at the time when he presents himself to take his seat in the Senate, possesses all of the qualifications required under the Constitution, a negative vote against his seating would not exclude a disqualified person from membership in the Senate.

The practical objective of the framers of the Constitution was to exclude from the membership of the Senate anyone who had not at the time of the assumption of the senatorial office been for 9 years a citizen of the United States. The fear of foreign influence and the wholesome distrust of those who had but recently disclaimed allegiance to a foreign power undoubtedly accounts for the citizenship clause in the Constitution. Likewise, the framers of the Constitution sought to exclude immature persons from the deliberations of the Senate. The whole purpose of the Constitution is subserved by the exclusion of the person who is lacking in age and/or citizenship qualifications at the time he presents himself as a member of the Senate and demands the right to participate in the deliberations thereof. The habitancy qualification must of course be determined as of the date of election. The Constitution expressly requires it. Again, the reason is consistent with the definite purpose of the framers of the Constitution. States, or districts thereof, during the Revolution had been represented by inhabitants of other States. This fact was well known to the members of the Convention. To effectively protect the weaker States from the influence of the larger and more powerful States, it was expressly provided that no person shall be a Senator "who shall not, when elected, be an inhabitant of that State for which he shall be chosen."

Looking to the precedents in the House of Representatives, John Young Brown was elected a Representative from Kentucky to the Thirty-sixth Congress. Not being of the age of 25 years, either when elected or at the beginning of the term, Brown waited and was sworn when he attained the required age. (See first session, 36th Cong. Globe, pp. 25 and 31.) In Jefferson's House Manual, the following note appears:

A Member-elect not being of the required age, he was not enrolled by the Clerk and did not take the oath until he had reached the required age.

Henry Ellenbogen was elected as the Representative of the Thirty-third Congressional District of Pennsylvania to the Congress of the United States at the general election on November 8, 1932. Under the naturalization laws, Ellenbogen, a native of Austria, became a citizen of the United States, June 17, 1926. At the time of his elec-

tion, he had been a citizen of the United States 6 years and 5 months, and 6 years 8½ months on March 4, 1933, the beginning of the term for which he was elected. He had been a citizen of the United States for more than 7½ years on January 3, 1934, when he presented himself to the House and was sworn and took his seat. Ellenbogen was permitted to retain his seat, the House being of the opinion that clause 2, section 2, of article I of the Constitution requires a person, to be a Representative, to have been a citizen of the United States 7 years prior to the date on which he presented himself, was sworn, and took his seat.

In the Senate, Henry Clay was seated and served before he was 30 years of age. Likewise, Armstead Mason, of Virginia, and John Eaton, of Tennessee, each qualified as Senators from their respective States and assumed the duties of the senatorial office before they were 30 years of age. No objection was made to the seating of Henry Clay, and it appears that he himself was probably unaware of the age qualification. His case is not relied upon as a precedent. Likewise, the cases of Mason and Eaton are not cited as precedents, because no question having been raised, each of these cases is at most a mere physical precedent.

Two Senate precedents demand notice.

(1) The Gallatin case. (See 1, Hinds' Precedents of the House of Representatives, sec. 428, and authorities there cited.)

There are few more distinguished names in the history of the United States than that of Albert Gallatin. Many were the public services that he rendered during a long and active life. Subsequent to the events with which we are concerned he served as Secretary of the United States Treasury for a longer period of time than has any other person in the history of the Nation.

Mr. Gallatin was born in Geneva, Switzerland, in 1761, and came to this country in 1780. In October 1785 he took the oath of allegiance to the State of Virginia. Having moved to Pennsylvania in December 1785 and having become a prominent resident of that State, he was elected a Senator from Pennsylvania in February 1793 and took his seat in December of that year. A question having been raised regarding the validity of his election, the Senate considered the matter and passed the following resolution:

Resolved, That the election of Albert Gallatin to be a Senator of the United States was void, he not having been a citizen of the United States for the term of years required as a qualification to be a Senator of the United States.

In the debate it was contended that Mr. Gallatin had never become a citizen of the United States, the oath of allegiance to Virginia being insufficient to accomplish that result; but the language of the resolution showed that Congress rejected this contention. That language shows that Mr. Gallatin's qualifications were regarded as defective not because he was not a citizen of the United States at all, but rather because he was not a citizen of 9 years' standing.

(2) The *Shields case*. (See Hinds' Precedents of the House of Representatives, sec. 429, and authorities there cited.)

Gen. James A. Shields, an alien by birth, was elected to the Senate from the State of Illinois on January 13, 1849, for the term of 6 years from the 3d of March following. The oath of office was administered to General Shields on March 6, 1849, but a question was raised

regarding his qualifications as a Senator and protracted debate ensued. It appeared that General Shields had been naturalized on October 21, 1840, so that at the commencement of his term of office he lacked about 7 months of having been a citizen for 9 years.

A resolution was presented in words:

That the election of James Shields to be a Senator of the United States was void, he not having been a citizen of the United States for the term of years required as a qualification to be a Senator of the United States.

Upon motion of John C. Calhoun, of South Carolina, the resolution was amended by the addition of the words "at the commencement of the term for which he was elected", and was passed as amended on March 15, 1849. As passed, the resolution read:

Resolved, That the election of James Shields to be a Senator of the United States was void, he not having been a citizen of the United States for the term of years required as a qualification to be a Senator of the United States at the commencement of the term for which he was elected.

The Revels case (Hinds' Precedents of the House of Representatives sec. 430) seems not directly in point. The attention of your committee has been called to no other case having a material bearing upon the question presented in the instant case.

Referring to the Gallatin case, it affirmatively appears that at the date of his election, at the beginning of the term for which he was elected, and at the time of his appearance in the Senate, he had not been a citizen of the United States for 9 years. In any event Mr. Gallatin did not fulfill the constitutional requirements.

In the Shields case, it likewise affirmatively appears that on the date of his election, at the commencement of the term to which he was elected and at the date when he presented himself to take the oath and assume the duties of his office, he had not been a citizen of the United States for 9 years. It is important also to note that neither Mr. Gallatin nor General Shields had been a citizen of the United States for 9 years on the date when final adverse action was taken by the Senate of the United States.

In the opinion of your committee, the foregoing is of importance.

The conclusion which your committee has reached is contrary to the resolution adopted in the Gallatin case; it is likewise in conflict with the resolution of the Senate in the Shields case, but the rule which we believe to be the proper one would have resulted in the exclusion of both Mr. Gallatin and General Shields under the admitted facts in each case. The rule which we have recommended to the Senate meets the reasonable and obvious purpose of the framers of the Constitution, as we have endeavored to point out. The committee presents the following resolution:

Resolved, that Rush D. Holt is entitled to his seat in the Senate of the United States as a Senator from the State of West Virginia; it appearing that he was thirty years of age at the time when he presented himself to the Senate to take the oath and to assume the duties of the office.

EXHIBIT A

RECORDS OF THE FEDERAL CONVENTION

1787—May 29: "*Resolved*, That the Members of the second branch of the National Legislature (the Senate) ought to be elected by those of the first, out of a proper number of persons nominated by the individual legislatures to be of the age of ——— years at least." (Farrand, vol. 1, p. 20.)

June 12: The above blank filled in with "Thirty" (F. pp. 211, 217, 221).

June 13: "Resolved, That the members of the second branch of the National Legislature ought to be chosen by the individual legislatures, to be of the age of 30 years at least" (F. 228, 235).

June 25: Further approval of the age of 30 years (F. 395, 408, 415).

June 26: Practically same as June 13 (F. 435, and vol. 2, 129).

July 24-26: "The qualification of (a) Senators shall be the age of 25 years at least; citizenship in the United States and property, to the amount of — (F. vol. 2, 141).

"Every member of the Senate shall be of the age of 30 years at least, shall have been a citizen of the United States for at least 4 years before his election, and shall be at the time of his election, a resident of the State for which he shall be chosen" (F. vol. 2, 155, 165, 179.)

August 9: Above amended by inserting the word "of" after the word "citizen" and substituting the words "an inhabitant" for the words "a resident", and the word "nine" for the word "four" (F. vol. 2, 229, 239).

August 13: The substitution of the word "nine" confirmed (vol. 2, pp. 266, 272-273, 281).

September 10: Reported as above by Committee of Style (F. vol. a, p. 565).

September 12: Reported as follows by Committee of Style:

"No person shall be a Senator who shall not have attained to the age of thirty years and been 9 years a citizen of the United States, and who shall not when elected, be an inhabitant of that State for which he shall be chosen" (F. vol. 2, p. 591).

September 17: Passed in above form (F. vol. 2, 652).

MINORITY VIEWS OF MR. HASTINGS, MR. AUSTIN, AND MR. DICKINSON

The undersigned members of the Committee on Privileges and Elections, recommend the adoption of the following resolution:

Resolved, That the election of Rush D. Holt to be a Senator of the United States was void, he not having attained the age of thirty years at the commencement of the term for which he was elected.

The Constitution provides in article 1, section 3, that—

No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

Mr. Holt stated before the committee that he was born on the 19th day of June 1905. His term of office as a Senator began on January 3, 1935, 5 months and 13 days before he attained the age of 30 years. The credentials of his election were laid upon the desk of the Vice President on January 3, 1935, but Mr. Holt did not present himself to take the oath.

It appears that his name was placed upon the pay roll at the beginning of his term and that he appointed Secretaries and Clerks who were also placed upon the pay roll.

It cannot, therefore, be contended that he has declined the office to which he was elected, but, on the contrary, these things show that he definitely accepted the office.

There are two precedents which we think are controlling, particularly in view of the fact that the first one was decided as early as February 28, 1794, and the second one on March 15, 1849.

The first one was the Gallatin case. Mr. Gallatin lacked the required 9 years' citizenship by about 8 months, and the Senate adopted a resolution declaring that his election was void because of such disqualification.

The second case was the Shields case, in which General Shields lacked about 7 months of the 9 years' citizenship requirement. The Senate on March 15, 1849, adopted a resolution declaring his election void because he did not possess the required qualifications "at the commencement of the term for which he was elected."

During the campaign it appears that Mr. Holt cited the instance of Henry Clay, who apparently was sworn in as Senator 2 or 3 months before he became 30 years of age. The majority of the committee, however, make no point of this for the reason that the question was not raised in the Senate and therefore cannot be considered as a precedent.

We think the plain language of the Constitution means that a United States Senator must be 30 years of age when his term begins. While in the case of Mr. Holt the age requirement lacked a little less than 6 months in time, the principle involved would be the same if he lacked 5 years and 6 months. To decide that a person elected to the

United States Senate could wait until shortly before his term had expired and until he had arrived at the age of 30 years is placing a construction upon the provisions of the Constitution that is wholly unwarranted; would establish a principle which might readily result in greatly diminishing the number of Senators provided for by the Constitution.

This is the first case of this kind that has been brought to the attention of the Senate. It is admitted by the majority of the committee that if Mr. Holt had presented himself to the Senate on January 3, it would have been the duty of the Senate to decline him his seat, because he had not arrived at the constitutional age. The contention is made, however, that the fact that he did not present himself until he arrived at the age of 30 years, presents an entirely different question, and the Senate ought now to decide that question in favor of seating him. We submit, however, that the question cannot be so easily disposed of without violating precedents, and without putting ourselves and our successors in a very embarrassing position.

It is assumed that the Senate will not be required to meet this question very often, if ever again. It must not be overlooked, however, that it establishes another principle that frequently confronts the Senate. To hold in favor of seating Mr. Holt is to hold that a person elected to the Senate does not become a Senator until he takes the oath of office. The twentieth amendment to the Constitution provides that the terms of Senators shall end at noon on the 3d day of January and the terms of their successors shall then begin. To hold that a Senator need not be qualified to take the oath of office at the beginning of his term and that he may postpone taking the oath until he has attained the age of qualification, necessarily establishes the principle that a person elected to the Senate does not become a Senator until he has taken the required oath. The practice and the established precedents are that a person elected to the Senate becomes a United States Senator at the beginning of his term and it does not depend upon the time he takes the oath of office.

The senior Senator from Nevada, Mr. Pittman, raised this question in a resolution presented to the Senate on December 8, 1931, in relation to the appointment of Senator Barbour, of New Jersey, as a Member of the United States Senate. Senator Barbour was appointed to fill a vacancy caused by the death of Senator Morrow, who had been elected to the Senate in 1930 for a term of 6 years, beginning March 4, 1931. Congress did not convene until December and, therefore, Senator Morrow did not take the oath of office. Senator Morrow died before the convening of the Senate and Senator Barbour was appointed to fill the vacancy.

The question raised by Senator Pittman's resolution was whether a person elected United States Senator became a Senator at the time his term began or whether he must take the oath of office before he became a United States Senator.

Senator Barbour was sworn in without objection and the resolution was referred to the Judiciary Committee. So far as we know, no action was taken by the Judiciary Committee upon the resolution.

Senator Pittman's speech upon the subject is found in the Congressional Record, December 8, 1931, beginning at page 16. Subsequently, on June 16, 1932, Senator Pittman filed a brief upon this subject.

The seating of Mr. Holt decides that question. It definitely decides that it is necessary to take the required oath before any person can become a Senator of the United States. Senator Pittman raised the question in order to have it definitely decided by the Senate that such oath was not necessary and thus overrule certain court decisions which might appear to be in conflict with the practice and precedents of the Senate.

A very pertinent inquiry to be made relates to the question of the beginning of the salary of a Senator. On March 3, 1883, by an act of Congress, the following provision was made:

That Senators elected, whose term of office begins on the 4th day of March, and whose credentials in due form of law shall have been presented in the Senate, but who have had no opportunity to be qualified, may receive their compensation monthly, from the beginning of their term, until there shall be a session of the Senate.

After the twentieth amendment to the Constitution became effective a new law was passed on June 19, 1934, providing that—

Senators elected, whose term of office begins on the 3d day of January, and whose credentials in due form of law shall have been presented in the Senate, may receive their compensation monthly from the beginning of their term.

These statutes clearly mean that a person elected to the Senate becomes a Senator at the beginning of his term, otherwise he would not be entitled to the salary of a Senator. The filing of the credentials is prima facie evidence of his election as well as his qualifications. Both the election and qualification for the office may be a subject of inquiry by the Senate. Until the Senate takes some affirmative action declaring that the person presenting the credentials was not legally elected or did not meet the constitutional requirements as to age, etc., such person, so far as the records show, is a member of the United States Senate. He, of course, can take no part in the Senate proceedings until he takes the oath required of a Senator. If he is not qualified at the beginning of his term a vacancy exists from that moment, although the Senate may not determine the fact until some later date.

In the case of Mr. Holt, the credentials were filed. Such credentials appear on their face to be regular. Therefore, Mr. Holt was under this law placed upon the pay roll.

The statute and the precedents have thus been followed. The question is brought to the Senate for the first time when Mr. Holt presents himself and offers to take the oath of office. If the Senate decides, as it must decide, that he was not qualified until June 19, it must also decide that the statute under which he has drawn his salary for a period of more than 5 months is void, and that every Senator who has drawn any pay between the time his term began and the time he was sworn in has received money to which he was not entitled.

These statutes and the universal practice followed constitute precedents against any such contention, and amount to a construction of the Constitution against the seating of Mr. Holt.

Many illustrations could be given to show how embarrassing it will be in the future if we shall decide that a person elected to the office of United States Senator does not become a United States Senator until he or she takes the oath of office. For instance, does a Senator have to take the oath of office before the immunity from arrest provided for in the Constitution attaches to him? Can a United States Senator

successfully urge as a defense in a criminal prosecution that he has not yet taken the oath of office? The Constitution distinctly provides in article I, section 6, that Members of Congress shall—

be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same.

There is another question, although not constitutional in character, is so well settled in the practice of the Senate that it would undoubtedly be necessary to adopt a resolution to change it, and that is the question of continued service which constitutes seniority.

Assuming that a Senator has been in the Senate for 2 or 3 terms, or for a period of 12 or 18 years, is reelected to the Senate and for some good reason cannot be present on the first day of the session. The adoption of the rule that a Senator's term begins when he takes the oath of office would interrupt that Senator's term of service, and the result would be that the man who takes the last oath thereby becomes the junior Senator of the Senate. This, of course, is not sufficient reason for refusing to seat a person as a Senator, who ought to be seated, but we call attention to it merely for the purpose of emphasizing the well-established rule that a person becomes a Senator when his term begins. This amounts to a practical construction of the Constitution over a period of many years.

We dissent from the majority opinion that the prohibitory clause 3 of section 3 of article I of the Constitution—

No person shall be a Senator who shall not have attained to the age of thirty years, * * *

applies to a date later than January 3, 1935, in this case, because such application does in this case permit, and would set a precedent permitting a Senator-elect to determine a date on which his term begins different from that provided in the twentieth amendment:

* * * the terms of Senators * * * (end) at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

A Senator-elect may not determine the beginning of his term. The only choice left to him is whether he accepts or rejects the office at the beginning of the term for which he was elected.

A Senator-elect may not at will change the composition of the Senate.

The composition of the Senate is indestructible.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof for 6 years * * *.

Article V made this provision not amendable in the usual way.

The composition of the Senate could be changed only by formal acts, viz:

First, the formal consent of the State to be deprived of its equal suffrage (no such indirect and implied consent as claimed in this case);

Second, the deliberate consideration and action by the Congress, ratified by the legislatures, or by the conventions of three-fourths of the several States.

It was claimed in the hearings (p. 19):

Can anyone doubt but that the State of West Virginia did give such consent in the general election held last November by the very powerful and sovereign expression of the State, the will of the people?

We doubt.

The evidence showed that cases were referred to during the election on the basis of which the candidate claimed that he would be entitled to be and would be admitted to his seat. His election on such claims was not consent that West Virginia should be deprived of its equal suffrage in the Senate for even 1 day.

The consent referred to in article V relates to amendment of the Constitution; it does not relate to a violation of the Constitution, or a deviation from the Constitution.

To permit this Senator-elect to postpone, for any time, the taking of the oath and his seat, amounts to a change in the composition of the Senate in conflict with the express requirements of the Constitution.

He could not lawfully postpone it.

The time when we must apply the test is the beginning of his term.

The high privilege and duty is given to the Senate to determine the qualifications of those persons presenting themselves as Members of the Senate. There is no review of our action. The responsibility of passing upon the subject and the sole responsibility of passing upon it is ours. If the question we had to pass upon was one of disputed facts, we might disagree upon the facts, and, therefore, set no dangerous precedent, but here the important fact is admitted by the person presenting himself.

We do not overlook the importance of this decision. It is a serious thing to refuse to seat a person who has been duly elected as United States Senator and who is admittedly qualified to be a Senator when he presents himself to take the oath of office, but this, after all, is nothing like as serious as disregarding the plain words of the Constitution and the precedents of the Senate throughout its existence.

For the reasons above set forth, we think the resolution which we offer ought to be agreed to.

DANIEL O. HASTINGS.
WARREN R. AUSTIN.
LESTER J. DICKINSON.

INDIVIDUAL VIEWS OF MR. JOHNSON

The facts in the case admitted as they are leave for determination a single legal or constitutional question. Mr. Holt was a candidate for United States Senator in the primary and the election held in West Virginia in 1934. He was successful. He received from the Governor of the State the requisite certificate of election. He was elected for a term of 6 years, commencing January 3, 1935. Neither at the time of the election, nor when his term commenced did he possess the age qualification provided for by the Constitution. On the 19th day of June 1935 he will have become 30 years of age and at that time he seeks to be sworn in as a United States Senator, and this right by the majority of this committee is sought to be accorded him. Admittedly, Mr. Holt did not ask to be sworn in as a Senator at the beginning of his term, nor has any effort been made since the commencement of his term to have him sworn in as a United States Senator.

Of course my predilections, in common with those of my fellows, are all in favor of the duly elected Representative of West Virginia. It was my hope that a fair reason might readily be found for the seating of Mr. Holt and thus affirm the choice of the people of the State. Very reluctantly, I have been compelled to reach a conclusion other than I preferred and this conclusion is dictated solely by the inexorable logic of the situation and what I construe to be the plain intent of the Constitution.

The limits of time pressing upon all of us now in the Senate and the multifarious duties which demand our every waking hour make it quite impossible adequately to discuss such a question as is presented by the present case. What we do, however, here, may serve as a precedent in the future and a decent regard for our colleagues and for those who may follow us requires that in some brief and even imperfect fashion, the reasons which actuate us in our conclusion be set forth and preserved.

In two ways the Holt case may be approached: As a case of first impression and in the light of existing precedents.

1. A case of first impression. Section 3 of article I of the Constitution provides as follows:

No person shall be a Senator who shall not have attained the age of thirty years and been nine years a citizen of the United States and who shall not when elected be an inhabitant of that State for which he shall be chosen.

The original first paragraph of section 3 provided:

The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof for six years, and each Senator shall have one vote.

Constitutional amendment 17 changed the phraseology of this portion of section 3 by providing for the popular election of Senators,

but retained the first sentence thereof, "that the Senate shall be composed of two Senators from each State, elected for six years."

The seventeenth amendment, as well, provided for the filling of vacancies in the office of United States Senator.

It would serve no useful purpose to detail here the long and interesting contest among the framers of the Constitution over the representation of the States in the Senate. Suffice it to say, the inflexible purpose of those who finally prevailed was the protection of the smaller and less populous States against those then of existing power, or that prominence or power which might in the future arise in the States more favorably situated or more likely to increase in wealth or influence. The smaller States prevailed after a prolonged and bitter contest, which at one time threatened to disrupt the deliberations of the convention. It was then conceded and has since been, of course, unquestioned that each State is entitled to its two Senators, who are selected for a period of 6 years. I cannot quite agree with some of my brethren who assert so vigorously that whether a State has one or two Senators concerns only that State. I feel that with the dual system prevailing there is a dual responsibility as well, and that membership in the United States Senate is a concern not only of the State, but is a concern of the Nation, too.

The Constitution makes certain requirements for membership in the Senate:

(1) No person shall be a Senator who has not attained to the age of 30 years.

(2) No person shall be a Senator who has not been 9 years a citizen of the United States.

(3) No person shall be a Senator who when elected is not an inhabitant of the State for which he has been chosen.

When the term of office of Mr. Holt began, recognizing the constitutional limitations, he did not seek to be sworn in as a Senator, and the Senate could not have admitted him then without a plain violation, not only of the oath of Senators but of the terms of the Constitution itself. It is asserted that he can wait 5½ months and then become a Senator, qualifying under the Constitution. It is perfectly obvious, and indeed this is the claim of his sponsors, that if he can wait 5½ months, he can wait 5½ years.

It is equally plain that if he can wait 5 years until his qualification as to age shall have been removed by the lapse of time, he could, if failing in the requirement as to citizenship, wait any period of time within 6 years, and than be qualified under the Constitution.

I am unable to give any such construction to the vary plain language requiring no construction at all, of the section which I have quoted. When the session opened in January last, and Mr. Holt conceded by what was done, his lack of qualifications, there was a vacancy in the office for which he had been elected and that vacancy, in my opinion, could not be filled merely by the passing of months or years. His election, like that of any other ineligible and disqualified candidate, was void.

If this determination be justified, I grant it is most unfortunate and I readily confess it is one that I reach with the utmost regret. But with a plain constitutional provision before us, with the facts

admitted, it seems impossible in the light of our responsibility to evade it.

During the election last year Mr. Holt was thoroughly familiar with his lack of qualifications under the Constitution and it is quite to his credit he made no attempt to conceal that fact from the people of the State. He labored under the erroneous impression, however, that because Henry Clay had sat unchallenged in the Senate under the age of 30 years, a precedent had been established in that regard. The fact, however, that Henry Clay's age apparently was unknown at the time and the question of his qualifications and eligibility never was raised could hardly afford a precedent either persuasive or controlling. What my brethren seek, who have decided otherwise in this case is, in my opinion, by a short cut to amend the Constitution.

I have no objection whatsoever to the amendment of the Constitution of the United States, but the mode of that amendment is prescribed, and neither by legislative nor senatorial dictum should the endeavor be made permanently to alter the plain import of the Constitution's provisions. I am unable to escape the conclusion, that reading the Constitution as a whole and discerning the intent of its framers, that the design was at least at the beginning of a Senator's term he should have attained the age of 30 years. I cannot read into the Constitution the purpose of its framers to be that a Senator should have attained the age of 30 years sometime within the 6 years of his term. I cannot conceive that the other provision, which is a part of the same clause relating to citizenship, means that anyone not a citizen for the requisite period may be elected a Senator and may qualify any time after the commencement of his term, 1 year or 5 years and 11 months, may simply wait until he becomes 9 years a citizen of the United States and thus become a member of the body. It is exactly these things which the majority of the Committee on Privileges and Elections say in effect the constitutional requirement implies, and this anomalous situation I cannot concede.

THE SENATE PRECEDENTS

There are two Senate precedents that stand out like beacon lights, one of them established by some of the very men who wrote the Constitution; and the other coming from those whom all revere as among the greatest Americans of the last century.

The first case was that of Albert Gallatin, whose name is written large in the events just succeeding the Revolution. In February 1793 Mr. Gallatin was elected a Senator from Pennsylvania and took his seat. The question of his citizenship arose, and it was insisted that he had not been a citizen of the United States for the time required by the Constitution. His citizenship had continued for a period of about 8 years. Mr. Gallatin's election, because he had not been a citizen for the time prescribed by the Constitution, was declared by the Senate void.

In this instance, it would seem that the very men most familiar with the Constitution, some of whom were really a part of it, construed the provision in question here and reached their very definite conclusion. It might not have been difficult then in determining the eligibility or the qualifications of such a distinguished character as Mr. Gallatin to have suggested the postponement for a year or the fraction of a year

which was required to qualify him in the length of time for his citizenship, but apparently no such endeavor was made and the plain language of the Constitution obviously was held to mean exactly what it said and the election consequently was decided void.

The second case which has occurred in the Senate, and which concerned one very well known and of great popularity, was that of General Shields. It is respectfully submitted that this precedent must be overturned and the views expressed by the great Senators of that day set at naught, if the majority report here shall be upheld. General Shields was elected to the Senate for the term of 6 years from March 3, 1849. On March 6 the oath of office was administered to him and his credentials were referred to a special committee of the Senate. It appeared from the committee report that General Shields was naturalized on the 21st day of October 1840, and therefore a full term of citizenship required by the Constitution he lacked by about 7 months.

The committee appointed by the Senate reported a resolution as follows:

That the election of James Shields to be a Senator of the United States was void he not having been a citizen of the United States for the term of years required as a qualification to be a Senator of the United States.

The action of the Senate as finally taken was by the following resolution:

Resolved, That the election of James Shields to be a Senator of the United States was void, he not having been a citizen of the United States for the term of years required as a qualification to be a Senator of the United States at the commencement of the term for which he was elected.

During the discussion of the case the suggestion was made that it be postponed until the following December, when by the lapse of time the disqualification under which Mr. Shields was laboring would be removed. The Senate dissented, and the debate which occurred upon the suggestion made by Senator Foote, of Mississippi, is illuminating so far as this case is concerned.

I insert the excerpts which I have verified of the debate which occurred generally upon the question involved, and upon the suggestion of postponement, which seem to me conclusive of the present situation:

It appears that Senator Foote, of Mississippi, out of respect for General Shields, moved a hearing of the question be postponed until the following December, at which time General Shields would have been a citizen for 9 years, and been reelected by the legislature. To this Mr. Butler, of South Carolina, replied:

I understand the motion to be to postpone the further consideration of this subject until the first Monday in December next. If, by the postponement of the question, the gentleman claiming a seat here as one of the Senators for the State of Illinois could then take his seat as such Senator, I would certainly vote for the motion. But this is a matter that is not without its difficulties. * * *

Mr. Butler firmly dissented from the report of the committee because, as it stood, it seemed to make the date of election determinative of disqualification, and further stated:

But if it can be shown that in December next, when Congress shall again meet, General Shields can take his seat, I shall vote for the postponement. If he cannot then take his seat, then the postponement would be entirely unavailing; it would be protracting the matter to no purpose to adopt the motion of the Senator

from Mississippi, or so it seems to me. I dissent, then, so far as I am concerned, from the report of the committee, and I do so by virtue of precedents in my own State and the case of Mr. Gallatin. * * *

To this Mr. Foote replied:

Will the Senator allow me to ask whether he believes, if the subject should be postponed until the first Monday in December, General Shields will then be entitled to take his seat?

To which Mr. Butler replied:

My judgment on the subject is, that if General Shields had not taken his seat at all, perhaps at that time he might have claimed it; * * *

I do not say that I have any opinion upon the subject, one way or the other, as to whether, under the circumstances, he will then be entitled to take his seat; but I am fully of opinion that there is no absolute necessity for eligibility to exist at the time of the election.

And again:

I merely wish to support the constitutional view of the question. If I thought he could not constitutionally take his seat, and that it must be considered vacant, I should be bound to vote for the resolution reported by the committee; * * *

Mr. Berrien, of Georgia:

* * * Sir, I cannot entertain a doubt myself of the correctness of the report of the committee. I cannot conceive that the Legislature of Illinois exercises the power conferred upon it by the Constitution of the United States, when that legislature elects one who is ineligible; and I cannot reconcile to myself the idea that, since by the Constitution the term of office is limited to 6 years, that term of office may be made to commence at a time posterior to the time when the individual is elected. * * * It will be, therefore, impracticable, in my judgment, for the Legislature of Illinois, when they meet again, to proceed to nullify their own act by electing a Senator again to fill the same office. Until the election be declared void, there is nothing upon which they can act. * * *

Mr. Webster:

* * * He (General Shields) must prove that he has been a citizen of the United States for 9 years, in my judgment, on the 4th day of March. * * *

Why, it appears to me to be plain as a turnpike road. The State of Illinois has sent a gentleman here as her Senator, upon whose qualifications it has been our duty to pass at large; and when it is stated, as a compliment and mark of respect to the honorable Senator, that no remonstrance has come here from the State of Illinois, I agree to it all; but, sir, if every citizen of Illinois were here today in his own proper person, and desired the confirmation of the Senator's claim, since the matter has been brought to our notice, and since it is before us, we must decide it according to the Constitution and our oaths. * * * Sir, our duty to the State of Illinois is to decide this question in a reasonable time, that she may have her own reasonable time to fill the vacancy. She has the right to expect it at our hands. I hope we shall follow it out at once. We should remember the responsible part we are performing in the discharge of high functions. If we are of opinion that the gentleman sent here is not eligible, we should say so, and signify that to the State that sent him here. I shall therefore vote against postponement. * * *

Mr. Hale said:

* * * But until such an avowal shall be made by General Shields or somebody for him, that he does expect to alter the state of the facts, it is the duty of the Senate to vote upon it. Permit me to say, sir, that I respect that provision (sec. 3, art. I) more than anyone in it, for when I looked at the Constitution and the history of the country for the past few years, I find very few provisions of the Constitution over which the party in power has not trampled rough-shod. This, sir, is a green spot on which the heel of party has not trod, and I desire to preserve it. I appeal to the Senate, too, to guard and preserve it.

Mr. Calhoun, of South Carolina:

I hold that nothing is more certain than that if General Shields is not now a Senator of the United States he never can become such by postponement. The

Constitution is explicit in requiring that no person shall be a Senator unless he has been 9 years a citizen of the United States. If, then, he is not a Senator now there is a vacancy, for Illinois would have but one vote here, and that vacancy must be filled according to law. That he is not a Senator is clear, because he cannot perform one duty belonging to the senatorial office unless he has been naturalized 9 years previous to the commencement of his senatorial term. Thinking thus, I deem it due to the State of Illinois that the question should be now settled, unless General Shields shall allege that he has evidence which will in all probability be satisfactory to the Senate that the term of 9 years had expired before the 4th of March. If such an allegation shall be made by General Shields, it will be the duty of the Senate to postpone it, but not otherwise. * * *

And now, sir, I come to a point of some little importance, and it is that the question here involved should be clearly settled, not only for the present, but for all future time. My opinion is that the resolution is not entirely correct. It would seem to conclude that all kinds of elections are void unless 9 years shall have expired on the day of election. I think that is not according to the Constitution. My opinion is, that if the 9 years are consummated previous to the 4th day of March the election is good and is not void. I propose, therefore, to add to the resolution the following words: "At the commencement of the term for which he was elected."

Mr. Webster:

Is it not obvious, that if the Executive appointment occur in the recess, a question must arise as to whether there was a vacancy and what sort of a vacancy? If a man has no seat, how can he resign his seat? If the election was void, a vacancy cannot be created by resignation—there is a vacancy already. Then I suggest to Senators—those who say that the question is so clear—that, however it may now be decided by the Senate, the question must hereafter be, whether there was a vacancy when the "resignation", so called, was made.

Mr. Douglas (colleague of General Shields):

The proposition is, that the election was void. I maintain that under the Constitution you have no right to declare it void; that is, upon the question which is still pending before you, you have no right to say that the election was void. It may have been voidable, * * *

Mr. Barrien:

We are simply engaged in performing a duty which as Senators we owe to the Constitution of the United States; and it seems to me that we manifest the most perfect respect for the State of Illinois by vindicating the principles of the Constitution, which she, in common with the other States of the Union, have ordained for the Government of this people. Now, it seems to me that the indications are very clear that it is the opinion of a majority of this Senate that this election was absolutely void at the time when it was made, if for no other reason, because the individual elected was not qualified to take his seat on the fourth day of March last—on the day when, by the Constitution, his senatorial term was to commence. Taking this to be the conviction of the Senate, I ask if any action of this body can change the consequences which must result? The Senator from Illinois seeks to discharge a duty which he owes to his State. Sir, we all owe a like duty to the State of Illinois, and to every other State in the Union. But he mistakes, in my opinion, if he supposes that any action of this Senate, either by passing or by refusing to pass the resolution, can affect the right of the State of Illinois or the manner in which that right shall be exercised by the constituted authorities in electing a Senator.

The question proposed by the Senator from Massachusetts is perfectly unanswerable. If this election was void, the office has never been filled since the expiration of the last senatorial term. The vacancy which has pre-existed the adjournment of Congress must continue to exist, because it depends upon the interpretation of the Constitution, and is wholly independent of any action of ours. The Governor cannot appoint, nor can we, by our action, enable him to appoint. The election is for 6 years, as shown by the credentials of the Senator; and to enable the State of Illinois to be represented in an extra session, which the President may deem it necessary to call, the Senator must be qualified to take his seat at any time after the expiration of his predecessor's time. The term of the predecessor of the Senator from Illinois having expired on the 3d day of March, unless the Constitution contemplated that the State should be unrepre-

sented, the succeeding term must commence on the next day. And it is necessary that he should be qualified to take his seat, according to the express terms of his credentials, as a Senator of the United States for 6 years from the 4th day of March. This is the testimony in the present case. And now, if this gentleman was not qualified to discharge the duty of Senator on the 4th day of March, is it possible that any action of ours can change the existing state of facts? If he is not qualified on that day, the office is rendered vacant by the expiration of the term of his predecessor, and is not affected by any action of ours. No action of ours can change the state of facts arising from the application of the principles of the Constitution. I desire, sir, to say that in the course which I pursue on this occasion, I am merely fulfilling what I conceive to be a constitutional duty; not contending for the privileges of the Senate; certainly not desirous of manifesting any disrespect to the State of Illinois, or to her Senator; but, on the contrary, believing that that State has as much interest as any other in the enforcement of the principles of the Constitution.

Mr. Butler.

I maintained yesterday, and still maintain, that although General Shields was not eligible at the time of his election, yet if he could have taken his seat on the 4th day of March with his qualifications complete, his previous ineligibility would not vitiate his election. But, inasmuch as it is represented that he could not at the time of taking his seat show that his qualifications were complete, I must be permitted to say that I am clearly of opinion that it cannot be maintained that he ever had valid title to his seat at all. The question resolves itself to this: Did his election confer upon him a valid title to the seat on the 4th of March? If it did not, it is not a title at all. You may qualify it, by calling the election voidable, or void, if you please. He had prima-facie evidence of title to the seat in the credentials which were presented. But the moment it was ascertained that the title conferred upon him no right at all to take his seat here on the 4th of March, you cannot say that any title had been conferred upon him at all. * * *

But it is represented here that General Shields, having no title to his seat, must go back for reelection or appointment by the Governor and that it is the duty of this body to throw no obstacle in the way, but to act in such a manner as to render this practicable. Sir, we cannot construe the Constitution of the United States for the accommodation of individuals. That is out of the question. My own inclinations are in favor of the sitting member. I concur in the opinion that it is due to the State of Illinois that this question should be settled. I know it has been stated that General Shields has offered to resign. But if there is nothing which he can resign, the act would be a nullity. To determine this, we must go back to the distinct inquiry as to whether the election conveyed a valid title at the time when he was called upon to discharge the duties of the office. If the election never has been valid, I presume it will be admitted that the Governor cannot fill the vacancy, and the sooner the facts are ascertained the better, in order to enable the Governor of Illinois to take measures to have the State represented by Senators upon this floor. I shall be much mistaken if, after the matter shall have been fully discussed, these gentlemen who have argued thus with much pertinacity will not be compelled to yield up their judgment. * * *

Mr. Underwood:

Now let us reason about this matter: Let us look at the Constitution. The Constitution says that unless an individual has been 9 years a citizen of the United States he cannot be a Senator of the United States. And that is not the only prohibition * * * (It says that unless he be of the age of 30 years he shall not be a Senator). Suppose then, you elect a man who is under 30 years of age, is not the election void?

In the course of the general argument upon the principle involved and the fundamental constitutional question, Mr. Webster said:

* * * I hold, most unquestionably, that the election was void, because the person upon whom the election fell was not competent to discharge the functions of the office that are intended to be conferred upon him; that is to say, to be a Senator from the 3d of March 1849, for 6 years. Now, if he could not be a Senator from the 3d of March for 6 years, then he was not eligible for the senatorial term, and it might just as well be said that he might be elected when he had

been a citizen 6 years, and await the lapse of 3 years before commencing his period of service, as it may be said that he may be elected and await the lapse of 9 months. The proposition is so clear that I think a little reflection will satisfy every gentleman on the subject.

In the course of the general debate as well, Mr. Seward said:

* * * The qualification of naturalization for a period of 9 years is a qualification which is not required at the time of election, but a qualification which must exist at the commencement of his term of service * * * I agree with the Senator from Missouri, that this case is not to be changed, unless it be by presenting evidence to show to the Senate, at its meeting in December, that the Hon. James Shields had been naturalized 9 years prior to the 4th of March.

I submit that the arguments with the reasons so clearly stated for the Senate's final action in the Shields case cannot in this instance be lightly disregarded. We have the power of course to decide otherwise; but at least a contrary decision overruling that of Senators like those named above, should be upon reasons as cogent and arguments as compelling.

The State reports are replete with cases relating to eligibility and qualifications for office. A large number hold that the time when the lack of eligibility or qualifications would attach is the election; while a larger number hold the crucial date is that of the commencement of the term of office. I see no useful purpose in collating the innumerable cases, which will be found in the digests and text books from different jurisdictions, nor argue either the one rule or the other that may prevail.

If precedent is to govern in this case, the Gallatin case, and even more so the Shields case, are conclusive.

If construction of the Constitution shall prevail, the result which was reached in these two precedents seems not only justified, but imperative.

As I have stated in the beginning of these observations, very reluctantly I am compelled to hold as I have indicated. With equal reluctance I present this report, which is not as full or complete as I would wish, but which, in establishing a precedent for future years, I feel upon my responsibility as a Senator should be put before my brethren.

HIRAM W. JOHNSON.

